RUGGED ROAD TO JUSTICE
A SOCIAL AUDIT OF NATIONAL HUMAN RIGHTS COMMISSION OF INDIA
VOLUME-IV

EDITED BY
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At the outset, we express our deep gratitude to the victims and their family members for reposing their faith in the Independent People’s Tribunal on the functioning of National Human Rights Commission, and for displaying remarkable courage in coming out in front of the Jury to narrate their tales of horror fearlessly.

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—Harsh Dobhal, Mathew Jacob & Anupam Kishore
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INTRODUCTION
The Constitution of India provides for the fundamental rights to its citizens. These rights and other social laws can be further referred to as human rights and the State being the guarantor of these rights. For decades together, human rights lawyers and activists have been using the courts to assert these rights and hold the State accountable for instances of violations. Since early 90s, India witnessed a shift in the socio-economic agenda and the policies of liberalisation, privatisation and globalisation set in. As the country increasing found itself closer to the idea of western democracy and its institutions, the Indian State started adhering to prevalent international norms of development and human rights.

The establishment of the National Human Rights Commission (NHRC) through the Protection of Human Rights Act (PHRA) in 1993, followed by establishment of State Human Rights Commissions (SHRCs), was one such step by the Indian government to express its commitment to protect and promote human rights. Under Article 370 of the Constitution of India, according to which, no law enacted by the Parliament of India, except for those in the field of defence, communication and foreign policy, will be extendable in Jammu and Kashmir unless it is ratified by the state legislature of Jammu & Kashmir. As accordingly most of the provisions of the Protection of Human Rights Act was included in the Jammu & Kashmir Protection of Human Rights Act (J&K PHRA), and was passed by the Jammu & Kashmir Legislative Assembly in the year 1997, and thus the Jammu & Kashmir State Human Rights Commission was constituted in the State of Jammu & Kashmir. The commission was envisioned to be an independent, credible, transparent and accountable body that will oversee and monitor the human rights situation and contribute towards new policies for upholding the same.

According to the United Nations, the national human rights institutions (NHRIs) should play a critical role “in promoting and monitoring the effective implementation of international human rights standards at the national level.” The foremost concern for such institutions to effectively function is their independence and autonomy. They
can be created either under the Constitution or a statute. In India, the statutory route has been the preferred mechanism for establishing the majority of the human rights institutions (HRIs)\(^1\).

However, these HRIs structurally depend on central and state governments for finances and appointments. The civil society organisations (CSOs) and the non-governmental organisations (NGOs) have constantly echoed their concerns for these commissions not being independent bodies as envisaged in the Act. The civil society has no role to play in the implementation of any of the functions of these institutions. HRIs are supposed to be uniquely positioned between the government and civil society organisations and be independent of the influence of both. However, this can be complicated as the commissions are supposed to be constituted by the State as well as funded by them\(^2\). As Anne Smith describes:

...if an NHRI is seen as being too close to the government or holding an agenda dictated by government departments, especially those who provide the funding, then they will be viewed by NGOs and the civil society at large as simply a puppet of the government and, therefore, damage their credibility. Conversely, if a NHRI allows NGOs to influence its workings such that an overly close relationship develops between the two, a NHRI will simply be seen as another “pro-NGO” ...Notwithstanding, if it is deemed to be pro-NGO, the NHRI’s credibility in the eyes of the most powerful group, the government, will be diminished. (Ibid, 209)

The commissions need to operate fearlessly and follow their mandate of upholding human rights. Despite the fact that these institutions are dependent on the State for finances, some degree of independence with regard to the functioning of these bodies could be ensured through a transparent and more democratic appointment process, ensuring plurality in appointments, establishment of independent investigation wing, involvement of credible and reputed human rights activists in various capacities etc.

Unfortunately, HRIs in India are clearly allied with the State. They have effectively become an instrument of the state and have been largely viewed as puppets of the State. One can refer to K.G. Kannabiran for a further understanding of the same. In an article published in the Economic and Political Weekly in 1992\(^3\), Kannabiran argued that the creation of such institutions was due to international pressure on India. India is constantly criticised for its human rights record, and therefore needs an institution that legitimises the exploitative orders of the inhumane state agencies. India has therefore created bodies which guard and supervise the political system, whilst having no intention of reducing human rights violations. These are bodies with a mandate to protect and promote human rights but which will actually act like a shield for the state by giving the appearance of setting its human rights records straight in front of the international community. ...the government obviously doesn’t propose to give up its present policy. Then the present proposal is one of those familiar political sleight of hand devices like the appointment of commissions of enquiry under the ineffective and over-worked Commissions of Inquiry Act 1956. A human rights commission is not going to resolve the political crises. Until these are

resolved, violence by the State is bound to continue ... If the government is really concerned about setting right its human rights record it has to take serious steps to rebuild the existing institutions, namely, the courts, instead of merely multiplying institutions. In fact it is more the responsibility of persons who regularly interact with these institutions, such as lawyers, public interest and human rights groups, jurists and academics to exert pressure on these institutions. The human rights record can never improve by the setting up of a commission without changing the existing social order. The debate on the setting up of a human rights commission should lead to a review of the functioning of the justice system and attempts have to be made to rebuild these institutions. The setting up of a human rights commission as a response to criticism of the government’s human rights record will at best be a formal act. This will not reduce human rights violations, but may be used to cover up such violations. (ibid, 2093)

What Kannabiran argued in 1992 is still valid two decades later. Despite the creation of 23 state human rights commissions and a National Human Rights Commission, a National Commission for Minorities, a National Commission for Scheduled Castes, a National Commission for Scheduled Tribes, a National Commission for Women, a National Commission for Protection of Child Rights etc, the human rights record of the State has actually worsened. However, India has attained a high level of legitimacy and acceptance through the establishment of these commissions. These commissions have seldom been successful in promoting and protecting human rights. Be it the cases of disappearances in Assam and Jammu & Kashmir, killings by army and paramilitary forces in Kashmir, Manipur, West Bengal and Chhattisgarh, farmer suicides in Maharashtra and Andhra Pradesh, land acquisitions and mining in Orissa and Jharkhand, droughts in Rajasthan and the rotting of food grains in the Haryana, atrocities against dalits and tribals, crime against women, pogrom in Muzaffarnagar or the Batla House encounter in New Delhi, all that the commissions have done is seek a report from the Government of India or respective state government concerned. In some cases, they have carried out investigations and issued recommendations but these are seldom abided by.

‘Paper Tigers’ or ‘Toothless Tigers’ are the words that came up somewhat rampantly during the consultation meetings held with various human rights groups across India. With mere recommendatory powers can we expect any more from these commissions? The images of human rights activists protesting in front of the NHRC during the Batla House encounter are still fresh. Can justice be expected from an institution which is another organ of the perpetrator, i.e., the State? Or, in the struggle for justice, will approaching human rights institutions simply result in re-victimisation from the same forces that are accused of the violation. The NHRC, being insensitive to the human rights issues, has asked the same accused to carry out the investigation into the issues. In other words, the NHRC has asked the police to investigate themselves, and then submit a report. There is no doubt that there is a clear lack of political will amongst the commission members. This can clearly be correlated with the political appointments in the commissions which will be discussed later in this section of the report. The action taken by the NHRC under the leadership of Justice J.S. Verma during the Gujarat riots was exemplary. But there are not many success stories to count and mention with regard to the interventions made by the NHRC and SHRCs. During various meetings and Independent People’s Tribunals (IPTs) held on the functioning of the NHRC and the SHRCs across the country, a mixed feeling came to the fore concerning these institutions. The participants in these meetings were various civil society groups, human rights organisations and individuals, lawyers, members of the media, retired judges of high courts and the Supreme Court and other eminent civil society members such as academics and individuals from other professions. While one part of civil society condemned the current functioning of the commissions and asked for their closure for reasons of huge investments, political appointment and wastage of
tax payers’ money, the other group, though understanding and condemning the current functioning of the commissions, proposed a strengthening and streamlining of the commissions.

That there is a need for human rights commissions cannot be denied. One of the prime reasons is that they are quasi-judicial bodies with powers enshrined through the Constitution of India. They act as an accessible justice mechanism, an alternative to court proceedings which in India are very lengthy, time-consuming and unimaginably expensive. The NHRC and SHRCs have the power of a civil court under the Code of Civil Procedure, 1908. The commissions also have the power to move the high courts and the Supreme Court. The Protection of Human Rights Act, 1993 (PHRA) and J&K PHRA, 1997, specifically mentions the establishment of a human rights court in each district. In some states they have been notified but are not yet working, whilst in other states they are yet to be notified and not much information is available in the public domain with regard to their functioning. These human rights courts mostly exist just on paper, as revealed by a number of civil society groups during the IPT process.

Globally, HRIs have gained enormous acceptability. They are a recent phenomenon and their establishment can be easily dated back two decades to the early 1990s. The international community had constantly moved for the establishment of national infrastructures for the protection and promotion of human rights, for bodies which would be constant watch dogs on matters related to human rights. This much was apparent at the Vienna World Conference on Human Rights in 1993. Later in December 1993, the UN General Assembly adopted the principles relating to the status and functioning of national institutions for the protection and promotion of human rights, famously known as the Paris Principles. The Paris Principles are the benchmarks which clearly lay down procedures for the establishment and functioning of national human rights institutions.

In the early 1990s, India was transitioning itself into the global market through newly adopted policies of liberalisation, privatisation, and globalisation. At the same time India was under enormous international pressure concerning its human rights records. In a neo-liberal framework, it was of the utmost importance for India to be accepted as a potential market and partner, and to have the adequate infrastructure that promotes and protects human rights.

The first mention of the potential establishment of a human rights commission in India was in the election manifesto of both the Congress and Bharatiya Janata Party in 1991. The Congress party came to power in 1991 and in the year 1992 started having discussions on establishing human rights commissions. On March 16, 1992, speaking in the Rajya Sabha, the then Home Minister, Mr. S.B. Chavan, mentioned that the proposed commission was to counter the false and politically motivated propaganda being spread by foreign and Indian civil rights agencies. On April 24, 1992, Mr. V.N. Gadgil, the official spokesperson of Congress, stated that the commission’s findings would act as correctives to the biased and one-sided NGO reports and would be an effective answer to politically motivated international criticism.4

The above statements by the home minister and the spokesperson of the ruling party make evident the international pressure under which the Act was passed, and the fact that the Indian State had no real interest in providing the institution with sufficient powers, resources and autonomy. The purpose of the establishment of the commissions and the enactment of the PHRA 1993 seems to have been driven by international pressure and to showcase India’s pro-human rights image to the international community. The State, in the meanwhile, has appeared to be continuing with the rights violations.

There were hardly any discussions held before the enactment of the Act. Almost all the major civil society organisations were excluded from the seminars and consultations that took place. The government’s background note on the establishment of the commissions was not made public and placed before the Parliament. The government didn’t even follow normal parliamentary procedures of first referring a bill to the Parliamentary Standing Committee for scrutiny, but instead rushed the bill to be adopted. It was later referred to the Parliamentary Standing Committee where it faded from notice. The NHRC was established on September 28, 1993, by a Presidential Ordinance. Two months later, a fresh bill was submitted to Parliament and on January 8, 1994, after a relatively indifferent parliamentary discussion, the “Protection of Human Rights Act, 1993” won Presidential approval and came into effect.

Since the inception of the PHRA 1993, there have been talks about its amendment. The Act clearly contradicts the Paris Principles, which will be discussed in detail in the later sections of this report. In 1996, the Kerala High Court submitted a draft proposal for amendments to the NHRC’s procedural regulations after conducting a spot study of various sections of the NHRC’s Law Division. A year and a half later, McKinsey & Co. prepared a report highlighting what it found to be the commission’s main problem – a severe backlog of pending cases – and suggesting solutions. In May 1999, the Staff Inspection Unit (SIU) conducted a staff study of the commission, the first since its inception, at the request of the Ministry of Home Affairs. Unfortunately, few, if any, of the extensive recommendations made in these reports have been implemented. Minor amendments were made in the year 2000 and 2006.

It’s now almost two decades since the inception of the commission. To date, 23 SHRCs and an NHRC have been created. Section 21 of the PHRA, 1993, states, “A state government may constitute a body to be known as the...” whereas Section 3 of the J&K PHRA, 1997, makes it mandatory to constitute a SHRC in the state of Jammu & Kashmir. In other words, it is not binding on states to establish an SHRC except the state of Jammu & Kashmir. The northeastern states of Mizoram, Meghalaya, Nagaland, Tripura and Arunachal Pradesh still don’t have SHRCs. Furthermore, the SHRCs in many states are defunct and dormant for several reasons; for example, no appointments being made for long periods of time, no infrastructure by the government etc. Examples of this can be seen in the SHRCs of Manipur and Himachal Pradesh. Many SHRCs came into existence as a result of civil society movements and public interest litigations. When the NHRC was contacted in this regard, it claimed that it had already requested the state governments to establish SHRCs. The NHRC and SHRCs are parallel bodies and the NHRC is not an appellate body for the SHRC.

The following report is a social audit of the functioning of six SHRCs in Jammu & Kashmir, Gujarat, Tamil Nadu, Bihar, Maharashtra and Himachal Pradesh. The objective for and methodology of undertaking the social audit is mentioned below. This section will also give a critical understanding of the PHRA 1993 and J&K PHRA 1997 vis-à-vis the Paris Principles with examples from the six states. A social audit of all the SHRCs and the NHRC is being conducted by the Human Rights Law Network (HRLN) in collaboration with several civil society groups across India. The social audit reports of the remaining SHRCs and the NHRC will be published in subsequent volumes.

OBJECTIVE

The NHRC and SHRCs were constituted following the PHRA 1993 and J&K PHRA 1997 (in the state of Jammu & Kashmir), with an aim to provide access to justice to a number of people who find it difficult and expensive to approach Indian courts. However, despite this mechanism being in place, these commissions have not been able to achieve desirable results, and the human rights situation has continued to deteriorate. Most of the violations reported to these commissions are committed by the country’s law enforcement agencies and security forces. The commissions suffer from a number of handicaps, such as a lack of autonomy, politically made appointments, inadequate resources and no independent investigative mechanism, thus making them incapable of effectively addressing violations. Over the years, there has been a huge trust deficit between these commissions and the people in general, and rights groups in particular. The country’s image as a vibrant democracy will be at stake if such institutions fail to live up to people’s expectations. The courts being difficult to access for the poor and the marginalised of this country, these commissions with quasi-judicial functions, play an important role in the justice delivery mechanism. Despite existing for almost two decades, there is very little information available with regard to functioning, finances, appointment, investigation, awareness etc. These commissions could have addressed the human rights situation in a much better and effective manner even if the powers were limited but exercised fully and effectively.

As the neo-liberal policies and the process of globalisation unfolded throughout the 90s and up to now, this onslaught has translated into systematic demolition of the welfare State, cutting down on welfare schemes, undermining health, education and social security, while appeasing the financial markets and increasing armament and armed force interventions. All this while the State has been vigorously playing the role of the protective shell for corporate houses and multinationals whereas more and more people are dying of hunger, farmers committing suicides, people facing displacement with an erosion of their life support systems. At the same the anti-terror and security laws have been found to be grossly misused against minorities, tribals and other marginalized communities. Thus the country finds itself in a situation where during the last two decades, the unfolding of the process of globalisation has robbed people of their livelihoods, and every section of society has borne the brunt of the rapid march of communal forces and terror related acts, the ordinary citizen’s cry for justice has multiplied.

In the context of this deteriorating human rights situation in the country one would expect the HRIs to play a robust role. It is in this backdrop that we felt it was imperative to study these institutions and evaluate their functioning. The role played by these institutions in matters of grave human rights abuse has been a concern for the human rights and civil liberties fraternities of this country.

RESEARCH METHODOLOGY

Since this publication is not merely a research project but rather an outcome of an ongoing endeavour to work with HRIs with an aim to strengthen towards an effective justice delivery mechanism, we have very closely looked at the functioning of the SHRCs in 18 states. The indicators we decided to evaluate the functioning of commissions comprised independence, autonomy, appointments, complainant handling mechanism, finances, relationship with civil society and human rights education. The perception of the human rights organisations and individuals as well as the victims and complainants were taken

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into consideration and they formed the tools of initial assessment. Meetings were held with a number of senior lawyers and retired judges to seek their advices for required changes in the PHRA and J&K PHRA 1997 (in the state of Jammu & Kashmir). An attempt was also made to understand commissions’ working based on the international guidelines and the Paris Principles.

The research methodology adopted for the purpose of the report included analysis of data on the work of the commissions, like annual reports, cases and orders/recommendations passed by the commissions and related media reports. Additionally, we interviewed staff, members and chairpersons of the commissions and members of civil society organisations. We approached legal experts and former members and chairpersons of the SHRCs to throw light on the working of the commission. In cases where we were denied access to information, RTI applications were filed under the Right to Information Act, 2005. The information collected was tested against the set standards and objective of the parent statute the Protection of Human Rights Act, 1993, and the International Guidelines.

A. Document Analysis
Primary data from the states of Gujarat, Bihar, Jammu & Kashmir, Maharashtra, Tamil Nadu and Himachal Pradesh was gathered; this included cases, complaints, orders/recommendations passed and annual reports of last two years. We gathered information about the administrative setup, complaints received and disposed, significant work done, budgets, and details of staff from the annual reports of the SHRCs.

B. Applications under the Right to Information Act, 2005
We also obtained information about the total number of complaints received and disposed off and the details of the staff working at the SHRCs through RTI applications. We have requested for information on annual reports, annual budgets, action taken reports, and recommendations passed by the SHRCs in certain cases. The SHRCs have denied us information on specific reports and recommendations on the grounds that these are confidential.

C. Media Reports
We tracked media reports on the commissions from 2006-2011 so as to assess the nature of their interventions in matters concerning human rights issues.

D. Independent People’s Tribunal
In each state, to start the process of participatory analysis of the functioning of the SHRCs, a consultation meeting was held. This meeting has the representation of people who have constantly engaged with the NHRC through complaints and research, and also a set of lawyers and activists from various districts within the state that are trained in the procedures of approaching the commissions. This meeting helps by providing a detailed situational analysis of the commission’s functioning, capacity building of the people and the formation of a civil society working group which will engage with the commission at various stages of the campaign and work towards strengthening and streamlining it.

9. In 1993, the UN General Assembly adopted Principles relating to the Status of National Institutions (The Paris Principles)
10. Makhija & Raha, A review of the working of the KSHRC and KSCW, Accountability Initiative & Daksh, April 2011. The methodology was inspired by the above mentioned reference and HRLN wants to acknowledge the same. The component of people’s tribunal was bought out specifically in HRLN’s study.
For the purpose of this study a format was developed and was sent to civil society organisations, legal experts, and the chairperson, members, secretary and staff of the commissions. The questions ranged from constitution of the commission, knowledge of the staff on laws pertaining to human rights, initiatives in the last two years, powers, complaint mechanisms and relationship between the commission and civil society organisations. The questions were framed to assess the independence, function, transparency and accessibility of the commissions. Samples of representative complaints were documented with all the available information in the testimony format.

The objective of organising the IPTs is to engage with and look at the functioning of these commissions critically through the eyes of the victims, experts and human rights activists, thus to catalyse the NHRC to function as effective, efficient, transparent and accountable institutions that address human rights violations. The IPT exercise aims at putting together evidence dispassionately and comprehensively, so that cases of human rights violations not addressed adequately by the SHRC mechanism can be brought before the courts and orders can be obtained to address specific failures and problems.

IPTs were held in all the six states. The cases deposed before the jury in the IPTs pertained to diverse sections of people covering most part of the states. Thus the effort was made to select cases from as many parts of the state as possible that represent a certain pattern of violation. The selection process meticulously ensured that cases of all vulnerable sections like women, dalits, tribals, children and members of minority communities were taken up in the IPTs. Similarly, it was ensured that the different and diverse patterns of violations such as custodial torture, extrajudicial killings, rape, violence against women and children, dalits and tribals, matters related to land rights, etc were represented in the IPT. Further, these cases were deposed before a jury panel comprising retired high court judges, senior advocates, academicians and other renowned civil society members. Along with the victims, experts who have thorough knowledge and experience of the functioning of the SHRCs also deposed before the jury. After listening to the victims and experts, each jury passed its observations and recommendations with regard to the functioning of the commission and suggested ways of strengthening the institution.

PARIS PRINCIPLES

The Paris Principles are the principal source of normative standards for HRIs. In 1991, the United Nations organised an international workshop, which resulted in the formulation and adoption of these principles. They are a detailed set of guiding principles for establishing and maintaining strong and effective HRIs. The Paris Principles were subsequently endorsed by both the UN Commission on Human Rights and the UN General Assembly.[11] They started the process of serious international cooperation and standardisation of HRIs.

The Paris Principles are broad and general. They apply to all HRIs, regardless of structure or type. They provide that a national institution should be established in the national constitution or by a law that clearly sets out its role and powers and that its mandate should be as broad as possible. They lay down four factors needed to establish and monitor the HRIs, namely independence through legal and operational autonomy; independence through financial autonomy; independence through appointment and dismissal procedures; and independence through pluralism of composition.

The first principle under the head ‘Composition and Guarantees of Independence and Pluralism’, clearly states that the HRIs should be pluralistic and should co-operate with a range of social and

political groups and institutions, including non-governmental organisations, judicial institutions, professional bodies and government departments. It clearly mentions the involvement of HRIs with all stakeholders in civil society. It also clearly mentions the role of government departments as ‘advisors’.

The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists;
(b) Trends in philosophical or religious thought;
(c) Universities and qualified experts;
(d) Parliament;
(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

The third principle under this heading mentions the independence through legal and operational autonomy of the HRIs. While it is important to have an HRI, it is equally important to empower it with constitutional powers to carry out and enforce its mandate. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate.

This mandate may be renewable, provided that the pluralism of the institution’s membership is ensured. It has to be noted that the idea of pluralism, or diversity, in the membership of a human rights commission figures strongly in the Paris Principles. Pluralism, through the participation of people from a variety of professions across of civil society and from members of different marginalized groups, ensures a diversity of viewpoints within the commission and helps legitimize the roles of these commissions.

Maintaining pluralism is one of the most important factors in guaranteeing the efficacy of an HRI. It fosters independence from the government, and helps an HRI deal with complaints against the State with a reduced worry that the HRI will be improperly influenced by the State.

The second principle under the heading ‘Composition and Guarantees of Independence and Pluralism’, states that the HRIs should have an infrastructure that allows them to carry out their functions. Particular importance is attached to the need for adequate funding to allow the institution to be functionally and financially autonomous. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect its independence.

The Paris Principles clearly lay down the factors that should be involved in the establishment and monitoring of the HRIs, with special emphasis on plurality and independence. The principles also mention the functioning of the HRIs. The various functions of the HRIs are described in the principles as “responsibilities”, suggesting that these are the things that institutions are obliged to do.

The functioning of the HRIs can be broadly categorised beneath the headings of recommendations and proposals to the government, the protection and promotion of human rights, acting as a human rights monitoring agency, the promotion of international cooperation, and compliance of the state with regard to various human rights statutes and treaties, human rights education, and functioning as a
quasi-judicial body (not a compulsion). The third clause, under the heading ‘Competence and Responsibilities’, clearly lays down the responsibilities of the HRIs.

“(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organisations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;

(b) To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which states are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.”

The Principles provide that HRIs should make recommendations and proposals to governments on various matters relating to human rights, including existing and proposed laws, human rights violations and the national human rights situation in general. They require national institutions to promote teaching and research on human rights and organise public awareness and education programmes. The Paris Principles also address methods of operation and by implication, the powers of national institutions. They are entitled to consider any issue falling within their competence without authorisation from any higher authority. They are entitled to hear any person or gather any evidence needed to consider mat-
ters falling within their competence. Furthermore, HRIs are called on to publicise their decisions and concerns, as well as to meet regularly.

“(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organisations in expanding the work of the national institutions, develop relations with the non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.”

The Paris Principles do not require HRIs to have a ‘quasi-jurisdictional’ function – that is, to handle complaints or petitions from people whose human rights are alleged to have been violated. However, where HRIs do have this function, the Paris Principles list particular obligations:

— To seek an amicable settlement through conciliation, a binding decision or on the basis of confidentiality;

— To inform petitioners of their rights, and available remedies, and promote access to them;

— To hear complaints and transmit them to competent authorities; and

— To make recommendations to competent authorities.

The Indian NHRC and SHRCs have quasi-jurisdictional functions. This will be discussed in detail later in this section. A complaint can be brought to the notice of a commission by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations. In such situations, the HRIs need to abide by the above mentioned four points.

From the discussion above, it can be easily established that the Paris Principles clearly lay down the framework for HRIs. It can be said that the Paris Principles are the first systematic effort to enumerate the role and functions of HRIs. While it can be called an ideal document with regard to the establishment of HRIs, it clearly lacks guidelines highlighting the functioning of the HRIs. For example, the Principles are silent with regard to cases against armed forces. The Paris Principles are a good starting point for discussion with regard to HRIs. The role of the Indian State is much larger than what has been prescribed for in the Principles for an effective and strong HRI.
The narrative on the inception of the PHRA 1993 and J&K PHRA 1997 has already been dealt with in the earlier sections. While some practitioners call it a token and a toothless act, others are of the belief that whatever limited provisions are prescribed for in the Act, if utilised to the fullest, they can lead towards the protection and promotion of human rights. This section is an attempt to glance through the Act and get an understanding with regards to the powers and functioning of the commissions.

The definition of human rights as per the PHRA and J&K PHRA is very clear. It reflects the fundamental rights enshrined in the Constitution of India and the Universal Declaration of Human Rights. It refers to rights relating to the life, liberty, equality and dignity of the individual. The underlying objective of the Act, as the name suggests, is to protect human rights in India. The Constitution of India is a repository of human rights available to citizens and persons living in India. The majority of these rights are available against the state, in that, it is the duty of the State to guarantee the protection of these rights. The Constitution also sets out the manner in which these rights can be enforced against the State. The NHRC and several SHRCs have been established through the PHRA 1993, and Jammu & Kashmir SHRC through J&K PHRA 1997. Section 21 of the PHRA 1993, with regard to the establishment of SHRCs, has stated that, “A state government may constitute a body to be known as...” Legally it is not binding for states to have SHRCs except in the State of Jammu & Kashmir where Section 3 of the J&K PHRA, 1997, makes it mandatory to constitute a SHRC. Many states like Karnataka and Uttar Pradesh have seen Public Interest Litigations (PILs) filed by civil society groups for the establishment of a commission. Higher judiciary, on various instances, have asked state governments to establish the SHRCs.

The NHRC ought to consist of a chairperson who has been a Chief Justice of the Supreme Court, one member who is, or has been, a judge of the Supreme Court, one member who is, or has been, a judge of a high court and two members who have practical knowledge and experience of human rights. The members of other national commissions are deemed to be the members of the NHRC.

The chief executive officer of the commission is a secretary general. Similarly, the SHRCs ought to consist of a chairperson who has been a chief justice of a high court, one member who is, or has been a judge of a high court or district judge with a minimum of seven years of experience, and one member (three for Jammu & Kashmir SHRC under Section 3 of J&K PHRA, 1997) having practical knowledge and experience of human rights. Similar to the NHRC, the chief executive officer of the state commission is a secretary.

The appointment of chairperson and the members of NHRC is done by a committee consisting of the Prime Minister, Speaker of Lok Sabha, Minister of Home Affairs, Leader of the Opposition in Lok Sabha, Leader of the Opposition in Rajya Sabha and Deputy Chairperson of Rajya Sabha.30 The duration of the term of the chairperson and the members is five years. Similarly, the appointment of the chairperson and members of the SHRCs is done by a committee consisting of the Chief Minister, Speaker of the Legislative Assembly, Minister in-charge of the Department of Home Affairs and the Leader of the Opposition in the Legislative Assembly. The duration of the term of the chairperson and the members is five years.

With regard to the functions and powers of the commissions, they have the power to look into any matter of human rights brought before them through the victim or on behalf of the victim by a complainant. Though it is largely argued that the commissions can only look into complaints against public servants as mentioned in Section 12 (a) (ii), Section 12 (a) (i) of PHRA, 1993, and Section 13.
(a) (ii), Section 12 (a) (i) of J&K PHRA, 1997, clearly says that it has the obligation to look into any complaint of violations of human rights. It also has the power to carry out *suo moto* inquiries. The commissions have dismissed a large number of matters stating that they are *sub judice*.

They have the power to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. The commissions have the power to review and study the safeguards provided by the constitution, treaties and other international instruments on human rights and institutions and make necessary recommendations to the government. The commissions should involve and encourage the efforts of non-governmental organisations and institutions and spread human rights literacy among various sections of the civil society.

The commissions, while enquiring into a complaint, have the power of a civil court. Every proceeding before a commission is deemed to be a judicial proceeding. A commission, for the purpose of investigation into a matter, can utilise the service of any officer or agency. The appointed officer or the agency needs to submit a report before the commission within a stipulated time and on that report the commission, after satisfying itself with the facts (cross verifying and asking for replies from different parties) will issue recommendations. The recommendations can direct the concerned for payments of damages, initiate proceedings for prosecution, and/or move the high court or the Supreme Court.

The recommendation issued by the commission has to be supplemented with a compliance report by the government normally within a period of one month. However, in dealing with the complaints against armed forces, the commission can only seek a report from the central government. Obtaining the report, the commission can either proceed with it or make its recommendations to the central government which is duty bound to furnish the action-taken report normally within a period of three months. The commission should then publish its report together with the recommendations and action taken. It has to be noted that other sections of this law are not applicable with regard to complaints against the armed forces.

The commissions are duty bound to furnish annual reports, and special reports if needed. The reports have to be tabled on the floor of the house by the government along with the action taken report. If any recommendation has not been accepted by the government, the reason has to be mentioned.

One of the ground-breaking sections under the PHRA 1993 (Section 30) and J&K PHRA, 1997 (Section 20) is the establishment of Human Rights Courts (HRCs). The HRCs were envisaged for a speedy trial in cases of human rights violations. In each district a court of session may be specified as a human rights court. For each human rights court, there should be a specified public prosecutor or an advocate with not less than seven years of practice.

The above sections have clearly laid out the broad understanding of the Paris Principles, the PHRA, 1993, and J&K PHRA, 1997. Based on the Paris Principles, the PHRA, 1993, and the J&K PHRA, 1997, the following section tries to understand the functioning of six State Human Rights Commissions of Jammu & Kashmir, Gujarat, Tamil Nadu, Bihar, Maharashtra and Himachal Pradesh. While looking into the functioning of the commissions, an attempt is also made to refer to the powers of the PHRA, 1993, and J&K PHRA, 1997, vis-à-vis the Paris Principles. For the same purpose the indicators used are Establishment, Independence, Appointments and Composition, Infrastructure, Relationship with Civil Society, and Accessibility. Examples from the abovementioned SHRCs will be quoted wherever deemed fit for a clearer understanding.
ESTABLISHMENT

The Paris Principles clearly state that for the establishment of the HRIs, they should be part of the law and entrenched in the Constitution. This legitimises the independence of a commission and enshrines it with legal powers. Following this, the NHRC and SHRCs were established under the PHRA 1993 and Jammu & Kashmir SHRC under J&K PHRA, 1997.

The reasons for the PHRA and how it came into existence have already been discussed in earlier sections of this report. Although the PHRA, 1993, and J&K PHRA, 1997, lay the ground for the establishment of the commissions, it contains many flaws contradicting the Paris Principles, in terms of independence, appointments, engaging with civil society etc. Civil society groups lobbied for amendments to be made to the PHRA, 1993, and J&K PHRA, 1997, and for it to be in accordance with the Paris Principles but, to date, they have been ignored. There has been a clear decline in the way the commissions function over the years if we look at the nature of complaints taken up and action taken hitherto. As mentioned, the social audit process brings out that the commissions' failures are not only because of the weak PHRA (it refers to both PHRA, 1993, and J&K PHRA, 1997) but also because of the lack of political will of the commissions. Positive clauses with regard to the effective powers of the commissions have not been put into practice. While the PHRA refers to engagement with civil society organisations and encourages human rights work in the country, the commissions appear to be happy to ignore civil society and be content being an extension of the State.

The PHRA and the establishment of the commissions serve as mere showpieces to portray a positive image to the rest of the world. It has been an extremely sad state of affairs. India has yet to make its National Human Rights Plans of Action, an action it committed to at the World Conference on Human Rights in Vienna. The lack of will to uphold its own mandate has affected the entire state of affairs, and people who held great hopes for the commissions now tend to take the old route to justice back with the courts. There are visible gaps in the jurisdictions of the national and state commissions. The complainant is unaware of whom to approach in which case. Sometimes cases have been addressed by the NHRC whilst in other instances similar cases have been transferred to a SHRC. It also has to be noted that transfer of a case means closure at the NHRC's end and is shown as a disposed of case, while in reality the complainant is still seeking justice.

INDEPENDENCE

A commission's independence reflects its effectiveness. It establishes its legitimacy and credibility. Independence from the government and any other private interest is the strong foundation on which a commission needs to be established. The indicators of independence are appointment mechanisms, terms of office, mandate, powers, funding, investigation etc.

The PHRA clearly violates the Paris Principles when it comes to independence. The NHRC and SHRCs have been established by the PHRA and are answerable to the Parliament. The line between the legislative and the executive is very thin. Instead of answering to an independent authority, the NHRC and SHRCs are responding to the government of the day. The NHRC and SHRCs report to the Ministry of Home Affairs, the same ministry which also oversees the work of the police, immigration, communal harmony, border management, special laws for terrorism and insurgency etc. Although most complaints lodged with the commissions are made against these departments, the NHRC and SHRCs appear to be bound by restrictions to move against them. This makes the commissions totally ineffec-
tive and allows a huge scope for government invasion into the commissions’ functioning.

The PHRA fails to make the NHRC and SHRCs independent bodies. They receive instructions from government ministers, since they are required to report to them by virtue of their appointments having been made by them. There has been no recorded evidence of the NHRC and SHRCs taking suitable action against the government of the day or of moving a court to action. In most of the complaints of grave human rights violations, in which state parties are perpetrators, matters are closed by simply recommending petty compensations. The commissions’ silence on the issues of armed killings and torture in various states, arbitrary arrests, sedition laws etc., are clear examples of the same.

While the NHRC did brilliant work to take *suo-moto* action in the Gujarat carnage and conducted the investigation, its silence in the court was evident of government pressure. In the report from Jammu & Kashmir, it can be seen that the NHRC and SHRCs have been quiet observers of secret killings and disappearances. There have been many incidences of enforced disappearances, rapes and encounter killings towards which J&K SHRC as well as the NHRC have been a silent spectator. Neither the SHRC nor the NHRC have brought to book the guilt security force personnel who committed rape in Kunan Poshpora Village in Kupwara District more than two decades back. Victims’ narrations and the commissions’ proceedings have been documented in order to investigate the role of the latter. One such heart wrenching case of disappearance came up during the investigation of commission’s proceedings. The two victims Mohammad Shafi Rah & Mushtaq Ahmed Rah, businessmen in Nepal, were arrested in the year 2000 by the D.I.G. Police and the Intelligence Bureau in Nepal, where mass arrest of Kashmiris was taking place at that time. Out of the 27 arrestees, only 10 were released and the rest are still missing, including the above victims. The FIR have been lodged in two police stations, namely at Zaina Kadal and Shaheed Gunj. The complaint at both the commissions i.e. National Human Rights Commission and J&K SHRC have been sent on September 17, 2003. However the complaint has not yet been disposed of in either of the commissions. The family members especially the father Abdul Ahad Rah is still in search of their missing sons, more than a decade after their disappearance.

The commission in Jammu & Kashmir is scared to move against the security force personnel that are torturing and killing civilians and committing rape regularly, on the basis of the impunity enjoyed by them under AFSPA. Even the recommendations passed by them, though in very few cases and only compensatory, have not been adhered to. In Bihar, the SHRC has not moved an inch in the huge volume of cases filed by many human rights groups on the issues of dalit atrocities. In cases of custodial deaths and brutal police tortures, only meager compensation amount has been recommended but still no prosecution has taken place of such guilty police officers and security forces. Most of the cases are, shockingly, still pending for many years. The story is no different in Tamil Nadu, Maharashtra and Gujarat. Because commissions are not guaranteed their independence, they remain mere showpieces of the State.

Payment of compensation is, on principle, not accepted by many civil society organisations. For an act of crime by State forces tax payers’ money is wasted, while the State forces and agencies continue to operate in the same way. There are no recorded instances available which prove that departmental proceedings or criminal charges have been initiated against the accused. The State and the commission are hand in glove when it comes to the protection of the accused fellow from their department.

The commissions have zero independence when it comes to investigation into a matter of human rights violation. The investigation mechanism of the commissions is completely flawed in nature. In the reports from various states compiled in this edition, one can find several instances where the perpetrators of the crime and the accused were asked by a commission to clarify the charges against them and
furnish a report. Upon receiving a complaint of police torture, a commission has asked the same police to investigate the matter, and based on the report has closed the matter. Or, upon receiving a complaint of negligence by a government department leading to violation of human rights of the victims, the commission has asked the same department to conduct the investigation and furnish the report.

It has been very shocking to learn that commissions seldom conduct independent investigations. This results not only in biased investigation and manipulations of facts, but in many instances in the form of a re-abuse of the victims for having approached the commission to file a complaint against the accused. Investigations of complaints concerning human rights violations are different to criminal investigations. Even in criminal matters, human rights violations can be investigated independently of the criminal charges. In such cases we need not have the police doing all the investigation. It can be conducted by a team comprising of doctors, academicians, psychologists, human rights activists etc.

Financial autonomy of a commission guarantees its overall freedom. This also means an independent way of operating, and no commitment to the government. But the commissions in India depend solely upon the Ministry of Home Affairs. The commissions don’t raise their funds on their own. The commissions should determine their budget and channel funds for the same. In the national plan, a separate fund is to be kept for the commissions to operate on. Financial independence will ensure the commissions are not accountable to the government but rather to the people. The financial situation of the commissions is very disappointing. The staff members are also appointed after requests to the government, and are sent to these commissions on deputation, more often on punishment posting.

In brief, the commissions are completely under the control of the government of the day. Be it with regards to appointment, investigation, finance or their functioning. The idea of the Paris Principles, for an independent autonomous commission, has been defeated in the past two decades.

**APPOINTMENT AND COMPOSITION**

The composition and appointment process of the commissions is the most crucial element in determining the independence and adequate functioning of a commission. The PHRA contradicts the Paris Principles on the appointments to and composition of the commissions. It has legitimised the appointments in such a way that is always in favour of the ruling government. While the Paris Principles mention the diversity in the composition of the commissions, keeping it positioned between the government and civil society, the PHRA has given all the power to the government with regards to the appointments to the commissions. The provisions laid down by the Paris Principles have already been discussed in the earlier sections of this report. According to the PHRA 1993, the appointment of members to the NHRC is to be conducted by a committee comprising of the Prime Minister, Speaker of Lok Sabha, Minister of Home Affairs, Leader of the Opposition in Lok Sabha, Leader of the Opposition in Rajya Sabha and Deputy Chairman of Rajya Sabha. If we look critically at the appointment committee, four out of six members are from the ruling government. It is evident that a person not acceptable to the ruling government cannot become a member or Chairperson of the NHRC. The story is the same for the SHRCs. With the current provisions, the bias in appointment can’t be dismissed.

Most civil society groups see the appointments to the commissions as post retirement benefits for government friendly bureaucrats and judges. The commissions have turned out to be parking lots and means of welfare for the retired bureaucrats and judges. There has been no representation of members of civil society in the existing commissions. Human rights activists are not welcomed onto the boards of the commissions. Members of State forces, who in most instances have been party to or guilty of the
Representation of women in the commissions has been a serious worry. No woman has ever been appointed as a chairperson of a commission as per the PHRA. Representation of the marginalised, such as dalits and tribals is also seldom seen. While the commissions deal with a large volume of complaints involving women, dalit and tribal cases, the lack of representation of these sections of society makes them equally vulnerable and marginalised in front of the commissions too. Though the Act mentions the appointment of one member who has knowledge and experience of human rights work, this provision is generally not adhered to.

To ensure diversity in the appointment process, there needs to be an engagement between the government and civil society. There need to be nominations for the commissions which can then be elected by the committee, which again needs to be comprised of members who are independent of the government. While the government argues that there are retired judges in the commissions who provide legitimacy, these judges need to act like advisors for the commissions which should be represented by people who have expertise in human rights and have carried on such work for a considerable amount of time.

The composition of the commissions is also not adequate to deal with a large volume of cases. With only a chairperson and a few members, it is impossible to do justice to the complaints that come before the commissions. The commissions now need to move out from the national and state capitals and have offices at the district level. It is extremely difficult for a person from a far-off village to continuously come to the state capital in order to deal with their case. The complainant incurs a huge amount of expenses in this way. Operating in each district would ensure that the workload of national and state commissions is more appropriately distributed, and hence they would be more able to reach out to everyone approaching them for justice.

With the current situation, it is evident that the commissions are actually at the mercy of the ruling government, whilst civil society, in all regards, is kept at the periphery of the operations. Out of a whole pool of civil rights activists in India, none has ever made it to the NHRC. The international community concerned with the functioning of human rights institutions should look into the matter, the reasons for this are loud and clear. In such a situation commissions are not doing anything but justifying the horrendous acts of the state.

The criteria for appointment mentioned are in favour of the ruling government. Appointment to a commission has been laid out in such a way that an entire section of society, people who have been fighting for rights for several decades, have been excluded from the operations of the commissions. For the appointments to be transparent and pluralist in nature there need to be amendments to the existing PHRA 1993. The powers with regard to the appointment and composition have to shift to an autonomous body which looks into the functioning of the commissions. The direct appointment by the executive and the legislative is not desirable and the records of the last two decades show that they have failed to protect and promote human right in India. The commissions, as they stand, don’t reflect the social and political diversity of India.

**RELATIONSHIP WITH CIVIL SOCIETY**

From the above discussions it is quite evident that the commissions are allied with the governments. They have been set up to be just another government department. While their mandate is for the protection and promotion of human rights, they are just engaged in giving a clean chit to the government and upholding its human rights record.
The commissions’ relationship with civil society is very limited and restricted, if in fact there is any relationship at all. There is no membership of representatives of civil society in the commissions in any capacity. While conducting the IPTs, the commissions stayed away from the proceedings and in most cases we were told that the commissions are not answerable to civil society and that they are constitutional bodies answerable only to the government. Such is the attitude of these commissions that they seldom engage in any concrete manner with civil society organisations and human rights groups.

The commissions need to engage in human rights education programmes and build awareness amongst the general public concerning their rights. No commission seems to be carrying out these activities. It was surprising to discover that even some lawyers and human rights activists don’t know the commission’s address in their state. Over the years, the commissions have just fulfilled the bare minimum of their mandate, by being in existence, and they have never reached beyond this. The impression of these commissions being just another government department is validated by the fact that they never involve themselves with civil society.

For members of civil society, the only way they can engage with the commissions is by way of being a complainant. As mentioned before, the websites are not functional in most cases. Furthermore, the websites are mostly in English, thus making it difficult for the local people to understand them. The attitude of the commission members, and their view that they are supreme authorities, alienates them from the people. Even the most urgent of human rights violations, instead of being immediately investigated by the commission, are simply transferred from desk to desk.

ACCESSIBILITY

Commissions mandated with protecting and promoting human rights ought to be accessible to the people, especially to those belonging to various marginalised communities. The commissions should give special importance to hearing the complaints of such groups. Also, public information should be available and shared with a larger group through various mediums.

The commissions in India operate from the state capitals. None of the commissions have shown any intent to move out from the comfort zone of the capital in order to be at district level. For people living in different districts in the state it is increasingly difficult and expensive to come to the state capital again and again for their complaints. There is not a single individual present representing the commissions in the districts. The commissions are not accessible to people with disabilities or to elderly citizens.

The commissions in all the states have failed to equip themselves with a diverse staff. Most of the appointments are made by the government and most of the members are men belonging to the higher socio-economic strata of society. It is very difficult for a woman or individual from the marginalized sections to approach the commissions and seek justice. In grave cases of custodial rape and torture, a woman victim has to address her case to the exclusively male members of the commission. Sensitivity and compassion amongst the members is clearly lacking.

Also the commissions have seldom conducted any activities in the past, whereby the people in far off districts can learn about the existence of the commissions and their powers. For most people, the commissions remain an unknown entity. There is a clear lack of awareness among the common people about the commissions, and therefore most of the complaints lodged with the commissions are sent by civil society groups on behalf of the victims.

In accordance with the PHRA 1993, for the commissions to be more accessible, it is important that human rights education programmes are conducted in each district by the commissions along with civil
society groups. Also, the commissions need to have representatives at district level, making it easier for people to approach them and follow up their cases. The establishment and proper functioning of the human rights courts will also help in this process.

CONCLUSION

The NHRC and SHRCs in India are currently in a grave state of disarray. The hopes of the millions of people who were advocating for these commissions have been turned into despair. While many have already given up the hope of any improvement in the functioning of these commissions and do not want to engage with these institutions, there are yet a large number of activists, lawyers and social workers who for years have constantly engaged themselves with the commissions in an attempt to seek justice, work and campaign towards streamline their functioning and to help make them more effective.

The idea of the IPT has been the same; to monitor and strengthen the functioning of the commissions. These IPTs clearly depict a representative sample from each state of the voices of victims of human rights violation and the responses of the commissions. Examining the testimonies of victims from each state will give a clear idea of the functioning of these commissions. The jury reports are also indicative of the fact that reforms are needed in the functioning of these commissions by the way of amendment to the PHRA and by the way of proper compliance with the current provisions in the PHRA.

With this attempt, we are hopeful that the idea of a strong commission is possible, whereby the commissions take strong cognisance of their current state of affairs and take necessary actions to protect and promote human rights effectively and efficiently.
POLICE ENCOUNTER, CUSTODIAL TORTURE, CUSTODIAL DEATH AND THE RESPONSE OF NHRC
The NHRC’s Response to Allegations of Encounter Killings, Police Brutality, and Custodial Deaths, Rapes, and Torture

During confidential interviews held throughout the visit, the Special Rapporteur was informed of several cases of individuals unlawfully taken into custody, severely beaten and taken to hospital where they subsequently died. He was informed that no steps had been taken to bring perpetrators of these acts to account.

– Report on India by Christof Heyns
Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

INTRODUCTION

A police officer from Uttar Pradesh admitted, “[t]his week, I was told to do an ‘encounter,’” by superiors. He was referring to a euphemism for executing an individual and then claiming that the victim was killed, without any pre-meditation, during the course of a shoot-out with police. “I am looking for my target,” he said, and then “I will eliminate him.” While India promotes itself as the world’s largest democracy, its police forces are widely regarded as lawless, abusive and ineffective. Youtube is replete with videos of police officers brutalizing citizens: recently, police officers were caught on tape thrashing an unarmed woman in Punjab, and another group of officers were caught beating teachers in Bihar with Latthis.

Many of the laws governing police practices are colonial era anachronisms. Instead of policing with public participation, the police use physical abuse and threats as primary crime investigation and law enforcement tactics. An institutional culture discourages officers from acting otherwise. Police officers are rarely given the resources, training, ethical environment, and encouragement to develop into a professional force. Many officers admit that they are expected to engage in various forms of police brutality and corruption, and may be penalized if they decide not to participate. Moreover,

2. Id.
the government, under the guise of furthering law and order, often shields officers from liability for their actions, which furthers a culture of impunity.

Marginalized groups, including Muslims and Dalits, are especially vulnerable to abuse. Though stemming from the discriminatory biases of individual police officers, their vulnerability is also the product of an abusive police culture in which an individual’s ability to pay a bribe, trade on social status, or call on political connections often determines whether they will be assisted or abused.

In this atmosphere, it is particularly important that the NHRC act as an independent body capable of methodically identifying and countering the systemic abuses of the police. Unfortunately the NHRC has been slow to do so. While the Commission has issued guidelines relating to encounter killings as well as custodial deaths and rapes, the guidelines are anaemic and ineffective. Moreover, the Commission itself fails to hold the police to these standards. In individual cases the NHRC will more often than not adopt the official police accounts of an event instead of challenging it with a full and proper independent investigation. The NHRC frequently dismisses cases without ever hearing from victims or eyewitnesses to police abuse.

**INDIA’S POLICING LAWS**

The 1861 Police Act, passed by the British, remains the implementing legislation governing India’s police structure. The legislation was passed in response to the 1857 Sepoy Mutiny by Indian soldiers acting in rebellion against British colonialism. The mutiny was quickly suppressed and jolted efforts by the British to pass laws to consolidate their authority over South Asia. These efforts including the establishment of an authoritarian police force. The police structure, retained today, is based on military command structures. There is tremendous emphasis on discipline and hierarchy. Lower ranked police constables are expected to blindly obey all instruction of superior officers.

According to the National Crime Records Bureau (NCRB), in 2012 India had 16,74,755 armed police, against a sanctioned number of 21,64,316 posts. In other words, there were 138 police per 1,00,000 people. Women constituted 85,462 of all police officers in the country, or five per cent of the police force. Muslims are also underrepresented in the police force; though making up twenty per cent of the population, they make up only six and half per cent of the force.

The power to create a police force rests primarily with the states, and as such most people in the police force report to state government authorities. At the federal level, the Union Ministry of Home Affairs, and support the states in their duties. All senior police officers in the state police forces, as well as those in the federal agencies, are members of the Indian Police Service (IPS). Larger cities also operate metropolitan police forces, under respective state governments.

Constables, the bottom rank, make up as much as 85 per cent of the Indian police. Constables are rarely trained on investigating crime complaints. Many also have little opportunity for career advancement, as many of the higher positions in the police department are de facto reserved for people from higher castes. The infrastructure, to support the work of the police, is crumbling. Many colonial era police stations and posts are falling apart. They lack basic equipment, including phone, computers, or stationary.

Many low-ranking police officers live in deteriorating barracks that are cramped and lack sufficient

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5. Id.
beds. Some lack medical facilities or toilets.

Junior and low-ranking police are frequently demoralized because of degrading working and living conditions. Police must meet a statutory requirement that they be available for duty 24 hours a day, seven days a week. Police constables frequently complain of exhaustion. Already short-staffed, police often have to report for duties that have little to do with the welfare of the country. Police are routinely diverted to protect “VIPs”—usually politicians, businesspeople, and entertainment figures. Worse yet, senior police officials frequently use low-ranking staff as orderlies and even as personal family servants.

While most police officials are subject to degrading and difficult work conditions, and are offered little training on effective policing techniques, officials are given incredible power over civilians. According to Section 46 of the Indian Criminal Procedure Code (CPC), law enforcement officials are authorized to use “all means necessary” to perform an arrest which is forcibly resisted. As noted by Special Rapporteur, Christof Heyns, “these provisions are broadly formulated and may grant law enforcement officers powers to use force in response to resistance which go beyond those powers permitted under international human rights law.”

These provisions also lead to civilian deaths. According to the NCRB, there were 109 civilian deaths due to police firing in 2011. However, many experts believe that the number of death may be far higher. Crime statistics are often not reliable, because the police are often unwilling to fully register crimes. One major reason for this is that police performance is evaluated based on crime statistics. There had been prior attempts to properly register crimes. However, when this was done, it led to a significant increase in crime figures, and caused considerable embarrassment to the government. The police reverted to concealing state crimes by not registering them.

There have been numerous attempts at police reform. The government appointed several well-regarded commissions and committees to assist with these efforts, including the Gore Committee on Police Training, the National Police Commission (NPC), the Ribeiro Committee on Police Reforms, and the Soli Sorabjee Committee or Police Act Drafting Committee.

The NPC was particularly comprehensive in the range of reform measures that it suggested in its efforts to prevent misuse of powers by the police and misuse of the police by politicians or other pressure groups. From 1979 and 1981, the NPC produced eight reports for the government. Some major recommendations included: (i) setting up of a Security Commission in each state to see that the government exercises its superintendence over the police in an open manner within the framework of law; (ii) prescribing a selection procedure that would ensure the appointment of the best officers to head the state police force; (iii) giving these officers a fixed minimum tenure so as to reduce their vulnerability; (iv) amending rules so that arbitrary transfers of police officers done without authority would become null and void; and (v) replacing the Police Act of 1861 with a new Police Act.

None of these recommendations were implemented.

In 1996 Prakash Singh (a former Director General of Police for Assam and subsequently Uttar Pradesh and finally Director General of the Border Security Force), initiated a PIL in the Indian Supreme Court, in which he sought real reform measures that would both promote the rule of law and meaningfully improve security across India. In 2006, the court noting that the police force was badly in need of greater professionalism suggested a number of reforms, including:

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the state government cannot ask the police force to hire someone, nor can they choose the Chief Commissioner,
there must be separate departments and staff for investigation and patrolling,
the creation of a Police Establishment Board, which will decide the selection, promotions and transfers of police officers and other staff, and
the establishment of a Police Complaints Authority, to inquire into allegations of police misconduct.

In October 2012, the Supreme Court requested status updates from the states as well as the central government on the implementation of these reforms. The Court’s decision had, as of then, yet to be implemented.

FAKE ENCOUNTERTILLINGS AND THE NHRC

“Encounter killings” is a euphemism used throughout South Asia to describe those extrajudicial executions in which police, paramilitary groups, or armed forces claim to have shot suspected criminals and terrorists during the course of a gun fight. A “fake encounter” occurs when an agent of the state kills an unarmed suspect, but alters the crime scene to make it appear as if the shooting happened in self-defence. In such cases, it is common for evidence, such as guns, to be planted on or near the dead body. Where the suspect was in custody at the time of the shooting, state authorities may claim that the person was killed during an escape attempt. Such killings are clearly against the law. As NHRC Member Satyabrata Pal noted:

. . . in the case of encounter killings, it’s an actual act of murder. These are public servants sworn to uphold the law – who kill! And if a public servant, particularly an armed officer of the state, thinks he can get away with murder, then obviously, he will think he can get away with anything else.8

Noting the “huge” numbers of fake encounter killings that occur in India, Satyabrata Pal added that, in his experience, fake encounter killings take place for three reasons:

Some were criminals who could not be put away through the judicial process, and therefore they were killed. The others were innocent victims who just happened to be in the wrong place at the wrong time.

And the third, which is the most tragic and the most uncomfortable, are those who are killed for reward. For – in hopes of – getting an out-of-turn promotion or a gallantry award.9

Whether security forces have genuinely acted in self-defence or have participated in a fake encounter is a question of fact, and it often requires independent investigation. According to Prashant Bhushan, senior advocate in the Supreme Court, “[u]sually, one telltale sign of a fake encounter is that the police don’t get injured, and there are no independent witnesses. That an encounter takes place in an isolated place is another sign [of a fake encounter].” Post-mortem reports can also be used to determine if a victim was fighting with authorities.

In 1997, noting that the “Commission has been receiving complaints from the members of the general public and from the non-governmental organisations that instances of fake encounters by the police are on the increase and that police kill persons instead of subjecting them to due process of law

8. Talk given during 3 August 2013 HRLN Event, “Out of Focus: In the Shadow of AFSPA”
9. Id.
if offences are alleged against them,” and that “[n]o investigation whatsoever is made as to who caused these unnatural deaths and as to whether the deceased had committed any offences,” the NHRC issued procedural guidelines for state governments for encounter-related deaths. Those guidelines were subsequently updated and reissued in 2003, and then again in 2010.11

In its 12th May 2010 letter, sent to the Chief Minister of every state, the NHRC writes:

*The National Human Rights Commission is concerned about the death during the course of police action. The police does not have a right to take away the life of a person. Under the scheme of criminal law prevailing in India, it would not be an offense if the death is caused in exercise of the right of private defence. Another provision under which the police officer can justify causing death of a person, is section 46 of the Criminal Procedure Code. This provision authorizes the police to use reasonable force, even extending up to the causing of death, if found necessary to arrest the person accused of an offense punishable with death or imprisonment for life. Thus it is evident that death caused in an encounter if not justified would amount to an offense of culpable homicide.*12

Noting that it has repeatedly issued these guidelines, “The Commission finds that most of the States are not following the recommendations issued by it in true spirit.” The guidelines then call for, *inter alia*:

- When a police officer receives information about an encounter-related death, that information must be properly logged and registered,
- Such cases should be investigated, not by the police in the same department, but an independent state agency like the state Crime Branch Crime Investigation Department (CB-CID), and
- A magisterial inquiry must be held within three months and the investigation must include an examination of statements by the relatives of the deceased and any eyewitnesses.13

Sadly, the guidelines are inadequate. For example, the call for all encounter deaths to be investigated by the state Crime Branch Crime Investigation Department (CB-CID), does not lead to its goal of impartial investigations into encounter deaths. As Prashant Bhushan explains, “We have found that in many States, the CB-CID is controlled by the same people. As in Delhi, investigation is done by the crime branch. The Commissioner of Police controls both the crime branch and the Special Cell that carries out the encounter. Where an encounter has the sanction of the higher-ups, then a different wing of the same police agency should not do the job. Therefore, we need an independent agency.”14

The NHRC also demands a magisterial enquiry where the deceased’s relatives and any eyewitnesses must be examined. However, the magistrate is an executive official who is not sufficiently independent of police authorities. For an inquiry to have any meaning it would need to be conducted by a judicial magistrate.

Most troubling is that when individual encounter cases come before the NHRC, the Commission frequently adopts the reports of the police authorities involved, even where the reports are inconsistent, internally flawed, and fail to meet the Commission’s guidelines. Post-mortem reports that establish that a person was tortured and then shot in the back are frequently ignored. Eyewitnesses to events

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12. Id.
13. Id.
ARBITRARY ARREST & DETENTION

Human Rights Watch, and other international human rights groups, note that far too many arrests in India are simply unlawful. Police officers, far too frequently, make arrests in retaliation for complaints of police abuse, in return for bribes, due to political considerations or the influence of powerful local figures. Officers also admit to using unlawful coercion, including torture, to elicit confessions to the charges they fabricate. Police often fail to follow procedures mandated by the Supreme Court in *DK Basu v. West Bengal*, including production of a suspect before a magistrate within 24 hours of an arrest. Police also often fail to provide arrested children with the special protections afforded under India's Juvenile Justice Act, such as the requirement to present any detained child before a special Juvenile Justice Board within 24 hours of arrest.¹⁵

When the spectre of terrorism or national security is raised, abuses become more frequent. Police counterterrorism investigators in Ahmedabad and Delhi, for example, were notorious for manipulating Indian law in order to detain 2008 bombing suspects well beyond the legal limit for police custody provided under Indian law; in some cases suspects were held for three to four months before seeing a magistrate. This practice not only violates the right to liberty, it also vastly increased the risk of custodial torture and coerced confessions. “The most worrisome, the most vulnerable period is when suspects are in police custody,” said Mukul Sinha, a Gujarat High Court attorney who handles high-profile human rights cases. “When the law tells you 15 days you can't artificially prolong it to 150 days.”¹⁶

But the excuse of counterterrorism is not needed for the police to engage in illegal arrests or unlawful detentions. Between April 2010 and July 2013, UP alone accounted for 3,397 illegal arrests out of 3,950 or 80% of the cases recorded by the NHRC. UP’s high share of arrests probably has more to do with how cases are reported to the NHRC, and suggests a number of illegal arrests that is much higher.

In December 1996, in *DK Basu v. State of West Bengal*, the Supreme Court set up eleven guidelines that must be followed by police personnel when arresting or detaining a suspect.¹⁷ These guidelines were elaborated upon by the NHRC in 1999. Noting that a “large number of complaints pertaining to Human Rights violations are in the area of abuse of police powers, particularly those of arrest and detention,” the NHRC suggests the following:

**Pre-Arrest**

- The power to arrest without a warrant should be exercised only after a reasonable satisfaction is

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¹⁷. AIR 1997 SC 610
reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person’s complicity as well as the need to effect arrest. [Joginder Kumar’s case- (1994) 4 SCC 260).

- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.
- After Joginder Kumar’s pronouncement of the Supreme Court the question whether the power of arrest has been exercised reasonably or not is clearly a justiciable one.
- Arrest in cognizable cases may be considered justified in one or other of the following circumstances:
  1. The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.
  2. The suspect is given to violent behaviour and is likely to commit further offences.
  3. The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.
  4. The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences. [3rd Report of National Police Commission].
- Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission. (see Joginder Kumar’s case (1994) SCC 260).
- The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding.
- Police officers carrying out an arrest or interrogation should bear clear identification and name tags with designations. The particulars of police personnel carrying out the arrest or interrogation should be recorded contemporaneously, in a register kept at the police station.

**Arrest**

- As a rule use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.
- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.
- Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person’s right to privacy. Searches of women should only be made by other women with strict regard to decency. (S.51(2) Cr.P.C.)
- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgement of the Supreme Court in Prem Shanker Shukla v. Delhi Administration [(1980) 3 SCC 526] and Citizen for Democracy v. State of Assam [(1995) 3 SCC 743].
- As far as is practicable women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.
- Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police Officers, may for this purpose, associate respectable
citizens so that the children or juveniles are not terrorised and minimal coercion is used.

- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand. (S.50(1) Cr.PC.)

- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The police should record in a register the name of the person so informed. [Joginder Kumar’s case (supra)].

- If a person is arrested for a bailable offence, the police officer should inform him of his entitle-ment to be released on bail so that he may arrange for sureties. (S.50(2) Cr.PC.)

- Apart from informing the person arrested of the above rights, the police should also inform him of his right to consult and be defended by a lawyer of his choice. He should also be in-formed that he is entitled to free legal aid at state expense [D.K. Basu’s case (1997) 1 SCC].

- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. (S.53 Cr.PC.)

- Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to the police Control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.

- As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury(s) on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other par-ticulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.

- If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or nonexistence of any injuries on his person.

Post Arrest

- The person under arrest must be produced before the appropriate court within 24 hours of the arrest (Ss 56 and 57 Cr.PC).

- The person arrested should be permitted to meet his lawyer at any time during the interroga-tion.
• The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.
• The methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment.

Enforcement of Guidelines
• The guidelines must be translated in as many languages as possible and distributed to every police station. It must also be incorporated in a handbook which should be given to every policeman.
• Guidelines must receive maximum publicity in the print or other electronic media. It should also be prominently displayed on notice board, in more than one language, in every police station.
• The police must set up a complaint redressal mechanism, which will promptly investigate complaints of violation of guidelines and take corrective action.
• The notice board which displays guidelines must also indicate the location of the complaints redressal mechanism and how that body can be approached.
• NGOs and public institutions including courts, hospitals, universities etc., must be involved in the dissemination of these guidelines to ensure the widest possible reach.
• The functioning of the complaint redressal mechanism must be transparent and its reports accessible.
• Prompt action must be taken against errant police officers for violation of the guidelines. This should not be limited to departmental enquiries but also set in motion the criminal justice mechanism.\[18\]

In a recent report to the Office of the United Nations High Commissioner for Human Rights, the NHRC reported that between 1 April 2010 and 30 September 2013, it had received 3949 cases of illegal arrest and 4467 cases of unlawful detention by the police. The Commission recommended compensation in 45 cases of illegal arrest, only 1% of such cases which it received, and in 67 cases of unlawful detention, or in 1.5% of such cases. More troubling, the Commission only recommended action against the erring public servant in 3 cases of illegal detention and 5 cases of unlawful detention. In other words, the NHRC refused to recommend action against a police official in well over 90% of the cases in which it had determined that unlawful activity had taken place. The unwillingness of the NHRC to act against such officers goes against its own guidelines.\[19\]

Prison Conditions and Custodial Deaths, Torture, and Rapes
Describing prison conditions in India, the US Department of State stated, in its country report for 2012, “[p]rison conditions were frequently life threatening and did not meet international standards.

19. Questionnaire Responses to OHCHR at http://www.google.co.in/url?sa=t&rct=j&q=%s&esrc=s&source=web&cd=1&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FDetention%2FDraftBasicPrinciples%2FIndiaNHRI.docx&ei=xAQVU4-OLsqHrAenxID1Bg&usg=AFQjCNGOB-g4Ed338-SWHHtPYL2nFMakgQ&sig2=2KSyZ7_NTqhVLaWqG37rUg&bvm=bv.62286460,d.bmk.
Prisons were severely overcrowded and food, medical care, sanitation, and environmental conditions were often inadequate. Indeed, the Ministry of Home Affairs has admitted that prison and detention centres are underfunded, understaffed, severely overcrowded and lacked adequate medical care and infrastructure. More importantly, the Ministry noted that prisoners were physically abused, faced long detention before and during trial, and had inadequate opportunities to communicate with legal counsel. Sunil Krishna, NHRC Director General (Investigation), found a greater need for improvements when it came to monitoring prison conditions

As of 2012, India has 1,394 jails with a capacity to detain 3,43,169 people. Most jails report overcrowding. Chhattisgarh reports that its prisons house 252.6% of capacity, and Delhi is at 193.8%. Convicts make up only 33.2% of the inmate population, while a staggering 66.2% are undertrials who have not had yet been tried and convicted for the crime for which they are being detained. By the end of 2012, 2,028 undertrials were detained in Indian jails for more than five years. 76,083 undertrials were released after being acquitted. Young children are sometimes detained with their mothers: 344 female convicts with their 382 children and 1,226 female undertrials with their 1,397 children were held in various prisons in the country at the end of 2012.

The IPT elicited gruesome stories of custodial torture and rapes. Shock treatments, including those applied to genitalia are common. Victims provide details of police beatings that are committed by constables at the direction of, or with the active participation of, superior officers. Some victims also describe intense police violence and sexual assault over a prolonged period of detention. Often police officers are drunk when the worst abuses occur. While the NHRC has entertained cases of police torture and rape, these cases are plagued with the same problems described above: the NHRC does not independently investigate cases, and instead relies heavily on official police reports regarding such incidents. In the past 20 years, the NHRC has not intervened in a single torture case being tried in the courts.

The Indian Supreme Court has said “dehumanizing torture, assault and death in custody” are so “widespread” as to “raise serious questions about credibility of rule of law and administration of criminal justice.” India’s commitments under both international and domestic law forbid such torture. However, these legal protections have proven insufficient four countering the habit of abuse that has developed in India’s detention centres and prison facilities. Many police continue to see force, to obtain confessions and information, as an acceptable and necessary tool for investigating crime and enforcing the law. More importantly, with no mechanism able to stop such abuses, there is no reason for the police to act differently. Special Rapporteur Christof Heyns noted several cases of individuals unlawfully taken into custody, severely beaten and taken to hospital where they subsequently died. He was informed that no steps had been taken to bring perpetrators of these acts to account.

Police officials often abuse power to coerce confessions from members of vulnerable populations, or form people they simply dislike. Human Rights Watch reports sexually abusive and degrading treat-

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21. Id.
22. NCRB Prison Statistics India-2012

40 RUGGED ROAD TO JUSTICE
ment for people in police custody, including the practice of dipping rods in chili powder and inserting them into the rectal area of suspects. The US Department of State notes that people with disabilities are not spared torture. On 1 August 2012, the Kerala police arrested a 25-year-old mentally ill man, Satnam Singh Mann, after he attempted to attack spiritual leader Mata Amritanandamayi at an ashram in Kollam District. After the police took him into custody he died. It is believed that Mann was tortured to death. The case remained under investigation.

There have been significant reports of police officials raping women in police or judicial custody. NHRC numbers on custodial rapes are widely believed to be significantly lower than the actual incidents. The general lack of oversight and accountability, victims’ feelings of shame, and a fear of retribution by the police contribute to victims choosing not to report such crimes.

Custodial deaths in police or judicial custody are a particularly acute problem. These deaths are usually the result of active abuse, though sometimes they are the result of neglectful medical care and poor detention conditions. According to the Asian Centre for Human Rights a total of 14,231 people – more than four people per day – died in police and judicial custody in India from 2001 to 2010. These statistics are based on cases submitted to the NHRC, and are considered an underreporting of actual figures.

The NHRC requires that all custodial deaths and rapes be reported to the NHRC within 24 hours, and that if it is not so reported, there will be a presumption that there was an attempt to hide the incident.

However, in practice, these reporting requirements have little deterrent effect. As noted in Tehelka, “these norms are flouted openly.” Suhas Chakma, Director of the Asian Centre of Human Rights (ACHR) explains that the “The district administrations have the sole authority to get the cases registered and order enquiries. The criterions of provisions under the laws are never fulfilled.”

In its 2012 report on prisons, the NCRB reported the following statistics related to prison related complaints to the NHRC:

Again, it appears that the number of cases reviewed by the NHRC drastically underrepresents the number of actual crimes that occur in prisons.

Even when such cases are reported to the NHRC, without the manpower to effectively handle cases of custodial deaths, the Commission often holds onto cases for a period of years before issuing a decision. As with the cases above, the NHRC often relies exclusively on police accounts of events and fails to accept clear evidence of police misconduct. Finally, even when the NHRC awards compensation for unlawful activity, criminal inquires rarely occur. As such, there is no effective means of preventing recurrence. Custodial rapes are rarely, if ever, reported.

Custodial conditions in India have received international scrutiny. The US Department of State 2012 report on human rights conditions in India notes, “Sources continued to report a serious prob-

27. Id.
30. Id.
### Number of complaints received from NHRC & SHRC and their disposal at the end of 2012

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problem with custodial deaths, in which prisoners were killed or died in police custody, and authorities often delayed or failed to pursue prosecutions against members of the police or security forces. The report adds, “NHRC guidelines direct state governments to report all cases of deaths from police actions to the NHRC within 48 hours; however, state governments did not consistently comply with the guidelines.”

In his report, Special Rapporteur Heyns noted that the majority of deaths in police custody were “preceded by torture and occurred within the first 48 hours of arrest. These statistics may not reflect the full extent of custodial deaths in India, given that not all deaths may be reported to the NHRC.” He adds that the onus to pursue cases of custodial deaths is often placed on the families of the victims. However, families are often unaware of their rights with respect to the investigations of such deaths. Explaining that an unwillingness to prosecute the main culprits of abuse, torture, and rapes contributes to impunity. IN other words, when the NHRC merely recommends compensation, but not action against the police officers who engaged in, or ordered, abuses, it contributes to the weakening of safeguards designed to prevent torture.

**COMMUNALIST RESPONSE BY NHRC**

“Since 2001, a terrible maxim had seeped into the Indian mainstream: all Muslims may not be terrorists but all terrorists are Muslims. It did not matter if you caught the wrong ones. No one needed veracity. Everyone only wanted the illusion of security and ‘action taken.’”

On 19 September 2008, “Operation Batla House” was initiated as an effort to apprehend two suspected terrorists. According to the police, upon reaching the four-storied house the police’s attempt to storm the flat on the second floor led to a heavy exchange of fire. The encounter led to the arrest of a number of local people, leading to widespread allegations and protests about police misconduct. There were numerous inconsistencies with the police account of events. A 17-year-old boy was shot in the top of his head, suggesting that he was sitting down and shot from above. Another individual had the skin on his back peeled, suggesting that he had been tortured before he was killed.

On 20 May 2009, the Delhi High Court asked the NHRC to conduct an inquiry into the alleged Batla House encounter. The NHRC report, issued two months later is widely considered to be a one-sided acceptance of police reports. The NHRC did not visit the flat where the incident took place, nor did it interview other residents in the building or the relatives of the deceased. Importantly, the NHRC report did not address the inconsistencies between the evidence and the official account.

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33. Id.
35. Id.
Sadly, this is not the only instance where the NHRC has failed to protect India’s religious minorities. According to advocates, the NHRC routinely treats differently Muslim victims and Hindu victims with identical stories. According to the Peoples’ Vigilance Committee on Human Rights, advocates filing nearly identical claims related to police brutality found that the NHRC continued to review claims of Hindu applicants, while transferring Muslim claims to the state human rights commission.

The Special Rapporteur Christopher Heyns noted that encounters have been used as a means to target specific groups. Such overt discrimination against a religious minority group by the government is deeply troubling. It is even more troubling when a human rights commission also prescribes to such behaviour.

THE NHRC AND THE GENERAL LACK OF ACCOUNTABILITY

In 2012 there were 57,363 official complaints against police officers. 34% resulted in a departmental inquiry. 54% were immediately dismissed as unsubstantiated. Only 1.5% of total complaints actually were scheduled for trial. Given that the many people are scared to file complaints against officials, the figure for official complaints probably underrepresents the actual number of human rights violations by police authorities.

Because the police are not held accountable for abuses, impunity reigns. Sadly, both internal police investigations into misconduct and external investigations, for example by the NHRC, have failed to be sufficiently independent or exhaustive. Internal police investigations are hindered by an informal code of silence: police officials are unlikely to disclose incriminating evidence against co-workers. The 2006 Supreme Court decision in Prakash Singh required the states to create police complaints authorities, responsible for investigating complaints of police misconduct. Currently, only about half the states have done so. Most such authorities do not function properly, and, according to the Commonwealth Human Rights Initiative, none have enough staff to conduct independent investigations.

External agencies, like the NHRC, too often ask the police to conducting their own investigations, or defer to police reports. Such reliance on the police to investigate themselves, enables the police to insulate themselves from liability. As Human Right Watch noted:

In practice, when the NHRC finds a prima facie case of a human rights violation, it usually recommends that the government provide immediate interim relief in the form of compensation but does not recommend prosecution of or disciplinary action against individual offenders. This limits the deterrent effect of NHRC investigations because even when the NHRC identifies individual perpetrators, it does not assess the liability of superior officers who ordered or condoned the actions of other police.

The NHRC has itself noted the government’s willingness to “to conceal the truth or underplay the accountability of those involved for the death in custody due to custodial violence or negligence,” yet it continues to regularly dismiss complaints on the basis of police reports that disclaim wrongdoing.

39. NCRB Crime in India Report 2012
41. Id.
HENRI TIPHAGNE
Executive Director, People’s Watch

The NHRC engagement is close to my heart because we were of the opinion that at the time of its establishment, the changes that were occurring in India were not what the country needed. We saw the institution being set up so we started engaging with it in the early days. It was this engagement, largely through complaints which we forwarded, that was our bridge builder – it brought us closer and allowed us to see its effectiveness. This relationship sometimes led to conflict, and the conflict was the stepping stone to me serving on the NHRC serving for the core group on the NGO. It was because I was a noisemaker; they found that to be a positive thing.

In fact, just before serving, I wrote a long letter to the NHRC chairmen at the end of 2000 or 2001. He told me that if he had the powers of contempt he would proceed against me. I apologized saying I spoke out publicly because there are certain tasks that this body is mandated to perform, and that I cannot be a hypocrite. That is how I came to meet him, and was appointed shortly after.

I served two terms with the NHRC and feel I have developed a personal relationship with it because looking at the institution from that lens changes one’s perception. The end of the second term was the most difficult because, despite serving on the committee, I had to write a report about the NHRC that was highly critical. After I released the report I resigned.

People serving with the NHRC each come with their own baggage. Paul, a diplomat coming with a lot of knowledge on human rights, is always biting his tongue. He sees what happens in the commission and defends it because he is part of it, but is now beginning to speak out. P.C. Sharma loomed over everyone with an oppressive negativity. Now Paul is shining in his leadership, but probably will be gone in four or five months.

This country needs the NHRC, but it is now twenty years old and desperately needs to be updated. My top concern is that this should be an independent commission. People serving will tell you that we have never had any hang-ups with the government, but the fact is that they frequently protect the government. The same judges have served for twenty-five or thirty years, everyone who serves is a bureaucrat, and no one has come from an independent background. Then you place them in the difficult situation of having to take a stand against the same state that they have always defended. For justice on extrajudicial killings guidelines would have to be established, but fake encounters continue to this day and peaked when guidelines were being issued – 300 killings per year.

The NHRC did not implement the guidelines themselves, but rather mandated that police commissioners communicate with the NRHC twice per year with a list of people who had been killed. The minimum would be to demand that every state write a report, but that never happened. Most states have never responded and the NHRC has never made this data publicly available, despite our requests. Babloo went to the Supreme Court, and they did what the NHRC should have done. They appointed a committee and sent them to Manipur with the mandate to investigate six cases. 1997 to 2010 was a lost period for the NHRC because of this missed opportunity.

It was an institutional hang-up within the NHRC, not a legal deficiency in law, that prevented them. This is the independence that we talked about.

There is a lack of knowledge of human rights. Frequently for people who are appointed, their best performance is during their fourth and fifth years. It’s not necessarily that they were bad, but that there is the larger issue with strategic engagement in HR violations. For encounter killings, how many public statements were there? None. Judgeship disease where everything is converted into a complaint. But
besides the complaint the judges have a responsibility to publicly speak and denounce. Extrajudicial killings need to be denounced. This is why we believe that our independence is incomplete. Twelve years after a case, the case is adjudicated. Is this really preventing anything? Outspoken people with HR backgrounds need to be placed in positions of power.

The NHRC is reluctant to admit their own shortcomings. They started with 400 complaints the first year, but now have a lakh of complaints with only 100 more staff who are all government officials. People of government are tuned a particular way; staff from a more varied background could accomplish more. You need fresh blood. Only a specific type of person is on the commission and the efficiency level is dropping.

Specific to Encounter Killings
In cases where after even ten years they determine an encounter was not genuine they give compensation. But despite that good, the person responsible is rarely prosecuted. This can be seen in custodial violence and torture as well. They say they have no powers to prosecute. The NHRC is a powerful body; they even have members of the Supreme Court. These cases should be taken up, but they lack the personnel.

The NHRC does not have enough staff, but they do not want more. They dispose hundreds of cases per week. Extrajudicial killings must be processed quickly or it becomes slower than the courts! The existence of the NHRC comes into question because they are not a speedy mechanism for HR redresses – the purpose of its creation. In this way they contribute to the culture of impunity because they deflect complaints and stop people from going to courts. As bad as the NHRC is, SHRC is much worse. There are hundreds of commissions that all say with the NHRC there is no trust or open discourse for upholding the rule of law. The individuals serving on the court do not matter; it is the institution we badly need.

Tamilnadu
in all the cases of encounter killings in tamilnadu, starting with the most notorious (killing of whoever) which I the cases addressed to the NHRC get no response or are not taken seriously. Four years ago I had to file a petition in the high court challenging a filing of 23 encounters and they've gone to 30. When I filed in the HC, we had made the NHRC and SHRC parties to our petition because they have a mandate to do this. The HC did not accept it, we were told to remove them because (reason unclear).

We wrote to the NHRC with the petition that with matters related to HR under section 12.2 an intervention with the permission of the court is permitted. Under the guidelines there is the opportunity to assist the court to ensure that HR are upheld. We received no response. The chief justice appointed a commission to look into this. Three years passed when the judge we were expecting to take action retired. This is typical of the judiciary system. That is why we wanted to go the NRHC; the person named in this case has killed five people since then! The SHRC simply warned him to be more careful.

Why is it that in Mannipur, Babloo is straining to find a case? Close scrutiny drops the rate of killings, so it is likely that if the NRHC had been active 1,000s of lives could have been saved. This institution, with twenty years of history, does not have a stand on the death penalty, which for us is another way for the government to kill people. The APF, a sophisticated group of HR activists, come out with recommendations every year. In 2004 it came out with specifications on how to combat the death penalty. No change has come.

The first time they spoke publically or published works which were critical about state performance
was with the UPR report in 2012. They realized that they have to be occasionally critical to be independent. Give the devil its due because they got good feedback and they made a strong report bashing the government on ECS rights. In twenty years, this one report is proof they are capable of independent function, and because of this he will probably be not given a second term.

For the report to Chhattisgarh, we gave a list of people who should go investigate independently. We received no response. Not a single member of the NHRC went. They sent a heavily armed contingent, including policemen. They could not hope to talk to people like this, but that was the point. This demonstrates an attitude of aloofness and arrogance.

We invited the NHRC to an APF meeting, making special effort to have them come as they had not ever attended. They refused as I had just submitted a highly critical report.

It is time the government addresses these issues. The poor hires and bad policies especially. For example, a former chairman accused of corruption as head of the NHRC is a poor hire. Handpicking people with a history of anti-human rights is so beyond counter-intuitive it indicates that the government wants weak-willed, ineffective people.

What would new phra look like? There are models all around the world. This is a body to protect the human rights of people in this country, therefore the people should know who is going to be responsible for their rights. Making the NHRC an open and transparent organization available to the public would likely solve many problems. For example, there have been no women on the commission for nine years. A transparent process will help to insure that nominees are considered carefully for qualifications, not connections.

We further propose explicit ban for people associated with security organizations for likely conflicts of interest. There is a trust deficit about people form the security orgs.

The police are not trained as HR investigators. This is not an attack, it is just that their training is applicable to different areas of law. The NHRC has actually done a good job with certain investigation disguised themselves and did factfinding. They are good investigators but they are crime investigation, its different from HR investigation, but these investigators need to be specially trained. This training does not need to be built from the ground up but can draw on people with previous experience. Optimally this should create a multidisciplinary HR team, preferably with more than twenty people. Number 2, you have a small team…15-20 people is no enough. Its too small of a number. And they are all policemen. I'm talking about the best of them.

The majority of the cases are pursued on the basis that the versions put forward by the police are the truth. Today, because of the pressure from civil society, the accounts of the police are occasionally made public.

They could have helped the district HR courts but they have not and those have failed.

Women Custodial Deaths-specific Problems

Some of the worst violence against women in the state was from the STF assigned to catch a single person. There was illegal detainment, custodial rape, and murder - hundreds of reports of this type of crime. In the whole of the NHRC's existence, they have never attempted a rehab center for women victims of state violence. Had they such an institution, in the post-Delhi rape cases they could have pointed to this. Additionally, there are almost no women investigators.

The STF had no supervision and complete impunity, they followed no procedural laws, and they were in the middle of the forest with access to large amounts of money. These events created such an intense fear that even three years later I could not do work because I looked like a policeman. Only after
weeks there did people started speaking to us. At that time, portions of the forest were STF territory and portions were brigand territory.

For sixty-eight people we got 2.2 crores, but now the case is closed.

This violence took place between 1993 and 1995. We were already on the edge of our jurisdiction, but we told of the continuing violence and spurred the NHRC into action. In 2004 the report came out and in 2007 the order was passed, but we had to wait for Annand to leave. By 2009 compensation had been paid to some. We tried to get compensation for the remaining victims until we received a message in 2012 that the case was closed. For the women cases there are almost no women investigators. You don’t have a team of women investigators looking at violence against women…people are not sensitized to the issues. You need to develop this jurisprudence

LENIN RAGHUVANSHI
Founding Member, People’s Vigilance Committee on Human Rights (PVCHR)

In 1996, the People’s Vigilance Committee on Human rights established itself as the pivotal human rights NGO after the establishment of the NHRC in 1993. Since then, there have been thousands of petitions filed; there have been successes and failures and some surprising findings. There have also been petitions that have been followed up on after five to ten years and police officials who have been sentenced to life imprisonment. The NHRC has conducted camps for the Musahar community in Bihar and brought freedom from bonded labour. Working with People’s Watch on issues relating to torture, we observed that the occurrences of torture with the poor, the Scheduled Castes, the Scheduled Tribes, and Other Backward Classes all had similar motivations and outcomes, however, occurrences of torture in Muslim communities was contrastingly different. Three years ago Benaras was deemed an area for frequent police encounters, although now that is no longer true. 400 out of 1000 complaints in which the victim was Muslim have been sent to NHRC. Despite the great number being indicative a grave issue, the way with which these cases are dealt is communal and discriminatory in nature. These same complaints were also put forward to the National Minority Commission which, in turn, told us to directly approach the police or NHRC, thus ignoring their primary function.

Additionally, when the NHRC corresponds to such complaints, the members often direct the police to “handle” the situation. This “handling” is generally an organized fabrication of factual falsehoods used to prolong the case for two to three months.

When social activists and human rights defenders got involved, they had to face fake encounters and false charges from the police just because they were protecting the interests of minorities. I have personally faced false encounters and several charges, including kidnapping have been filed against me, most notably one involving a doctor and his and the abuse of his spouse

The whole of the Muzaffarnagar belt is in communal conflict. Himachal and Hindu fascists, RSS, and other forces are at work. The ideals of the RSS do not exist only amongst their ranks, but spread and attach themselves to the police, hospital workers, judiciaries, and the many in the general population. The police ask names in order to ascertain what one’s religion is. Once they know your religion, they will often make comments about Muslims being terrorists. This is an ongoing situation which likely not lose momentum on its own. When a criminal department moving in procession can be heard to say “HararMahadev”, you can imagine how they might tackle the major issues of Muzaffarnagar. The Muslim community is labelled by the officials as “Mini Pakistan”. The Hindu powers are even able to curb Muslims to such an extent that the voices of these minorities are rarely heard at any level of gov-
ernment. Another revelation was that cases, even those which happened in the same district at the same
time, involving Non-Muslims would immediately go to the DGP's (Director General of Police) and SPs
(Superintendent of Police), while those involving Muslims would be transferred to the SHRC, which
as far as I am concerned is a defunct organization.

When the question was raised to Justice Patel, he replied that the Muslim community was not
the only aggrieved community that faced torture. If that is true, then why is it that only their cases are
brought up? There is a dire need of judicial intervention in minority matters especially in conflicted
areas where the people should be paid special attention. Additionally, efforts must be made to adjust the
social status of these people, so as to remove the various forms of discrimination. The extreme lack of
effort being made to create change indicates that the NHRC's core members are patriarchal, casteist and
rigid minded, which explains the prevalence of gender inequality, casteism, homophobia, and patriarchy
in the wake of many of the cases with which the NHRC becomes involved.

These issues clearly raise questions on the systematic functioning of the NHRC and the police.
Firstly, the police do not follow any procedure to effectively deal with cases but rather follow their own
arbitrary path. There has been no police reform since the initiation of police procedures in the – draco-
nian – 1856 Act. Secondly, officials and members of the NHRC need to be held accountable for their
actions, follow procedure, and must decide objectively as these decisions affect the lives of too many
people to be thrown by the prejudices of an individual.

BB MOHAN
Advocate

In 1993 the Joint Special Task Force (STF), under the leadership of W. Devaran and S. Badiri, was as-
ssembled by the Karnataka and Tamil Nadu governments in order to apprehend the forest brigand Veeras-
pan. Veerappan began his career in 1985 in the jungles of the Western Ghats – moving freely between
Kerala, Tamil Nadu, and Karnataka – and in 1991 started killing police officers and forest officials in
response to their harassment of his family.

From the start, the STF set out to take control of this area, spanning three states and 6,000 square
kilometres, in which Veerappan had established strong roots. Despite everything, the joint efforts of
the Karnataka and Tamil Nadu governments were not sufficient to capture, nor even track, Veerappan.
Losing hope of capturing their target without altering their methods, the governments turned their
attention to the people living in these areas – the tribal people and forest dwellers – who they believed
had been aiding the brigand.

In the name of catching Veerappan, the government created camps which were such cruel places
some have compared them to the concentration camps of Nazi Germany. Suddenly, anyone and every-
one was at risk of being arrested and taken to these camps as suspects. If word got out that Veerappan
had passed through a village, the residents became accomplices and government forces would immedi-
ately begin making arrests. The atrocities committed in these camps by government forces cannot be ade-
quately expressed in words. Such cruelty has not been seen in our country since gaining independence.
People would be held for a number of days without any record. Some, men and women, were stripped
naked and kept in restraints. Others still were hung upside down and savagely beaten. Deplorably, many
of these abuses were sexual in nature – a father forced to have a sexual intercourse with his daughter, a
mother her son. All of this took place in 1993. More than 2,000 people were affected by the brutality
of the Joint Special Task Forces.
Tribal people are as vulnerable a minority as can be found in India. They have little access to many of the services enjoyed by other citizens and remain largely voiceless on most political issues. As such, the pursuit of justice is largely hindered in cases such as these. In 1996 our organization, the Tamil Nadu Tribal People Association (TNTPA), sent letters to the Tamil Nadu and Karnataka governments. They did not respond. A letter was then sent to the State Human Rights Commission, and even they failed to respond. Finally, with help from various organizations, trusts, and individuals, we forwarded the issue to the National Human Rights Commission (NHRC) in 1997.

Once these atrocities were brought to their attention, the NHRC formed a panel comprised of Justice Sadashiva and the former director of the Central Bureau of Investigation C.V Narasimhan. In 1999, 6 years after these human rights violations had occurred, the Sadashiva panel started its inquiry. Unfortunately, after some time a police officer questioned the sustainability of the panel in the Karnataka High Court because there is a limitation of what need is there in the act. Then, it was dismissed by the Karnataka to take up the matter before the panel so after which even though it inquired so many people, nearly a thousand victims and otherwise affected people appeared before the panel.

This staggering number of people affected by these human rights violations managed to appear before the panel, despite the threats and harassment which they received from state police, with the help of several trusts and organizations. However, even though roughly 1,000 people came to testify, the Sadashiva panel only took the cases of 193 victims. Because so many of the cases would go uninvestigated, Justice Sadashiva and Mr. Narsimhan personally visited the areas where the so-called “concentration camps” were built.

The inquiry into the cases of the 193 victims lasted from 1999 to 2003, with the investigative report being submitted to the NHRC on 2.12.2003. After its submission, the report was not published for another 3 years. The TNTPA and several other organizations used the publishing of this report as an opportunity to garner support with demonstrations, rallies, and conferences. In 2006 we travelled to Delhi with all the victims and knocked on the door of the NHRC. On the first day only Justice Anand was present, and he did not permit a meeting.

Fortunately, Anne Raja, the General Secretary of the National Women’s Federation, and D. Raja, the Communist party of India’s secretary, accommodated us. They also helped us and came there and fought for us. It was lucky for our cause that it was at this time that Justice Shivaraj became the acting chairperson of the commission. Upon hearing the testimonies of the victims the Justice became annoyed at the lack of follow-through with the cases. After the submission of the report on 2.12.2003, the court should have received responses from the respondents. Not a single response was received from the STF, Karnataka, or Tamil Nadu respondents despite the 3 month window in which a response, legally, must be filed. After some pressure from various parties the responses from the state governments were sent to the NHRC.

Finally, after 3 years of prolonged struggle, interim compensation was to be paid. The state governments of Karnataka and Tamil Nadu were directed by the NHRC to do the same. The report by the Sadashiva panel was able to show that the STF had committed acts of rape, detention, torture, disablement, and disappearance. All the ballistic reports in which sixty-three people were said to be killed in encounters were found to have been murders and the encounters fake examined by the panel speaks that these were not encounters but were fake encounters. The motivation of these murders was not revealed in the investigation. But, the panel failed to identify the purpose of the crime.

Out of the 193 cases, chosen from the nearly 1,000 who testified, only 89 people were given interim compensation and the case was closed. Despite every effort, the result is still a gross miscarriage
of justice. This is exemplified by the impunity granted to the leaders of the Joint Special Task Force who are guilty of ordering the execution of many of these atrocities. One of the victims who came forward testified that I want to point two persons here, the rape victims. This lady was raped by W. Devaram himself raped her, and in another case one more woman was raped in the presence of the S. Badiri. These two allegations were ignored by the panel as they were high officials of the STF.

In this case, the NHRC should have initiated a probe or have filed a writ petition before the high court or the supreme court in order to launch an independent investigation. Is it not duty of the NHRC as it has found that these crimes are committed and human rights of the tribal people are violated on the name of nabbing Veerappan to proceed further under this act?

**This case was presented before the IPT by Ayesha, wife of the late Mohammad Salim**

**Case #1**

**MOHAMMAD SALIM**

On 3 March 2011, police officers came to the home of Ayesha and Mohammad Saleem. The officers claimed that their son, Nadeem, had bought a stolen mobile phone, and they wanted to interrogate him. Nadeem was not home, and the officers proceeded to harass sixty-year-old Mohammad Saleem, as well as their other son Salim.

Over an allegedly stolen mobile phone, Mohammad and Salim were apprehended by the police. The two men were dragged and beaten while on their way to the police station. Once at the police station, they were physically tortured. By that evening, Mohammad’s physical condition had deteriorated significantly. When the police handed Mohammad over to the local people of the community, he was in critical condition. He died of his injuries soon after.

Ayesha filed a complaint with the NHRC on 3 October 2011. On 17 December 2011, the NHRC transferred the case to the Uttar Pradesh State Human Rights Commission. The NHRC has not followed up on the case since the transfer, and in the two years that have passed the state commission has also failed to act on behalf of the family.

Mohammad Salim was beaten to death by the police on the mere suspicion that his son possessed a stolen mobile phone. Ayesha lost her husband, and Nadeem and Salim lost their father. To date the family has not seen any reparations.

**This case was presented before the IPT by the victim himself**

**Case #2**

**AHAJAR, SON OF GHULAM RASOOL**

During assembly elections, Ahajar got into a dispute with Layeek Ahmad and Naved. Layeek and Naved had prior criminal histories. Shortly after the dispute, both men were arrested by the Sardhana police on robbery charges. When asked if they had any accomplices, they decided to implicated Ahajar in their illegal activities.

On February 7, 2012, at around 10:30 p.m. Sardhana police assistant sub-inspector Vijay Kumar came to apprehend Ahajar at his home. When his brother Shahzad asked the ASI why Ahajar was being picked up, ASI Vijay Kumar told him that all three (Layeek, Naved and Ahajar) had been caught plan-
ning a robbery. When Shahzad told the ASI that this was not possible, as Ahajar was at home, the ASI told Shahzad to be quiet, otherwise he would be put behind bars as well.

Ahajar was illegally kept in Sardhana police station from 7 February to 9 February 2012. During this period, he was brutally beaten by the ASI, and made to confess to crimes that he did not commit. He was also tortured with electric shocks. Finally, he was booked under Section 2, 3 of the Gangster Act, for being involved in illegal and anti-social activities.

A complaint was filed with the NHRC on 7 May 2012. Ahajar wanted an investigation into the beatings and electric shocks which he received at Sardhana police station. On 13 June 2012, the NHRC transferred the case to the Uttar Pradesh State Human Rights Commission. The NHRC has not followed up on the case since the transfer and to date, Ahajar has not received any compensation.

Case #3
MUHARRAM ALI

Muharram Ali, aged 52, was forced from his home by the village head. After initially refusing to leave his home, he was arrested, beaten, and abused by the police. After being held in the police station without any medical aid for his injuries for two days, he was transferred to Faizabad jail. Once in jail, he was further tortured by individuals working for the village head. He was additionally threatened with never being released from jail, was poorly fed, and was kept in unsanitary conditions. He was also forced to do work while incarcerated, including plastering walls and cutting grass. After nine days he was released.

Since his release, and after an attempt on his life by the village head and the village head’s son, Muharram abandoned his home. However, the harassment did not stop, and he has subsequently been forced to move many times as the village head and his son have threatened landlords if they allow Muharram and his family to rent with them. The village head and the village head’s son have similarly prevented him from being able to find work. Muharram is deeply afraid of the village head and the fear and stress of this perpetual harassment has led him to contemplate suicide.

Muharram Ali’s complaint was filed with the NHRC on 26 June 2011. The NHRC in turn transferred it to the Uttar Pradesh State Human Rights Commission on 3 September 2011. No action has since been taken in the case even though two years have passed.

Case #4
GHURELAL ALIAS DEEPAK

Deepak, aged 15 at the time, was arrested by the police on suspicion of murdering Surendra Patel, who was shot dead on 21 May 2003. On 24 May the police visited Deepak’s house to interrogate him and on not finding Deepak at home they left a message for him to come to the police station. When he arrived at the police station, he was asked for katta and on refusing to have it, he was beaten mercilessly with leather belts on his palms by two police officers. The police then escalated to punching and kicking him as his father watched and begged for them to stop. Because of his pleading on behalf of his son the father was physically removed from the police station as the beating continued. The beating was so punishing and the pain so severe that the victim sincerely feared for his life.

After the beating he was placed in an unsanitary jail cell and was not fed. The next day the police took him to see a judge and from there he was taken to a juvenile jail. At the juvenile jail he was forced to work despite his injuries from the assault and was not provided with any medical care. Because of his
detention the defendant, who was a student at the time of his arrest, was unable to complete his studies.

The case was filed with the NHRC on 1 August 2011 and was transferred to the Uttar Pradesh State Human Rights Commission on 3 September 2011. Although two years have passed since the Commission took Deepak’s case, the Commission is yet to take any action.

Case #5
SHADAB, SON OF TAHIR HUSSAIN

Shadab and his nephew, Mohammad Anas, live in Moradabad. On 22 October 2011, they went to get some medicine. As they were crossing the railway phatak to return home, they were stopped by two policemen, Jai Prakesh and Rajendra Singh. Another man, Yakoo Khan, was stopped as well.

The officer asked the men their names. When the men responded, the officers started harassing them and addressing them with religious slurs. The men were kept in a stinking toilet for several hours. They were handcuffed. When they asked the officers why they were being held, the officers replied, “you are terrorists and you have troubled the police very much.” The officers forcible took money from the men, as well.

The men had not committed any crime, but were stopped simply because they were Muslim. Shadab’s family heard of the incident and came to help. Only after paying a fine to the Upper Chief Judicial Magistrate were the men released.

On 8 December 2011, Shadab filed a petition with the NHRC. No action has been taken yet.

Case #1
MS. THANGAMMAL W/O SHRI RAMASAMY

Ms. Thangammal sells betel leaves in the public market in PeriyaThanda in Kolathur. Sometime around 1993, she was at home, when several police officers came and asked for her by name. When she admitted that she was the person they were looking for, they told her that she had to go to Mettur Police Station to meet with the police inspector. She was told that she would be returned home in a few hours. As soon as she entered the police station, the Head Constable kicked her in the face. Another policeman made a derogatory remark regarding whether she could handle all 8,000 policemen staying in Police Camp at Mettur School. Then an inspector from Madras, Shri Mohan Das, took her into a room and made her massage him from afternoon until midnight. Das also then asked her if she was the concubine of Arjun, the younger brother of Veerappan.

This next morning, ten people were brought from her village, and she was asked to identify them. She told the police that she did not know any of them by their name, but had seen them while doing coolie work. Not satisfied with her answer, the police further interrogated her as to whether she was assisting Veerappan and his associates by denying her acquaintance with those ten persons.

She was taken to another building, a school building, where a Mr. Devaram held a gun to her head and interrogated her about her relationship with Arjun. He used sexually graphic language in asking her about Arjun, and threatened her when she stated that she did not know him. This interrogation continued for three days. At one point, Devaram took Ms. Thangammal upstairs, disrobed her, and questioned her about what postures she was in when she was with Arjun. When she continued to state that she did not know Arjun, Devaram raped her. He raped her multiple times over the following days.

The police refused to believe she did not know either Veerappan or his brother Arjun. She was
kept in custody in that school building for a period of four months. The torture continued. After four months, Shri Devaram told another policeman to shoot her since she refused to disclose any details about Arjun. The police officer did not shoot her, but instead took her to Erode Police Station where she was severely beaten by the police using lathis. Fifteen days later she was transferred to a jail in Mettur, where she remained for two years until TADA charges against her were finally dropped by the Government of Tamil Nadu.

In 2000, she was asked to make a statement about her experiences before an NHRC panel. Prior to speaking with the panel, she was threatened by the Tamil Nadu police. Nonetheless, she still submitted a statement to the NHRC about her experiences. To date, the NHRC has not helped her. She continues to have to go to court on charges related to her alleged relationship with Arjun; the NHRC has not intervened on her behalf.

Case #2
RATHINI (ALSO KNOWN AS RATHNA), WIFE OF SHRI SHIVANNA

Rathini was approximately fourteen years old when a contingent of police officers arrived at her home in two jeeps. It was 2:00 a.m., but since her parents had both been recently arrested, she was home alone. The officers took Rathini to the Mahadeshwara Hills camp. At the camp, she was disrobed and blindfolded. A man named Shankar Bidri subjected her to electric shocks until she fainted. When she regained consciousness, she asked for water. The officers denied her request, suggesting that she drink her urine. Only much later was she finally given water.

The next day, she was raped by ten men. She was detained in the camp for fifteen days, and was subjected to electric shocks throughout her confinement. The police asked her to reveal the whereabouts of her parents, but she did not know where they were.

After fifteen days, Shankar Bidri took her Mahadeshwara Hills and married her off to Shri Shivanna, an agricultural labourer. She still lives with her husband.

Rathini was questioned because the police believed that her parents were affiliated with Veerappan. She submitted her story to the NHRC, but has yet to be helped in any meaningful way.

Case #3
SHRI KRISHNAN

Sometime around 1993, Shri Krishnan was tortured and killed in police custody. He had traveled to Kolathur to sell six bags of groundnuts to Vaiyapuri Oil Mills for Rs. 2,200.00/-. For an unknown reason he was arrested, stripped completely naked, and chained up at Mettur police camp. When his wife, Madi, found out about his arrest and came to check in on him she was threatened with arrest if she did not return to her village. Several days later, back in her village, Madi was visited by Karnataka Police who were looking for her husband. She did not understand their language well and was very afraid of them and accordingly was unable to communicate with them effectively. Because of her poor communication, the Karnataka Police beat her.

Several weeks later, Madi, while trying to find the location of her husband after he was no longer being held at the Mettur police camp, found out that her husband had been murdered by the police while in their custody.

Madi submitted her story to the NHRC, but has yet to be helped in any meaningful way.
PRAKASH KARIYAPPA
This case was presented before the IPT by Prakash Kariyappa, on behalf of Vijaymurthy

Case #1
VIJAYMURTHY

On 11 June 2005, Vijaymurthy died of a heart attack at the Bangalore Central Jail. Vijaymurthy was suspected of being a high-ranking leader in the Tamil Nadu Liberation Army, a group listed by the Indian government as a terrorist organization. The conflicting accounts of his death along with his possible affiliation with a terrorist group have created suspicion that Vijaymurthy died due to the intentional negligence of the prison authorities.

A senior jail officer alleged that Vijaymurthy was admitted to Jayadeva Hospital in Bangalore after suffering a heart attack on 10 June. He was discharged the next day, but suffered a second heart attack after returning to the prison; the second heart attack resulted in his death.

Vijaymurthy’s wife has alleged that his death could have been prevented if not for the irresponsible medical care of the doctors. The doctors said that they were aware of a high risk of a second heart attack. Nevertheless, he was returned to the prison. He fell sick again soon after and was taken to the prison infirmary. Despite his severe health condition, he was brutally mistreated by the prison workers. He was not given a wheelchair to go to the upper floor and was forced to walk the stairs under his own power. He collapsed as he climbed the stairs and died soon after.

Vijaymurthy suffered from a heart ailment, high blood pressure and diabetes since the time he arrived at the jail, and had been in and out of the hospital in the months leading up to his death. An NHRC claim was filed by the South India Cell for Human Rights Education and Monitoring (SI-CHREM). To date, the NHRC has not done anything for Vijaymurthy and his family.

Case #2
KAILASH MEENA

Kailash Meena is a leading anti-mining and anti-displacement activist from Neemka Thana in Sikar District, Rajasthan.

On 20 December 2011, Kailash was arrested for hitting and then blackmailing the wife of Mr Sardar Mal. However, Kailash could not have committed this offense because on the date of the alleged activity, KailashMeena was leading deliberations with representatives of the Dabla people’s struggle. The meeting ran late into the night.

Kailash believes that a false case was made against him because of the success of his political activities. This is not the first such case that was falsely made against him. Indeed, prior to his meeting for the Dabla, he overheard someone, named Umrao Singh, say that if Kailash continues to speak against mining interests, he will be thrown in jail.

After Kailash was arrested, he was severely beaten and tortured. He filed a case with the NHRC, but to date the NHRC has not helped him.

Additional details about his case will be provided during the IPT.
Case #3
NAGENDRA, ALSO KNOWN AS NAGA

On 1 January, 2007, at around 1 p.m., while he was eating lunch outside of his family’s hotel, Nagendrawas brutally assaulted by a police officer. He was beaten unconscious by Sub-Inspector of Police, Mr. M.M. Prashant, of the Ramanagaram police station, and then viciously kicked while laying unconscious on the ground. The assault resulted in multiple internal injuries, which required a number of expensive hospital visits, and potential long term hearing loss.

The assault began because a bench at the hotel had to be moved closer to the road because of construction work occurring in front of the hotel. Mr. M.M. Prashant arrived in a government jeep and demanded to know why the bench had been placed so close to the road. Naga promptly told Mr. Prashant that he would instruct one of the employees to remove the bench as soon as he returned. Without warning, Mr. Prashant became enraged at Naga’s comments and began to verbally abuse him, threatened him with lock-up for not heeding a police order, and finally began his vicious and violent assault on the youth. The officer then left Nagandralying unconscious on the ground and drove away. His mother and aunt, who witnessed the attack, then immediately took Nagandra to the Ramanagaram Town Hospital. The boy was referred to an ENT specialist and an OPD certificate was prepared. Based on the advice of the ENT specialist, the hospital prepared a wound certificate which stated that the victim is now hard of hearing in the left ear and that he suffered internal injuries. A follow-up visit at the Victoria Hospital in Bangalore found that Naga was healing well, but would need a hearing aid to mitigate the hearing loss.

The family approached the Ramanagaram police station on the day of the assault to lodge a complaint. The Circle Inspector verbally abused them and refused to record the compliant. They attempted again to register a complaint, this time to the Deputy Superintendent of Police. Again, they were abused and threatened. After standing firm, they were finally offered a small sum of money as compensation and told to stop pursuing the case. The family refused the sum and left the office. Since then, the family has been receiving constant threats from the police to accept whatever compensation is offered to them. On 4 January, the family sent letters to the Inspector General, the Chief Minister, Home Minister, and the Leader of Opposition regarding the incident. The Home Ministry replied with a promise that action would be taken. On the 23rd of January, they received a police notice stating that their complaint had been registered in the IG’s office. The notice asked them to appear before the IG and record their statements, which they have subsequently done. However, no disciplinary procedures have been taken against the police officer in question.

A complaint was filed to the NHRC by Mathews Philip of the NGO SICHREM. The complaint sought for the NHRC to investigate the matter, initiate legal action against the guilty party, and to order compensation for the victim at the earliest time possible. The NHRC has yet to provide relief.
KILLINGS AND TORTURE
BY THE ARMED FORCES AND
THE RESPONSE OF NHRC
The NHRC’s Response to Enforced Disappearances and Extra-Judicial Killings in Areas of Alleged Ethnic and Political Uprisings

[T]he level of extrajudicial executions in this country still raises serious concern. This includes deaths resulting from excessive use of force by security officers, and legislation that is permissive of such use of force and hampers accountability.

– Christ of Heyns
Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

INTRODUCTION

“My husband, Jaswant, was abducted on the 6th of September, 1995. He was taken from right in front of this house which he built with his own hands. . . . After he was taken, my children and I never saw him again.” As Paramjit Kaur helplessly watched, her husband was taken by armed commandoes of the Tarn Taran police near their home in the Kabir Park area of Amritsar. Jaswant Singh Khalra was, by all accounts, a loving husband, a good father to his two young children, and a trusted and valued member of Amritsar’s Sikh community. Importantly, Khalra had no known ties to any separatist or terrorist groups; to the contrary, Khalra was a well-known human rights activist who sought to work within the Indian legal system. Yet – despite the fact that he posed no discernable risk to the security of the state – on 6 September 1996, Jaswant Singh Khalra became one of India’s disappeared.

Unfortunately, abductions and unlawful killings by India’s security forces are frequent occurrences. Indeed, the reason why Khalra was himself abducted was because he was systematically gathering evidence of the unlawful abduction, torture, and murder of Sikh individuals by Indian police forces in the state of Punjab. The evidence that Khalra and his colleagues gathered implicates India in the unlawful killing of ap-

1. Interview with Paramjit Kaur on 6 July, 2013 [hereinafter “Paramjit Kaur Interview”]. Interview notes with the author.
2. Id.; see also Kumar, Ram; Singh, Amrik; Agrwaal, Ashok & Kaur, Jaskaran Reduced To Ashes: The Insurgency and Human Rights in Punjab. Kathamandu (Nepal): South Asia Forum for Human Rights. ISBN 99933-53-57-4. [hereinafter Reduced to Ashes].
3. Paramjit Kaur Interview
proximately 25,000 people throughout Punjab from 1984 to 1995. As his wife explained:

The Punjab police force behaved as if nothing could be done to them, partly because evidence of disappearances were taken to the high court and were consistently ignored. Though the police talked about terrorists and the threats imposed by separationists, most of the people taken were not remotely related to any separatist movement. People were kidnapped and killed for having names similar to someone the police were looking for. Children were killed. Family members, who themselves had no personal ties to any illegal organization, were butchered.

Such extrajudicial killings have not been limited to the state of Punjab. Currently, under review by India’s Supreme Court, is a petition by the Extra Judicial Execution Victim Families Association (EEVFAM) containing overwhelming evidence of over fifteen hundred unlawful summary executions of civilians committed by security forces in Manipur. Preliminary findings from a Supreme Court commission ordered to look into these killings suggest not only were many, if not all, of these killings unlawful, but the crime scenes were actively staged to look like “encounters” with militant groups to create the false impression that security forces were acting in self-defence.

The Jammu and Kashmir State Human Rights Commission recently determined that 2,730 unidentified bodies had been secretly buried in north Kashmir’s Baramulla, Bandipore and Kupwara districts by Indian security forces. The State Commission noted that the official number of secretly buried bodies is likely to increase as more mass burial sites are discovered throughout the state. The Kashmir-based Association of Parents of Displaced Persons estimates the total number of people disappeared by the army in Kashmir to be well over 8000. Special Rapporteur Christof Heyns notes that Jammu and Kashmir may have had as many as 80,000 extrajudicial executions between 1998 and 2009.

The regrettable reality of India is that, under the guise of protecting the integrity and national security of the Indian state, the country has — and continues to — engage in crimes against humanity against its own citizens. India does so not just in direct contravention of its obligations under customary international law and international treaty obligations, in committing these murders it is often acting against its own national laws. “National security” has become a mantra granting police forces great authority without accountability. When the Centre raises the specter of “communism,” “terrorism,” or “religious separatism,” the judiciary and other institutions responsible for monitoring human rights violations become acquiescent.

As the testimonies at the IPT established, the NHRC has been particularly problematic in its un-

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5. Khalra and his team had gathered evidence of the secret cremations of 2,097 people in three cremation grounds in the city of Amritsar. Extrapolating from his research, Khalra’s work suggests that approximately 25,000 people were secretly cremated throughout the state. The investigation is discussed in greater length at page ___. See also “the Punjab Mass Cremations Case: India Burning the Rule of Law” at http://www.ensaaf.org/pdf/reports/cremations.pdf.
6. Paramjit Kaur Interview
8. Id.
10. Id.
11. Id.
NHRC: SOCIAL AUDIT REPORT

willingness to tackle these types of political issues. Despite some general public pronouncements about the unlawfulness of secret abductions and extra-judicial killings, the NHRC has shown great reluctance to publicly condemn specific acts of murder. To the contrary, the Commission has more often than not acted to protect state officers from criminal liability. The NHRC’s unwillingness to take meaningful stances in specific acts of state abuse helps further the culture of impunity, and this allows such kidnappings and murders to continue.

ENFORCED DISAPPEARANCES AND EXTRA-JUDICIAL KILLINGS UNDER INTERNATIONAL AND INDIAN LAW

“Under both Indian and international law, police officers who conspire and then execute individuals have engaged in premeditated murder. It’s that simple.”

Historically, extrajudicial and arbitrary executions disproportionately occur during times of armed conflicts, states of emergency, and attempts by a government to counter internal insurgencies, both real and imagined. Such executions are sometimes accompanied by an increase in “enforced disappearances”. An enforced (or forced) disappearance is the abduction or imprisonment of a person by a state authority, or a third-party acting with state complicity, followed by the state’s refusal to acknowledge that the abduction or imprisonment has taken place. The purpose of enforced disappearances is, in part, to place the victim outside the protection of the law. After the victim is abducted, he or she is usually illegally detained and tortured. Next, the person is usually murdered, and the body secretly disposed of to escape discovery. For all intents and purposes, the person seems to have just simply vanished. The state authority committing the murder has deniability; it is difficult to obtain evidence regarding either the initial abduction or the circumstances surrounding the person’s death.

Extrajudicial killings and enforced disappearances are not simply considered illegal, they are considered to be crimes against humanity, or “particularly odious offenses in that they constitute a serious attack on human dignity or grave humiliation or a degradation of human beings.” The four 1949 Geneva Conventions clearly prohibit such acts of murder and explicitly state that “wilful killings: are to be considered “grave breaches” of the Geneva Conventions.” The Universal Declaration of Human Rights, and the International Covenant of Civil and Political Rights, which India ratified in 1979, both note that extrajudicial executions undermine the rule of law by depriving targeted individuals of their right to life, as well as the right to defend themselves against the charges brought against them.

Significantly, India is also a signatory of the International Convention for the Protection of All

17. The Rome Statute of the International Criminal Court; see also UN Security Council Resolution 1674, adopted by the United Nations Security Council on 28 April 2006, which “reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity,” the resolution commits the Council to action to protect civilians in armed conflict.
Persons from Enforced Disappearance (ICCPED), which explicitly makes enforced disappearances unlawful. The ICCPED clearly states:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.¹⁹

Further, the Convention provides that parties to the convention must, inter alia, investigate acts of enforced disappearance and bring those responsible to justice, ensure that offenders are prosecuted, and establish the right of the relatives of the disappeared person to learn about the fate of their loved one. While India has not yet ratified the treaty, it is a signatory to the convention. As such, India has an obligation under international law to refrain from acts that defeat the object and purpose of the treaty.

India’s penal code also makes acts of unjustifiable murder illegal. Where a public servant wrongfully kills a suspect, and where that act is not justified, for example in self-defence, then the officer is culpable for homicide under Indian Penal Code Section 302. As NHRC Member Satyabrata Pal explained: in the case of encounter killings, it’s an actual act of murder. These are public servants – sworn to uphold the law – who kill! And if a public servant, particularly an armed officer of the state, thinks he can get away with murder, then obviously, he will think he can get away with anything else.²⁰

If a public servant lies about the circumstances of a murder, they are culpable under IPC section 167 relating to public servants acting to alter records, and sections 191 and 192 on providing or fabricating false evidence. Kidnapping is punishable under section 359 and 362 of the IPC, and kidnapping with the intent to murder is punishable under section 364. But while the laws in India support the right to be free of unlawful disappearances and murder by agents of the state, as a practical matter it is difficult to protect this right.

Members of the armed forces are protected by criminal procedural codes that make it virtually impossible to prosecute unlawful activity. Section 45 of the Criminal Procedure Code protects any member of the armed forces from arrest by civilian authorities for, “anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central government.” Section 197(2) of the CPC has also been used to block civilian trials of those in the armed forces who have been implicated in human rights abuses:

No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central government.

The Central government almost never grants sanction to prosecute.

Anti-terrorism laws, discussed at greater length below, limit the possibility of prosecuting officers who may have acted illegally. The Armed Forces (Special Powers) Act, or AFSPA, for example, allows the Indian army to use substantial force against any person who acts in contravention of any law. It prohibits the assembly of five or more persons. Further, it allows the destruction of any shelter — private or public — if the army finds that armed attacks are likely from that location. An armed officer can make arrests, enter and search any premises, search and seize vehicles suspected to be carrying an offender or any person against whom any reasonable suspicion exists — all without a warrant, trial or due process of justice.²¹ Importantly, AFSPA shields from prosecution any action taken under the color

¹⁹. Article 1 ICCPED.
²⁰. OUT OF FOCUS: In the shadow of AFSPA, event on 3 August 2013 at the Indian Social Institute and organized by the Human Rights Law Network.
of law. In other words, there can be no prosecution, suit or other legal proceeding against an army officer who simply claims to be acting under that law. While AFSPA's legal immunity is limited to acts (1) by army officers and (2) which are authorized by AFSPA, as a practical matter the legislation creates an atmosphere of impunity where unlawful acts by security officers, including bribery, murders, and rapes, become quotidian.

Even where evidence of illegal activity can be gathered and cases against members of a security forces properly pursued before the NHRC or the courts, as a practical matter it is difficult to prove that a police officer has compromised evidence by altering the official records in order to suggest that he or she was acting in self-defence. As such staging and altering of the record is prolific, it becomes difficult to prove the culpability of the officers.

THE NHRC AND FAKE ENCOUNTER KILLINGS IN INDIA

The term “encounter killing” is a euphemism used throughout South Asia to describe instances in which the police, paramilitary groups, or armed forces claim to have shot and killed suspected criminals and terrorists during the course of a gun fight. A “fake encounter” occurs when an agent of the state kills an unarmed suspect, but alters the crime scene to make it appear as if the shooting happened in self-defence. In such cases, it is common for evidence, such as guns, to be planted on or near the dead body. Where the suspect was in custody at the time of the shooting, state authorities may claim that the person was killed during an escape attempt. Such killings represent illegal extrajudicial executions.

Noting the “huge” numbers of fake encounter killings that occur in India, NHRC Member Satyabrata Pal noted that, in his experience, fake encounter killings take place for three reasons:

Some were criminals who could not be put away through the judicial process, and therefore they were killed. The others were innocent victims who just happened to be in the wrong place at the wrong time. And the third, which is the most tragic and the most uncomfortable, are those who are killed for reward. For – in hopes of – getting an out-of-turn promotion or a gallantry award. 22

NHRC Member Pal further noted that such promotions and awards were a “driving motive” for extrajudicial killings by army officials. 23

In an attempt to curb fake encounters, the NHRC issued guidelines in 1997 recommending procedures to be followed in instances of encounter deaths. These guidelines, which were updated and reissued in 2003, and again in 2010, suggest mechanisms to report all deaths in the course of police action and to systemize the gathering of evidence in such instances. The recommendations, assessed at greater length in Chapter __, are largely considered anaemic and insufficient in dealing with the problem of encounter deaths.

The NHRC claims that it reviews all complaints received involving deaths in the course of police actions. 24 The Commission admits, however, that cases are often hampered by delays in getting information from the states. 25 The Commission rarely engages in fact-findings of its own, and it does not hold state actors accountable for their unwillingness to comply with NHRC guidelines on encounter

22. OUT OF FOCUS: In the shadow of AFSPA, event on 3 August 2013 at the Indian Social Institute and organized by the Human Rights Law Network
23. Id.
25. Id.
LEGALIZING IMPUNITY THROUGH ANTI-TERRORISM LEGISLATION

A misguided fear of terrorism and dissent has resulted in legislation that effectively protects state actors accused of participating in an extrajudicial killing, enforced disappearance, or other act of violence against certain civilian populations. The Armed Forced (Punjab and Chandigarh) Special Powers Act of 1983, allowed the army to work with near impunity in the state of Punjab and in the union territory of Chandigarh. This law, along with the Terrorist and Disruptive Activities (Prevention) Act (TADA), which was in force from 1985 to 1995, was used extensively in Punjab to shield police officers from justice for the murders of Sikh civilians. TADA gave wide latitude to law enforcement agencies to deal with alleged terrorists and “socially disruptive” individuals. The police were given the power to hold a person for up to a year without formally charging that person, and there were few, if any, mechanisms for monitoring abuses by law enforcement agencies.

The 2002 Prevention of Terrorism Act (POTA) was also subject to abuse by law enforcement agencies. POTA quickly gained a reputation as a tool that shielded enforcement agencies from accountability as they committed arbitrary arrests and harassment based on political expediency or communalism rather than an actual need to protect the people from terrorism. POTA, which was in force from 2002 to 2004, was used to detain close to a thousand people in its first eight months alone. As with the other anti-terrorism legislation mentioned here, POTA made it difficult to prosecute officers who participated in fake encounters or who otherwise abused their authority. The Unlawful Activities Prevention Act (UAPA), is currently being used to castigate prominent journalists, filmmakers, and political activists in Chhattisgarh, as well as to persecute Muslims suspected of little more than owning a copy of the Quran.

Perhaps the most transparently abusive of the anti-terrorism laws is the Armed Forced (Special Powers) Act (AFSPA). AFSPA's harshness is best understood as part of the colonial legacy of the British as they asserted their occupying authority against the local population's legitimate interests in self-rule. In 1942, the All-India Congress Committee proclaimed a mass protest demanding “an orderly British withdrawal” from India. This call for a determined, but non-violent, passive resistance, became the basis of the Quit India Campaign. In response, the British declared the Congress an illegal organization, had its leaders arrested and jailed, and declared a state of emergency throughout British India. It also promulgated the Armed Forced (Special Powers) Ordinance which gave this the occupying army vast powers to ascertain and deal with Indian security threats.27

Unfortunately, when India gained its independence, it decided to retain the law. Cognizant that many areas, especially in the northeast, where being annexed into the new Indian state against the expressed desire of its inhabitants, the new government believed that legislation similar to the Ordinance was needed to control dissent in these “disturbed areas.” Passed in 1958, as the Armed Forced (Special Powers) Act, AFSPA gave the army the same kind of authority to handle domestic conflicts that the British army was given to control a mutinous indigenous population.

AFSPA grants extraordinary powers to the military, including the power to detain persons, use lethal force, and enter and search premises without a warrant. These powers are formulated using ratherbroad and vague purposefully language. For example, Section 4 of the Act grants power to any

military officer, including any non-commissioned officer, to use lethal force if the military officer is of the opinion that it is necessary to do so for the maintenance of public order. The risk of abuse is heightened by the extraordinary immunity given to the military by the Act. In section 6 of AFSPA: “No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”

The Centre does not give such sanction to prosecute. According to a February 2013 article in The Hindu, “[i]n 54 years, not a single army, or paramilitary officer or soldier has been prosecuted for murder, rape, destruction of property (including the burning of villages in the 1960s in Nagaland and Mizoram).”

In 1997, the constitutional validity of AFSPA was challenged in Naga People’s Movement for Human Rights v. Union of India. The Supreme Court upheld the law finding that it was not arbitrary or unreasonable, and it did not violate any of the fundamental rights of the constitution enshrined in Articles 14, 19, or 21. The Supreme Court did impose certain restrictions: it held that a declaration of ‘disturbed area’ status had to be reviewed every six months, elaborated on safeguards for detained persons, and made legally binding a list of dos and don’ts related to the conduct of military operations. The Court’s decision is widely criticised by legal scholars who feel that the rights to equality, life, and personal liberty were not adequately considered.

In 2012, the Supreme Court reviewed the applicability of section 719 of AFSPA, which requires central government permission to prosecute a member of the security forces in areas where the AFSPA is in force. In CBI v. General Officer Commanding, involving the extrajudicial execution of five villagers in south Kashmir, the Central Bureau of Investigation contended that permission to prosecute was not necessary if the accused could not have been considered to have acted in the course of an “official duty”. During the trial, a judge asked the lawyers representing the Army, “You go to a place in exercise of AFSPA, you commit rape, you commit murder, then where is the questions of sanction? It is a normal crime which needs to be prosecuted, and that is our stand.” Despite these concerns, the Court inexplicably reaffirmed AFSPA’s immunity provisions.

AFSPA and the Supreme Court’s decisions upholding it have been criticised by several organs of the United Nations. On 23 March 2009, the UN Commission for Human Rights Navanethem Pillay, formally asked India to repeal AFSPA as it was contrary to Article 4 of the ICCPR. She noted that the AFSPA was a “dated and colonial-era law that breaches contemporary international human rights standards.” After her visit to India in January 2011, Margaret Sekaggya, the UN Special Rapporteur on the situation of human rights defenders, called for the repeal of AFSPA, and stated that she was deeply disturbed by the large number of cases of defenders who had claimed to have been targeted by the police and security forces under such anti-terrorism laws. Rashida Manjoo, the UN Special Rapporteur on human rights defenders, also called for the repeal of AFSPA.

31. Id.
32. Id.
teur on violence against women, its causes and consequences, in April 2013, said that the AFSPA had “resulted in impunity for human rights violations broadly.” Calling for a repeal of the law, Manjoo stated, “the interpretation and implementation of this act, is eroding fundamental rights and freedoms – including freedom of movement, association and peaceful assembly, safety and security, dignity and bodily integrity rights, for women, in J&K and in states in north-east India.”

The most damning criticism in the United Nations came from Christof Heyns, the Special Rapporteur on extrajudicial, summary or arbitrary executions. In his 2013 report to the UN Human Rights Council, he stated:

*the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict.*

Calling for the repeal of the law, Heyns said that “retaining a law such as AFSPA runs counter to the principles of democracy and human rights.”

AFSPA was recently reviewed by several high-level government commissions. In response to the 2004 rape and murder of Thangjam Manorama by paramilitary forces, the Indian government set up a five-member committee, led by former Supreme Court Justice BP Jeevan Reddy, to “review the provisions of AFSPA and advise the Government of India whether (a) to amend the provisions of the Act to bring them in consonance with the obligations of the government towards protection of human rights; or (b) to replace the Act by a more humane Act.” The Reddy Committee submitted an extensive 147-page report in which it unambiguously states, the “Armed Forces (Special Powers) Act, 1958 should be repealed.” The report continues, “[t]he Act is too sketchy, too bald and quite inadequate in several particulars.”

Another high-level government commission, the Justice Verma Committee was assigned to review the laws related to sexual crimes. In its report, released in January 2013, the Verma Committee noted, “impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act.” The Verma Committee recommendations included the following:

*There is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas as soon as possible. This is necessary for determining the propriety of resorting to this legislation in the area(s) concerned; and . . . Jurisdictional issues must be resolved immediately and simple procedural protocols put in place to avoid situations where police refuse or refrain from registering cases against paramilitary personnel.*

34. Id.
35. Id.
38. Id.
The Committee also recommended that the requirement of sanction for the prosecution of armed forces personnel should specifically exclude crimes involving sexual violence.\textsuperscript{40}

Later that year, Retired Supreme Court Justice Santosh Hedge was asked to head a commission looking into six extrajudicial killings in Manipur. The Hedge Commission, in every case it was asked to look at, found that the killing was a result of a fake encounter. The Hedge Commission also said that the army’s list of dos and don’ts, which was used to uphold the constitutionality of AFSPA in \textit{Naga People’s Movement for Human Rights vs. Union of India}, was “largely on paper”. Indeed, many senior officers who testified before the commission did not know anything about the guidelines.\textsuperscript{41} Concerned that AFSPA does not provide any meaningful protection against abuse, the Hedge Commission said that the continued operation of the AFSPA made “a mockery of the law.”\textsuperscript{42}

Strong opposition from security forces has prevented any action to repeal or dilute AFSPA. Army officials cite the need to protect the morale and integrity of the army as reason not to scrutinize allegations against army personnel. A retired Indian diplomat recently told Amnesty International India, “The army knows that if the AFSPA is lifted, they’ll be flooded with lawsuits, which is indeed bad for morale...if you deploy the Army, you give them immunity. That’s the narrative the government has accepted from the Army.”\textsuperscript{43} NHRC Member Pal disagrees with this assessment. Discussing the great reputation of Indian peacekeeping forces, culled from the Indian Army, Pal says,

\textit{If they acted abroad, in Sierra Leone or Liberia or the Congo, as they do in Manipur and Jammu and Kashmir, they would all be prosecuted. So if they can operate there, and there has never been a whisper or suspicion against any Indian army contingent abroad where they have also been the most effective, there is absolutely no reason why they should have these draconian powers and this sweeping impunity. So AFSPA really has no reason to continue.}\textsuperscript{44}

To its credit, the NHRC has, on occasion, suggested that AFSPA creates an environment that allows for human rights abuses and has suggested that the law be allowed to expire, “AFSPA remains in force in Jammu and Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights.”\textsuperscript{45} Unfortunately, however, citing the Supreme Court’s decision in \textit{Naga People’s Movement for Human Rights v. Union of India},\textsuperscript{46} the NHRC has shown great reluctant to make a clear and explicit statement regarding AFSPA.

But the NHRC’s unwillingness to attack AFSPA is not simply a matter of reticence. Each of the six cases that went to the Hedge Commission, including that of the extrajudicial killing of a twelve-year-old...
old boy who was playing at home with his friend and his family, had previously been submitted to the NHRC. Each of these six cases, either (1) was dismissed by the NHRC based solely on information provided by the police forces, or (2) remains pending before the NHRC with no resolution even after many years.\textsuperscript{47}

**LIMITATIONS ON THE NHRC’S JURISDICTION**

In addition to the limitations on accountability discussed above, the PHRA imposes restrictions on the NHRC, which impede the Commission’s ability to look into allegations of extrajudicial killings and disappearances. Under Section 19, the NHRC may, either through its own motion or as a result of a petition, look into a violation of human rights by a member of the armed forces; however, the NHRC’s capacity to investigate such abuses is limited to seeking a report from the central government.\textsuperscript{48} As a practical matter, the PHRA prevents any independent investigation by the NHRC into specific allegations of wrongdoing by any member of the armed forces.

The National Human Rights Commission has publically criticized this Section 19 limitation:

> It is not the view of the Commission that the “present system” of inquiry into allegations of human rights violations by the armed forces is working satisfactorily. The Government is fully aware that the Section 19 of the Act, as at present worded, prevents the Commission from itself initiating an inquiry into, or investigating, the violation of human rights by the armed forces and that this provision has been widely criticized both at home and abroad. Yet, spokespersons of the Government, even at the highest levels, have frequently referred to the existence of the Commission and its powers under the Act as a sure defence against the violation of human rights by the armed forces when allegations of such violations are brought against them. The Commission finds this tendency to use it to provide an alibi for possible wrong doing by the armed forces disturbing, to say the least.\textsuperscript{49}

Section 19 is inconsistent with the standards for national human rights institutions articulated in the Paris Principles as well as the Handbook, which states:

> Designating the military as exempt from the complaints mechanism may also have a detrimental effect on an institution’s effectiveness, particularly in view of the strength of the military in many States and its corresponding potential to violate human rights.\textsuperscript{50}

Another significant limitation on the authority of the NHRC is the one-year jurisdictional limitation set in Section 36(2). According to the PHRA, the NHRC “shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.” Extrajudicial killings and enforced disappearances are by their nature secretive acts. Evidence is tampered, reports falsified, and witnesses intimidated or disappeared themselves. The expectation that lay individuals will have the ability to unearth evidence against a police officer or a member of a paramilitary group within one year of their loved one being abducted or killed is unrealistic.

The one year limitation also goes against the procedural time limitations as they exist in most de-

\textsuperscript{47} Extra Judicial Execution Victim Families Association (EEVFAM) and Anr. v. Union of India and Anr. Writ Petition (Criminal) No. 129 of 2012. These cases are discussed at greater length on page __.

\textsuperscript{48} See PHRA section 19.


\textsuperscript{50} The Handbook; see also id.
mocracies, where time limitations go into effect, not when the illegal act occurred, but when evidence of the illegal act is either uncovered or from when it would be reasonable to expect the evidence to be uncovered. By imposing a strict one-year limitation based on the date of the unlawful activity, the PHRA in effect rewards attempts by the state to obfuscate or conceal the truth. The one-year limitation for NHRC review effectively shields the state from accountability while furthering a culture of impunity.

Despite the limitations imposed by the PHRA on the investigation of specific cases of abuse by the military, the NHRC still has other powers under the PHRA which it can use to counter abuses by the military and other security forces. The NHRC can proactively encourage the work of NGOs documenting abuses and help publicise their findings. It can also use its powers to spread human rights literacy, to educate military officers on the limitations of their authority, and to work with the media to spread information regarding abuses. Finally, it can make strong recommendations to the government with respect to the lack of procedural safeguards in AFSPA and can intervene in court proceedings to explain how AFSPA is contrary to India’s international treaty obligations.

While the limitations of the NHRC are considerable in this area, the NHRC can and should use its moral authority to stand up against abuses by India’s security forces. Still, a greater role by the NHRC would certainly be welcome.

ENFORCED DISAPPEARANCES AND EXTRA-JUDICIAL KILLINGS IN AREAS OF CONFLICT

India’s anti-terrorism and national security policy is aimed, in part, at silencing dissent in regions with high levels of communal or secular dissatisfaction, as for example in Punjab in the 1980s and 1990s. Other areas are subject to harsh suppression because of a belief that the people in those areas are fundamentally different because of their language, facial features, or essential “foreignness”; this belief has led to extreme brutality by the Centre in border areas like Manipur, Assam, West Bengal, and Kashmir. In other areas, the Indian government uses the spectre of communism to silence dissatisfaction by disenfranchised tribal groups; in areas such as Chhattisgarh, Jharkhand and Orissa the Centre often hides behind the rhetoric of the Naxalite threat to excuse military abuses.

The pages that follow provide a brief overview of five such areas of conflict, and of the NHRC’s often inadequate responses to accusations that India is, or was, engaged in extrajudicial executions and enforced disappearances in these states.

The Punjab Cremation Case allowed the NHRC its first opportunity to review allegations of mass state-sponsored disappearances and killings, and so we begin with a discussion of the events in that State. Because the Supreme Court directly referred this matter regarding the mass, systematic, secret cremations of Sikhs in Punjab to the NHRC, the Commission was able to work without being constrained by the PHRA’s one-year time limitation. Had the NHRC taken a strong stance against state-sponsored killings in Punjab, the Commission could have established itself as a relevant human rights institution, a moral authority to which the people could turn for the protection of their rights. Sadly, this did not happen.

The NHRC’s response to the killings in Punjab was needlessly reductionist: the NHRC refused to look at any deaths in Punjab outside of the three crematoriums already investigated by Khalra prior to

his death. It further refused to inquire into how and why people were killed. Instead it limited its review to the fact that illegal cremations had occurred. Worse, the NHRC refused to divulge the names of any officers involved in the killings and disappearances, making it impossible to hold the police officers accountable for their conduct. The NHRC also failed to conduct a meaningful independent investigation. Not a single survivor, or family member, ever testified before the Commission. Even so, the NHRC took well over a decade to reach a resolution in the case.

The NHRC’s limitation on its own jurisdiction was unwarranted under the jurisprudence and unwarranted given the nature of the human misery that had taken place. Moreover, it established a precedent of acquiescence to official accounts of events, ultimately making it harder to hold the government accountable for acts of violence.

After Punjab, we turn to Manipur. Decades of racist policy and military occupation in Manipur has resulted in a state whose economic and social institutions have been severely compromised. For most of its history as a state in India, Manipur has had to contend with high levels of extrajudicial killings by the army, paramilitary forces, and the police. In an attempt to hold the security forces accountable for the murders – many of which are preceded by disappearances, torture, and rape – people in Manipur turned to the NHRC for help.

Sadly, in many cases brought to the NHRC, the Commission adopted the state police or state magistrate’s determinations regarding these deaths. The NHRC did not conduct an independent investigation, or hear testimony from witnesses or family members of the victim. Even in those rare instances where the NHRC found that security officials had acted unlawfully, cases took years to close.

In 2012, the Extra Judicial Execution Victim Families Association (EEVFAM), a group of the wives and mothers of people extra judicially killed in Manipur, filed a petition in the Supreme Court against the Government of India, the State of Manipur, and the NHRC. This petition provided extensive documentation of 1,528 cases of false encounter killings committed by security forces in Manipur between 1979 and 2012. Based on this litigation, the Supreme Court asked a commission of three judges, headed by Justice N. Santosh Hedge, to look into six sample cases all previously submitted before the NHRC, to determine if there was enough of a discrepancy to warrant a fuller look at the issue. In just four months, with far fewer resources then were available to the NHRC, the Justice Hedge Commission found that in these six cases there was not a single instance of a “genuine” encounter.

Kashmir has also seen a spate of enforced disappearances and extrajudicial killings. On 2 July 2011, the Jammu and Kashmir State Human Rights Commission announced that 2,730 bodies were found, many bearing marks of torture, in unmarked graves in four of the state’s 14 districts. At least 574 of these bodies have been identified as the bodies of local Kashmiris, undermining the government’s assertion that the graves held unidentified Pakistani militants.

In previous petitions to review cases of disappearances and extrajudicial killings, as with Manipur, the Commission usually adopted official accounts of event, and rarely conducted an independent investigation or invited testimony from witnesses or family members. The NHRC’s response to the discovery of Kashmir’s secret graves has been similarly underwhelming. Having ignored the issue for years, despite decade-long rumours that such graves existed, in 2012 the NHRC asked the Union Home Secretary and the Defence Secretary to investigate the unmarked graves in the districts where the bodies were found. As with Punjab, the NHRC choose to be unnecessarily self-limiting and refused to consider the many people killed in other districts of the state.

Most of the bodies so far found have yet to be identified. The government has put the onus on victims’ families to identify the graves of their missing relatives and only once identified will the
ernment exhume the bodies and carry out DNA tests and profiling. For the average Kashmiri citizen, this is a Sisyphean task. The NHRC could use its position to advocate for these families and to help in the identification of the bodies dumped in the many secret graves throughout the state.

In West Bengal, the Border Security Force uses the alleged threat posed by external powers as an excuse to subjugate the local population. Here, again, the NHRC has been slow to process the murders committed by the Border Security Force (BSF). According to Kolkata-based civil rights activist Kirity-Roy, of the 700 to 800 complaints filed by his organization, the NHRC has independently investigated only one case. In 30 to 40 cases, the NHRC accepted the report submitted by the BSF and the case was closed without giving family members a chance to respond. In seven cases the NHRC ruled in favor of the victim. However, in these cases the Commission only awarded monetary compensation; the NHRC was unwilling to recommend the initiation of a criminal case against the BSF officers responsible. In the remaining cases, the NHRC simply has yet to make a determination. Many cases have been pending at the NHRC for years.

The NHRC's response to atrocities in Chhattisgarh is particularly troubling. There, the Commission was tasked by the Supreme Court with investigating allegations of violence committed by the government-backed militia, SalwaJudum. The NHRC’s investigation team was composed entirely of police officers, while representatives of local tribal communities and NGOs were not invited to join. The team travelled in armed conveys to meet with victims and were always accompanied by special police, which made honest conversation with victims difficult. The NHRC also uncritically adopted state police accounts of events. Not surprisingly, The Commission report, largely criticized by the human rights community, effectively exonerated the government of Chhattisgarh, as well as the SalwaJudum, for a variety of abuses, including extrajudicial killings and disappearances.

Fortunately, other human rights organizations were also allowed to submit their findings to the Court. On 5 July 2011, the Supreme Court of India declared the militia to be illegal and unconstitutional and ordered its disbanding.

While our report concentrates its findings on these five states, it is important to remember that these are not the only states in India that were, or currently are, facing significant conflict, nor are these the only places where the NHRC has failed victims of mass human rights violations.

For example, Assam, a northeastern state near Manipur, was subject to mass extra-judicial murders, or “secret killings,” between 1998 and 2001. During the AsomGanaParishad (AGP) government of Prafulla Kumar Mahanta, family members, friends, and associates of the leadership of the separatist United Liberation Front of Assam (ULFA) were assassinated by unidentified gunmen. With the fall of this government following elections in 2001, the secret killings all but stopped.

Investigations into the killings resulted in the “KN Saikia Commission Inquiry,” presented to the Assam Assembly on 15 November, 2007. The report provides details about of how Mahanta, in his role as the Assam Home Minister, used surrendered elements of ULFA, known as SULFA, to execute family members – including women and children – of individuals suspected of ULFA sympathies. More troubling, these extra-judicial executions were done with the assistance of the local police and the Indian Army. Appointed SULFA executioners approached their targets at home, at night, knocking on the door and calling out in Assamese to allay suspicion. When the victims answered the door, they were shot or kidnapped to be shot elsewhere. Dinesh Barua, older brother of PareshBarua, military wing chief of ULFA in the 2000s, was taken from his home at night by unidentified Assamese men, along with armed military officers. Later his body was found lying near a cremation centre in Chabua. ULFA's Publicity Secretary, MithingaDaimary, lost five members of his family during this period.
The NHRC response to activities occurring in Assam were largely inadequate. As with Manipur, many cases brought to the NHRC were closed based on state evidence alone. Many more cases were simply not adjudicated. In November 2013, during a tour of Assam and Manipur, NHRC Member Satyabrata Pal was asked by a journalist whether he was aware of the secret killing of ULFA Members. His response was he was unaware of the killings because they happened before he joined the Commission. However, he added he would be willing to look into the cases now they had been brought to the attention of the NHRC. His response set of a wave of rumours that the NHRC would now look at the secret killings in Assam. However, there appears to be no follow-up yet at the official level.

As with Chhattisgarh, the government’s anti-Naxalite counterinsurgency response in Jharkhand, Orissa, and Andhra Pradesh has resulted in countless deaths of unarmed men, women, and children. Under the guise of protecting the security of the state, human rights defenders are targeted by security forces. As with the other states discussed in this chapter, cases of extrajudicial killings and enforced disappearances in these states rarely result in an impartial investigation. More often than not, the NHRC adopts the official determinations regarding culpability without hearing any opposing evidence.

CONCLUSION

The NHRC’s record on enforced disappearances and extrajudicial killings is ultimately one of acquiescence. As the Commission itself admitted in the EEVFAM litigation, it lacks the staff to adequately investigate the many cases that come before it. Rather than invite testimony from witnesses and family members, the NHRC often closes cases based only on the one-sided reports of police investigators. It does this despite having acknowledged that many of these reports have been doctored to protect security officers. The Commission frequently laments the government’s unwillingness to provide timely, reliable evidence, such as videotaped post-mortem reports. However, it incentivises such behaviour by choosing to not create a presumption of wrongdoing where adequate evidence, establishing that a killing was justified, is lacking. The Commission’s stance on resolving cases has the effect of bolstering state denials of misconduct.

As noted by Special Rapporteur Christof Heyns, the effective functioning of the NHRC is partially hampered by the PHRA, which limits its ability to investigate human rights violations committed by members of the armed forces and which limits jurisdiction to matters within one year from the date of the incident. But even considering the limitations placed on the NHRC by the PHRA, Commission Members still have tools that could be used to shed light on human rights abuses by the security forces. For example, as mentioned by Imphal-based human rights activist Babloo Loitongbam in his expert statement, the NHRC has the ability to actively campaign for the abolishment of AFSPA. And as advocated by Kolkata-based activist Kirity Roy, the NHRC can work more closely with NGOs to shed light on abuses and offer targeted human rights training programs for the police, army, BSF, and paramilitary personnel. The Commission can also work with the press to spread awareness of human rights violations and can actively call for the prosecution of security officers implicated in extrajudicial killings and disappearances. Even within the limitations of the PHRA, the Commission can and should do more to ensure that the citizens of India are granted the basic right to live free of the fear of enforced disappearances and extrajudicial killings.
The NHRC and the Punjab Mass Cremation Case

INTRODUCTION

Inadequate recognition of the Sikh religion and the Punjabi language in the newly established state of India, as well as dissatisfaction with national economic policies that exacerbated inequalities in the state’s agrarian sector, led to calls from Punjab’s Sikh population for cultural and economic autonomy. Unfortunately, the ruling Congress Party viewed even the most anodyne demands for increased autonomy as an existential threat to India’s national security. Facing the difficulties of managing a diverse population with myriad religions, languages, and ethnicities, the Indian government paid lip service to requests for cultural rights, while actively suppressing non-Hindu self-expression.

By all accounts, the central government’s response to Sikh dissent was needlessly harsh. In 1955, for example, Delhi responded to a peaceful demonstration in support of using the Punjabi language in schools and local government, by arresting 12,000 people. Predictably, Delhi’s heavy-handed tactics backfired. Decades of discrimination against the Sikh population, arbitrary arrests, and police abuse created an environment of distrust, which strengthened militant separatist movements throughout the state. By the early 1980s, activities by militant secessionist groups, combined with overly oppressive counterterrorism efforts, resulted in open conflict in Punjab.

By October 1983, the central government had declared a state of emergency in Punjab: constitutional rights were suspended and the elected Punjabi government was dismissed. Punjab was now ruled from Delhi, and the army and various paramilitary groups were sent in to occupy the state. In just the first five months of 1984, government forces killed approximately 300 Punjabis in domestic counter-insurgency operations.

In June 1984, the central government launched Operation Bluestar, a military operation whose purpose ostensibly was to capture armed militants residing in the Golden Temple. The ensuing massacre of thousands of Sikh civilians as well as militants ensured another decade of violence.

The Golden Temple in Amritsar is a sacred holy site in the Sikh religion, and – especially during the June Guru Arjan holidays – is visited by thousands of religious pilgrims. By 1983, the temple had also become a sanctuary for many separatists. Concerned for their safety, the separatists are suspected to have fortified the temple, and there are reports that the temple compound housed light machine-guns and semi-automatic rifles. The central government claims that the sole purpose of Operation Bluestar was to remove militants from the temple. This explanation, however, does not explain why the government knowingly chose to conduct this operation on a Sikh high holiday when the temple was sure to be filled with thousands of innocent, apolitical, civilian worshippers from around the world.

Operation Bluestar began with the deployment of seven army divisions and several paramilitary groups throughout Punjab. The borders of the state were sealed off to all foreigners, including non-resident Indians (NRIs). Rail, road, and air travel within Punjab were suspended. Water and electricity services were stopped. A state-wide curfew was imposed and all routes in and out of the Golden Temple

53. Id.
Army units and paramilitary forces surrounded the temple. They arrived with tanks, artillery, helicopters, armoured vehicles, and chemical weapons. Military leaders had earlier sent army officers dressed as pilgrims into the shrine; consequently, the leadership was well aware that many innocent civilians were praying inside the temple. Nonetheless, the worshippers inside were treated as enemy combatants. According to witnesses, and contrary to claims by the government, no announcement was made to warn civilians that a military action was planned, and they were given no opportunity to safely leave the compound. On 4 June 1984, the Indian military began shelling the Golden Temple.

What followed was a massacre. According to the Indian Army, 136 army personnel were killed and 249 injured, while insurgent casualties were 493 killed and 86 injured. Unofficial figures, however, suggest that as many as 3,000 were killed during the operation. Many of those who died that day were unarmed civilian worshipers who were simply caught in the crossfire. In response to the attack on the Golden Temple, on 31 October 1984, Prime Minister Indira Gandhi was assassinated by two of her Sikh bodyguards. Over the next four days, thousands of Sikhs throughout India were killed in retaliatory violence. Massive pogroms were openly, albeit unofficially, encouraged by senior political leaders. Sikh homes and businesses were destroyed; 50,000 Sikhs were left homeless in New Delhi alone. Police officials failed to respond to the many rapes, murders, and hate crimes throughout the country, and rarely filed FIRs when complaints were made. Sadly, none of the politicians or police officers identified by victims and eyewitnesses as organizing or perpetrating the massacres would later be held criminally liable for their role in inciting communal violence.

In the state of Punjab, counterinsurgency operations led to the arbitrary detention, torture, extrajudicial execution, and enforced disappearance of thousands of Sikhs. Security forces abducted young Sikh men on the mere suspicion that they may have been involved with militant groups. Such was the level of impunity that abductions often happened in the presence of witnesses; it was enough for security forces to later simply deny having these people in custody. Extraordinary counterinsurgency laws, including the Armed Forces (Punjab and Chandigarh) Special Powers Act of 1983 and the Terrorist and Disruptive Activities (Prevention) Act of 1985, allowed security forces to work with complete freedom throughout Punjab. Further, the army’s system of rewards and incentives for capturing and killing militants, led to an increase in disappearances and extrajudicial executions of civilians and militants alike.

To hide the evidence of their crimes, security forces secretly disposed of the bodies, either by cremating them, or by throwing them in irrigation canals. Indeed, so many bodies were thrown into the rivers that Pakistan claimed 1,700 Punjabi bodies were found in its tributaries, and the Rajisthani Chief Secretary made a formal complaint to Punjab’s administrative leadership about the number of dead bodies flooding their canals. According to reports, the bodies usually bore marks of torture, and were

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55. “UK says it advised India to use helicopters for Operation Bluestar,” NDTV, 04 February 2014.
56. Id.
60. Protecting the Killers, Human Rights Watch, 18 October 2007.
61. Id.
often found with hands and feet tied together.  

**EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN THE 1990S**

Punjab remained under the administrative control of the central government until February 1992. During that time, much of the terrorist threat had been effectively eliminated. Most Sikh militants had surrendered, fled, were captured, or were killed. The economy began to show signs of returning to normalcy, and the central government permitted state elections in 1992. Voter turnout, however, was poor; many of the political parties previously strong in Punjab had become emaciated by years of conflict and they decided to boycott the elections. As a consequence, the Congress party was easily able to retain control of the new state government, and continue the extreme policies previously instituted from Delhi. The new government appointed, as police chief, K.P.S. Gill and gave him unfettered discretion to deal with what remained of the insurgency.

Gill was ruthless in his attacks against suspected militants and their families. Thousands of innocent Sikhs were killed in fake encounters. Many young boys were disappeared from their homes in the middle of the night: they were abducted, blindfolded, brought to isolated areas, and brutally shot with AK-47s. And though police officials were rarely harmed during these staged “encounters,” their accounts were not officially questioned by anyone in a position of authority.

According to Amnesty International and Human Rights Watch, Gill’s police force was responsible for the rape and torture of countless women and children. Human rights advocate, RS Bains, notes that young, disaffected, unemployed boys were actively recruited into the police force, given guns, and made to feel important and powerful for meeting “murder quotas.” Moreover, as with the army, members of the police force received out-of-turn promotions, gallantry awards, and monetary rewards for killing militants, real or imagined. There was simply no check on the power of the police under Gill.

Surjit Singh, a former police officer, recounts being explicitly ordered by senior police officials to kill people and then falsely claim that it was an encounter death. In recent court filings, he writes:

> … senior officers who directly either give orders, or sometimes were even present to take credit when the fake encounter took place and then show it to the public and the press and heavy recovery was shown to impress the public. Even the so-called encounters of known terrorists/ wanted persons were staged so that there is no need for collection of evidence to try them in a court of law.

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68. Interview with the author.
He also notes that many people were targeted by the police, even though it was well established that they were innocent. Describing one such incident, Surjit Singh writes:

\[
\text{... the last encounter of Sheetal Singh Matteval was real, yet the tragedy occurred as his wife NarinderKaur, Brother Amrik Singh and Darshan Singh were picked up later by overzealous officers and killed extra judicially. They had no role in the activities of Sheetal Singh and were innocent victims of police force.}^{71}\]

Despite the fact that Punjab’s insurgency had been effectively defeated, Punjab’s police force continued to wage a war on its civilian population. Human rights abuses continued unabated.

**EARLY RESPONSE BY THE NHRC**

In 1994, the newly established NHRC went to Punjab to review the situation of human rights abuses in the state. The resulting report noted, “[i]n the public mind there is a prevailing feeling of the police being above the law, working on its own steam and answerable to none.”^{72} The report also stated, “There was widespread feeling that life in urban and rural areas has largely returned to normal. While there was need for continuing vigilance, a feeling was now growing and was repeatedly expressed that it was time for the police to cease operating under the cover of special laws.”^{73} The NHRC report recommended that:

1. strong punitive action be taken against police convicted of human rights violations,
2. police stop using unlicensed vehicles, which have been implicated in disappearances, and
3. the state government consider publishing a list of suspects wanted by the police in order to avoid arbitrary arrests.^{74}

The NHRC failed, however, to take any action at this time to discover which police officers, or other public officials, were involved in continuing human rights abuses.

**UNITED NATIONS RESPONSE TO POLICE ABUSES IN PUNJAB**

Nigel S. Rodley, the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment, stated in his 12 January 1995 report that custodial torture appears to be “pervasive in each of the 25 states of India,” with the likelihood of torture greatest for political detainees in areas of “counter-insurgency operations [such as] Punjab and Jammu and Kashmir.”^{75} This fact was corroborated by Sikh separatist leader Kanwar Singh Dhami. As part of a public relations campaign to show the effectiveness of the police department, on 29 March 1994, the Gill presented Dhami to reporters as part of a staged public surrender. Ever defiant, Dhami instead used the public platform to report that he, his pregnant wife KuldipKaur, and their six-year-old son had been held in illegal and unacknowledged detention for ten months and were tortured in each other’s presence. Limping at the press conference,
he said that the authorities threatened to kill his family and he believed they would do so.\textsuperscript{76}

Professor Rodley also noted that financial corruption, or a “desire to secure bribes,” contributed towards torture and disappearances in the state. Police officers would often, for example, demand bribes to secure the release of a disappeared relative. Professor Rodley found that high-level individuals throughout the state government were complicit in “a high incidence of cover-ups with regard to torture cases [including] senior police, state officials, magistrates, and members of the medical profession.”\textsuperscript{77}

According to a 1994 report by the United Nations Working Group on Enforced or Involuntary Disappearances, victims of disappearances were not limited to suspected terrorists but included journalists critical of Punjabi authorities, and lawyers known for defending people against charges of sedition.\textsuperscript{78} Amnesty International also expressed concern about the active targeting of human rights lawyers for disappearance and murder.\textsuperscript{79}

\textbf{EVIDENCE OF MASS CREMATIONS}

In January 1995, human rights activist Jaswant Singh Khalra and his colleague, Jaspal Singh Dhillon, publicly released information suggesting that security agencies in Punjab had been involved in secret, and unlawful, cremations throughout the state. Khalra had secured municipal records, which established that thousands of “unidentified” bodies had been cremated in just three crematoriums in Amritsar. In the process of trying to identify the people whose bodies had been cremated, Khalra and Dhillon also found evidence that at least some of the people whose bodies had been cremated had been unlawfully abducted by the Punjabi police between 1984 and 1994.\textsuperscript{80} Khalra took this information to the Punjab and Haryana High Court, but his writ petition, demanding the court investigate mass illegal cremations, was rejected.\textsuperscript{81} In April 1995, based on Khalra’s research, the Committee for Information and Initiative on Punjab (CIIP) moved the Supreme Court for an order demanding a comprehensive inquiry into extrajudicial killings throughout Punjab.

As a result of his activism on behalf of the disappeared, Khalra received several serious death threats. Senior Superintendent of Police Ajit Singh Sandhu warned Khalra that if he did not desist from seeking information about the mass cremations, he too would become one of the disappeared.\textsuperscript{82}

On the morning of 6 September 1995, armed men accosted Khalra outside of his home as he was washing his car. He was forced into a blue van. His loved ones never saw him again.\textsuperscript{83}

After Khalra’s kidnapping, his wife Parmajit Kaur, through Gurcharan Singh Tohra, telegrammed the Supreme Court to inform the justices of her husband’s abduction. The Supreme Court decided to treat the telegram as a habeas corpus petition, which it then joined with the petition on mass cremations.\textsuperscript{84}

\textsuperscript{76} Id.  
\textsuperscript{77} Id.  
\textsuperscript{78} Id.  
\textsuperscript{79} Id.  
\textsuperscript{80} Reduced to Ashes: The Insurgency and Human Rights in Punjab, Committee for Coordination on Disappearances in Punjab, 2003.  
\textsuperscript{81} Id.  
\textsuperscript{82} Id. and Parmajit Kaur Interview.  
\textsuperscript{83} Id.  
\textsuperscript{84} Reduced to Ashes: The Insurgency and Human Rights in Punjab, Committee for Coordination on Disappearances in Punjab, 2003.
On 15 November 1995, a bench of the Supreme Court, under Justice Kuldip Singh, reviewed Khalra’s allegations and held that if the facts presented by Khalra were correct:

...even partially – it would be a gory-tale of human rights violations. It is horrifying to visualize that dead bodies of larger number of persons – allegedly thousands – could be cremated by the police unceremoniously with a label ‘unidentified’. Our faith in democracy and rule of law assures us that nothing of the type can ever happen in this country but the allegations [made by Khalra] – horrendous as they are – need thorough investigation.  

The Court then directed the CBI to begin investigations regarding Khalra’s allegations.

THE SUPREME COURT ASKS THE NHRC TO EXAMINE “ALL ISSUES” RAISED BY KHALRA’S ALLEGATIONS

The CBI issued a final report to the Supreme Court on 10 December 1996. In a decision widely criticized by human rights groups, the report was sealed at the behest of the government and its contents remain outside of the public domain. The Court did disclose that the CBI had found evidence of “flagrant violations of human rights on a mass scale.” Moreover, the Court noted that the CBI had found that 2,097 illegal cremations had taken place in the three crematoriums in Amritsar for which Khalra had provided information. Of the 2,097 cremations, the CBI was able to positively identify 585 people and partially identify 247 people with a remaining 1,238 people still unidentified. On 11 December 1996, the Supreme Court ordered the CBI to continue looking into issues of culpability, while directing the NHRC “to have the matter examined in accordance with law and determine all the issues which are raised before the Commission by the learned counsel for the parties. Since the matter is going to be examined by the Commission at the request of this court, any compensation awarded shall be binding and payable.”

The NHRC, which in 1994 had expressed great concern about the situation in Punjab, and which had strongly suggested that responsible police authorities be punished for any human rights violations, now had explicit authority to look at “all the issues” raised by Khalra’s allegations. Sadly, the NHRC utterly failed to act in any meaningful way, either with respect to police accountability or compensation.

The NHRC took well over a decade to reach any resolution in this case. It was initially mired in jurisdictional issues that took years to resolve. The first jurisdictional issue was whether the NHRC had the power to review events that happened over a year before the suit was brought, or if it was limited from doing so by article 36 of the PHRA. Regarding the first issue, the NHRC decided that jurisdiction was sui generis: the Supreme Court has the fundamental right to confer powers of investigation to any committee. As the NHRC noted, and as was later upheld by the Supreme Court:

The Commission would function pursuant to the directions issued by this Court and not under the Act under which it is constituted. In deciding the matters referred by this Court, National Human

85. W.P. (Crl.) No. 497/95, ParamjitKaur Vs. State of Punjab and others, and Writ Petition (Crl.) No. 447/95, Committee for Information and Initiative on Punjab Vs. State of Punjab.
86. No. 497/95, ParamjitKaur Vs. State of Punjab and others, and No. 447/95, Committee for Information and Initiative on Punjab Vs. State of Punjab.
87. Id.
88. Id.
89. Id. (emphasis added).
Rights Commission is given a free hand and is not circumscribed by any conditions.  

The second jurisdictional issue involved the scope of what the NHRC was going to examine. According to the initial Supreme Court order, it seemed the NHRC was being asked to review “all the issues” related to the enforced disappearances and extrajudicial killings in Punjab. In other words, the NHRC was to investigate not just the cremations in Amritsar, which Khalra had already documented, but all of the implications that arose from the fact that thousands of secret cremations had occurred in just one city within Punjab.

Rather than look at the issue in a holistic manner, the NHRC choose to limit its own jurisdiction. The NHRC first limited its review to only the three crematoriums for which Khalra and the CBI had already provided information. It then further limited itself to only reviewing the circumstances of the cremations. The NHRC was unwilling to acknowledge that it was not the illegality of the cremation that was significant, but the human rights abuses – including possible abduction, torture, and murder – that mattered.

Damning to its credibility and commitment to human rights, the NHRC distanced itself from its strong stance of 1994, and decided that it would no longer concern itself with accountability. Whereas it had earlier called for strong punitive actions against police officials involved in human rights abuses, the NHRC now stated:

*It is not our concern in these proceedings to determine as to which police officer or officers were responsible for violation of the right to life of those persons, as that is a matter to be decided by the competent court, after the CBI concludes its inquiry / investigation, as per the directions of the Supreme Court.*  

In fact, the Supreme Court had not, at the time, so limited the NHRC’s authority. But even if it had, the Court certainly did not ask the NHRC to actively shield police officers involved in these abuses. Despite the fact that FIRs are considered public documents, the NHRC refused to release any FIRs that could establish which police officers were involved in the disappearances or killings. By refusing to release information that would assist in identifying responsible officers, the Commission actively impeded any attempts at accountability. Even now, the Punjab police maintains that most of the cremations were for people unintentionally killed in the crossfire between the police and militants. Almost two decades later, there still has been no meaningful admission of liability by the Punjab police.

NHRC proceedings commenced in 1996. However, it was not until 2004 that the Commission dealt with any substantive evidence related to the mass cremations. Fortunately, while the NHRC was struggling with jurisdictional issues, a group of NGOs came together to form the Coordination Committee on Disappearances in Punjab (CCDP) to, *inter alia*, collect and collate information on disappeared people from all over the state of Punjab. First-hand information obtained by the CCDP led to a substantial proportion of the identifications of “unclaimed and unidentified” persons.

By the terms of the 1996 Supreme Court order the NHRC was, at a minimum, tasked with identifying the people cremated in the three crematoriums in Amritsar and awarding compensation to their families. In November 2004, the NHRC proceeded to do this by placing “notification[s] in the newspapers calling upon the next of kin to put forward their claims”. The NHRC was either unwilling or unable to appreciate that many of the affected villagers were illiterate or out of the distribution range of the few newspapers in which it placed notifications. The NHRC did not send investigators into the

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91. Id.
field to speak with the family members of victims, nor did the Commission involve the community in its efforts.

Working at the village-level to gather information from people about the disappearance about their loved ones, the CCDP submitted 1,591 claims from the Amritsar region. These 1,591 claims constitute a substantial majority of the cases for which positive identifications were ultimately made. Underfunded and inadequately resourced NGOs, while operating in a climate of hostility and fear, were forced to do the work that the NHRC was unwilling to do.

The NHRC was also trying to determine whether any of the identified individuals were in police custody prior to their cremation. To make this determination, the NHRC relied almost exclusively on statements by the Punjab police about whether the person was in their custody, or whether the person was a bystander killed during a shoot-out with militants. Throughout the proceedings, the NHRC did not conduct any independent investigations. No witnesses or family members were called to testify before the Commission. No police officers were cross-examined. No independent attempts were made to determine the veracity of statements by the police.

In April 2012 - sixteen years after first receiving the Supreme Court’s mandate - the NHRC held that for the violation of the human rights of the 194 victims who the police admitted were in police custody immediately prior to their death and cremation, their kin were entitled to monetary compensation of Rs 2.5 lakh each. For the 1,318 victims who had been identified, but who the police denied were in police custody at the time of their deaths, their families were paid Rs.1.75 lakh each.93 Of the original 2,097 bodies, a total of 532 bodies remain unidentified.

INTERNATIONAL RESPONSE TO THE NHRC INQUIRY

The U.S. Department of State, in its 2005 India country report, remarked:

“In Punjab, the pattern of disappearances prevalent in the early 1990s ended; however, during the year, the Government failed to hold accountable hundreds of police and security officials for serious human rights abuses committed during the counterinsurgency of 1984-94, despite the presence of a special investigatory NHRC…. The Government took no action in any of these cases, and none was expected.”94

Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, also expressed concern about the NHRC proceedings in the Punjab Mass Cremation Case. In his 2013 report on India, Heyns noted:

“Delay in judicial proceedings constitutes one of India’s most serious challenges and has clear implications for accountability. For example, lengthy and ineffective proceedings exist in Punjab where large-scale enforced disappearances and mass cremations occurred between the mid-1980s and 1990s. The lack of political will to address these disappearances is evident in a context where steps to ensure accountability have been reportedly inconclusive.”95

He added:

“The situation is aggravated by the fact that security officers who committed human rights violations are frequently promoted rather than brought to justice. The Special Rapporteur has heard of the case

95. UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to India, 2013

80 RUGGED ROAD TO JUSTICE
of Mr. Sumedh Singh Saini, accused of human rights violations committed in Punjab in the 1990s, who was promoted in March 2012 to Director General of Police in Punjab. Promoting rather than prosecuting perpetrators of human rights violations is not unique to Punjab. The Special Rapporteur heard this complaint from families of victims throughout the country.

For some families, decades have passed since the disappearance or death of a loved one. Yet – despite the involvement of the Supreme Court, the CBI, the NHRC, and the countless additional commissions created to review the deaths in Punjab, the majority of families have not received any meaningful acknowledgment of wrongdoing.

CONCLUSION

The NHRC reduced the issue in the Punjab Mass Cremation Case to the nature of the disposal of bodies in three crematoriums. It ignored the fact that an illegal cremation was likely preceded by an illegal detention, an illegal torture, and an illegal murder. The NHRC’s reductionism was unnecessary under both Indian and international jurisprudence, and unwarranted given the nature of the large-scale human tragedy that had taken place.

These shortcomings were further compounded by the NHRC’s failure to direct the appropriate agencies to carry out necessary investigations in the field. This failure placed a difficult and onerous burden on family members and NGOs to prove and submit cases for consideration. The NHRC choose not to use the resources at its disposal, nor did it acknowledge the state’s obligation to reach out to the family members of victims.

Throughout the sixteen-year proceedings, the National Human Rights Commission ignored the fundamental rights violations that had occurred in Punjab, despite having initially acknowledged them in 1994. The NHRC failed to conduct a meaningful independent investigation. Police officers were not cross-examined. Not a single survivor, or family member, ever testified before the Commission. Testimonies were not collected. Unlike a truth and reconciliation commission, the NHRC choose not to bear witness or record the truths of the people who had suffered. And unlike a court, it was unwilling to hold those responsible accountable for their violations of human rights.

Finally, it should be remembered that tens of thousands of people were disappeared or killed throughout the state of Punjab. Because the NHRC limited its jurisdiction to only three crematoriums, the majority of Punjab’s secret cremations have yet to be officially investigated. There are still many people in Punjab who do not know the fate of their loved ones.

NAVKIRAN SINGH
Advocate

I was part of a team of lawyers who worked with Jaswant Singh Khalra. Khalra had been attempting to identify thousands of dead bodies in three crematoria in Amritsar. Khalra’s approach to systematically collecting evidence regarding the secret cremations became the basis of the Punjab mass illegal cremations case.

As we worked on the case, we constantly lived with the knowledge that the police could target us. Those were the times when people were just picked up and killed, and we lived with the threat that we too may be disappeared. Five Human Rights Lawyers were killed by Punjab police during the period 1990 to 1992. One of them was taken away along with his wife and four-year-old child. The family
was never heard off again. Punjab police officials are being tried for killing them. Yet, in spite of these concerns, we succeeded in proving – with certainty – that wrong had been done by the police forces in the Punjab. The police showed they had something to hide by secretly cremating the dead bodies of those abducted in false encounters.

Despite strong evidence of wrongdoing, the NHRC frustrated our attempts to get justice. The NHRC has never taken the case very seriously and it never made a meaningful effort to give any timely relief to the families of the victims. Justice is not a priority for the NHRC; political expediency is. The NHRC wanted us to let bygones be bygones. They wanted to whitewash evidence of the killings and they made the decision to prioritize protecting the police officials over shedding light on the truth. Compensation to the families of victims was meager. Our experience with the NHRC shows that as human rights activists, we remain at the mercy of the state. It is very discouraging.

The NHRC was designed to place people with human rights expertise into at least two of the five seats on the Commission. Yet nobody with a true human rights background has ever been appointed. It is clear that the government does not want to risk putting a strong voice in a position of power. Instead, the Commission has become a soft landing seat for judges after they retire. It is basically an allotment by the government: after you retire, you have a good payment package waiting for you if that you do what we say. So everyone on the Commission naturally has a very pro-government mindset. The insincerity of the government’s intentions was clear from the outset of the NHRC’s formation in 1993. The clause that the NHRC could not take on a case that was more than a year old was specifically designed to prevent the NHRC from investigating the atrocities in the Punjab, which had ended just over two years earlier, in 1991.

From the start, the NHRC investigation of the Punjab cremations case was flawed. The NHRC should have looked not just at the fact of the secret killings, but they should have investigated the cause of it. Instead, the NHRC ignored the background issues of how these people were killed and then cremated illegally. Thus, the NHRC investigation missed the main point: how and why were those living people turned into dead bodies? So all the NHRC was left with was the compensation aspect.

Yet, even within this limited mandate, the NHRC demonstrated no willingness to challenge government officials into bringing to light the events behind the cremation cases. For instance, when the police said that they did not want to release the FIRs because those contained the names of the police officers, the Commission very readily agreed. The NHRC helped the Punjab police to hide the FIRs so that the police officials who were behind the killings could not be identified. So even though the FIRs (First Information Reports) are public documents, they were turned into confidential documents.

Most families had to wait over a decade to receive the meagre compensation of 1.75 lakh rupees. As a symbolic amount, compensation was better than nothing. But the NHRC failed to understand the unique suffering these families had to endure. You see, if you find out that your loved one has died for whatever reason, you can do whatever rituals and ceremonies you have to do to respect their life and to spiritually deal with their loss. But here are thousands of people who, for years, were unsure if their loved ones were dead or alive, people who did not even get the chance to look at the bodies. Their family members were killed and cremated without their knowledge.

The failure of the NHRC on the cremation cases represents a broader judicial and governmental disrespect for the right to life of Punjabi people. Here we have a case where tens of thousands of people have been killed in Punjab at the hands of Punjab police or paramilitary forces and all of them being Sikh’s have been dealt with arbitrarily. Can you imagine that 35-50,000 people just vanished and nobody has bothered to even compensate the families or hold an inquiry? Most of the judiciary refuses to
take cognizance of this fact because of a broader governmental attitude that this is how militancy could be stopped. Anything can be done in the name of the security of the nation. Keeping the country intact is the most important cause. There is a mind set within the Government, and among the broader Indian populace, that any action done for national security is inherently just. Therefore, we need not punish the Government or their instrumentalities for killing tens of thousands of Punjabis. This mind set is a true roadblock in the way of justice and a very frightening development for Indian democracy. Families are ruined, dissent is silenced with bullets, no justice is done, and the cycle of violence is sustained.

India wants to project itself as a superpower. But the thing is that India is still in an immature democracy. The populace is illiterate and easily swayed by communal allegiances. They do not know their rights. I can not say things have not changed. Things have improved a lot. But a body like the NHRC: it just does not have enough power to enact real change. It has simply not been able to be part of the solution.

We have beautifully written laws in India, but nobody adheres to them. So what can you do? Part of the problem is also that nobody knows what his or her rights are. And in fact the government does not want its citizens to know what their rights are. So if the Commission would begin to educate people about their rights – which is currently a part of their mandate – that would at least be something significant.

**RAJVINDER SINGH BAINS**

Advocate

Jaswant Singh Khalra, a human rights activist, had discovered, in three crematoriums in Amritsar, evidence of the secret cremations of over two thousand Sikh individuals. He filed a writ before the courts to look into this issue, but his pleas were ignored. Only after Khalra himself was disappeared, did the Supreme Court get involved; they began a civil inquiry into both the disappearances Singh was investigating and Singh’s own disappearance. My team of lawyers and I represented Jaswant Singh Khalra’s family during these proceedings.

The Punjab Mass Cremations case was brought before the National Human Rights Commission pursuant to an order of the Indian Supreme Court. The Supreme Court directed the NHRC to positively determine the identities of the disappeared persons, and to provide the families of the victims with adequate compensation. That order was given in 1996. Much of the evidence had already been gathered by Jaswant Singh Khalra and by the CBI, which had already investigated aspects of this case. The National Human Rights Commission was given the very simple job of supplementing the evidence and providing compensation to the families for their losses. Gathering this evidence should not have taken longer than a few months. However, it took the National Human Rights Commission sixteen years to do this. And when they finally completed their work, they provided the families with a meager compensation of two lakh rupees.

My experience with the NHRC has made me very cynical about their commitment to human rights, and about their effectiveness as an institution. The Punjab Mass Cremations case started in 1996 and continued until last year. This is far too long. How can we support the NHRC when even simple cases can go on for fifteen or sixteen years?

I no longer take any cases to the NHRC. It is not cost effective for me, as an advocate based in Chandigarh, to litigate cases in Delhi that can get dragged out over an unnecessarily long period of time. If the cases only took four or five hearings, I would like to go to Delhi and do it. However,
when a case seemingly never finishes, when a case takes several years, it become unfeasible to continue. People cannot be expected to go to Delhi regularly to attend the proceedings or to provide evidence.

When the Punjab Cremation case first started, the families of the victims would take the bus all the way to Delhi to be present at the hearings, and they would then have to come all the way back when the case was adjourned over some frivolous objection. The first objection centered on the NHRC’s statutory limitation to look only at atrocities that have been committed within the last year. Some at the NHRC said that these cases were already five or six years old, so they could not look at them. It took the Commissioner one year to decide that because the NHRC had been directed by the Supreme Court to investigate the case then the statute of limitations did not apply. This decision was again challenged, but the Supreme Court ultimately upheld it. However, in this process many years passed. Then an objection was made with respect to the First Information Reports. The Police were nervous that that if they handed over the reports, the police may be subject to criminal liability.

The accused individuals were represented by top lawyers so they would file objections to prevent the Commission from functioning properly and the Commission itself lacked the will to decide these issues quickly. As the case dragged on, the families stopped going. Then the lawyers stopped going. Finally, only the lawyers already in Delhi were willing to continue with the case.

Still, the Punjab illegal cremation case was important. It established a precedent. For the first time it was officially established that there were hundreds of people who had been disappeared. It is important in terms of what it established in the greater legal history. However, in terms of the individual families, individual relief, and compensation it was more or less a joke. Compensation needs to be given immediately to help lessen the many financial difficulties faced by the families of the victims. If you delay compensation by over a decade, the idea of compensation becomes a mockery.

The Commission was always more concerned with protecting the police officers from liability and prosecution than with helping the victims’ families. Ordinarily a National Human Rights Commission should be eager to bring on record evidence to prosecute those who commit human rights violations. The job of the Commission may be only to provide compensation, but there is no bar to collecting evidence and if there is any evidence of a crime it should be referred to the CBI for prosecution. However, because the NHRC was concerned about evidence that would expose the police officers to criminal liability they never took any testimonies. There were people who were available and wanted to give their testimonies, but the Commission never took any witness statements. For all intents and purposes, the Commission protected the police officers who murdered our people.

The NHRC has been unable to even stop something so basic as the use of torture by police during interrogations. Police torture is India’s biggest challenge. We have a brutal system that sustains itself with ordinary people’s blood. For example, in Uttar Pradesh there is no border, no Marxism, no communism, no insurgency, no Sikhism, nothing. And yet some of the worst human rights violations take place in U.P. Many of the major anomalies in the judicial system are due to the use of torture. There are no honest investigations. The police take innocent people in and act as if they found the perpetrator. In this way, the police pad the numbers of cases solved and criminals arrested. Those who are tortured, charged and then acquitted will not protest or pursue the matter of compensation because they fear they will be framed in another case. The conviction rate in Punjab is 37.5%; the rest are all acquitted. As a point of comparison, in the United States the conviction rate is 93%.

Occasionally, there are rare cases for malicious prosecution, not even for civil compensation. Mostly, the police are not held accountable for arresting and torturing innocent people. The NHRC’s mandate includes reducing police torture, but they do not sufficiently investigate or monitor police interrogation
practices. They do not make effective policy recommendations or recommend any new laws. It is as if they condone it. That is the NHRC's biggest failure.

I actually have a lot of appreciation for the way the mandate of the NHRC was framed. The NHRC is a combination of both police and judicial personnel. The Commission can examine witnesses, collect and record evidence, obtain the help of any agency and summon anyone in the country. They have all the tools to reach the truth and give a finding. That finding should be respected across all courts to obtain retribution and compensation. The NHRC has all the powers it needs to effectively discover and publicize the truth of human rights abuses in this country.

The biggest problem is that the members are retired judges or retired civil servants who don’t really care about human rights issues. They are people whose job has always been to restrict human rights and protect the government, not to defend human rights. This is a human rights commission; the people appointed should be people with a passion for human rights. If that were the case, the NHRC would become a very effective instrument.

However, no government wants an effective human rights commission. The NHRC is a weak institution, which is exactly what India wants.

THE NHRC FAILS TO EFFECTIVELY INVESTIGATE “ADMINISTRATIVE LIQUIDATIONS” IN MANIPUR

Extra-judicial killings rob of us of the people we love, they destroy our marriages and our livelihoods, and they deny our young ones normal childhoods.

–NeenaNingombam

Secretary, Extra-Judicial Execution Victims Families Association, Manipur (EEVFAM)

INTRODUCTION

On 4 March 2009, Azad Khan was murdered. Commandos dragged Azad from his home, shot him in a nearby paddy field and then, according to multiple witnesses, planted a gun on Azad’s body to make it appear as if he was killed in an encounter. Azad’s parents were forced to watch helplessly as their child was brutally killed before them. Azad Khan was only twelve years old.96

The case, now five years old, is still pending before the NHRC. The Commission failed to order any interim relief and continues to, as late as the winter of 2013, request additional reports, despite extensive documented evidence that the commandos acted improperly.

The Supreme Court recently requested that Azad’s case be reviewed by an independent commission, which – in a matter of mere months – was able to ascertain that how “Azad Khan was killed was not an encounter nor was he killed in exercise of the right of self-defence.” Noting that, “[i]t is extremely difficult to believe that nearly 20 trained security personnel equipped with sophisticated weapons... could not have overpowered or disabled the victim,” the court-appointed commission found that here

96. Extra Judicial Execution Victim Families Association (EEVFAM) and Anr. v. Union of India and Anr. Writ Petition (Criminal) No. 129 of 2012.
97. Id.
was simply no justification for this little boy’s death.

Sadly, Azad Khan’s murder is not an isolated incident. Extrajudicial killings have been a regular part of Manipuri life since the independence of India.

THE ANNEXATION OF MANIPUR

Manipur is one of eight states in India’s Northeast. Tethered to mainland India by the narrow Siliguri Corridor, only between 21 to 40 kilometres wide, the Northeast region shares international borders with China, Myanmar, Bangladesh, and Bhutan. Manipur, like the rest of the Northeast, was not part of historical India. Rather, Manipur was an independent kingdom able to trace its history to 33 A.D. For almost all of its existence, the kingdom’s main economic and cultural interactions were with Southeast Asia.

In the early 19th century, both the Ahom (of present day Assam) and the Manipur kingdoms fell to a Burmese invasion, and the ensuing First Anglo-Burmese War resulted in the entire region coming under British control. Under British colonialism, the Northeastern states were isolated from their traditional trading partners to the East. Nonetheless, as a recognized “princely state,” the British allowed Manipur to maintain much of its cultural autonomy. The monarchy stayed in place and local dialects, all branches of the Tibeto-Burman languages, were respected.

With British withdrawal in 1947, Manipur’s future again came into question. Initially, Manipur was a semi-autonomous principality within the federated nation of India. India was to look after Manipur’s defence and foreign affairs while the King retained control over all domestic matters. Importantly, Manipur had the right to accept any future Indian constitution or to instead implement its own constitution, which it did in 1947.

Concurrent political events complicated India’s geopolitical calculations regarding the state. In 1949, China became a communist nation. At this time, Burma’s communist party was also growing in influence. Manipur was developing a vibrant peasant movement, which was developing ties with these foreign communist parties. In the eyes of the Indian government, Manipur’s autonomy was becoming strategically dangerous.

Just two years after Manipur adopted its first independent constitution, and a year after its first elections, the central government in Delhi forced – allegedly at gunpoint – Manipur’s King Budhachandra to sign an annexation agreement, which made Manipur a full territorial entity of India. On 15 October 1949, India’s central government unilaterally dissolved the popularly elected Manipur State Assembly. All political power was handed over to Indian military official, Major Rawal Amar Singh, who became the first Indian Chief Commissioner of Manipur.

The people of Manipur did not initially accept the Indian annexation. Several public resolutions as well as a national convention were used to declare the Manipur Merger Agreement null and void. Manipuri legal groups claimed that an agreement signed under duress, and which had not been ratified by the State Assembly as was required by the Manipuri constitution, could not be constitutionally viable. India responded by using brute military force to counter any aspirations for independence. Declaring Manipur and much of the Northeast a “disturbed area,” the government used AFSPA, initially a colonial ordinance used by the British to suppress Indian calls for self-rule, to suppress Manipuri desires for the same. The initial liberation struggle to restore Manipur’s sovereign independence and the massive, and

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disproportionate, counterinsurgency measures by the Indian government resulted in a state of armed conflict that lasted decades.

The insurgency was at its height in the 1980s and 90s, but has since been effectively quashed. At this time, armed secessionists groups in Manipur are small, disorganized, and have little popular support. For all intents and purposes, the people of Manipur are integrated into the Indian political system. In the 1990 assembly elections, turnout for Manipur was 89.95%, and 2012 it was 83.24%. Indeed, voter turnout in Manipur remains the highest in the country.

But even though much of Manipur’s insurgency has been brought under control, Delhi continues to maintain Manipur’s status as a troubled territory, and the Indian army remains in the state under the colonial AFSPA. Overt racism by the predominantly Hindi-speaking security forces goes unchecked. Thousands of Manipuri people have been murdered. Yet more have been disappeared while in state custody. Rapes of Manipuri women by Indian security forces have been all too common. AFSPA, however, has effectively provided blanket immunity to members of the armed forces for any and all activities. Indeed, rather than hold officers accountable for improperly killing civilians, the army has instead awarded promotions and gallantry awards to army officers who kill.

Moreover, decades of military occupation and isolation have resulted in a severely distressed economy, an inadequate infrastructure, destabilized social norms, and weak public institutions. Unemployment is significantly higher in Manipur than in the rest of India; hardest hit are those living in urban areas, the youth, and the educated. The state’s public educational system is severely underfunded and is one of the worst in India. Teacher absentee rates in primary schools are at 24.8%. Many Manipuris have expressed concerns that the public education system leaves young people unprepared to compete for jobs in mainland India. Drug abuse is rampant; 42% of addicts are 15 years old or younger.

The racist and colonial policies of India’s central government has resulted in a Manipur whose economic and social institutions have been substantially compromised. As BablooLoitongbam, Director of Human Rights Alert, notes:

Despite the presence of oil and other natural resources, the regional economy stagnated as India was unwilling to invest in the infrastructure of the Northeast. Civil society was crushed and political interactions with the central government were defined by racism and distrust. The Indian government has controlled the territory and extracted the resources of Manipur but somehow democratic India has yet to take on board the history, the people or the culture of this region as part of Indian culture and history. Thus, Manipur remains a blank space in the political imagination of the rest of the country to be filled by stories of violence and difference.

The militarization of Manipur has had a deep effect on Manipuri society. Afraid of being considered anti-national, people in Manipur are afraid to speak freely. Harassment of businesspeople at

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100. Extra Judicial Execution Victim Families Association (EEVFAM) and Anr. v. Union of India and Anr. Writ Petition (Criminal) No. 129 of 2012.  
101. Id.  
105. Interview with the author.
Manipur’s many checkpoints has had a chilling effect on economic growth. The racialised interactions between army officials who are predominantly from mainland India and the people of Manipur has added to the distrust people have for the central government.

**ADMINISTRATIVE LIQUIDATIONS**

AFSPA gives vast authority to the army to kill on mere suspicion of insurgent activity. The law adds to an atmosphere in which Manipuri lives are devalued. As the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions states about the prolonged use of AFSPA, “the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict.”

This primary response has extended beyond the military, and extrajudicial killings by all security forces, including the police and the border security forces, became common. In 1997, Supreme Court Justice BJ Sen was asked to institute a judicial inquiry into the 1991 deaths of two Manipuri men by the Imphal police. The Court held:

> the present case appears to be one where two persons along with some others were just seized from a but, taken to a long distance away in a truck and shot there. This type of activity cannot certainly be countenanced by the courts even in the case of disturbed areas. If the police had information that terrorists were gathering at a particular place and if they had surprised them and arrested them, the proper course for them was to deal with them according to law. “Administrative liquidation” was certainly not a course open to them.

Sadly, such administrative liquidations, or extrajudicial killings, have been the norm for much of Manipur’s history with India.

Criminal activity by members of security forces outside the army is subject to prosecution and can be brought before the courts. However, as a practical matter it has been difficult for victims to win such claims. As NHRC Member Satyabrata Pal recently noted:

> The problem in Manipur that we find is two fold. The police are a particularly brutal lot . . . they are perhaps the most brutal police force that we have come across in the NHRC. And secondly the government of Manipur is the only state government – the only state government – that insists on standing by its police even in the face of overwhelming evidence that a murder was committed and refuses either to take action against the police or even to give relief.

Sadly, even though at least one NHRC Member is aware of “overwhelming evidence” of murder, when it comes to actual cases of extrajudicial killings, the NHRC will often adopt state police or state magistrate determinations that a proper encounter had taken place and that the police were acting in self defence.

With no functional accountability mechanism to address murder, other abuses, including rapes by security forces became the norm. This condition was highlighted by the brutal 2004 rape and murder of Thangjam Manorama Devi.

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107. People’s Union for Civil Liberties vs Union of India and Another (1997)

108. OUT OF FOCUS: In the shadow of AFSPA, event on 3 August 2013 at the Indian Social Institute and organized by the Human Rights Law Network.
On 11 July 2004, 32-year-old Manorama was arrested by members of the Assam Rifles, a paramilitary force initially created by the British colonial government to suppress dissent against British interests. The Rifles claimed that Manorama was a member of the separatist People’s Liberation Army and was responsible for a number of bombings. But rather than arrest her in the presence of a female constable, as is required by Indian law, so she can be tried in court, the all male unit of the Rifles dragged Manorama from her home. The next morning, some villagers discovered her dead, bullet-ridden body in a field not far from her home.  

The Assam Rifles claimed that she was killed in an escape attempt. However, no blood was found next to her body, suggesting that she had been killed elsewhere. The fact that her body had been moved provided the first clue that the Rifles account of her death may have been fabricated. The police surgeon and forensics specialist noted that the shots were fired at close range and that Manorama would have been lying down when she was shot. She was certainly not trying to escape, as was claimed by the Rifles. Her body bore a number of marks and bruises indicating that Manorama had been tortured before she was killed. Most troubling, a report from the Central Forensic Science Laboratory found semen stains on Manorama’s skirt suggesting that she may have been raped before her death. The rape could not be confirmed, however, because there were multiple gunshot wounds in her vagina.

Now, almost a decade after the incident, there still have been no arrests or prosecutions in the alleged rape and murder in 2004 of Manorama Devi, despite multiple government inquiries finding improper conduct by the Assam Rifles. The NHRC finally, in 2012, recommended that Manorama’s next of kin be given Rs. 10 lakh in compensation, but the defence ministry has not yet complied with this recommendation.

EEVFAM SUES THE NHRC

In 2012, the Extra Judicial Execution Victim Families Association (EEVFAM), a group of the wives and mothers of people extra judicially killed in Manipur, filed a petition in the Supreme Court against the Government of India, the State of Manipur, and the NHRC. This petition provides extensive documentation of 1,528 cases of false encounter killings committed by security forces in Manipur between 1979 and 2012, and demands that the authorities conduct a proper investigation into each of these cases. The NHRC was added as a defendant, because many of these cases – including that of the murder of 12 year-old Azad Khan – either (1) were dismissed by the NHRC based solely on information provided by the police forces, or (2) remain pending before the NHRC for many years with no resolution in sight.

The petitions filed by the defendants demonstrate not only the ineffectiveness of the NHRC, but the manner in which the Indian and Manipuri governments use the NHRC to shield themselves from accusations of improper activity. For example, in its counter-affidavit, the state of Manipur responds to strong evidence of unlawful murders by stating, “the NHRC is the proper authority to monitor cases

110. Id.
112. Extra Judicial Execution Victim Families Association (EEVFAM) and Anr. v. Union of India and Anr. Writ Petition (Criminal) No. 129 of 2012.
referred to in the writ petition." The state government believes that where reports were submitted to the NHRC, and the NHRC found no violation of human rights, the matter should be considered settled and closed. The NHRC’s failure to act was used by the Manipur state government as evidence that it had acted lawfully.

The NHRC’s response to the litigation highlights some of the systematic problems preventing the Commission from properly investigating cases. According to the 21 November 2012 affidavit filed by Sunil Arora, the Deputy Registrar of the NHRC,

> The Commission received everyday about 500 complaints either by post, telegram, e-mail etc. All these complaints are to be scrutinized. The Commission has no adequate staff to scrutinize all these complaints as and when they are received. In view of inadequate staff, lot of delay takes place in registering the complaints and similarly in issuing the process.

In discussing how complaints are investigated, Mr. Arora notes:

> it is rather unfortunate that the doctors involved in preparing the post-mortem reports and the police officials involved in investigation have till date not felt the necessity of doing their job diligently. They should understand that a proper exercise at their end would help the Forums/Courts concerned to reach to the truth and to punish the guilty, if any.

Mr. Arora’s affidavit makes clear that the NHRC is not in a position to carry out any independent review of the evidence available in extra-judicial killing cases. Scientific tests are frequently not conducted, including basic ballistics analysis or fingerprinting of weapons. The NHRC often relies on State Magisterial reports, which include no information from witnesses or the family members of victims, and the NHRC lacks the staff to obtain this information on their own. The NHRC makes decisions based on flawed information. And the Commission’s determinations are then used by the government, as was done by the Manipuri state government, to state that they were involved in no wrongdoing.

Even with limited manpower, however, the NHRC can decide that where the government is unable or unwilling to provide proper evidence justifying a killing, it will use that lack of information as evidence of improper conduct. It has not chosen to do so, even when government fail to follow NHRC guidelines on the reporting of such killings.

In 1995, concerned about the veracity of government post-mortem reports in case of death in police custody, the NHRC wrote to the chief secretaries of all the states and advocated that all post-mortem examinations be videotaped to ensure accuracy. In its letter, the NHRC noted, “The Commission has formed an impression that systematic attempt is being made to suppress the truth.” Again in 1997, the NHRC explicitly shared its concerns that post-mortem reports were being doctored to protect the interests of policing authorities. Yet, when faced with actual cases involving extra-judicial killings, the NHRC by and large relies on these very same post-mortem reports. If the NHRC was truly committed to holding the states accountable for extra-judicial killings, it can easily establish a strong presumption of improper state conduct where such videotapes are not submitted, or where other NHRC protocols are not followed.

Fortunately, the Supreme Court appears less inclined than the NHRC to simply adopt the state
police or state magistrate determinations regarding these deaths. In January 2013, the Court asked a commission of three judges, headed by Justice N. Santosh Hedge, to look into six sample cases, to determine if there was enough of a discrepancy to warrant a fuller look at the issue. In just four months, with far fewer resources than were available to the NHRC, the Justice Hedge Commission found that in these six cases – all of which had been previously presented to the NHRC – there was not a single instance of a “genuine” encounter.

In its report submitted to the Supreme Court in April 2013, the Hedge Commission found that in all six cases, security forces used “maximum force” when it was not warranted. Further, the commission said that the continued operation of the AFSP A made “a mockery of the law” and held that the security forces had been “transgressing the legal bounds for their counter-insurgency operations in the state of Manipur.” The commission, echoing findings regarding AFSP A by the Jeevan Reddy Committee, added:

*Though the Act gives sweeping powers to security forces even to extent of killing a suspect with protection against prosecution, it does not provide any protection to the citizens against its possible misuse… Normally, the greater the power, the greater the restraint and stricter the mechanism to prevent its misuse or abuse. But in case of the AFSPA in Manipur this principle appears to have been reversed.*

The Hedge Commission found that security forces in Manipur regularly disregarded procedural safeguards set out by the Supreme Court in *Naga People’s Movement for Human Rights vs. Union of India*.

The EEVFAM case is still pending before the Supreme Court.

VISIT TO MANIPUR

After considerable media scrutiny, a damning report by Special Rapporteur ChristofHEyns, and the publication of the Hedge Commission report, the NHRC conducted its first ever visit to Manipur in October, 2013. During this trip, the NHRC held 44 hearings on complaints filed by victims of alleged fake encounters. Member Satyabrata Pal noted that in all 20 cases that came before his division bench, the NHRC had determined that there was not a single encounter that was genuine. While the NHRC’s decision to finally take some of these cases seriously is to be lauded, it is troubling that some of the cases reviewed by the NHRC had been pending for many years. There was, for example, the case of Mr. Lanhghaisan who was murdered in 2005 by the 19th Rajput Regiment, and whose family has now been waiting for nine years for a determination on his case.

While in Manipur, the NHRC also took *suomoto* cognizance of the restrictions imposed on access to anti-AFSPA activist Irom Sharmila, and noted that UN Special Rapporteurs as well as the NHRC’s Special Rapporteur had previously been denied access to her by the state government. The NHRC directed the Government of Manipur to immediately remove these restrictions, calling it a “breach of India’s obligations under international human rights standards and principles, and a grave violation of

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human rights”.  

Civil rights activist Irom Sharmila has been on a hunger strike since the 2 November 2000 Malom Massacre during which ten civilians were killed by the Assam Rifles, including Leisangbam Ibetombi, a 62-year old woman, and 18-year old Sinam Chandramani, a 1988 National Child Bravery Award winner. The purpose of her hunger strike was to bring attention to the devastation wrought by AFSPA. Three days after she began her strike, Irom was arrested by the police and charged with attempting to commit suicide. She has been force fed and confined for most of the last thirteen years. While the NHRC’s efforts on her behalf are welcome, it is troubling that it took over thirteen years for the Commission to either meet with, or advocate for, Irom Sharmila.

CONCLUSION

Six cases, including that of the murder of 12-year-old Azad Khan, went before the NHRC. In all six cases, the NHRC determined either that security forces acted lawfully in killing valid security threats or, as in Azad’s situation, the Commission allowed cases to languish for years without recommending prosecution of guilty individuals or compensation for the family members of the victims. All six cases were then evaluated by the Hedge Commission. In just four months, and based on information that was fully available to the NHRC, the Hedge Commission determined that all six accounts of encounters were “not genuine.”

Finding little veracity in the need for twenty security personnel to secure a twelve-year old child, the Hedge Commission found that how “Azad Khan was killed was not an encounter nor was he killed in exercise of the right of self-defence.” Similarly, in reviewing the 2009 deaths of two cousins, Nameirakpam Gobind Meitei and Nameirakpam Nobo Meitei, the Hedge Commission found:

> In our considered opinion, medical evidence coupled with contradictions and discrepancies in the oral evidence referred to hereinafter, are sufficient to come to the conclusion that the incident in question is not an encounter, but an operation by the security forces wherein death of the victims was caused knowingly.

In every cases reviewed by this independent commission, existing evidence was used to establish that people were extra-judicially killed in fake encounters. The Hedge Commission found that in one cases, 89 bullets were fired by security forces, and in another case, the victim had suffered 16 wounds from bullets shot at close range. In all of these alleged “encounters”, no army or police personnel were hit by bullets allegedly fired by the victims.

While the NHRC’s recent visit to Manipur it to be commended, it does not erase two decades of relative inaction. Moreover, it is hard to believe that the NHRC would have addressed any concerns in Manipur had it not been shamed into doing so by multiple UN special rapporteurs, a Supreme Court case, and intense international media scrutiny.

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121. See full synopsis of this case on page __.
122. See full synopsis of this case on page __.
The Armed Forces Special Powers Act was originally a tool of the British colonial government, imposed in 1942 in response to the Quit India movement. The Indian government has not only adopted this Act, but has actually been even more draconian in its enforcement of the law. AFSPA has been expanded so that the power to kill on suspicion has been given to all officers. And the imposition of AFSPA to certain “disturbed areas” is done using racist criteria. Importantly, there is no legal recourse allowing one to challenge the “disturbed area” designation.

AFSPA gives immunity to officers for killing someone on suspicion. Security forces will concoct stories of insurgents opening fire on security forces and report that the man was killed in retaliation. The authorities will accept this version of events without question. Despite a parent’s attempts to register a complaint that their son was picked up at a restaurant by security forces and found dead with camouflage that does not fit and a gun that was slung over him, there will never be a proper investigation. Whatever version is presented by the police and military becomes presented over and over in the media and in government reports until it becomes truth. The effect of this on society as a whole is tremendous. It has created an environment in which killing has become an accepted norm for dealing with dissent. This has become such an entrenched norm that protections for the individual can never really function here. Local police and judiciary are extremely reluctant to challenge the army in any way in part because of the extraordinary lack of limitations on this wartime law, which is being allowed in a time of relative peace.

A measure of justice can be achieved when there are people who are ready to stand witness. Once in a while, a few cases will be taken to the high court. The high court usually sends an order down to the lower courts to make an inquiry into the deaths. If you can get some of the people to come forward and testify, then in some cases it will be established that these were fake encounters. At maximum, however, the high courts will offer a few lakhs compensation. The army never faces criminal persecution because even the high court restrains itself from challenging the security establishment.

People who try to fight against the violence in Manipur perpetrated by the security forces are regarded as anti-national threats to the status quo. There have been instances when people were arrested on charges of sedition. Our organization has been under constant scrutiny, branded as an extremist organization funded by underground militants. I, myself, have been questioned extensively by the police. When you are under investigation, nobody wants to risk their career by working with you. But fortunately, no charges have been pressed on us thus far. Our advantage is that we are known nationally and internationally. Our visibility is our protection, but there is no guarantee of our safety.

When we started the campaign against the AFSPA, when mothers went and protested and UN bodies began commenting, it gave a huge amount of visibility to what was happening. As a result, around 2004 the army changed their tactics. They are still the steel frames of security, but the dirty jobs were given to the police. From 2006-09, the violence peaked and the police forces became incredibly brutal. And yet, when the union home minister came to Manipur, he went on TV where he mentioned his long meeting with the security forces and congratulated them on the great job that they were doing and said the “number speaks for themselves”. This made me feel sick because we go to these families and we see the damage this casual violence wreaks on them. Most of the men killed are young, with a wife and young kids. The future of these families, for another 60-70 years, is completely shattered. Without their primary breadwinner, these families fall into high risk of poverty. They cannot access govern-
ment welfare programs because they are branded as the families of terrorists. How can you punish an 8-month child for something that his father has done, even if his father was a terrorist?

I would like to draw your attention to the fact that the National Human Rights Commission has been very ambivalent regarding AFSPA. The NHRC had taken a position on the Terrorist and Disruptive Activities (Prevention) Act (TADA), and had written to each and every member of the parliament to express its disapproval of that legislation; this action contributed to parliament’s refusal to renew TADA in 1995. The NHRC acted similarly with regards to the 2002 Prevention of Terrorism Act (POTA). But AFSPA, which is the oldest and most draconian of the anti-terrorism laws, which is a law that reeks of colonialism, continues to be on the law in India.

My humble submission to this jury is that we need to press the NHRC to take a clear position on AFSPA, and as it did with TADA and POTA, the NHRC must write to each and every member of parliament and express its distaste for AFSPA. The Commission needs to remind the MPs that AFSPA does not comply with the international treaty obligations of this country. Indeed, each and every UN body that has reviewed the matter has expressed grave disapproval with the Act.

I should note that during the Supreme Court’s review of AFSPA in 1997, Dr. Rajiv Dhawan, representing the NHRC, made clear the Commission’s position that AFSPA was ultra vires and Parliament did not have the authority to pass a law of this nature. But once the Supreme Court decided to uphold AFSPA in a decision that is considered to be one of the most conservative judgments in the annals of the Supreme Court of India, the NHRC has kept effectively quiet thereafter. The NHRC must do more.

In 2012, we learned that the UN Special Rapporteur on Extrajudicial Killings was coming to India. We invited him to Manipur, but the central government wouldn’t allow him to come, ostensibly out of concern for his safety. So seventy of us took a bus to Guwahati where he was having a consultation with civil society and created a huge publicity event with our arrival. When the widows can come out and tell their story in public, it gives visibility to the consequences of the government’s ruthlessness and shames the soldiers perpetrating these acts.

Since the NHRC is excluded from investigating the armed forces, there is very little they can do besides aiding the widows in gaining some compensation. But the sheer lack of will by the NHRC casts doubts as to whether they would challenge the security establishment even if they could. Recently, the Supreme Court came out and made a stern face at the security forces in Manipur. This small action alone changed the situation radically. This year 2013, only two cases of extrajudicial killings have occurred. If I can take you back to 2009, over that same time frame 250-300 people were killed. For heaven’s sake this is the exact type of action the NHRC was mandated for! If the NHRC had taken a similar action in 2007 to just shed some light on what was happening, how many thousands of lives could have been saved? How many widows could have had a normal life? How many orphans could have had their fathers? The NHRC was established in 1993. It took 20 year for NHRC to have a sitting in Manipur, that too only after the Supreme Court has requested them to do so. How can we understand this?

The composition of the NHRC is very problematic, and is a big reason that the NHRC has been ineffective in dealing with AFSPA. India should take pride in the number of very strong human rights activists working here. Yet somehow none of them find a place on the NHRC. The Commission is composed entirely of retired judges, policemen and bureaucrats. When the NHRC was formed, Justice Bhagwati said that the Commission was not set up not so much to deal with “human rights issues” as such; but it was geared up to deal with “problems created by human rights activists”. While there are some incremental positive steps, the gap between the need for an effective Commission and performance of the current one is huge. The NHRC has legal and moral authority but does not use it. Every
instrument depends hugely on who is using it. I think the personnel who are at the Commission are critical. Activists who have no power, no mandate are getting so much done regardless. This is a Commission that gets it mandate from the central government, but it accomplishes little. I think the missing link is the willingness, the basic orientation of the members to challenge human rights violation. This willingness is very critical.

Specifically in the context of Manipur, any effort to start an accountability process is always seen by the status quo as a threat. That’s why Manipur’s state human rights commission was completely shut down. Government officials in Manipur cannot accept that anyone could legitimately question their authority. The NHRC has failed to curtail this culture of impunity by refusing to take a strong position on AFSPA. When they are speaking on an international platform, they will take a position. But domestically, there is a lot of ambivalence. They do not want to topple the apple cart.

NEENA NINGOMBAM
Secretary, Extra-Judicial Execution Victims Families Association, Manipur (EEVFAM)

The security forces regularly apprehend men and kill them in cold blood. They are branded as terrorists in the FIRs that the commandos write themselves. And after that, we, the families of the deceased have a very difficult time finding out what happened to our family members. In the rare cases that family members are able to make an inquiry, it is very difficult to convince witnesses to appear in court. They are scared of coming in speaking. These things are still happening in Manipur. As the families of terrorists, the state government denies us any compensation, widow’s pension or benefits for our children. If a member of the security forces is killed, their family is entitled to significant benefits. But on the other side, what happens to the family when the breadwinner suddenly passes away and the government refuses to help? We, as widows, have all experienced this hardship; we hope that we can do something for these families to achieve justice.

My husband and I worked together selling clothing. We also did other odd jobs, really whatever there was to do. In Manipur, to get a government job is really tough. You have to depend on self-employment. My husband struggled with addiction, and was not politically inclined. I know he was not involved with terrorists groups because after he was out of jail he would stay with me and both of us would work together. He felt shy going out to talk with people and preferred not spending time with other groups.

My husband was apprehended on November 4, 2008. On that very day I was at home and we had lunch together before he left to go visit a friend. His friend told me that when he was there he received a call on his mobile and left. Later, I found out my husband was dead by seeing his dead body on the local news channel. I saw the dead body with a hand grenade placed next to him. The police said that some encounter happened; I know it was some made up story.

After that, I just sat at home, not knowing what to do. My family members all came to my house after they received the information. My younger brother in law went to the morgue to check his body. We took the body and after that some human rights activists came to our home. They told me to see a lawyer at HRLN, who took up my husband’s case.

In this society, being a widow is not easy. People will say bad things about you if go out or earn money. People misunderstand us. Some of my friends are returning to their parents’ homes. They can no longer stay in their in-law’s house, because the in-laws do not treat them well anymore, and they do not feel at peace.
I am getting no psychological or financial support from the government. I have to support my two children on my own. My eldest son knows that his father is dead, but my younger son is just becoming aware. I worry he will become like other children who say that they will kill the person who killed their father. So many children of those that are killed become dropouts. And at least I am able to support my family but there are certain families in my group who find it really hard. They work all kinds of odd jobs and still they find it difficult.

You can't take the law in your own hands. If the person is guilty, he must admit that he is guilty. If he is guilty, if he is wrong give him punishment. You can't simply detain a person and then kill him without any due process.

Many of our families have taken their cases to the National Human Rights Commission. The NHRC simply accepts the official police account of events, even when there police accounts make no sense. The NHRC has not sent anyone to Manipur to look into these cases until October 2013. We rely on the human rights institutions and the courts to provide us with a measure of justice. I really hope that these institutions will realize how important this issue is. Extra-judicial killings rob of us of the people we love, they destroy our marriages and our livelihoods, and they deny our young ones normal childhoods.

SERAM ROJESH

When people talk about the AFSPA, they often focus their criticism only on how the AFSPA affects Manipur. As a student of sociology I think it's important and underappreciated to recognize how the AFSPA affects the entire country. The continuation of the AFSPA undercuts our conceptions of India as a democracy that places sincere value in liberty, equality and justice. This is the type of legislation that a truly democratic country cannot impose on its people. Our politicians claim with pride that India has the largest elections in the world. Yet they prove their complete lack of confidence in our democratic institutions by relying on colonial-era legislation to empower the military to govern and control sections of our country.

AFSPA has created a divided society by demarcating between India proper, whose constituents are capable of living in an ostensibly peaceful, democratic society, and “disturbed areas” where the armed forces operate as the sole authority to maintain control. Politicians may claim that it’s all part of the same India but their policies prove otherwise. It’s a politics of exclusion. In those areas where AFSPA is in effect, the rule of law has been rendered meaningless. A state of exception has been formed in which all the rules have been suspended for the last 50 years and people are governed under a military paradigm. The government has shown itself to be either unwilling or unable to differentiate potential criminals or terrorists from the rest of the population. Instead, for 50 years it has treated the entire population of Manipur as enemies of the state and thus the military is rendered as the only institution capable of safeguarding the rest of India from this threat.

AFSPA has had a deep psychological and behavioral effect on the people of Manipur. While people technically still have the right to speak freely, they do not because of a deep-rooted fear that they would be categorized as an anti-national. The government has created an internalized fear among the population and used that fear to maintain control and quash dissent. People will not speak; they will not fight because they fear for their lives. There are isolated outbursts. But in everyday practice free expression does not exist. It is extremely unhealthy for any society.

An economy cannot thrive in such a society. The most talented minds are forced to leave Manipur
to find better opportunities. All markets shut down by 5 or 6 in the evening, and people are afraid to travel to establish a business or a trade relationship. On the roads, there are frequent checkpoints, at which army officials repeatedly harass the local businessmen. But for businessmen from outside Manipur, the situation is much different. Their goods are freely allowed to pass. The racialized relationship between the Indian army and the people of Manipur has created a deep distrust that is simply absent in the army’s interaction with people from other parts of India whose facial features and language they find much more similar to their own. The military paradigm through which the government understands Manipur has created a combative relationship of distrust rather than a constructive relationship in which the government would attempt to improve the economic situation in Manipur. As a result, the government does not think in terms of creating opportunities, building industry or giving better education. They are not trying to develop, to empower, to create self-reliance. Thus Manipur’s economy continues to be stagnant.

However, a small group of people in Manipur have been able to profit off of military rule. In the last decade, the military has given increasing amounts of power to the local police officers, who are said to be true patriots of India and can thus do whatever they want. This is how they divide the society-by creating a small group of social elites and granting them extreme power. Technically speaking the police commanders have no power under the AFSPA but the culture of impunity has left the army free to delegate killing powers to police officers without recrimination. The army has created an umbrella group they call the joint forces. When there are court cases, it is very hard to determine what was done by the army “legally” under the AFSPA and what was done by other elements of the joint forces. Because of this, police officers are immunized from prosecution.

The Village Defense Force has been another important element in the militarization of society. Over 10,000 people have already been appointed to the VDF, most of them young people. These are youths who are economically, politically and socially very backward. For 3000 rupees a month they give up their education and join the military. In Manipur, one cannot expect that these youths would otherwise find a proper job, so they are forced to take this work. They are often used as unpaid servants of the officers, occasionally even working in their homes. This is pure exploitation by a government who sees these youths as nothing more than a tool, a machine for the functioning of the state. To make up for their poor salary, military officers unofficially allow them to do all kinds of corrupt criminal activities. Then they are blamed for everything bad that happens here. Yes, they do a lot of bad things, but we must recognize that they are being used.

The military’s presence in Manipur has created conditions of high instability for the local people. The military officers are highly corrupt and run a booming drug trade, which was known anecdotally for many years but until recently there had been no proof. However, recently a high-ranking official of the Assam Rifles was caught with a huge consignment of drugs. Yet he suffered no punishment and was eventually released.

Many of the recruits to the army come from troubled backgrounds and arrive with the mindset that women are sex objects. When they get here they are told that they can do practically anything without any fear of punishment. In that situation, one can begin to understand why atrocities happen. These are the people the government is telling us are protecting the people of Manipur.

As human rights activists, we tend to see the judiciary as the mechanism to challenge the state. But we must understand that the judiciary is not distinct from the state. In this sense, it is impossible for a judicial body or commission to have any real independence. We must recognize that all institutions have worked together to create the current situation in Manipur. The military has been killing people because
they have been told to kill. The judiciary itself justified the act in 1959. And that is why the AFSPA has been in effect for over 50 years; it is not only the military, it is all these bodies of government who are complicit. As a member of civil society, we do our best to advocate against it but thus far we have been unable to make this a fundamental issue of our democracy and unify civil society actors to bring change.

As far as the NHRC as an institution, it’s a very limited institution with no provisions to intervene in military matters. This exception was a handover to the military commissions and precludes the NHRC from having any kind of real role in this situation. I happened to interview many of the people from the NHRC and they all plainly said that we want to intervene but we are not allowed to get involved. I think that it is integral that NHRC be given the power to investigate those cases that are related to the extrajudicial killings by the armed forces. Otherwise it’s just a nice name in this context. Even if it did have this power, I cannot be confident that it would have a real impact as it has no real independence. But I am an optimist and will wait to pass judgment until the NHRC has an opportunity to prove otherwise.

This case was presented before the IPT by SoubamRadhe, mother of the late SoubamBoucha

Case #1
SAOBAM BAOCHA

On the morning of 28 December 2008, SaobamBaocha said goodbye to his mother, Radhe Devi, and went to see his friend Gurung. After lunching with their girlfriends at the “High Restaurant” in Sagolband, the boys went to Tera Bazar. They were never heard from again.

When the boys did not return home that evening, Gurung’s family tried frantically to contact them over his mobile phone; the phone was switched off. The next morning, local friends informed Gurung’s family that two unidentified persons had been killed by members of the Imphal West Police Commandos and the 23rd Battalion of the Assam Rifles near LeimakhongMapal. The families went to the morgue of the Regional Institute of Medical Sciences (RIMS) where they discovered their sons’ lifeless bodies.

The Imphal Police claimed that the two men were killed in an encounter with security forces. But the family did not believe this story, and requested that the NHRC look into the matter.

The NHRC received the claim in 2009, and directed the security authorities to submit reports for their consideration. In the mean time, in 2010, on the behest of the Guwahati High Court following a writ petition a judicial inquiry also began into the killings. That inquiry found that Saobam and Guranghad been killed in a fake encounter by the combined forces of the Imphal Police and the Assam Rifles. The victims had been picked up by the combined forces and taken to the foothills of Huimeichiing, where they were brutally murdered. The judicial inquiry based its findings, in part, on the post-mortem reports. Bullet wounds were spread indiscriminately over their body. Gurung had a number of bullet wounds on his back, effectively ruling out a face-to-face encounter killing. He also had a laceration wound on his back, suggesting that he was possibly tortured before killed. Dr.Lalthar, the doctor responsible for Saobam’s post-mortem, described Saobam’s injuries as “homicidal in nature.”

Despite the findings of the judicial inquiry, the NHRC has yet to issue a decision in this case. The family has waited for five years for some measure of justice, and has yet.
This case was presented before the IPT by Longjam Meena, mother of the late Longjam Uttamkumar Singh

Case #2
LONGJAMUTAMMKUMAR SINGH

Longjam Uttamkumar Singh was a 34-year-old sales executive from Imphal West with no prior criminal history. He was murdered in broad daylight, in his own backyard, in front of his mother and uncle. On the afternoon of 29 March, 2008, Longjam was returning from work. As he was parking his scooter when two armed men approached him. Without warning, and without announcing who they were, they pointed their guns at him and fired at point blank range. Longjam was sent sprawling to the ground.

He pleaded his innocence as he staggered back to his feet before falling again to the ground. The men fired another two rounds into his body and he died on the spot. In the meantime, his mother, Meena, and her brother, Mr. Gyandro, had run outside to try to save his life. At gunpoint, they were forced back inside the house. Through a window they watched as members of the Manipur Police Commandos planted a gun and a bundle of money beside his dead body. Police later claimed that Mr. Uttamkumar had been killed in an encounter and that they had recovered money and a pistol from the body.

The family filed a complaint with the local police department, submitted a memo to the Chief Minister of Manipur, filed a petition in the Guwahati High Court, and requested the intervention of the NHRC.

The NHRC asked for additional information regarding the shooting but failed to issue any rulings in the case. In the meantime a judicial inquiry found that Longjam was not a member of any insurgent or unlawful group and that he was killed in a stage-managed encounter. In 2012, Longjam's case became part of a Supreme Court case that was filed against the NHRC. While the Supreme Court case against the NHRC was pending, and a full five years after his unlawful murder, the NHRC finally determined that Longjam’s next of kin should receive six lakh rupees. The family has not yet received this money.

Case #3
AZAD KHAN

On the day Azad Khan was killed by the Manipur security forces, he was only twelve years old.

A seventh grade student at Phoubakchao High School, Azad was sitting on the veranda of his house with his parents, his aunt, a cousin, and his friend, Kiyam. At 11:50 a.m., on 4 March, 2009, thirty commandos suddenly appeared at the house. They dragged Azad off the veranda, into a field next to the house, beat him, and then shot him. They then tossed a pistol onto the dead boy’s body to make it appear as if this was an encounter killing.

Azad’s parents watched helplessly. They were, themselves, held at gunpoint by other commandos. Kiyam was slapped around and asked why he was associating with a known terrorist. When Azad’s father, Wahid Ali, tried to go after his son, he was severely beaten. His family was forced, again at gunpoint, into the house. Through a small window they watched as Azad was brutally beaten, kicked to the ground, shot dead, and then as the scene was staged so that he would appear to have been armed.
Azad was killed in the middle of the day with many witnesses. Within hours, local residents formed a joint action committee to seek justice for Azad. A neighbour, Mr. Ashrat Ali, lodged a report stating that Azad Khan was picked up from his house and murdered in the nearby paddy field. Two other neighbours, Salim Khan and Hashim Ali, claimed to personally have witnessed Azad’s murder. Both men noted that a gun was intentionally planted on the boy. Salim also noted that a large group of neighbours were screaming at the commandos to not plant the gun, after which the commandos fired several shots to disperse the crowd.

The post-mortem report corroborates eyewitness accounts. The report shows that Azad suffered bullet injuries on his back and sides. The boy’s body did not have any injuries suggesting wounds intended to disable the suspect in order to make an arrest, as was claimed by the commandos. To the contrary, according to Dr. Memchoubi, the doctor responsible for the post-mortem report, the wounds demonstrated that the boy was shot from behind from a range of 2.5 feet, which is completely inconsistent with a face-to-face gunfight.

The case, now four years old, is still pending before the NHRC. The Commission continues to, as late as the fall of 2013, request additional reports. The Commission has not ordered any interim relief, nor has it recommended any remedial action. The case became part of the 2012 Supreme Court suit by EEVFAM against the NHRC, the Government of India, and the State of Manipur. The Supreme Court specifically requested that this case be reviewed by an independent commission. In a matter of months, that commission determined that how “Azad Khan was killed was not an encounter nor was he killed in exercise of the right of self-defence.” Similarly, a judicial inquiry report, requested by the Manipur High Court, also found that the killing was a staged encounter. According to that report, the Manipur Commando personnel apprehended Azad Khan, killed him in the field adjacent to his house and planted a pistol on his dead body. Despite these determinations, the NHRC has yet to make a finding of fact regarding the incident, or to otherwise provide the family with any relief.

Case # 4
NAMEIRAKPAMGOBIND MEITEI AND NAMEIRAKPAMNOBO MEITEI

On 4 April 2009, two cousins, Nameirakpam Gobind Meitei and Nameirakpam Nobo Meitei, were brutally murdered by security forces. They each leave behind a wife and one an infant daughter. Nameirakpam Gobind Meitei and Nameirakpam Nobo Meitei were both in their mid-twenties, both employed, and neither had any criminal history. On the day they were killed, they left their house and went for tea and snacks at the Soro Hotel. At around 9 pm that evening, they were picked up by the security forces and executed. Their families only learned of their deaths through a radio bulletin announcing the death of two men. Their bodies were later recovered bearing clear evidence of torture.

According to the reports by the police S.I. Huidrom Sukumar Singh received intelligence that suspected members of a terrorist organization were operating near Games Village. Singh’s forces were joined by thirty-nine Assam Rifles. Upon arrival at the scene, four or five heavily armed men opened fire on the security forces. The resulting firefight was reported to have lasted over 7 minutes. After the exchange two alleged terrorists were dead while the rest managed to escape. Recovered at the scene were one 9 mm pistol with magazine, a hand grenade with detonator, four live rounds of 9 mm ammunition, four empty cases of 9 mm ammunition, and three cases of AK ammunition.

The commission noted some glaring discrepancies in Singh’s testimony. In his evidence, the witness stated that the team left around 5:40 pm, while in his affidavit he stated that he received the
intelligence at 9 pm. He later altered his statement saying that he received information in two stages. This testimony, seemingly invented to account for the time lapse, casts doubt as to the existence of the reported intelligence. Another discrepancy lies in how the teams combined forces, with the AF force seeming to materialize in his affidavit, coincidentally, for the same operation. Also, three of the spent casings alleged to have come from the recovered 9 mm pistol were not fired from that gun. According to Singh’s statement, the commandos took heavy fire from 17-22 feet away for over 7 minutes. Yet not one of over fifty security personnel nor one of three vehicles was hit. This is impossible to believe.

Dr. Memchoubi Phanjoubam, who performed Gobind’s autopsy, found 16 gunshot wounds. He stated that every bullet passed through Gobind’s body, indicating that the shots were most likely taken at extremely close range. Out of the 16 wounds, only 5 entered from the front, while the rest passed through his back and sides. All of the 5 bullet wounds on Nobo’s body entered from the back. Neither man’s body had wounds consistent with a face-to-face firefight as described by the Security Forces – they were both shot repeatedly from behind. Furthermore, the doctor suggested that any single wound would have been sufficient to incapacitate either one, causing them to fall to the ground and out of the way of continued fire. The presence of further bullet wounds suggests that the security forces either continued to shoot the victims after the gunfight was over, possibly post-mortem, or that there had never been a gun fight to begin with. Finally, if the cousins had been killed in an encounter, why did both bodies show evidence of torture?

After the encounter, the State of Manipur labeled both victims as known terrorists to justify the killings. The state accused Gobind of being a member of the KCP, an illegal organization. However, it could not produce any evidence establishing this fact. In regard to Nobo, the State of Manipur proffered that an FIR under Section 13 of the Unlawful Activities Prevention Act had been registered against him, but that the case had been closed without evidence of any criminal wrongdoing on 3/5/2002, almost seven years before the incident. The State had no evidence to demonstrate that either had any history as members of terrorist groups.

The family filed a police complaint on 9 April 2009 stating that both victims were arrested near their house and killed in a fake encounter. The OC on duty refused to accept their complaint. Thereafter, they sent a separate written report to the SP Imphal East, from whom they never heard back. The case was then referred to the NHRC. The NHRC took no action for nearly three years.

The case is still pending before the NHRC. The Commission has not ordered any interim relief, nor has it recommended any remedial action. The case became part of the 2012 Supreme Court suit by EEVFAM against the NHRC, the Government of India, and the State of Manipur. The Supreme Court specifically requested that this case be reviewed by an independent commission. In a matter of months, that commission determined that the encounter was fake, stating:

In our considered opinion, medical evidence coupled with contradictions and discrepancies in the oral evidence referred to hereinabove, are sufficient to come to the conclusion that the incident in question is not an encounter, but an operation by the security forces wherein death of the victims was caused knowingly.

Despite these determinations, the NHRC has yet to make a finding of fact regarding the incident, or to otherwise provide the family with any relief.
Case #5  
AKOIJAM PRIYOBARTA

On 15 March 2009, around 3:00 p.m., AkoijamPriyobrata left home to buy polythene packets for packaging pickles. At some point that night, he was picked up by security forces, tortured, and executed. After a night of frantically trying to locate the victim, his mother finally received word of his death the next morning from the Lamphel police station. She identified her son's body at the mortuary. Priyobrata was killed in a fake encounter. He had no criminal record and leaves behind a wife and young son.

M. Goberdhon Singh led the team involved in this incident. He stated in his affidavit that on the day in question, at around 7:30 PM, he received information from the Assam Rifles that some members of an outlawed terrorist organization were gathering in the area of the incident. About fifteen commandos in three vehicles went to investigate. He alleges that while patrolling the area, two or three unknown youths approached the team in a suspicious manner. When his team shouted at them to stop the youths opened fire from thirty to forty feet away. The ensuing firefight lasted for about 5 minutes. The youths fled and escaped, leaving behind a dead comrade, one 9 mm pistol with five rounds, and two empty cases of 9 mm ammunition.

A number of inconsistencies in the testimony of the security forces cast serious doubt on this version of the events. Their depositions contradict each other regarding the type of vehicles used, the order of the vehicles, and who took the lead in the retaliatory shooting. According to the AR witnesses, before the operation there was a 10 minute briefing of the combined team. The commando witnesses make no mention of the briefing; according to them they received the information by mobile phone.

Furthermore, despite the extremely close proximity of the alleged firefight, and the five minute duration, none of the security forces were injured and none of the vehicles were damaged in any way. The security forces’ account expects it to be believed that two or three terrorists could not manage to hit three big security vehicles or any one of the fifteen personnel at a distance of thirty feet in a full five minutes of shooting. Additionally, despite the story including a group of terrorists, no casings other than those of the allegedly found gun were ever recovered.

A few procedural issues before and after the incident cast further doubt on the security forces’ version of the story. In his deposition, M. Goberdhon Singh claimed to have received intelligence from an informant in the 16th Assam Rifles. Nowhere did he attempt to record this information. He took no steps to verify either the identity of the informant or the correctness of the information, violating standard intelligence procedure. After the alleged gun battle, the evidence was seized and prepared only in the presence of police witnesses, allowing ample opportunity for evidence tampering.

The postmortem report shows that Priyobrata suffered four bullet injuries and severe contusions on his face and another abrasion on the left elbow. No satisfactory answer could be given from the security forces as to how the contusions were caused, despite the doctor’s verification that the injury was ante-mortem. How the security forces could have inflicted blunt force wounds from a distance of thirty feet remains unanswered. More than anything else, the evidence of torture indicates that he was not shot in a firefight with the security forces, but that he was picked up, brutally beaten, and then executed.

The State of Manipur proffered that he was suspected to be an active member of the banned KCP organization. This is in keeping with a steady pattern of excusing extrajudicial executions by baselessly accusing the victims of terrorist activities. In Priyobrata’s case the evidence is particularly thin and one security officer involved in the incident even said that he knew Priyobrata was a member of the KCP because he happened to be in a locality known for KCP activity. In no way could this ever be considered
sufficient evidence to label Priyobrata a terrorist.

The case was referred to the NHRC. Despite the extremely suspicious evidence presented by the security forces, the NHRC has not yet made a decision on the case. The Commission has not ordered any interim relief, nor has it recommended any remedial action. The case became part of the 2012 Supreme Court suit by EEVFAM against the NHRC, the Government of India, and the State of Manipur. The Supreme Court specifically requested that this case be reviewed by an independent commission. In a matter of months, that commission determined that the encounter was fake, stating, “the Commission is of the opinion that the deceased did not die in an encounter.”

The NHRC and Kashmir’s Unmarked Mass Secret Graves

INTRODUCTION

Enforced disappearances, extrajudicial killings, and secret burials were common occurrences in Kashmir throughout the 1990s. Gun battles, land mines, and hand grenades peppered the streets and villages of Kashmir. Stories of torture and rape left many Kashmiris terrified to leave their homes after dusk. By 1996, according to conservative official estimates, around 15,000 people had been killed; that number rose to 80,000 by 2013.123 Tens of thousands of Kashmiri civilians were taken into custody.124 Five to ten thousand of these people have been disappeared.125

When questioned about the missing, the Indian government and the army has maintained that these individuals had left home on their own accord to train as militants in neighbouring Pakistan. This contention, however, has been undermined in recent years with the discovery of dozens of mass secret graves holding thousands of bullet-ridden bodies.126

THE ORIGINS OF CONFLICT IN KASHMIR

The conflict in Kashmir has palpably touched the lives of every family residing in the state. Most families have lost a relative or friend to the rampant, pervasive violence that has characterized Kashmir over the last few decades. In addition to the tens of thousands of people who have been killed or disappeared, yet more have suffered physical or mental injuries because of the hostilities. Hundreds of thousands Kashmiris have been internally displaced or have had to flee the country as refugees.127

The conflict in Kashmir has its origins in the partition of India and Pakistan in 1947. As colonial rule was coming to an end, the smaller principalities in South Asia had to decide between acceding to India or Pakistan, or becoming independent nations. This decision making process was complicates in Kashmir, which had a Muslim-majority state with Hindu Maharaja, Hari Singh.128

Because the Majaraja was unable to decide whether to join India or Pakistan, Kashmir’s future was unclear when the British left, its status left for future negotiations. Strategically situated, Kashmir immediately became the subject of controversy between India and Pakistan. Because it believed that the British had unfairly favoured India when the South Asian territories were being divided, Pakistan backed an invasion of Kashmir by bordering tribal lashkars (militias). This invasion prompted Hari Singh to request assistance from India, which was only willing to provide military support if the Maharaja agreed to sign an Instrument of Accession making Kashmir part of India. On October 26, 1947, Hari Singh signed the instrument, and the first war between India and Pakistan began.129 At the end of the 1947 war, Pakistan gained control of roughly two-fifths of Kashmir, now called Azad Kashmir, while India gained control of the remaining three-fifths forming the state of Jammu and Kashmir. India and Pakistan would have at least two more wars over Kashmir, in 1965 and 1999, and numerous, continuing skirmishes for control over border areas.

As part of Hari Singh’s accession agreement, Kashmir was guaranteed autonomy in domestic affairs, with the central government only having exclusive control over defence and foreign policy. Even now, Jammu and Kashmir is the only state in India with its own constitution. As a practical matter, however, Kashmiris have had little ability to exercise this autonomy.130

Throughout the 1950s and 60s, the central government actively interfered in local Kashmiri politics. Political leaders and activists demanding genuine autonomy were jailed. The Jammu and Kashmir Public Safety Act (PSA) was passed in 1978. The PSA is an overly broad, vague law which permits the government to keep an individual in detention without trial for up to two years if the government believes that the individuals was “acting in any manner prejudicial to the security of the state or the maintenance of public order.” Moreover, the PSA granted immunity from prosecution to any person “for anything done or intended to be done in good faith in pursuance of the provisions of this Act.” The PSA effectively gave license for arbitrary detention of throughout the state.

The 1987 state elections were a turning point in the Kashmir’s relationship with India. The central government in Delhi ordered mass arrests of candidates and party workers belonging to the Muslim United Front. Next, were significant, credible allegations of vote-rigging. Popular resentment grew for the National Conference-Congress coalition, which claimed to have won the elections, as did disillusionment with electoral politics.131

Militant movements gained ground in Kashmir, and the end of the Soviet occupation of Afghanistan in 1989 resulted in mass movements of sophisticated weaponry into the state. Even those who did not support militancy, were vocal in their desire to break free from India. By 1990, there were daily protests in which tens of thousands of people marched on the streets demanding Kashmiri independence.

The Indian government was unwilling to acknowledge the legitimate grievances of the Kashmiri people. It considered all dissidents to be supporting Pakistan’s “proxy war,” in the region, and respond-
ed to protests with extreme brutality. The Armed Forces (Jammu and Kashmir) Special Powers Act and the Jammu and Kashmir Disturbed Areas Act were passed in 1990, and as in Punjab and Manipur, the security forces used this legislation to shield themselves from prosecution for extreme acts of brutality.

Summary executions, custodial killings, torture, rapes, disappearances, and arbitrary detentions became all too common. Security forces would respond to an attack by a militant by storming the militant’s neighbourhood, setting fire to the main buildings in the area, and beating up random people in the street. Security operations included warrantless searches, usually in the middle of the night for the purpose of frightening the inhabitants of the region. Many of these warrantless searches resulted in rapes, though it is unclear how many, given that most remain unreported.

THE NHRC AND THE BEIJBEHARA KILLINGS

On 22 October 1993, ten thousands peaceful demonstrators marched on the National Highway in Beijbehara to protest abuses against the Kashmiri people. Members of the 74th Battalion Border Security Force (BSF) decided to disperse the demonstrators by open firing into the crowd. No warning was previously given. Thirty-seven people were killed, and seventy-three injured.

The newly established NHRC took suomoto cognizance of the shooting on 1 November 1993. After reviewing government reports and evidence from six witnesses, the NHRC immediately issued several strong recommendations, which included interim compensation of Rs. 100,000 to the families of the murdered victims as well as disciplinary proceedings and parallel criminal prosecutions against fourteen BSF officials.

The government strongly objected to the call for parallel criminal prosecutions, stating that the penalties in BSF disciplinary proceedings corresponded to criminal proceedings and would thus be sufficient. Three years later, on 12 November 1996, the Director General of the BSF responded to an NHRC request for an update, by stating that a General Security Force Court trial had been held for each of the twelve BSF agents, but that results of the court martials were “being withheld for the time being.”

On March 16, 1998, the NHRC submitted a strongly worded request to the BSF for all transcripts of the proceedings. The Ministry of Home Affairs refused. Subsequent attempts by the NHRC to obtain the records were similarly rebuffed. In its 1998-1999 annual report, the NHRC stated:

*The Commission is yet to satisfy itself that justice has fully been done in regard to the tragic loss of life that occurred in Beijbehara, in the State of Jammu & Kashmir, on 22 October 1993 in respect of which incident it had made specific recommendations.... The Commission is determined to see this case through to its logical conclusion. At the end of the year under reporting, it was awaiting the records of those proceedings and was contemplating moving a Writ Petition before the Supreme Court if it were denied full access to the records that it had sought.*

The Ministry of Home Affairs remained unmoved.

In February 1999, the NHRC moved the Supreme Court to issue a writ to make available all proceedings related to the BSF court martials. The Commission, however, later withdrew its petition, possibly because it was concerns related to Section 19 restrictions in the PHRA. According to Human Rights Watch, the ministry refused to release the records.

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133. Id.
Rights Watch and various contemporary news reports, it appears that the BSF officials charged with the Beijbehara shootings were acquitted of all charges.\textsuperscript{135}

**DISCOVERY OF MASS SECRET GRAVES**

India and Pakistan announced a ceasefire in November 2003, and this became an impetus to also start peace talks between Kashmiri separatists and the Indian government. After years of unrelenting violence, the peace talks came as a welcome relief. However, deep distrust remains. Jammu and Kashmir is still a heavily militarized area. According to Human Rights Watch, as of 2006 about five hundred thousand army and paramilitary personnel are still deployed in Jammu and Kashmir in addition to approximately seventy-nine thousand police officers.\textsuperscript{136}

The insurgency was effectively over by 2008, when activists were allowed access to the militarized border areas to help earthquake victims in those villages. Activists began hearing stories from locals about networks of unmarked mass graves. According to eyewitnesses, all of the graves were dug at the order of Indian security forces and contained bodies of Kashmiri men. When the graves in Baramulla district were uncovered, witnesses saw bodies some of which were fresh and some decayed. It appeared that these graves had been used for many years.\textsuperscript{137}

After much lobbying from human rights lawyers, the Jammu and Kashmir State Human Rights Commission (JKSHRC) agreed to hold an inquiry. Activists used Right to Information (RTI) laws and field workers to survey areas where mass graves could exist.\textsuperscript{138} According to the JSKHRC investigators, 2,730 bodies were dumped into unmarked graves in 38 sites across four of the state’s fourteen districts: Baramulla, Bandipora, Handwara, and Kupwara.\textsuperscript{139} At least 574 of the bodies have been identified as those of local Kashmiris, which has challenged government contentions that the graves held unidentified foreign militants.\textsuperscript{140} The state commission noted that many more bodies will likely be found as additional grave sites are discovered.

Despite requests by the JKSHRC, the Jammu & Kashmir government has refused to exhume bodies to carry out DNA-based identifications. The state government maintains that the people buried in these graves are terrorists, many of whom are foreign, and has put the onus on the families of the victims to identify the graves of their missing relatives. Once specific gravesites are identified, the state government maintains, they will exhume the bodies and carry out DNA tests and profiling. Obviously this is an impossible task; part of the problem with enforced disappearances is that the families have no way of knowing what happened to their loved one.\textsuperscript{141}

Given the refusal of the state government to cooperate, the state human rights commission has recommended the formation of an independent and structured body to look into all issues related to the mass graves, including identification of the bodies.


\textsuperscript{136} Id.


\textsuperscript{138} Id.


\textsuperscript{140} Id.

In 2012, human rights activist Radhakanta Tripathy petitioned the NHRC to intervene on behalf of families that had a loved one disappeared:

*It is beyond doubt that unmarked graves containing dead bodies do exist in various places in North Kashmir. There is every possibility that these unidentified bodies buried in various unmarked graves at 38 places may contain bodies of enforced disappearance cases as the bodies were unidentified.*

In response, the NHRC asked the Union Home Secretary and the Defence Secretary to probe all aspects of unmarked graves in three districts of north Kashmir. Sadly, and as it did in the Punjab Mass Cremations Case, the NHRC limited its review to the sites already discovered, instead of using it as an opportunity to review the systematic practice of disappearances, killings, and secret burials throughout the state.

**CONCLUSION**

Enforced disappearances and extrajudicial killings continue in Kashmir, as do arbitrary and illegal detentions. The PSA's preventive detention measures are used to detain people suspected of being militants, even though for many there is simply not enough evidence to secure a conviction. The Additional Advocate General told the Srinagar High Court recently that there were 4,500 suspected militants in custody, who have not yet been tried. According to human rights advocates, many of them have been in custody for ten or more years.

As with Manipur, AFSPA is used in Kashmir to shield the military officers when they engage in disappearances, rapes, and murders. Though AFSPA permits prosecution if the central government gives sanction, in practice such permission is not given. In response to a November 2011 RTI requesting information on how many times sanction had been granted to prosecute army officials for crimes committed in Jammu and Kashmir, the government admitted that it had not granted a single request for sanction between 1989 and 2011.

Thousands of people remain victims of enforced disappearances in Kashmir. Extrajudicial executions are widespread. Human Rights Watch reports that suspected militants are often executed instead of tried because of a belief that keeping militants in jail is a security risk. This excuse has been used to execute people who were later found to be innocent.

The NHRC's initial attempts to find justice for the victims in Beijbehara are commendable. However, the NHRC needs to do more. With the recent discovery of mass graves in Kashmir, the NHRC can work with the state commission, local NGOs, and the media to help uncover more sites and to advocate for systematic methods of identification. The Commission can also use its considerable voice to bring greater attention to the fact that enforced disappearances and extrajudicial killings continue in Kashmir.

143. Id.
144. “What Lies Beneath,” Foreign Policy, 29 September 2011
I am Parveena Ahangar, chairperson of the Association of Parents of Disappeared Persons. The APDP was founded in 1994 when the number of parents visiting the High Court to file or pursue Habeas Corpus petitions reached new heights. My son was abducted in 1990 by members of the National Security Guards. I went to the High Court to file the writ petition of Habeas Corpus were it was bumped down for an inquiry in the lower court. After a year the case returned to the High Court. An investigation was held and my case was passed to the home minister in 1997 for sanctioning but that did not occur. The case was also presented to the State Human Rights Commission and National Human Rights Commission, but our issue was not heard. India, as a democracy, has demonstrated a lacking, not just in terms of basic law enforcement, but also in general governmental oversight; my case, 23 years later, is still pending. The courts and the human rights commissions, two separate systems established to protect the people of this country, have failed to achieve justice. More than that, these organizations have failed to explain or even make available the reasons why this case has not yet been closed.

In Kashmir, civilians have been assured their rights and their safety as protected by law, however many of the procedures and protocols put in place to protect these people are blatantly ignored by various governmental security agencies. Astonishingly, people are most often disappeared not by terrorists or other illegal organizations but by the government’s militant forces created to protect them. Security forces, the military, the Border Security Force, the Central Reserve Police Force, and others are all culpable. The Armed Forces (Special Powers Act) in 1942 was originally intended to allow military officials to protect the national borders surrounding Jammu and Kashmir but has since been twisted to permit murder in the name of border defence. Our state has become a burial ground with constant human rights violations such as killings, murders, rapes, extortion and fake encounters. Many of the officers are aware of this lethal power and abuse it at their convenience. Shooting and killing civilians in the name of defence is one kind of abuse, but raping women, burning their bodies, and disposing of them in the river demonstrates the seemingly limitless power and complete lack of accountability which these organizations flaunt. As per the policy of the government, killing “terrorists” or “criminals” can earn commendation; the more they kill, the more they get promoted. In this type of system, where killing is not only permitted but rewarded, why would these killings stop?

Nearly 24 years have passed without any kind of resolution or justice for my son or for other people in his position. The High Court, the Kashmir State Human Rights Commission, and the National Human Rights Commission have failed. There is no question of whether or not our family members were taken – they were abducted in front of our eyes – the questions for which we desperately seek answers are where were they kept? Who was responsible for this? And, most importantly, what happened to them? Are they still alive?

It is only logical for our government to provide these answers either as the fulfilment of basic law enforcement or as the flag under which the perpetrators committed this crime. The case of my child being abducted is only one of many other such crimes. One man sought justice with the National Human Rights Commission, the State Human Rights Commission, and the High Court after both of his daughters were arrested and disappeared. It has been 13 years since he last saw them. There is yet no response from the Nation Human Rights Commission, the High Court, or the State Human Rights Commission.

The NHRC says that they will provide one lakh rupees as compensation for this heinous crime, but
we do not want that. The lives of our children are worth more than one lakh rupees. Even if they offered one billion rupees as compensation, we do not want it. This is not an issue of money but of the lives of our children – our children for whom we have been fighting for more than 20 years. My 15 year old son was abducted; I fail to understand what he could have done to deserve this and refute that money is sufficient compensation. This one lakh rupees is not justice, and it does not prove the National Human Rights Commission’s worth as a credible human rights organization. What we need is not money, but answers. We need justice.

In 2010, reportedly thousands of young children were raped and killed within our region. The court ordered an investigation into the matter and three officials from Assam were called. The investigation yielded no results.

More than one lakh people have now been killed in Kashmir. We will continue the fight for justice until our last breath. We will not be deterred by fear of death. We want answers, we want justice, and the struggle will continue until we have made this a reality.

This case was presented before the IPT by Abdul Ahad Rah, father of Mohammad Shafi Rah and Mushtaq Ahmed Rah

Case #1

MOHAMMAD SHAFI RAH AND MUSHTAQ AHMED RAH

Brothers Mohammad Shafi Rah and Mushtaq Ahmed Rah were working in a leather factory in Kathmandu. On 5 September 2000, the two brothers were arrested by a joint team of police from Nepal and New Delhi who had launched a crackdown on Kashmiri businessmen in Nepal following the hijacking of an Indian airliner.

The family was told that the men were transferred to a jail in Jodhpur, but when the family tried to visit, they were told they had to get permission from a Srinagar court first. When they went back, the family was told that the sons were not being held in Jodhpur. The elderly father, Abdul Ahad Rah, was then interrogated himself.

Of the 27 Kashmiris arrested, only ten were released. The rest are still missing and are presumed to have been taken to secret detention centres.

Now 76-years-old, Abdul Ahad Rah has been searching for his sons for thirteen years. He still holds out hope that his sons are still alive. He and his wife, who during the course of this ordeal has lost her eye-sight, have filed numerous petitions with various bodies. They have filed FIRs, filed petitions with the courts, and have pleaded for help with both the Kashmir State Human Rights Commission and the NHRC.

Thirteen years have gone past since the arrest of the two brothers in Nepal. Not only is it not known where Mohammad Shafi Rah and Mushtaq Ahmed Rah are, it is not even clear of the men are still alive.
This case was presented before the IPT by Altaf Hussain Malik, son of Abdul Ahad Malik

Case #2

ABDUL AHAD MALIK

On 24 May 1997, at about 9.30 pm, the army cordoned off Abdul Ahad Malik’s house. Abdul was not at home at the time, but was visiting his elderly aunt in Wagoora. Members of the Rajputana Rifles interrogated the family about Abdul’s whereabouts. After discovering that he was in Wagoora, the Rifles took Abdul’s son, Altaf, and Abdul’s brother, Abdul Rehman, and went to the aunt’s home.

In Wagoora, Abdul Ahad Malik was placed in an army vehicle. The family never saw Abdul again. They filed an FIR with Keri Police and visited numerous army camps.

On 22 March 2002, the District Magistrate of Baramulla stated that, based on his inquiry, Abdul Ahad Malik was lifted by the army in May 1997 and was then killed by terrorists. No explanation was provided on why it was believed that Abdul had been killed by terrorists. No body was ever recovered, and no evidence of a terrorist attack was ever provided.

The family of Abdul Ahad Malik approached the NHRC. The matter was not placed before the NHRC until 9 June 2000, three years after Abdul was first abducted. On the same day, the case was closed. The NHRC claimed that someone in the family claimed that Abdul was apprehended by the “8th Gorakha Regiment,” but no such regiment existed. The NHRC’s overly legalistic approach ignored the fact that a District Magistrate had found that Abdul has been taken by the army, and that while the family was not certain of which regiment was involved, all witnesses consistently stated that the Indian Army had taken Abdul Ahad Malik.

The impunity for the perpetrators of the crime, along with the NHRC’s unwillingness to look into the abduction, and possible murder, of Abdul Ahad Malik has further added to the family’s loss.

Case #3

MUZAMIL AHMAD CHASOO

Muzamil Ahmad Chasoo was a 16 year old student in the 9th standard who worked part-time at a pharmaceutical agency. One day Chasoo went out and never returned home. Several days after going missing, personnel from the Border Security Force (BSF) raided his house looking for him. The family of the missing boy, believing that this was a diversion by the BSF meant to obscure their involvement in the boy’s disappearance, filed an FIR on 2 March 1997. The family of the victim also filed a habeas corpus petition with the High Court of Jammu and Kashmir (CrPC no.6/2001). It was denied that the victim had been arrested and so on 16 April 2002 the matter was referred for judicial inquiry. This inquiry was conducted by Additional Sessions Judge Srinagar and was concluded on 28 November 2002. Based on testimony of the respondents and a discrepancy in the dates between the petitioner and a witness, Reyaz Ahmed, it was not concluded that the 9th Battalion BSF had taken Chasoo, however it was concluded that Chasoo was missing. The High Court disposed the petition on 27 January 2004 based on the inquiry report.

A complaint was filed by the father of Muzamil Ahmad Chasoo on 25 May 1998 to the NHRC and notice was issued to the Ministry of Home Affairs. A response from the Ministry of Home Affairs, dated 16 August 2000, stating that they are not responsible for the abduction of Chasoo was then used to close the case.
After confirming the disappearance of Chasoo, the High Court shifted the burden of seeking justice back to the victim's family. Similarly, the NHRC, based entirely on the Ministry of Home Affairs singular response, dismissed the case. The approach of both the High Court and the NHRC resulted in a denial of justice as no investigation has taken place.

Foreigners in their own Land:
The Border Security Forces Target Indian Citizens in West Bengal

INTRODUCTION

FelaniKhatun’s fifteen-year-old lifeless body dangled upside down from a barbed wire fence along the Indo-Bangladeshi border by Anantapur. It was 7 January 2011, and Felani was on her way back to Bangladesh to get married. A cattle smuggler had given her a bamboo ladder, which she propped against the border fence. As she reached the top, her blue skirt caught on the barbed wire, and unable to free herself she panicked and screamed. AmiyaGhosh, of the 181st Battalion Border Security Force (BSF), was patrolling the area. He heard the scream and responded by indiscriminately firing his rifle in the direction of the girl. A single bullet pierced her chest. She was in extreme pain and begged for water, but no one brought her any. It took half an hour for her to bleed to death.147

Felani’s body hung from the fence for five hours. After BSF officers finally retrieved her body, they tied her hands and feet together around a pole, and carried her off like an animal that had just been butchered. Two days later, when her father received her body, he noted that all of her gold jewellery had been removed.148

The BSF is responsible for monitoring the Indian side of the border with Bangladesh. But with few checks on its power, no judicial oversight, and insufficient training for non-combat work with civilians, the BSF often overreacts to little problems. BSF jawans, or junior police, are notorious for acts of abuse, including extrajudicial killings, rapes, torture, and extortion. According to Human Rights Watch, BSF personnel murdered 1,000 people, both Bangladeshi and Indian citizens, between 2001 and 2010. On average, one person was killed every four days along the Indo-Bangladeshi border.149

THE BORDER SECURITY FORCE

The BSF was established in 1965 as part of the national Central Armed Police Forces. Its primary role is to guard India’s international borders during peacetime. It is also responsible for preventing trans-border crimes. With 240,000 personnel across 186 battalions, the BSF is one of the largest border

149. Trigger HRW.
With worldwide hostility towards migrations increasing, it may seem unremarkable that the BSF has been authorized to use extreme force to prevent people from entering India unlawfully. But the BSF’s longstanding shoot-and-kill policies, that often effect Indian villagers leaving near the border, are harsh by all standards. With well over a thousand deaths, most in cold blood, and against defenceless local residents, it is troubling that there have been few prosecutions for misconduct. Rather, most Indian officials either support, or excuse, shooting unarmed people trying to enter the country. And many seemed uninterested that many of the victims of the BSF are Indian citizens who happen to live near the border. People, like fifteen-year-old Felani, have been killed not for entering India, but for leaving it. People have been killed while lying on their backs or after surrendering to authorities. Violence is pervasive, routine, and arbitrary.\footnote{151}

In addition to responsibilities for guarding the border, it is important to note that over the last two decades the BSF has been also used as a counter-insurgency force in Jammu and Kashmir.\footnote{152} Approximately one-third of BSF personnel are deployed in Kashmir at any given time. In Kashmir, they are involved with many violent, high-stress campaigns, and are ask to participate in numerous human rights violations in Kashmir, including illegal detention, torture, and disappearances. After leaving Kashmir, many BSF jawans are stationed in low conflict areas, but they bring their training and trauma from Kashmir back with them.

BSF jawans are, for the most part, young men. They are given insufficient training to deal with conflicts with civilians, and are not provided with any mental health services. A recent study found that fifty per cent of the BSF jawans questioned did not even regularly have access to clean water or basic sanitation. Fifty four per cent, complained of abusive language and exploitation by senior officers. An astonishing seventy seven per cent were badly sleep-deprived: many only getting four hours of sleep per day. Jawans also complained about the lack of support from senior leadership. The report reveals that BSF personnel, for the most part, do not find their job either challenging or satisfying, and complain that there is little opportunity for growth. They complain that the leadership’s expectation are often ambiguous, and many are uncertain about what is expected of them. There is however, a “zero error” policy in place and “a pervasive feeling that even bona fide mistakes are treated unduly harshly.”\footnote{153}

Given the high stress occupational environment, it should not be surprising that the BSF has one of the highest suicide rates in the country. There have been at least 254 suicides by active duty personnel between 2004 and 2012. Additionally, there have been at least twenty fratricides since 2004.

It should also be unsurprising that the frustrations of the BSF jawans are wrongly expressed through violence. The BSF personnel shoot indiscriminately instead of investigating the situation and arresting anyone engaged in illegal activity. Most who are shot are unarmed. According to the Bangladeshi NGO Odhikar, the BSF killed 38 Bangladeshi nationals and as of November injured 90 and abducted 64.\footnote{154} After Human Rights Watch issued a report document the killings of a thousand people, the Indian government ordered the BSF to exercise restraint and encourage the use of rubber bullets instead of more lethal ammunition. For the first year, BSF attacks decreased significantly, after which the number s of
fatalities increased again. Recent allegations suggest that to get around shooting-on-sight restrictions, BSF soldiers subjecting suspects to severe beatings and torture, which has resulting in an increase in the number of custodial deaths in custody.\textsuperscript{155}

The BSF’s activities are not clandestine. And their abuses of human rights bear no relationship to promoting India’s security. YouTube has numerous videos of people being harassed by the BSF. For example, one video shows the 105th Battalion stripping and beating a Bangladeshi man for trying to smuggle cattle from India. Indian law requires that such smugglers be handed over to the police. But the jawans illegally detained and tortured him and then left him. He had to struggle to walk back him while badly hurt.\textsuperscript{156}

The BSF is required to file a report with the police when someone is killed. Even when such reports are filed, they include spurious accounts attempting to justify the murder. The BSF will often claim in killing cases that jawans were acting in self-defense. When Human Rights Watch looked into some of these cases, they could not find a single case where weapons or explosives were recovered, and no evidence that the lives of the soldiers were in anyway threatened.\textsuperscript{157}

Importantly, BSF personnel are not penalized by the government for engaging in abductions, torture, or killings; rather, they enjoy complete impunity for their activities. The BSF maintains that its police cannot be tried in civilian courts. Instead their police face a military court martial process, which is hidden from public view.\textsuperscript{158} As of 2012, there has not been evidence of a single successful prosecution against a BSF agent.\textsuperscript{159}

In 2010, the Kolkata-based NGO, MASUM, alleged to have evidence of over 200 cases where BSF personnel tortured or murdered an Indian national within the state of West Bengal. In over 100 of those cases, there were eyewitnesses to the initial abduction or torture. The state police, however, refused to investigate these cases. These facts were presented to the Supreme Court in \textit{State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal and others}, which is still currently pending before the court.

\section*{WEST BENGAL}

Further complicating the work of the BSF, is that much of the border between India and Bangladesh was haphazardly drawn, and not reflective of the loves of the people who live there. There are places where a family’s home may be in one country, and their fields in another. The porous border is routinely crossed by locals engaging in trade or commerce, or by relatives and friends separated by an arbitrary line drawn by the British in 1947.\textsuperscript{160}

On January 25, 2010, MotiarRahman, a Bangladeshi national accidentally strayed across the border whilst cutting the grass in his field, an easy enough mistake to make as there were no markers clearly delineating where one country started and the other ended. He was captured by the BSF and tortured.

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\textsuperscript{157} “Trigger-happy border security force, alleges human rights report,” Infochange
\textsuperscript{158} OpEd: Actions that border on the barbaric, The Hindu, 26 September 2013.
\textsuperscript{159} Human Rights Watch 11 June 2012
\textsuperscript{160} “Comment is free liberty central India’s shoot-to-kill policy on the Bangladesh border,” The Guardian, 23 January 2011.
\end{flushright}
Nirsingha Mondal, an Indian citizen, was picked up by the BSF when he went out to collect firewood. He was dragged to a BSF camp and severely beaten. Abdus Samad, whose case is attached, was accused of smuggling because his fieldwork brought him close to the border. He died in custody after being tortured. The BSF, however, claim that he suddenly became unwell, and died.\(^{161}\)

It also does not help that many BSF jawans do not see the darker-complexioned, predominantly Muslim Bengalis as real Indians. In West Bengal, the BSF has no counter-insurgency responsibilities. But arriving in West Bengal after having served in the more difficult Kashmir post, many jawans retain the attitude that Muslims by the border can be ISI-sponsored terrorists or terrorist sympathizers. Villagers living by the border areas complain that BSF personnel often do not speak or understand the local languages, and treat everyone with suspicion and aggression.\(^{162}\)

A final layer of complication comes from corruption. There is money to be made from trans-border activities. As a senior BSF official told Human Rights Watch, “[t]here are a lot of people involved, including our chaps. That is why only these farmers, with one or two cows are caught, not groups that ferry large consignments of cattle or drugs.”\(^{163}\) Most troubling is the illegal trafficking of girls and women. The desire to make money often translates into a desire to have complete control over the border.

THE NHRC

Soon after her death, Felani Khatun’s photos began to circulate on the internet. These gruesome photos showed either a dead young girl hanging upside down form the border fence her blood matted on her sweater, or being carried off tied to a pole like a butchered animal. Calls for a trial began immediately. A special court was convened for a court martial, and the proceedings were closed to the public. In August 2013, Amiya Ghosh was acquitted of all charges.

Condemnation of the trial began immediately. NHRC chairman, Mizanur Rahman, made clear unequivocal statements condemning the BSF. He said, “it has not only cheated Felani’s soul or her family out of justice, but also the whole nation,”\(^{164}\) adding “Such a verdict is unacceptable. The judgment is nothing but a travesty of justice. The Indian authorities have failed to deliver justice. They have deceived our nation.”\(^{165}\) While the BSF may have challenged the NHRC’s jurisdiction to review cases in involving its officials, they could not challenge the NHRC’s ability to rally the media against them. After the public outcry, the BSF decided to reconsider the verdict. Amiya Ghosh’s case was reopened and is currently pending.\(^{166}\)

While the NHRC was wonderfully responsive in the highly publicized case of Felani Khatun, they are less responsive with the average case. According to activists in West Bengal, of the 700 to 800 complaints they filed, the NHRC has independently investigated only one case. In about 30 to 40 cases, the NHRC accepted the report submitted by the BSF without affording activists or family members any time to respond to the reports. For the rest, the NHRC simply has not reviewed them. It has been years and victims are still waiting for a determination in their cases.

162. Trigger
163. Trigger
CONCLUSION

The BSF justifies the murder of civilians by the border by stating that they were cattle smugglers evading arrest, or that its personnel were acting in self-defence against people with little more than sticks. Suspicion of a crime, evasion of arrest, or the presence of sticks does not justify the use of lethal force under Indian law. The NHRC made an important contribution in Felani’s case, but such contributions are rare. Even with its current lack of resources and jurisdictional limitations, the NHRC has the ability to show great moral leadership in questioning the lack of accountability at the BSF. It can also advocate for better conditions and training for the NSF jawan’s whose violence is exacerbated by their stress.

KIRITY ROY
Secretary, BanglarManabadhikarSuraksha Mancha (MASUM)

The Border Security Force (BSF) is a paramilitary force fully under the control of the Ministry of Home Affairs (MHA). It was founded in 1968 with the duty to control and maintain India’s borders. Under this mandate, the BSF is supposed to be posted within 150 yards of the international border. But actually they have outposts, camps, posting, everything much deeper inside Indian territory. Instead of protecting the border, they have continually looked to increase their control over the territory and even have gained control over the civilian government. In comparison to a police force equipped with lathis and the occasional rifle, the BSF is equipped with sophisticated weapons, showing everybody in the local government who holds the power in the area.

Despite their massive power, the BSF has not made our border safer or more secure. Every day smugglers flow freely back and forth across the border. In one district we looked at, drugs, gold, many different commodities and thousands of cattle were crossing the border every day, even in open daylight. The BSF is fully aware of all of this; in fact they are the enforcers of the cross-border smuggling trade, gaining huge profits from the illegal activity. When BSF personnel are posted in Kashmir, they always have to think that they might lose their life at any time. But when they are posted here, at Bangladesh border, they worry only about how to use their authority to earn money.

And there is the potential for them to earn a huge amount of money. Transporting cows across the border is their main source of revenue. The villagers who actually smuggle the cows may receive 100 rupees per cow, while per cow, the BSF gets at least 5000 rupees. Every day tens of thousands of cows are crossing to Bangladesh. This is huge money. Unfortunately, it is not only cows, crossing the border, but young children: 13 to 15 year-old girls, women are regularly coming from Bangladesh, and from the border they are taken straight to Calcutta and then onto Mumbai, Pune, all with the approval of the BSF and local police. If one girl is looking especially nice, she will have to stay with the BSF for the night, with an officer or a constable. So it goes beyond money. There are cases where BSF officers are raping women and children.

Often, battalions of BSF come directly from Kashmir and bring their wartime mentality here to West Bengal. They come from a place where they have orders to shoot anything suspicious on sight and they bring that mentality here. They are given no training on how to deal with civilians. They are acting like an occupying force dealing with an enemy. Bangladesh is not an enemy country like Pakistan. But

167. Trigger HRW
it is clear that the Indian government thinks of Bangladesh differently from its other neighbors. Indian citizens can freely and easily visit Nepal or Bhutan. But with Bangladesh, it is completely different. In my opinion, this is completely because Bangladesh is a Muslim country. Today in India, a big portion of the population believes that Islam means terrorism; there is no difference.

The communal issues extend into West Bengal. Murshidabad District, the focus of much of my organization’s work, has a large majority Muslim population. The majority of BSF personnel are north Indian Hindus. When they come here, they see that everyone is black, speaking Bangla instead of Hindi, many people practicing Islam and even in some areas Hindus practicing with foreign customs. They feel that they cannot trust these people, that these people are somehow not Indian; especially with the Muslims population; for them Muslim means Pakistani and Pakistani means ISI. As a result, they treat the people with hostility and violence.

Another problem is that the border is completely manmade, artificial. The partition of 1947 was done by the British completely haphazardly without any knowledge of the area. In some places you can find that part of the house, like the bedroom is in India, and the washroom of the house is in Bangladesh (earlier East Pakistan). The government’s fencing project has made things even worse. The government of India has erected fencing sometimes seven to eight kilometers inside Indian territory. If my land is beyond the fence I will have a very difficult time getting entry even though it is well inside the border. People are even living between the fencing and the border. The BSF only opens the gate from 7-8 am in the morning and 4-5 pm in the afternoon; no exceptions made. In one case a person was bitten by a snake but could not cross the gate to be taken to a hospital and died. If a woman is pregnant, she has to go into labor from morning 7am to 8am to be shifted to a hospital.

In the Indian constitution, in Article 19, it is written that a citizen can freely go and walk anywhere in India. Yet this is regularly violated by the government of India itself. In the border area, on the occasion of a son or daughter’s marriage, families cannot invite large groups of people. And if you want to bring in food for a good dinner, you need permission from the BSF to buy foodgrains, sweets, kerosin and even salt. People living in the border areas are living completely different lives from the rest of India. They are personas non grata.

If you go through the media, almost every day you will find in every newspaper one line of news that a smuggler was killed in such-and-such-area of West Bengal by the BSF. The BSF is saying that to prevent smuggling, they have to fire. In Indian law, killing a person is not permitted to prevent unauthorized border crossing. However, there is absolutely no oversight for the BSF. After every extrajudicial killing the dead body of the victim is taken by the BSF and the brought to the local police station, where it stays for hours. When the police find time, then they make one UD case (unnatural death) as mandated by the Indian justice system. Sometime later, the body will be examined by the autopsy specialist, and they often do not do a comprehensive, and unbiased, examination of the body.

Indian laws regarding unnatural deaths are consistently violated in the border areas. First, the BSF and / or police are declaring a body as “Dead”, which only a medical practitioner is licensed to do. If someone was shot, it does not mean that they died immediately. If the person was rushed to a hospital, he might have survived and we could say well, the BSF or the police did their best not to save his life. The problem is that, if the person survived he could tell the circumstances under which he was shot. To eliminate the proof, the BSF and police will never try to save the person.

Second, for the post mortem examination (PME), the autopsies are carried out by Doms (a Dalit caste who are the dead body bearers), who are mostly illiterate and have no medical training. The doctor who signed in the post mortem report as Autopsy Surgeon, most of them has no training on
forensic medicine. We have records where, Pediatrics, Psychiatrists, Eye specialists, General Physicians performed as Autopsy Surgeon. This practice is going on all over the state of West Bengal.

Despite these issues, we are seeing the situation slowly begin to improve. In the last year, the rate of BSF killings gradually dropped. In 2011, the Director General of the BSF declared in Dhaka that lethal weapons would not be used in the border area, which resulted in a slight reduction in the number of killings. But the murders still happen. Also, the BSF has problems of enforcement of the rules within their own hierarchy, and they continue to protect personnel from facing any justice for their actions. The main problem is corruption. The police are very much in nexus with the BSF and the judiciary and human rights commissions are toothless. Impunity is the final word.

At MASUM, we are always under threat, always in danger. At present, one of our most senior fact-finders at bordering area of Murshidabad is facing false charges and is in hiding. At present in the MASUM office, many of us are facing at least one criminal case. Our district human rights monitors are threatened every day; the witnessed and victims who visit us are regularly being threatened. In Bangla there is a saying that when you are in the water, you don’t try to fight with the crocodile. This is the general attitude of the populace of bordering villages. If one files a complaint, the police will say: “Today, your husband has been killed, tomorrow do you want that your son will be killed? Save your son, don’t lodge a complaint to MASUM.” There is no plan for protection of witness. If someone informed us about torture / assault by the state agencies, that family is taking a risk. But still every month, we receive over 100 complaints directly from the victims and their families of police and BSF torture, killing and other abuses.

To try to improve this situation, we have repeatedly reached out to the NHRC. Before 2006, we did not receive even one acknowledgement letter that our complaint had been received out of hundreds of complaints we sent to them. In 2009, the NHRC conducted first ever meeting with NGOs, to which I was invited. At that meeting I openly told them, “you don’t have any right to talk about human rights. You are just supporting the police. When we lodge a complaint you don’t even acknowledge us. Even the small amount of power you do have, you do not use. You are just in support of the government. How do you expect human rights workers to support you?”

Now, I must admit that almost all the complaints we submit have been acknowledged and registered at NHRC, and they have begun to ask reports from the relevant government officials. However, they are not doing enough to change the situation here. When I submit a complaint and the NHRC asks for a report, the police go straight to the house of victim with a copy of our complaint asking “you dared to lodge a complaint against me?” And then again, we see threats, torture, false cases and all the like. The NHRC has no mechanism for protecting people who make complaints against the BSF.

Out of the 700-800 complaints we have filed, the NHRC has independently investigated one case. In 30-40 cases, the NHRC accepted the report submitted by the perpetrator’s office, and the case was closed without giving us the chance to respond. For the rest, the NHRC simply hasn’t looked at them. It has been years and we are still waiting for an answer. In total, I came to know that in seven cases out of the 700-800 cases I have filed, the NHRC ruled in favor of the victim. And even then, the NHRC only recommended monetary compensation. It has never recommended that a criminal case should be initiated against BSF / police personnel who they found to be guilty of torture / murder. And of course, any monetary compensation is not coming out of the BSF’s pockets. It is taxpayer money that the victim himself helped pay for. In another incident, the NHRC asked for a report from the MHA, who sent a very senior person to investigate. The case involved a grocery shopkeeper beaten for refusing to pay an extra bribe on top of the one he was already paying. Afterwards there was a good order that the BSF
cannot interfere with the livelihood of the people. Of course, these things still happen anyways. In all, there is not even one case that you could say that fully, justice has been done.

Beginning in 2008, we sent requests to the NHRC to conduct training workshops to improve the conduct of the BSF. This was a project that MASUM wanted to organize, but we felt the NHRC should come and run it jointly. In 2011, the NHRC’s head of training informed me that they would conduct the workshop but that MASUM would not be allowed to participate. We had no way of providing input, or otherwise monitoring the training that was given. We felt that the NHRC should have been more inclusive of civil society.

There is a practical reality: the NHRC has no power to investigate any act done by the armed forced. But this is not the sole explanation for why the NHRC is failing to improve the situation along the West Bengal border. In many cases taking place elsewhere in India, we have witnessed that the NHRC intervene very actively and some correct steps were taken. But here, the state and national institutions are just sending some papers around to each other and nothing is being done. There is also an issue of staffing. On the commission, there is really only one person who is really trying to make the NHRC effective—the rest of the people there do not have much respect for human rights. The staff members of the commission are all from government agencies. When I lodge a complaint, it is a police officer who is reading the complaint and conducting the investigation, so of course there is lobbying behind closed doors. Often, the NHRC will send cases to the SHRC, where the situation is even worse. There is no logic governing which cases get sent to the SHRC, and which cases remain with the NHRC.

With respect to extrajudicial killings in West Bengal, the NHRC’s record is abysmal. It is not an institution that can viably be said to promote human rights.

This case was presented before the IPT by KuranMondal, brother of the late SentuMondal

Case #1
SENTU MONDAL

On 17 June 2008, 18-year-old SentuMondal was brutally killed by the jawans of the Border Security Force. Sentu was allegedly caught by the BSF personnel present at Outpost no. 1 under the jurisdiction of the Singhpara BSF Camp. He was charged with smuggling cattle and was detained in their outpost.

Despite this being a minor crime and the fact that the Sentu presented no threat to the BSF personnel present, they began violently beating the teenage boy. He was repeatedly hit with rifle butts, which resulted in the rupturing of his genitals. Sentu died later that same night from the terrible injuries he had sustained. In a grossly illegal attempt to cover the evidence of their crime, the dead body was sunk into the Padma River by the perpetrators.

Two days later, on 19 June at about 4 p.m., Sentu’s dead body surfaced and was collected by the Jalangi police, who registered the case as an unnatural death. Despite the pervasive atmosphere of fear in the local communities, the father of the victim bravely made multiple attempts to lodge a complaint with the Jalangi police to take action against the perpetrators of his son’s death. Rather than acting on the complaint, the Jalangi police attempted to shield the BSF from liability. Instead, Sentu’s father was illegally detained by the Jalangi police, who attempted to intimidate him into withdrawing his complaint.

The case received the attention of the National Project on Preventing Torture in India (NPPTI) who sent the case to the NHRC. After requesting a report from the BSF, the NHRC concluded that
Sentu’s death was the result of drowning. The NHRC did not initiate its own investigation, nor did it allow any forum for interviewing witnesses in West Bengal. The NHRC simply closed the case. The fact that the NHRC could accept such a result despite the plethora of evidence to the contrary, including the Jalangi Police Office’s own report which recorded the death as unnatural, suggests that they are in such a hurry to dispose of cases that they cannot be bothered with basic verification of the facts even in cases of gross human rights violations.

This case was presented before the IPT by RahimaBibi, mother of the late Yudul Sheikh

Case #2
YUDUL SHEIKH

Twenty-year-old Yudal Sheik was senselessly murdered by the Border Security Forces on 22 June 2007. Yudal was unarmed and posed no immediate threat to India or to any BSF officers.

Yudul had been smuggling cows across the Bengali border in Murshidabad, a lucrative enterprise considering that higher cost of cows in Bangladesh. However, Yudal was acting with the tacit approval of local BSF personnel, who benefit financially from such illegal trades across the border. For reasons that are not completely understood, a detachment of BSF officers shot and killed the unarmed young man. The next day, BSF officers placed a knife by the body and suggested that the boy had been killed whilst he attempted to attack BSF personnel, in an “encounter.”

Like many Indian families living across the West Bengal border with Bangladesh, Yudul’s family was familiar with the many warrantless killings regularly committed by BSF agents. They understood too well the atmosphere of impunity in which the BSF operated. As a result, the family initially chose not to file a complaint. However, their child’s case caught the attention of the staff at BanglarManabadhikarSuraksha Mancha (MASUM). After a MASUM fact-finding, staff members of the NGO determined that Yudal had in fact been unarmed. On 26 June 2007, they filed a claim with the NHRC.

The relief requested from the NHRC was not unreasonable. It was asked that the NHRC intervene on behalf of the family and call for (1) a fair and impartial investigation of circumstances surrounding Yudal’s death, (2) adequate protection for any witnesses to the incident in order to protect them from retaliation from BSF personnel, (3) the initiation of criminal cases against the involved BSF personnel under section 302 of the Indian Penal Code, and (4) adequate compensation for the Yudal’s family.

Although they had jurisdiction to review the case, on 31 July 2007, the NHRC decided to transfer the case to the West Bengal Human Rights Commission. The NHRC did not then follow up on the case in any manner, and seems unconcerned about the fact that the state commission has not yet resolved the case. Now, six years after their son was ruthlessly gunned down, Yudal’s death has yet to be properly investigated by state authorities, and his family has yet to receive any compensation.

Case #3
ABDUS SAMAD

On 5t May 2009, AbdusSamad was at home asleep with his wife, Rima, and six children. At around 3 a.m. six BSF constables in Murshidabad district burst into the house and began ferociously beating him, while verbally abusing his wife. Even with many witnesses present, the constables dragged Abdus to a nearby schoolyard where they used their rifles to continue the savage beating. Eventually Abdus was
taken to a BSF camp where other BSF personnel joined the original six in abusing the victim. Sensing that the man was on the verge of death, the BSF personnel brought him to another BSF camp, rather than a government health facility, where some primary health assistance was available. The victim succumbed to his injuries and died at roughly 5 a.m.

This senseless and brutal murder leaves six children with no father and Rima, his wife, widowed. When Rima was permitted to recover his body, she found her dead husband lying on the floor naked, covered in blood, with injuries fresh enough for blood to still be leaking. Numerous people present at the funeral attest that the body had deep cuts on both cheeks, an inch and a half deep gash above his right ear, as well as massive bruising, indicative of internal bleeding, all over his body – most heavily on his neck and legs.

The next morning, several family members of the victim, including his wife and older brother, attempted to register a complaint at the Lalgola Police Station, which the on-duty officer refused to accept. By contacting a number of political figures, Rima was able to pressure the Lalgola police into registering an FIR. However the FIR was not registered as a potential murder, despite the explicit testimony of Rima to that effect. Furthermore, evidence suggests that the BSF personnel tampered with evidence by forcing the doctors at the hospital to certify that the cause of death was a heart attack.

Eventually, Lolgola police brought a criminal case against the perpetrators, but none were accused of murder. Additionally, despite the fact that Abdus died in the custody of the Border Security Force, the required Judicial Magistrate inquiry, under section 176(1-A) of the Criminal Procedure Code, has not been made.

The case was taken up by the National Project on Preventing Torture in India (NPPTI), who directed the case to the NHRC. The NPPTI fact-finding team was able to get proof from the Officer-in-charge of the Lalgola Police Station, a Mr.PintuSaha, that the victim was apprehended and tortured by the BSF. The NPPTI sought NHRC intervention to initiate criminal cases against the accused, a full inquiry by a Judicial Magistrate, an independent investigation by CID, compensation for the family of the victim, and a reprimand for the Lalgola police who attempted to obstruct justice. As of yet, no action has been taken by the NHRC.

Case #4
BABAR ALI

Just past midnight on April 8, 2007, 20 year old Babar Ali was killed in cold blood by the BSF in a fake encounter killing in the Murshidabad district near Katlamari. Babar was killed for trafficking cows across the border. Babar had secured the consent of corrupt BSF officials responsible for the border through a bribe of Rs. 5000 per pair of cows. At around 12:30, one of the BSF personnel from outpost no. 2 shot him from behind at close range over a disagreement related to the bribe. Babar died on the spot. Personnel from outposts 1 and 2 kept nine pairs of cows and planted a weapon on the boy in order to fabricate the case of an encounter.

Braving the possibility of further violence, the next morning Babar’s uncles, Mr.Taijul Islam and Mr. Tohidul Islam, went to the police station to lodge a complaint. Mr. Sunayan Basu, the officer in charge of the Raninagar Police station, refused to register a complaint and threatened the men. Subsequently, on the 2nd of May, Babar’s father sent a formal complaint to the Superintendent of Police of Murshidabad.

The morning after the incident, the National Project on Preventing Torture in India (NPPTI)
received word of the incident. Their fact-finding team was able to take photographs of the body which demonstrated that Babar was shot in the back at close range. The proximity of the shooter and the location of the bullet effectively rule out the chances that this was an encounter killing. Furthermore, if the police and BSF were to claim that this was an encounter killing, than a number of post-mortem tests should have taken place. However, the evidence suggests that the NHRC guidelines regarding documentation of an encounter killing were consistently violated. When the fact-finding team visited the police station, the officer in charge refused to disclose information and threatened the team.

On 13 August 2007, the NPPTI filed a complaint to the NHRC as well as the DG of the BSF and the state government of West Bengal regarding Babar Ali’s killing. The complaint demanded the immediate initiation of a criminal case against the BSF personnel involved, a neutral and fair investigation of the matter, a Magisterial enquiry, a suspension of the officer-in-charge of Ranninagar Police station for shielding the killers and refusing to register the complaint of the victim’s family, and adequate compensation for the victim’s family.

Consequently, on 19 September 2007, the NHRC mandated that the BSF investigate the case as per the NHRC guidelines laid down by the Commission in their letter dated 2 December 2003, and to submit an Action Taken Report within 6 weeks from the date of receipt of the letter. After a delay of several months under the dubious excuse that the BSF could not find the relevant NHRC guidelines, the Superintendent of Police of Murshidabad sent the findings of his investigation back to the NHRC on 6 December 2007. His report detailed that on the night of Babar Ali’s death, the officers in question noticed between 30 and 35 smugglers with 20 to 25 cattle proceeding toward the border. When the officers asked them to stop, the smugglers attacked with sharp weapons and a bomb. Finding his life in danger, the officer in question fired on the smugglers, killing one. According to the report, the accusation that the family members had been prevented from filing a complaint was false.

The NHRC accepted the facts as presented by the BSF report and closed the case.

The NHRC and the Salwa Judum in Chhattisgarh

INTRODUCTION

In June 2005, the Government of Chhattisgarh, with the support of the Home Ministry, began arming a vigilante group, the Salwa Judum, as part of its counter-insurgency operation against the Naxalites.

Since then, the Salwa Judum has been accused of numerous human rights abuses, including countless rapes, enforced disappearances and extrajudicial killings. In 2008 the Supreme Court asked the NHRC to constitute a fact-finding committee that would prepare a report on allegations “relating to violation of human rights by the Naxalites and Salwa Judum”.

The NHRC fact-finding team was deeply flawed. The team did not include any members of civil society, but was made up entirely up police officers. When the NHRC team went to meet the victims, they were accompanied by Special Police Officers (SPOs) and Central Reserve Police Force (CRPF) personnel. They arrived in armoured military and anti-landmine vehicles loaded with guns. Victims were then asked to openly make statements in front of the same forces who had participated in the crimes against them. Most were unable to. In at least two villages, people were so terrified, they ran
away when they saw the armed conveys arrive.

The resulting report by the NHRC, based on flawed information, effectively exonerated Salwa-Judum for its vigilantism. Moreover, the report claimed that the Chhattisgarh government had not sponsored the activities of the SalwaJudum.

Fortunately, other human rights organizations were also allowed to submit their findings to the Court. These findings were corroborated by the reports of other government agencies as well as independent media. On 5 July 2011, the Supreme Court of India rejected the NHRC’s determination, finding that SalwaJudum had engaged in numerous human rights abuses and that, because they were actively supported by the Chhattisgarh state government, their activities could be imputed to the state.

The NHRC’s false characterization of SalwaJudum’s is deeply troubling, and calls into question the Commission’s ability to conduct independent investigations.

THE NAXALITES GAIN GROUND IN CHHATTISGARH

Located in central India, Chhattisgarh was established as an independent state on 1 November 2006. It was formed from the sixteen Chhattisgarhi speaking districts of Madhya Pradesh. It also has some of the highest areas of poverty in India. Its literacy rate and education index are below the Indian average, and unemployment is abysmally high. A third of the population are Adivasi, or members of indigenous tribal communities.

Chhattisgarh is rich in mineral resources, including iron-ore, limestone, coal, bauxite, tin, quartz, marble and diamonds. Most of these resources, however, are on Adivasi land. Private corporations, including Jindal Steel, BALCO Aluminium, TATA and ESSAR, have been eager to gain access to these lands. State owned companies, including Bilhain Steel Plant, the National Thermal Power Corporation, and the National Mineral Development Corporation, also want greater access to Chhattisgarh’s mineral wealth. Some of these corporations have worked with government agencies to find ways, both legal and illegal, to dispossess the Adivasi of their lands.

Naxalite is a broad term, often used pejoratively by the Indian government, to refer to the various militant Maoist groups active in India. The term ‘Naxal’ derives from the name of the village Naxalbari in West Bengal, where the movement had its origin. Naxalism, like all communist ideology, has its roots in socio-economic disparity. Naxalites champion the rights of tribal communities and their continued access to their lands and forests. They also call for better labour conditions and equality for members of Scheduled Castes and Tribes. Given the rampant exploitation of the Adivasi in Chhattisgarh, and the chronic delays in the Indian justice system, the Naxalite promise to deliver instant justice and equality has easily taken root among Adivasis.

The Naxals arrived in Chhattisgarh (then still part of Madhya Pradesh) in the early 1980s. By the late 1990s, they had established a stronghold in most of the rural areas of Surguja and Bastar, where the government had little presence and provided little infrastructure. By May 2005 the Maoists had become a dominant force in nine of the state’s sixteen districts. The Naxalites initially found support in these areas because they spoke to the abject poverty and dispossession experienced by the Adivasi community. But the Naxalite promise was not without cost.

The Naxalites began to forcibly recruit at least one person from each Adivasi family, and were willing to take on anyone over the age of 16. Moreover, while the Adivasis make up the bulk of the Naxals in the area, they are not part of the organization’s leadership, most of whom are based in Andra Pradesh. Their campaigns, which included forcible land redistribution, sometimes helped the poorest tribal groups. But the resulting violence did not. 170

The Naxalites have committed numerous human rights abuses, including the targeted killings of police, political figures, and landlords. They have also attacked schools and health centres as symbols of the government and have abducted public officials and held them as hostages in exchange for the release of captured Naxalites fighters. Further, they have conducted show-trials in which people were tried before a janadalat, or people’s court, and faced penalties that included beheading. The Naxalites have also been known to use landmines and IEDs.171

With time, the Naxalites started losing support within the community.

THE SALWAJADUM

The central government responded to the growing power of the Naxalites by using brute force. According to the 2010-11 Annual Report of the Ministry of Home Affairs, to combat Naxalism, the government has deployed thousands of federal paramilitary police, including the CRPF and the Border Security Force (BSF), to support state police forces. In 2008 the government created the Commando Battalions for Resolute Action (COBRA), a force of approximately 10,000 trained troops who specialize in counterinsurgency and jungle-warfare operations. This response has resulted in serious human rights violations. Security forces have arbitrarily arrested, detained, and tortured innumerable innocent Adivasi villagers. They have targeted civilians simply for suspecting them of Naxalite sympathies. 172

In 2005, the government also started to support the counterinsurgency efforts of the SalwaJudum. Translated alternately as “Peace Mission” or “Purification Hunt,” SalwaJudum started as a small local protest group in Bijapur district. The central and state governments saw in the protests an opportunity to create a vigilante group that could effectively counter the power of the Naxalites. They provided members of this group with training, arms, and the support of security forces to fight the Naxalites. In a short period of time, a movement that began as a few local protests in a schoolhouse transformed into an irregular fighting force conducting raids against villages believed to be pro-Naxalite.173

The state government deepened this relationship by recruiting Special Police Officers (SPOs) from within the Salwa Judum. As an SPO, a previously unemployed tribal youth would gain access to a regular salary and a rifle. According to the Chhattisgarh state government, on 28 March 2011, the state employed 6,500 armed SPOs.174 The SPOs were provided little formal training. Many of them were children. In 2009, the Chhattisgarh state police admitted that in the past they had recruited children under the age of 18, but claimed they did so due to the absence of age documentation. They also

170. Id.
claimed that all minors had by then been removed from the ranks. However, Human Rights Watch investigators in Chhattisgarh found that underage SPOs continued to serve with the police and engage in counter-Naxalite combing operations.\textsuperscript{175} The Asian Centre for Human Rights corroborates this account. They interviewed nine minor girls who were SPOs. The girls joined because they wanted a monthly salary and were promised a job with the police department when they were older.\textsuperscript{176}

The use of child soldiers is not the only human rights abuse committed by the counterinsurgency. Salwa Judum agents and state security forces would jointly raid villages believed to be pro-Naxalite. They would torture Adivasi villagers, torch homes, kill livestock, and loot their valuable. Rapes became common during these raids. Raids would continue until entire villages were cleared out and the inhabitants forced to relocate to government camps, also referred to as Salwa Judum camps. Residents could not seek the intervention of the police as the police would usually refuse to register FIRs against the Salwa Judum.\textsuperscript{177}

The number of Adivasis who had to flee from their homes because of the SalwaJudum raids is staggering. Approximately one hundred thousand have fled to neighbouring Andra Pradesh. Tens of thousands of have been displaced to government camps. According to the US State Department, by 2006 an estimated 60,000 tribal villagers were residing in 27 camps, all of which lacked adequate shelter, food, and security. There were also allegations of human trafficking from among the displaced villagers in these camps.\textsuperscript{178} After having already forced them into the camps, SalwaJudum agents and SPOs would then come to the camps to forcibly recruit people to join them.\textsuperscript{179}

A number of government agencies were deeply troubled by the activities of the SalwaJudum. The Planning Commission, the Administrative Reforms Commission, and the National Commission for Women and the National Commission for Protection of Child Rights (NCPCR), all submitted reports publically condemning the activities of the right-wing vigilante group. The NCPCR report repeatedly noted accounts of people being raped or killed because someone in their family had resisted the SalwaJudum.

**NANDINISUNDAR V. STATE OF CHHATTISGARH**

In May 2006, NandiniSundar, a Professor of sociology at the Delhi School of Economics; RamachandraGuha, a historian; and E.A.S. Sarma, former Secretary to Government of India and former Commissioner, Tribal Welfare, Government of Andhra Pradesh, conducted a fact-finding mission in Chhattisgarh. They had heard complaints about the activities of SalwaJudum and wanted to ascertain the severity of the situation. Alarmed by what they saw, they submitted their report on the human rights violations by SalwaJudum to the Prime Minister, the Union Home Minister, and the NHRC.\textsuperscript{180}


\textsuperscript{176} MFC & JSA, June 2007, Where There Can Go No Doctor, Report of a preliminary visit to assess the Public health situation in Dantewada, Chhattisgarh.

\textsuperscript{177} The Adivasis of Chhattisgarh: Victims of the Naxalite Movement and SalwaJudum Campaign, Asian Centre For Human Rights, 17 March 2006.

\textsuperscript{178} United States Department of State, 2007 Country Reports on Human Rights Practices - India, 11 March 2008


\textsuperscript{180} Frontline 2011
Receiving no response, in 2007, the civil rights activists approached the Supreme Court with a writ petition. The petitioners alleged widespread violations of human rights against the people of Dantewada District and its neighbouring areas in the State of Chhattisgarh. They also alleged that the State of Chhattisgarh was actively promoting the activities of SalwaJudum.\footnote{NandiniSundar and others v. State of Chhattisgarh, Criminal Miscellaneous Petition No. 6462 of 2008, Order, April 15, 2008, Order: July 5, 2011.}

Concerned with the allegations, in 2008, the Supreme Court requested that the NHRC constitute a team to investigate the allegations.

The NHRC responded by appointing an investigation team made up entirely of police officers. Despite repeated requests from NGOs, the NHRC chose not to include any representatives from local tribal communities or any members of civil society. The investigators had access to the earlier reports of the Planning Commission, the Administrative Reforms Commission, National Commission for Women and the National Commission for Protection of Child Rights; these reports were ignored. The investigation team also refused to evaluate the numerous documented instances of rapes, kidnappings, and killings published by independent journalists.

While the NHRC was conducting its review, Human Rights Watch was also evaluating conditions in Chhattisgarh. Its investigators found significant evidence of both (1) human rights abuses by SalwaJudum agents and SPOs, and (2) government collusion in these abuses.\footnote{Human Rights Watch, “Being Neutral is Our Biggest Crime”. Government, Vigilante, and Naxalite Abuses in India’s Chhattisgarh State, 15 July 2008, available at: http://www.refworld.org/docid/487c96552.html.} Human Rights Watch issued its report during the course of the NHRC investigation, and their findings were made available to the Commission.

The NHRC investigation team travelled to various villages and SalwaJudum camps in an armed convoy, which included SalwaJudum leaders and members, Special Police Officers (SPOs), and the Superintendent of Police. Frightened, most villagers were unwilling to speak openly about their grievances with the SalwaJudum. The NHRC report itself acknowledges at least two instances, in Pusbaka and Chikurubatti villages, where the villagers ran away upon seeing the police and CRPF members accompanying the team.

In determining the veracity of the complaints against the SalwaJudum and the SPOs, the NHRC investigators looked to whether FIRs were registered. They ignored the reality that most people were either unwilling or unable to file FIRs against an entity which was in collusion with the government. More often than not, the NHRC investigators uncritically accepted the police version of the cases, despite at least one acknowledged instance of seeing a false FIR, filed by the police, blaming Naxals for a crime that clearly had been committed by SalwaJudum and the SPOs.

The resulting 118-page report was, like the investigatory techniques used to produce it, deeply flawed. Despite significant reports to the contrary, the NHRC investigation team found no evidence of murders or rapes. Also disturbing, the NHRC team absolved the state of any role in building this armed resistance to the Naxalites. While admitting that the state government has been giving arms to private individuals, the NHRC determined that this did not constitute sponsorship of a vigilante group because “[t]he tribals can not be denied the right to defend themselves against the atrocities perpetrated especially when the law enforcers are themselves ineffective or not present.”

According to the report: The State government cannot be said to have sponsored SalwaJudum but it certainly has extended support to it by way of providing security to the processions and meetings of SalwaJudum [activists] and also to inmates of the temporary relief camps.
The NHRC, in the same report drew an unwarranted distinction between “sponsor” and “support”, a distinction made meaningless by the reports acknowledgement that the line between the activities of SalwaJudum members, SPOs, and the security forces was often blurred. 183

Though unwilling to substantiate any allegations of killings or rapes, the NHRC investigation team did note that “[a]llegations levelled in the petition against SalwaJudum are prima facie true to the extent of burning of houses and looting.” But the report attempted to minimize the vigilante group’s role in causing the displacement of close to two hundred thousand Adivasis. The report states that people were not being coerced into leaving their villages and joining the SalwaJudum camps, while also noting that access to many government services and rations were only available to people who went to these camps. The NHRC team further observed that those who were displaced into to Andhra Pradesh continued to live there and did not feel safe enough to return to their villages. The reasons for their reluctance to return, the team speculated, included apprehensions about SalwaJudum activists, the SPOs, the security forces and the Naxalites.

Before issuing its decision in 2011, the Court had, fortunately, also received reviewed reports from other government agencies, independent newspapers, and NGOs. It is clear from the opinion that the Court flatly disagreed with the NHRC’s assessment:

This case represents a yawning gap between the promise of principled exercise of power in a constitutional democracy, and the reality of the situation in Chattisgarh, where the Respondent, the State of Chattisgarh, claims that it has a constitutional sanction to perpetrate, indefinitely, a regime of gross violation of human rights in a manner, and by adopting the same modes, as done by Maoist/Naxalite extremists. The State of Chattisgarh also claims that it has the powers to arm, with guns, thousands of mostly illiterate or barely literate young men of the tribal tracts, who are appointed as temporary police officers, with little or no training, and even lesser clarity about the chain of command to control the activities of such a force, to fight the battles against alleged Maoist extremists. 184

The Court found that thousands of tribal youth were being appointed as SPOs, with the consent of the central government, to engage in armed conflict with the Naxalites. Further, the monthly honorariums and firearms were sufficient support to implicate the government in the human rights abuses of these youth. The court continued,

the Union of India has not seen it fit to evaluate the capacities of such tribal youth in undertaking such responsibilities in counter-insurgency activities against Maoists, the dangers that they will confront, and their other service conditions, such as the adequacy of their training, is clearly unconscionable. 185

The Court then held that the state of Chhattisgarh was not permitted to use SPOs in any counter-insurgency programs, was required to retrieve all firearms distributed to the SPOs, and had to disband all vigilante groups, including the SalwaJudum. Further, the court ordered that the state must prosecute any vigilante group members implicated in human rights abuses.

185. Id.
CONCLUSION

Sadly, litigation related to the SalwaJudum case continues. The state has failed to fully comply with the judgment. Prosecutions against former SalwaJudum members are rare, and many of the same individuals who were guilty of abuses have now been hired by various state agencies, including the police department. Nonetheless, the clear decision from the Supreme Court, explaining why the government cannot finance and arm a vigilante group, was certainly welcome.

The NHRC, despite its role as the premiere human rights institution in the country, completely failed to serve the Adivasis in Chhattisgarh. The Commission excused the same state behaviour that the Court correctly identified as “unconscionable.” In doing this, it created a disincentive to reach out to the NHRC in instances of human rights violations. This is because, as Supreme Court Advocate, and Founding Member of HRLN, Colin Gonsalves, noted, “people do not want to go before the NHRC because they can create a bad record.”

NANDINI SUNDAR
Professor of Sociology, Delhi School of Economics

SUBMISSION TO IPT ON NHRC

In June 2005, a movement known as the ‘SalwaJudum’ was launched to combat the Naxalites in Dantewada district in the state of Chhattisgarh. It was a deliberate government sponsored strategy to counter the Naxalites in the district. In raids on villages carried out jointly by the SalwaJudum activists and the security forces, suspected Naxalite sympathizers (sangham members) were beaten and brutally killed, their houses torched, and livestock looted. In several instances, the raids continued till the entire village was cleared and all the villagers were compelled to move into SalwaJudum camps. The purpose, as outlined clearly in the district collector’s ‘Work proposal to make the Jan Jagran Abhiyan successful,’ 2005, was to remove the support base the Naxalites had created in the villages and isolate them.

NHRC INACTION ON COMPLAINTS ABOUT SERIOUS HUMAN RIGHTS VIOLATIONS IN DANTEWADA BETWEEN 2005 AND 2008

In May 2006, the members of the Independent Citizens Initiative (ICI) led by Mr. BG Verghese met a full bench of the NHRC and placed before them the findings of the investigation carried out by the ICI. (Independent Citizens Initiative, ‘War in the Heart of India’). A complaint had also been sent to the NHRC by PUCL-PUDR and other organisations which visited Dantewada in November 2005.

In December 2007, the National Commission for the Protection of Child Rights (NCPCR), based on a fact-finding by Shanta Sinha, J.M. Lyngdoh (former CEC) and Venkat Reddy, which involved visits to camps and public hearings at Cherla and Kirandul, noted that ‘many people shared accounts of family members being killed and women raped by the SalwaJudum’ (Cherla), as well as, ‘There were numerous accounts of family members being killed for resisting the SalwaJudum’ (Kirandul). The NCPCR forwarded the testimonies and specific complaints it had received to the NHRC to investigate, which in

186. OUT OF FOCUS: In the shadow of AFSPA, event on 3 August 2013 at the Indian Social Institute and organized by the Human Rights Law Network.
turn merely forwarded them to the state government for a response.

**NHRC’S RESPONSE TO SUPREME COURT DIRECTIVE TO INVESTIGATE SALWAJUDUM**

In 2007, two writ petitions were filed before the Supreme Court, WP 250/2007 titled Nandini Sundar & Ors vs. State of Chhattisgarh based on four fact-finding reports, including one in which the petitioners themselves had been involved (ICI), and WP 119 of 2007 titled Kartam Joga & Ors vs. State of Chhattisgarh & Union of India, in August 2007, filed by three residents of Dantewada (Kartam Joga, Dushi Joga and Manish Kunjam) who had personally suffered beating, arson, looting and intimidation by the Salwa Judum. In WP 119/2007, testimonies from 111 villages were annexed, on the basis of which lists of over 500 villagers killed, 2825 houses burnt and looted, and tens of women raped, had been prepared.

On 15 April 2008, the Supreme Court assigned the task of forming an independent fact-finding committee to the NHRC: ‘After hearing both sides, we feel that in view of the serious allegations relating to violation of human rights by Naxalites and Salwa Judum and the living conditions in the refugee settlement colonies, it will be appropriate if the National Human Rights Commission examines/verifies these allegations. We leave it to the NHRC to appoint an appropriate fact finding committee with such members, as it deems fit and make available its report to this court within eight weeks. We request the state of Chhattisgarh and the Union of India to render all cooperation to the NHRC and the committee appointed by it. List after two months.’

**THE PROCESS**

The ‘appropriate fact finding committee’ that the NHRC deemed fit comprised entirely of police personnel, drawn from its investigation wing. The NHRC team did not have any representative of the local adivasi communities or any independent ‘non-police’ observer, despite a request by the NGOs who were part of the NHRC core group to be allowed to accompany the team. After the petitioners insisted that the team should include a woman to investigate allegations of rape and sexual abuse, a woman Superintendent of Police accompanied the team.

In some cases, the NHRC team went to villages in a convoy of ten four-wheel drives and an anti-mine tank, preceded by road clearing exercises. No wonder that they reported finding deserted villages in which people had run away. The NHRC team also used SPOs and Salwa Judum activists as translators. Before and after the NHRC visited, the villages were threatened by SPOs.

All this was brought to the attention of the NHRC by the petitioners and the local press. However, the NHRC took no notice. After much petitioning, the NHRC agreed to hold a public hearing at Dantewada. Petitioner Manish Kunjam and others brought a number of affected people to depose.

During the course of the investigation, IDPs from Nendra village then living in Andhra Pradesh who had come to depose before the NHRC team along with some NGOs from AP were intimidated and threatened at Konta by the Salwa Judum leaders in collusion with the Konta police. The NHRC accepted the version of the police that they had been detained for a friendly cup of tea.
EVIDENCE OF NHRC COLLUSION WITH THE HOME MINISTRY

The NHRC filed its report in a sealed cover to the Supreme Court on 26 August 2008. However, on the morning of August 26 itself, before the court had seen the report, the Economic Times published a report by Devesh Kumar headlined, ‘NHRC gives thumbs-up to SalwaJudum movement.’ The selective leak is disturbing since the reporter claimed that his source was not the NHRC, thereby implying that someone else had access to the report before it was filed before the court. Incidentally, the Union of India, represented by the Home Ministry, which is the nodal ministry for the NHRC, is also a respondent in this case.

OVERALL COMMENTARY ON THE NHRC REPORT

Despite the limitations of the NHRC fact-finding, especially when it came to the testimonies of murders and rapes submitted to them, there was sufficient corroboration of the petitioners’ complaints for the court to ask the Chhattisgarh government to file an Action Taken Report on the NHRC recommendations by 30 January 2009.

In all the villages the NHRC visited, it found allegations of arson substantiated, including some villages like Bheji which were not even on the petitioner’s original list, showing that the petitioners’ allegations themselves pertained to only a sample of the total destruction. In other words, the petitioners had only touched upon the tip of the iceberg, the NHRC investigated a sample of these, and yet the NHRC did not see fit to highlight the enormity of the problem. While it could not hide the arson, it minimized the deaths and rapes.

A golden opportunity was missed. Had the NHRC been unbiased and told the truth based on the evidence it had itself collected and which is available in the report annexures, the history of the area might have been different, and the conflict may not have further escalated in the way it has.

PROBLEMS WITH THE NHRC FINDINGS

There are a number of problems with the NHRC report which betray clear bias.

1. Internal contradictions regarding killings
The NHRC findings which minimize the heinous crimes committed by the SPOs and security forces, do not reflect its own evidence, especially the testimonies that were submitted to it by relatives in the case of killing by SalwaJudum, or the statements based on cross-examination of relatives, even though these are on record in the NHRC annexures (Annexures B-1 to B-4 of NHRC report). For example, in the public hearing at Cherla, testimonies submitted by the relatives of the victims include 60 cases of killing, (though those taken on record in NHRC Annexure B-4 pertain only to 37 deaths). Similarly in Annexures B-1 to B-3 of the NHRC report, there are many testimonies which show that villagers were forcibly taken to SalwaJudum camps, their villages were burnt and looted by SalwaJudum, SPOs and police forces, and people in the village were killed.

The NHRC report even notes with respect to sangham members (village level Maoist activists): “these villagers were specifically targeted when Salva Judum was on the rise. The enquiry team has come across instances where some of these villagers were even killed (no criminal cases were, however, either reported or registered). Though the State has taken action against SPOs in some cases for viola-
tions like murder and attempt to murder, but these cases do not pertain to the violence let loose on innocent villagers during operations against Naxalites.” (5.04)

And yet in its conclusions it claims that reports of the killings by the petitioners are based on ‘hearsay’. Further, if the enquiry team came across instances of innocent villagers being killed it should have registered FIRs on its own and taken up the cases.

2. Completely wrong conclusions
The NHRC team treated the petitioners as the accused, and hence did not consult them on anything. On the other hand, the team stayed in the police mess and met the police officers. As a result it made elementary mistakes.

a. Wrong village visited: In at least two instances, NHRC team states that the petitioners complaints were not substantiated after visiting the wrong village, despite the correct particulars being given in the petition.

- Karemarka (NHRC team visited Karemarka in Jangla PS, rather than Karremarka, NP)
- Polampalli (NHRC team visited PolampalliDornapal PS, rather than PolampalliUsur PS)

b. Drawing conclusions on denial of services based on wrong villages: The petitioners’ contention that services (medical help, education, anganwadi) were withdrawn from villages which had not joined SalwaJudum is said by the NHRC team to be disproved by visits to villages in Sukma block. This is patently erroneous, since Sukma block is out of the conflict area. This also ignores earlier fact-findings by the National Commission for Protection of Child Rights that all services had been confined to camps.

3. Contradicting evidence by independent parties ignored
In at least 2 cases, the NHRC team has ignored the evidence provided by independent journalists and others which contradicted the police version and accepted the police version at face value.

- Santoshpur: 4 independent journalists (from ETV, CG Net/Daily Chhattisgarh, Christian Science Monitor and Indian Express) testify to killing of KodiyaBojja by SPOs, based on interview with NOK and other villagers, soon after incident. NHRC team accepts police version that he was killed by Naxalites.
- HariyalCherli: 5 different sources (fact-finding reports by the Independent Citizens Initiative, PUCL-PUDR, Asian Centre for Human Rights, Forum for Fact-finding, Development and Advocacy) as well as the DGP’s press release reported in Hitvad have been ignored by the team, namely that 9 bodies recovered belonged to ordinary villagers/Naxalites killed by security forces. Instead, the internally contradictory police FIR has been taken at face value, and 7 killings attributed to Naxalites instead. No allowance is made for the fact that compensation is given to relatives of Naxalite victims (as against no compensation given to relatives of SJ/police victims), the fact that the NOK in this case had accepted compensation, and this might influence some testimonies.

4. The NHRC team clearly set up a hierarchy of evidence based on the person’s closeness to the police
In many cases, NHRC team seemed to assign differential weights to the evidence tendered by the tribal villagers, and IDPs in Andhra Pradesh, compared to SalwaJudum activists, the SPOs, and the camp inmates supporting SalwaJudum and the police. All testimonies – including those provided in person
– by refugees/IDPs in Andhra Pradesh have been discounted. On the other hand, almost all statements made by SalwaJudum camp residents and SPOs have been accepted, especially when they allege that a person was killed not by SalwaJudum but by Naxalites.

a.) Evidence of IDPs in State of Andhra Pradesh inexplicably discounted:
   • Kottacheru: Testimonies personally given by IDPs in Andhra to NHRC team regarding burning of village and killing of persons discounted because no-one was available in village or camp to corroborate. The lack of such persons is itself circumstantial corroboration of the IDP claim.
   • Lingagiri: Testimonies personally given by villagers to NHRC team in AP of arson and killings by SalwaJudum discounted because there was nobody in the village to corroborate, as the entire village was destroyed and abandoned.
   • Hirapuram, Pisaipara, Pusbak, ChirpurBhatti (Chikurubhatti) – all cases where IDP testimony to NHRC team was corroborated by evidence of burnt villages on the ground, but their testimony was not accepted.
   • Onderpara, Gorkha, Bheji – all cases where testimonies before SC of widespread burning were corroborated by ground evidence, but were discarded as ‘could not be substantiated’ because village was empty.
   • Nendra – Despite Next of Kin (NOK) giving testimonies, and even sending photos of the bones of their relatives killed by SPOs in camp, the version of camp residents that they went ‘missing’ has been accepted.

b. Statements by villagers or camp residents which allege killings by Naxalites accepted at face value: Even if the body is not found and no case is registered, these statements are treated as substantiated, even where they contradict testimony given by other villagers or even NOK. Similarly, statements collected in villages and camps which blame Naxalites for burning houses are treated as substantiated, even though there appear to be some internal contradictions, and there are no police records.
   • Some examples: PoyamLachu, Jangla camp; Korsa Santo, Pulgatta; UikeSannuKotrapal, VanjamMangu, Kotrapal; MadviVira’s son, Neelamadgu; the people killed by Naxalites in Gangalur village; camp residents of Hirapuram alleged Naxalites killed 3, although only one got compensation; 3 killings attributed to Naxalites in Asirguda even though only one is registered and has got compensation.
   • Gaganpali and Asirguda camp residents say village was burnt by naxalites, but no police record was registered;

f. Statements by villagers and camp residents indicting SalwaJudum/SPOs treated as unsubstantiated: Such statements, including by NOK which allege killing by SalwaJudum or SPOs or security forces are treated as unsubstantiated if the body is not found, or there is no police record. The investigating team itself has found that police records were silent on several cases of killings and several cases of missing bodies, including alleged killings by Naxalites. To say that, on that ground, the petitioners’ complaint has not been substantiated is highly misleading. It amounts to ignoring the strong possibility of an act of violence.

g. All statements by the police are accepted at face value: except two (Matwada, and Hirapuram in which an SPO raises doubts), even when they contradict villagers testimony, e.g. Modiay-Somlu, Padeda; KorsaBudhram, Padeda; Nendra house burning in July 2008.
In almost all cases, the NHRC team accepts the police version of encounter killings. The report does not mention the violation of the NHRC’s own guidelines on encounter killings, according to which in all cases where the police officer involved in the encounter killing is from the same PS as the encounter being investigated/registered, such cases should be handed over to an independent investigating agency like the state CB-CID. The fact that the team itself found suspicious circumstances under which encounters were reported (e.g. see paras 6.38.1/2, 6.47.3, 6.61.1, 6.61.2, 6.63.5/7, 6.70.5 of the report) should raise doubts about the police statements on encounters, as NHRC itself has repeatedly expressed concern at all cases of encounter and issued landmark guidelines on how to deal with them.

SUMMARY

The NHRC investigation was described by K. Balagaopal as a “most friendly enquiry.” They put the petitioners on trial and tried to justify whatever the state was doing. That they could not succeed is due to the perspicacity of then CJ Balakrishnan, and the enormity of the violence which could not be fully whitewashed.

HIMANSHU KUMAR
Activist, Human Rights Law Network

Today, the tribal people of Chhattisgarh are victims of the same type of violence that local people in resource-rich areas are experiencing all over the world. They are facing off against profit-obsessed multinational corporations and a disconnected central government which views the tribal people only as an impediment to their economic interests. The conflict in Chhattisgarh is purely a function of economic interests. The specter of the Naxalites and the consequent counter-insurgency operations constitute a thinly veiled project to cleanse the area of local people in order to initiate large-scale mining projects uninhibited by tribal concerns. It is not by coincidence that the SelvaJudum was launched just after the government signed over 100 Memorandums of Understanding with various mining companies. Both major parties took part in the development of the paramilitary group, pouring in the entire government machinery at their disposal—arms, training, police forces—to facilitate this effort. Local tribal youths were forced into service, acting essentially as vigilantes or informants, deputized under the name “special police officers” or SPOs. These combined forces were then turned loose on the local villages.

Government officials began by attempting to move the civilian population to roadside government camps. The stated reason for this policy was so that the Naxalites could be differentiated from the civilian population and caught. But what was actually happening was that the government was deliberately shifting the tribal populations out of the resource-rich areas. Often, tribal people refused to leave their land. The government’s response was violence. When the security forces arrived, tribal people would attempt to flee into the forests and were gunned down as they ran. Small children and old people were brutally murdered, women were raped, and entire villages were burnt down. However, the tribal people have shown remarkable resilience, emerging from the forests a few days later to try to rebuild their lives. Yet the attacks did not end there. Some villages have endured over twenty attacks by government forces.

It is important to reiterate that this sustained government violence was not an anti-insurgency program primarily, but rather a conflict generated by economic interest. Furthermore, if the state offensive was actually an anti-insurgency effort, it must be said that it has failed miserably. Nobody has gained more from state violence in the region than the Naxalites. Their cadres have increased twenty times
because tribal villages under threat felt they had no option to protect themselves but to seek the support of the Naxalites and encourage their young men to join. Regardless of the true motivations of the government security establishment, we cannot understand what strategy could justify the massacres of the Indian’s own civilian population. We cannot understand why the houses of non-combatants, common tribal people, were burnt down, their women raped, their children slaughtered. There is no justification for these inhuman actions. It stands against all laws and constitutions, international and domestic. You cannot do this to your own people.

The conflict in Chhattisgarh turned into a political issue, with heavy coverage from the media, and prompted a number of fact-finding missions. After the first phase of SelwaJudum, Chhattisgarh was visited by a fact-finding team made up of a number of high-level members of the press and ex-government officials. Their team was attacked by SPOs and taken to a police station. The SPOs declared them to be Naxalites and were preparing to kill the entire team. By chance, one of the members of the team was able to get in touch with my organization, and we were able to intervene and secure their release. In the wake of that incident, the team filed a petition to the Supreme Court declaring that the counter-insurgency operations in Chhattisgarh were completely out of control and needed to be stopped. The Supreme Court responded by directing the NHRC to investigate the allegations made in the petition.

The NHRC team was deeply and, I believe, intentionally flawed. The team included no members of civil society – not one NGO delegate or experienced Human Rights activist. Instead, it was comprised entirely of serving police officers. When the NHRC team went to meet the victims, they arrived with the perpetrators – the SPOs, the CRPF, hundreds of policemen with automatic weapons – escorting them in gun-laded vehicles, tanks and anti-landmine vehicles. The victim was asked to make his or her statement openly in front of these combined forces, with a policeman recording. This was how the NHRC team attempted to collect its testimonies. We strongly objected to this method of fact-finding, so the NHRC agreed to allow us to set up another hearing at a different place, minus the massive show of force. After the hearing, as the witnesses attempted to return to their village, they were stopped by the SelwaJudum. They were beaten, detained for the whole day and forced to sign an affidavit that they were taken to the NHRC forcibly. Four days later, their village was burnt down. We reported these events to the NHRC. We pleaded with them to talk to the police and intervene. The NHRC responded that the protection of witnesses was not their business and did nothing. It later issued a report saying that the SelwaJudum was a necessary measure in the counter-insurgency effort. This despite the flood of media coverage highlighting the atrocities taking place in the areas the NHRC visited. The Commission was actively ignoring what was going on around it.

Apart from the Commission’s report, I had a number of encounters with the NHRC with cases involving the situation in Chhattisgarh. Between 2005 and 2007, I took more than forty cases to the NHRC and provided advice for tribal people in submitting many more. In my experience, the NHRC was extremely unaccommodating, and often appeared to impede justice for no apparent reason. Sometimes they would dismiss our cases for addressing our complaints to too many authorities or other similarly trivial reasons. They would dismiss testimony as lies given the slightest opportunity, for example a girl reporting that she was raped says five policemen at one point and six at another. In cases the NHRC deemed worthy of pursuing, the Commission would have the very same police officers listed as perpetrators investigate the claims.

Allow me to discuss one incident to demonstrate the irrelevance of the NHRC and the judicial process in general to the violence happening here. In two neighbouring villages, six girls were raped by the joint forces. Together, they attempted to file a complaint at a local police station. Their complaint
was denied. They came to my organization, and we wrote to the superintendent, who did not respond to us. We sent applications to the NHRC, which directed the superintendent to investigate our claim. Soon after, those girls were again kidnapped by security forces and taken to the police station. For five days they were again raped. They were thrown back to their villages with a warning that if they ever talked to me again, their villages would be burnt down. The case went to the local court, and warrants were issued against the accused. The government said the men had absconded and that they could not be found. Meanwhile, these same policemen were living openly in police stations, drawing salaries, attacking villages, raping girls. Only a few months back, those girls were kidnapped for a third time. They were brought before a magistrate where they signed a statement saying that they were never raped. They never filed a case in a court and they never gave a statement. The case was rejected and the men were acquitted.

As another example, I must talk about is SoniSori’s case. Her nephew was picked up by police officers, who wanted to use him as an informant. When he refused, he was illegally detained for 40 days in a police station toilet. She approached the court, filed a petition for habeas corpus and got her nephew released. Thereafter, the police and the entire local governmental apparatus came to see these two tribal people as enemies of the system. Within the government, there is an attitude that the courts are their tools exclusively. If these tools are instead used “against” the police then the whole state apparatus becomes threatened. The response from the state forces was swift. SoniSori found herself falsely implicated in 8 cases and was brutally tortured in the police station; she was stripped naked and had rocks forced into her private parts by the superintendent of the police himself. That superintendent was later awarded the gallantry award by the President of India. The NHRC has played a part in the government’s efforts to discredit her, declaring her to be mentally unsound, a person to be ignored. Despite repeated requests from more than 70 organizations across the world, the NHRC did not take up her case. The NHRC should be fulfilling its role as a voice for human rights advocacy, petitioning the Supreme Court, and publically lobbying for action. Instead they do nothing.

Despite my many criticisms of the NHRC, I must give them credit for one report which was, quite surprisingly, very honest. It regarded the murder of three tribal people in a SelwaJudum camp. The police reported that they were killed by Naxalites. The NHRC team visited the site and reported that since the SelwaJudum camp is in the immediate vicinity of a police station and a CPRF camp, it would not have been possible for Naxalites to openly kill people there. With the help of this report as well as eyewitness testimony of the widows of the deceased, we fought this case in the Chhattisgarh High Court. The officer responsible for the fake report and two SPOs were later arrested and are currently in prison.

Furthermore it should be said that these types of problems are not localized to the NHRC. The Chhattisgarh High Court is extremely biased against tribal people. The Court does not differentiate between tribal cases and Naxalite cases since it is of the opinion that tribal people are always in business with Naxalites. Since Naxalites are considered enemies of the state, it is the duty of the Court to punish any and all people associated with them. Pleas coming from tribal people and their supporters that their cases have nothing to do with Naxalites fall on deaf ears, since it is the opinion of the Court that all tribals are Naxalites and all Naxalites are liars.

We see that Naxalism has become the bogeyman in India, in the courts and in general. The government points to this movement as the greatest threat to the internal security of India. The weight placed on these insurgents and the fear they create in the general society enables the government to label anyone who does not abandon their resources or anyone who speaks out against the state vision of development as a terrorist and an enemy of the state. The Supreme Court is not immune to these
processes. While the Court strongly condemned the actions of the Salwa Judum, if you read their judgment carefully, it included more suggestions than specific orders. It gave space to the state to evade this judgment by a simple change in nomenclature: the SPOs became the Chhattisgarh Auxiliary Force, and the same people were re-recruited into different uniforms. Instead of old guns, they were given new automatic weapons.

If the government truly wants to make progress against the Naxalite insurgents, it must honestly address the ways in which its counter-insurgency efforts push the local population closer to the insurgents. The local community in Chhattisgarh doesn’t look upon the Naxalites as enemies. In most cases they are considered as friends and protectors. It is the police who are the enemies, because it is police who threaten them with rape and murder. In many cases, when someone told me their child was killed by the police, I would suggest that it was possible that he was killed by a Naxalite. The tribal people would immediately refute that, questioning me how their own people could kill one of them. The Naxalites they now perceive as their own.

The Chhattisgarh example demonstrates that the over-militarization of an area always creates a problem. We see that whenever the security forces go to a new area, they will at least use up their resources and their food. They will at least rape some of the women. They will at least detain and beat up a few youths in their jails. This is just to mark their presence in the area. The community naturally feels vulnerable, and turns to the Naxalites for protection. The insurgents sense a mandate to organize and expand their operations against the security forces. This process eventually results in pitched insurgency/counter-insurgency warfare. In this process we see that the presence of security forces actually serves to create insurgency in an area where before there was relative peace.

I have a difficult time imagining the end of the violence in Chhattisgarh any time soon. The project of the Salwa Judum is supported by both political parties at the central and state level for the reasons I have previously discussed. No element of government with any power has yet wanted the security operations in Chhattisgarh to be dismantled, and never wants the brutality and horror to come to light. The Indian government is very conscious about its international image, so they have tried to cover up the whole mess. The NHRC was just another part of that effort. The Commission falls under the jurisdiction of the Ministry of Home Affairs (MHA), the same ministry responsible for the police and paramilitaries perpetrating the atrocities in Chhattisgarh. There is a systemic problem with the NHRC: how can it function independently when it is overseen by one of the principle human rights abusers in India? The NHRC’s actions in Chhattisgarh follow a distinctive pattern I have noticed: in minor cases, it is capable of intervening quickly. However, whenever there is a chance of exposing a systemic flaw in the system, a case which may truly threaten the political bodies that the NHRC works for, it does nothing. In my opinion, some positive steps would be for the NHRC to disassociate from the MHA and to mandate the inclusion of non-governmental persons onto the Commission. To be a truly effective advocate for human rights, the NHRC needs more autonomy and more input from civil society.

SUDHA BHARDWAJ
Trade Unionist and Civil Rights Lawyer, Chhattisgarh Mukti Morcha

In 2005-06, the manner in which the Salwa Judum acted in the Bastar region of southern Chhattisgarh is just one example of large scale counter-insurgency operations which have taken place in our country. According to government reports, during this period 644 villages were emptied out. This displaced roughly 50,000 people who, as a result, were brought to roadside camps, which was common practice.
RUGGED ROAD TO JUSTICE

during the counter-insurgency. Shamefully, what was to be a safe haven for these displaced people became an area of an enormous amount of violence including arson, murder, and rape.

Whenever a large number of human rights violations occur in any particular area, the NHRC fails to address even a small fraction of the problems. The NHRC frequently handles violations which it deems not to be of individual importance from a position of ignorance or with an attitude of complete indifference. The first report regarding the human rights violations surrounding the Salwa Judum insurgency was submitted to the NHRC by PUCL, PUDI, and others. The NHRC did not respond. This is War in the Heart of India! An eminent committee headed by B.G Verghese, also submitted a report to the NHRC. Still there was no response.

The NHRC’s first response regarding the Salwa Judum cases came only when the Supreme Court became directly involved. These cases on the human rights violations were of enormous magnitude which are still pending and are not been disposed till now. The reports contained affidavits of hundreds of killings, about ninety-nine rape cases, and nearly 2,000 cases of arson; the volatile nature of the situation meant that human rights defenders risked their lives to collect the data. Furthermore, despite the great risks taken to collect these data, they show only a fraction of the truth; the true number of human rights violations is estimated to be much higher.

During this petition the NHRC was asked to investigate these allegations. The team of NHRC investigators was accompanied by high ranking officials traveling in anti-landmine vehicles. The reports that they made were overly technical and focused on lesser or even trivial issues, flat-out denying the major points. Based on this approach the affidavits and the complaints were rejected one after the other. Finally, unable to ignore evidence such as the burnt remains of entire villages, the NHRC did come up with some recommendations. The first recommendation was for the resettlement of displaced people, such as the three and a half lakh Adivasi population. Some of the displaced population might have migrated to other states like Orissa or Andhra Pradesh but most of them sought refuge in the forests. The second NHRC recommendation was that FIRs must be filed for the atrocities whether committed by Naxalites or Salwa Judum. The third recommendation was regarding compensation that was given. With the exception of three or four cases, the Chhattisgarh government did not adhere to any of these recommendations. All the human rights organizations – ISDS, vanvasichetna ashram, CPI, etc. – involved in efforts to resettle the displaced people were treated with hostility. This issue of implementation was raised before both the Supreme Court and the NHRC. The NHRC by itself did nothing; it was only when directed by the Supreme Court did the NHRC conduct even an insensitive and partial investigation. The NHRC did not see to it that the recommendations were implemented by the Chhattisgarh government, and when others were attacked by the government for trying to enforce their recommendations, the NHRC never offered any kind of assistance. The compensation was given in very few cases and the FIRs were never registered.

In 2008 and 2009 some of the villages which had been resettled were attacked again leaving extra-judicial killings and fake encounters in the name of justice. Despite all the rape, despite all the death the government is silent. There have been no FIRs. There is no desire within the government to prosecute these violent criminals.

**Operation Green Hunt** was the name used by the media to describe the “all-out offensive” by the government of India’s paramilitary and state military forces against the Naxalites in 2010. The Chhattisgarh People’s Union on Civil Liberties (PUCL) created a list of 134 people who were killed in the first four months of the operation which was forwarded to the NHRC. During that period no human right defenders were permitted to enter Chhattisgarh. The various human rights organizations, being
prohibited, asked the NHRC to perform the investigation. There was no investigation. In the past, when approached with a case, the NHRC would ask that the case be sent to the SHRC. In turn, the SHRC would say that the case was beyond their authority and would advise us to send it again to the NHRC. This passing of the buck would continue until the case died or some other organization took responsibility to fill the gaping legal-void left by the NHRC. At the present moment we have given up on the NHRC. We have lost faith not only in their ability to handle cases, but in their desire to do so.

Recently there have been indications of a shift in the attitude of the NHRC. Perhaps this is a reaction to media attention or legal pressure, or perhaps the organization wishes to redeem itself, but finally, in April 2013, the NHRC had a full bench sitting in Raipur, Chhattisgarh. The NHRC, various civil societies, and representatives of Chhattisgarh all participated. We submitted our various reports and, though there was no reply, we were happy that the NHRC had at least given a hearing. The cases dealt with deaths in jail, extrajudicial killings, custodial deaths, and SoniSori. Twenty lakhs was disbursed as compensation in twenty-seven cases.

One noteworthy case taken to the NHRC was that of Ledha. Ledha persuaded her husband to surrender himself to the police and as a result he was killed brutally and in cold blood. When she protested she was raped and tortured. The case was filed with the High Court, but she was harassed until she was forced to withdraw her complaint. The NHRC asked officials to simply close the case. This was the type of experience typically had when working with the NHRC. The compliance to NHRC guidelines regarding fake encounters and intimidation, regarding jail deaths and custodial deaths is poor. If only the NHRC were to adhere to the guidelines, maybe India could begin to make these types of atrocities a thing of the past.

This case was presented before the IPT by Kishore Narain, on behalf of MuchakkiMukka

Case #1

MUCHAKKI MUKKA

On 1 October 2009, at around 8 or 9 in the morning, Injerum police forces stormed into MuchakkiHidma's house. They looted the corn installed in the badi, as well as some utensils, a bow and arrow and a tagiya. His son, MuchakkiMukka was brutally beaten and taken away. The police grabbed three other youths as well, MadakamPandu (aged 16), Sodi Deva (aged 17), and MadkamMalla (aged 17). Then the police left, firing a volley of about 20 rounds in the air as a clear threat to any villagers who might wish to aid the four youths.

At the time of the abduction, MuchakkiHidma was some distance from his house working on his farm. He was informed of the incident by his wife and daughter. On 4 October, his wife and the mothers of the other children were permitted to go to the Konta Thana to try to secure their sons' release. When they arrived at the camp, they were told that their sons had been taken to an undisclosed location. They were given no further details on the whereabouts of their sons.

Hidma filed a complaint with the NHRC on 7 October 2009. He asked the NHRC to take notice that his son had been abducted from his own home without committing any crime. In his complaint, he openly worried that his son would be tortured and killed and a fake case would be created against him. The complaint entreats the NHRC to intercede to get his son released from the Injerum police.

Though four years have passed, the NHRC has not yet taken any action. The family now believes that Mukka was murdered by the Chhattisgarh security forces, though there is no way for them to
be sure of what actually happened. In 2012, Himanshu Kumar filed a PIL against the NHRC in the Supreme Court in which he asserted that the NHRC has failed to look into cases of disappearances, killings, and torture in Chhattisgarh; MuchakkiMukka’s case is highlighted as one of the cases in which the NHRC has refused to act.

This case was presented before the IPT by AmiyShukla, on behalf of KadtiLaxman

Case #2
KADTI LAXMAN

KadtiLaxman was just 10 years old when he was murdered by the SalwaJudum. Kadti was at his aunt’s home in Munder, Thana Bangapal, Dantewada District when a combined force of the SalwaJudum and other security forces entered his village. The family believes that this incident occurred in August 2005, however the family – all tribal villagers – are illiterate and do not keep track of exact dates. The boy was dragged out of the house in front of his pleading aunt. He was taken outside and then, in front of the whole village, the boy was shot by special police officer Somru.

With some assistance, Kadti’s uncle filed a complaint with the NHRC on 3 March 2009. On 30 March 2009, the NHRC dismissed the case, stating that the complaint had also been sent to the Chhattisgarh State Human Rights Commission. The NHRC did not first confirm whether the case was being reviewed by the state commission, nor did it follow up on how the state commission has looked into the case. If it had, it would have discovered that the state commission has not yet acted on the case.

The NHRC’s callous treatment of a case in which government forces executed a 10-year-old boy is completely unacceptable and represents an unbelievable miscarriage of justice.
ATTACK ON HUMAN RIGHTS DEFENDERS AND RESPONSE OF NHRC: THE RIGHT TO ASSOCIATION, EXPRESSION AND ASSEMBLY
Human rights defenders are individuals, who act to promote or protect human rights. It seeks the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. They work on a number of issues, for example, extrajudicial killings, torture, arbitrary arrest and detention, female genital mutilation, caste and gender based discrimination, employment issues, housing, access to healthcare, toxic waste and its impact on the environment, and numerous other issues affecting the rights of the individual.

Defenders are active in support of human rights as diverse as the rights to life, to food and water, to the highest attainable standard of health, to adequate housing, to a name and a nationality, to education, to freedom of movement and to non-discrimination. They also address the rights of categories of persons i.e. women’s rights, rights of the differently abled, children’s rights, the rights of indigenous people, the rights of refugees and internally displaced persons, and the rights of linguistic or sexual minorities.

**HUMAN RIGHTS DEFENDERS AND THE NHRC**

Here, we are going to look at the situation of HRD vis-a-vis National Human Rights Commission (NHRC). Being an independent body with the mandate to monitor and encourage India’s compliance with human rights norms, the NHRC is in a unique position to safeguard the guaranteed protections offered to all people under international and national law. Towards fulfilling this mandate and especially that of HRDs, the NHRC has assigned a separate unit for the protection and support of HRDs. The question is how effective this unit of NHRC has been in providing protection and justice to the HRDs who are getting constantly attacked in the field of work that they are doing i.e. promotion and protection of human rights.

The NHRC, supposedly the protector and promoter of human rights, can be the co-carrier of human rights along with the HRDs considering that their goals are no different. Additionally, the NHRC has power to be the protector and upholder of the rights of the HRDs as it has the mandate to do so. But whether or not that has happened, the measures provided and taken for the protection of HRDs by the NHRC
will bear testimony to that. Also, the action taken by the NHRC on the cases of assaults on the HRDs will make the picture clearer.

Indeed, the legislation i.e. Protection of Human Rights Act, 1993, which led to the constitution of the NHRC, puts the responsibility on it to promote, “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. However, despite laudable goals, it is not clear that the NHRC has been effective in meeting its mandate. As has happened may times, in most of the cases, the commission does not inform the petitioners about the outcome of its investigations into the respective complaints. Even the petitioners are not notified on whether their cases have been dismissed.

Attack on Human Rights Activists

Human rights activists, and their families, have been killed, tortured, threatened, arbitrarily arrested and illegally detained, falsely charged, placed under surveillance, or had their offices raided because of the nature of work they have been doing in upholding human rights. They are often being labelled as ‘maoists’, ‘terrorists’, ‘militants’, ‘anti-nationals’, agents of religious institutions and their rights to freedom of expression, peaceful assembly, association is on many occasions restricted.

This is a time in history when the people, who have been working for peoples’ rights, talking about exploitation of the marginalised, of dalits and tribals, and other disadvantaged and vulnerable sections of society, are coming under increasing threat both by the agencies of the state as well as by non-state actors. The Right to Information (RTI) activists, people working in the conflict zones of Kashmir, Northeast, Chhattisgarh; journalists, lawyers, individuals, organisations voicing people’s concerns, anybody trying to be critical, trying to question the state’s neo-liberal policies and corrupt practices, is immediately subjected to suspicion, intimidation, harassment, arrest, and torture. Sometimes such people are even being killed. Much is made out of the largest, vibrant democracy that India is. The Indian State instead of treating such people as partners in a vibrant democratic process perceives such people as threat to national security, national interest and is more interested in targeting them, profiling them. So, today we find ourselves at considerable risk while working on human rights issues.

Many of human rights violations against HRDs are mostly committed by law enforcement authorities; however, they have been instances of serious human rights abuses by armed groups against human rights defenders too. Impunity for such violations has resulted in its unabated continuance, and defenders and their communities are often caught in between during the fight between security forces and the armed groups, targeted or killed for allegedly taking the “wrong” side, as so has become the case in the conflict region of Chhattisgarh, Kashmir and the Northeast.

VIOLATIONS AND THE ROLE OF HUMAN RIGHTS ACTIVISTS

Human rights activists investigate, gather information regarding and report on human rights violations. They use lobbying strategies to bring their reports to the attention of the public and in some cases judicial officials, with a view to ensuring that their investigative work is given due consideration and that the human rights violations issues are aptly addressed.

The biggest role of human rights defenders is acting in support of victims of human rights violations. Investigating and reporting on violations which can help end ongoing violations, prevent their repetition and assist victims in taking their cases to courts for effective justice delivery. Many human rights activists provide professional legal help and represent victims in the judicial forum. Others provide victims with counselling and rehabilitation support.
Many human rights activists work towards securing accountability for respect for human rights legal standards. In its broadest sense, this involve lobbying with the authorities and advocating greater efforts by the State to implement the international human rights obligations it has accepted by its ratification of international treaties.

In more specific instances, the human rights activists focus on bringing to the light, either in a public forum for example, in a newspaper or before a court or tribunal, the incidences of human rights violations that have already occurred. In this way, they work towards securing justice on behalf of victims in cases of human rights violation and towards breaking the patterns of impunity, thereby preventing future violations. A significant number of human rights activists and organisations focus exclusively on ending the impunity for violations. The role of a defender does not end at preventing or bringing to light the instances of human rights violations, it also has work towards strengthening the State’s capacity to prosecute perpetrators of violations, for example by providing human rights training for prosecutors, judges and the police.

Supporting Governance towards Ensuring Human Rights
The human rights activists also focuses on encouraging the government to fulfill its human rights obligations, for example by publicising information on the government’s record of implementation of human rights standards, enforcing and developing human rights culture through creation, monitoring and implementation of the laws promoting and protecting human rights. They also work towards good governance, advocating the support of democratisation and an end to corruption and the abuse of power.

Towards Implementation of Human Rights Treaties
Human rights activists have a major role to play towards the implementation of international human rights treaties. Many non-governmental organizations (NGOs) and intergovernmental organisations help to establish housing, health care and sustainable income-generation projects for poor and marginalised communities. They offer training in essential skills and provide equipment such as computers to give communities improved access to information.

This group merits special mention as its members are not always described as human rights defenders and they themselves may not use the term “human rights” in a description of their work, focusing instead on terms such as “health”, “housing” or “development” which reflect their area of activity. Indeed, many of these activities in support of human rights are described in general terms as development action. Many NGOs and United Nations bodies fall within these categories. Their work, as much as that of other human rights defenders, is central to respect for and protection and achievement of human rights standards.

Towards Generating Human Rights Literacy
Further action of significance undertaken by human rights activists is the provision of human rights education. In some instances, education activities take the form of training for the application of human rights standards in the context of a professional activity, for example by judges, lawyers, police officers, soldiers or human rights monitors. In other instances, the education includes involving teaching about human rights in schools and universities and disseminating information on human rights standards to the general public or to the vulnerable, marginalised and oppressed communities.

In summary, one can say that the gathering and dissemination of information, advocacy and the
mobilisation of public opinion are often the most common tools used by human rights defenders in their work. They also provide information to empower or train others. They actively participate in the provision of the material means necessary to make human rights a reality – building shelter, providing food, strengthening development, etc. They work on democratic transformation in order to increase the participation of people in the decision-making that shapes their lives and to strengthen good governance. They also contribute to the improvement of social, political and economic conditions, the reduction of social and political tensions, the building of peace, domestically and internationally, and the nurturing of national and international awareness of human rights.

**Repression Against Human Rights Defenders (HRDs)**

The democratic space for HRDs continues to shrink. Those working in the field of human rights i.e. RTI activists, NGOs, individuals and media persons are increasingly coming under attack for voicing people’s concerns. The government have enacted laws which have been anti-democratic, challenges constitutional rights, have put the curb on the freedom of expression. POTA (now repealed), UAIPA, Chhattisgarh Special Public Security Act (CSPSA), AFSPA and many such Acts, made in the name of national security, have been used to gag the voice of HRDs. These laws provisions have been misused time and again for prolonged detention and arrests of HRDs. The approach of the judiciary isn’t of much help either in dealing with such cases. Booked under these draconian laws, the so-called ‘criminals’ have been languishing in jail for prolonged durations, sometimes even exceeding the maximum sentence for which they have been booked. The judges continue to deny them bail, in the name of them being a threat to national security, even though prima facie it is clear that false cases have been put against them. The matter of Soni Sori and Linga Kodopi from the state of Chhattisgarh is a case in point. They have been put in jail under charges, in which their co-accused continues to roam free, as they were given bail long time back. Soni and Linga languished in jail, for almost two years now, denied bail every time whenever they approached court and even Supreme Court of India continue to sit over them. Now, even though they have been granted bail (it is interim, as on 10 December 2013) but they are not allowed to go their native land of Chhattisgarh and even the Supreme Court refuses to take responsibility of the lives of Soni and Linga, if they decide to go home now. They are living as refugees in their own country continuously harassed by the state authorities especially the police. The NHRC has also not provided any relief to them as their case has been pending in NHRC for more than two years now.

There have been numerous instances of human rights violations suffered by the human rights activists, which is happening on a daily basis. On January 3, 2011, police arrested Mumbai-based well known Dalit activist and editor of Vidrohi magazine, Sudhir Dhawle (42 years) in Wardha on charges of waging a war against the State. Mr. Dhawle, also a freelance journalist, was accused of having links with the banned Communist Party of India (Marxist-Leninist) and has been booked under Section 121-A of the Indian Penal Code, read with sub-sections 17, 20 and 39, and under the Unlawful Activities (Prevention) Act.

The Ratnagiri district administration clamped prohibitory orders in the Jaitapur nuclear power project area to prevent social activists from entering the area even for public meetings. On 25 March 2011, police prevented social activists Gopal Dukhande from entering Mithgavane village near Jaitapur. Social activists fighting against graft increasingly came under attacks too.

The role of NHRC in the face of increasing attacks on the human rights activists is really unsatisfactory, to say the least. A number of human rights activists who have complained of attack on their lives
especially by the police authorities have not been satisfied with the NHRC as the NHRC, to which the incidence of human rights violations at the hands of the police, is brought to, invariably refers the complaint back to the police only, and thus the revictimisation starts. The people, especially the human rights activists, are gradually losing faith in the NHRC as a protector and promoter of human rights. As so was the case of attack on the activist Shamim Modi, whose complaint was closed without due consideration and without any investigation by the NHRC.

**ATTACK ON NGOS**

There have increasing attacks on NGOs, not only physically but economically too, as a lot of human rights organisations are dependent on the foreign funding, regulated by Foreign Contribution Regulation Act (FCRA) as the State’s funding towards democratisation and upholding of human rights mandate in India is almost nil. So, nowadays, the best way to stop the human rights organisation from voicing people’s concerns, is to cripple them economically. And so they have been doing by unduely cancelling the FCRA license of a number of NGOs working extensively for the cause of the people and creating hurdle in implementation of anti-poor/people and anti-environment policies – the protest at the Kudankulam nuclear power plant is a case in point which resulted in cancellation of FCRA for many NGOs, who were supporting this protest, especially in the state of Tamil Nadu.

**Kudankulam Effect: Government’s biggest Crackdown on Foreign Funding of NGOs**

The Union Home Ministry cancelled the FCRA registration of thousands of NGOs who were receiving huge foreign funds, similarly accounts of lots of NGOs were frozen and several NGOs were prohibited from receiving foreign funding. This is a huge havoc for num erous NGOs who were doing good work and receiving foreign funds.

In the year 2012, the Home Ministry of India cancelled foreign funding of 4141 out of total 39236 NGOs registered under the Foreign Contribution (Regulation) Act, 2010. Accounts of 20 NGOs were frozen and 60 NGOs were prohibited from applying for foreign funds under the FCRA.

The largest block of NGOs whose FCRA was cancelled are based out of Tamil Nadu. 794 NGOs from Tamil Nadu are about 19 per cent of the total NGOs whose FCRA was cancelled. The basis for cancellation was termed as- ‘On Violation’ but it was fairly understandable that the NGO-led protests that was triggered against the Kudankulam Nuclear Power Plant prompted Government to act so heavily on foreign findings of NGOs which received foreign funds for years especially those belonging to the state of Tamil Nadu.

This was the first time the Union Home Ministry acted so heavily on the NGOs who survive on foreign funding. It is also said that this stringent action happened as a follow-up of the Prime Minister Manmohan Singh’s criticism on non-governmental organisations allegedly received support from abroad for leading protests against the Kudankulam Nuclear Power Plant in Tamil Nadu and to destabilise the law and order situation. SP Udaykumar, who was amongst the many protestors who led this protest, was termed to be one of the biggest threats to the national security.

**The Case of the NGO INSAF**

India’s Home Ministry suspended the FCRA (Foreign Contribution Regulations Act) registration of the Indian Social Action Forum, INSAF, even though INSAF acted compliant to the human rights defenders’ rights and responsibilities recognised by India in UN declaration on human rights defenders’
India has thus neglected its duty to secure the human rights defenders’ rights and responsibilities despite India’s approval of the international commitments to secure their rights and responsibilities of defending the human rights as approved within the UN human rights system.

INSAF’s recognised rights to get international support for defending human rights were removed after INSAF brought to the public debate India’s obligation to publicly defend the human rights, which the UN organs have required the government to bring to the public consideration related to the government’s decisions and policies but which responsibility the government has neglected over time.

The INSAF successfully fought its “Cancellation of FCRA License” case in the Delhi High Court against the Home Ministry of India’s order to cancel its license and thus proved that government intentions were mala fide in targeting them.

UN Special Rapporteur on the Situation of Human Rights Defenders in India vis-a-vis’ FCRA
In what is perhaps the first international reaction to the Indian government’s heightened scrutiny of NGOs receiving foreign funds, the United Nations Special Rapporteur Margaret Sekaggya expressed concern about the new regime introduced by Foreign Contribution Regulation Act (FCRA), 2010. The more stringent FCRA, 2010, which replaced the FCRA of 1976, came into force on 1 May 2011. In her report on the situation of human rights defenders in India, Sekaggya has observed that some of the provisions of the new Act “may lead to abuse by the authorities when reviewing applications of organisations which were critical of authorities”.

The UN Special Rapporteur on the Situation of Human Rights Defenders, Ms. Margaret Sekaggya, has noted in her conclusion statement of her visit to India, 2011 that:

“I am concerned about the amendment to the Foreign Contribution Regulations Act” (FCRA) as it “may be used to censor non-governmental organisations which are critical of government’s policies” so that “the space for civil society is contracted”.

Consequently the UN Special Rapporteur on the situation of human rights defenders explicitly demanded that “The Foreign Contribution Regulation Act should be critically reviewed or repealed”.

She said that, “The National Human Rights Commission should intervene on the issue of the Foreign Contribution Regulation Act and should monitor the denial of registration and permission to receive foreign funding for NGOs, with a view to amending or repealing the bill” and “monitor the full implementation by India of recommendations made by United Nations human rights mechanisms, including special procedure mandate-holders, treaty bodies and the universal periodic review. Such a monitoring role should apply to the recommendations contained in this report.”

She further stated that “a law on the protection of human rights defenders, with an emphasis on defenders facing greater risks, should be developed in full and meaningful consultation with civil society and on the basis of technical advice from relevant United Nations entities, should be enacted”.

The Case of the NGO MASUM
On June 9 and 10, 2008, MASUM, the human rights organisation based out of West Bengal, with People’s Watch, Madurai, coordinated the People’s Tribunal on Torture (PTT) in Moulali, Kolkata, during which 1,200 victims and their families were present and 82 victims deposed before the tribunal. This public hearing formed part of the National Project on Preventing Torture in India (NPPTT). Invitation
letters were issued to all the concerned officials including Police Commissioner of Kolkata on May 23, 2008 and the letters were received by their offices in time.

Yet, on June 7, 2008, the police visited the MASUM office, and refused to accept the written explanation of Mr. Kirity Roy, President of MASUM and State Director of the Project, on the legality of the Public Tribunal. However, the Public Tribunal continued in spite of this uncertainty.

At the hearings before the Public Tribunal on June 9 and 10, victims of torture by the police and by the Border Security Forces recounted their stories in panels before an audience of fellow victims and interested members of the public. The panels were overseen by a Jury of human rights activists, jurists, and medical personnel, co-chaired by Mr. Justice Malay Sengupta (Former Chief Justice, Sikkim High Court) and Dr. Mohini Giri (Former Chairperson, National Commission for Women).

After successful conclusion of the Public Tribunal, on June 10, 2008, a plain-clothed police officer trespassed into the venue and took photographs without permission. On questioning, he revealed that he had come under the instructions of the Detective Department. Commissioner of Police Mr. Gautam Mohan Chakrabarty was contacted, and he informed Mr. Kirity Roy that a criminal case had been lodged against him at Taltolla police station for organising the Public Tribunal. The Commissioner refused to divulge further information. People’s Watch then contacted Taltolla police station for details, but they refused to furnish any information beyond confirming the existence of the charge against Mr. Kirity Roy. It is worth noting that Mr. Kirity Roy was at no time a panel member of the Public Tribunal.

Furthermore, on June 12, 2008, police officers from the Detective Department raided the offices of MASUM. Between ten and twelve officers led by the Assistant Commissioner of Police searched the MASUM premises, while ten armed officers waited outside. They did so with a warrant issued by the Chief Metropolitan Magistrate, Kolkata, but without indicating the motive for such a warrant.

Such continuous harassment of NGOs, be it INSAF, MASUM or any other, working for the cause of human rights and exposing human rights violations by the state authorities, continues unabated and the supposedly protector of such rights, the NHRC, continue to sleep over it and blind and deaf towards its it.

The Role of Government and the NHRC vis-à-vis the NGOs
The highest authorities at the central and state levels as well the NHRC should publicly acknowledge the importance and legitimacy of the work of human rights organisations, to secure their right to defend particularly the “rights of marginalised groups, including dalits and adivasis; defenders working on economic, social and cultural rights; defenders affected by security legislations and militarisation; right to information activists; journalists; and women defenders and defenders working on women and child rights” These measures need to be carried out so that India will fulfil its international human rights commitments.

The work of human rights organisations often involves criticism of government policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government’s policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights organisations can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported, both by the government as well as the NHRC.
ATTACK ON MEDIA

Beyond the challenges that journalists face in their professional lives, there are a lot of issues that media persons face on a daily basis. In this age of increasing concern over heightened terrorism, the journalists have been facing threats and criminal charges for pointing out the flaws in state’s security mechanism especially in police investigations, as these are often astray. The result is that some of the media persons get directly implicated in terrorism cases. In the Northeast and in conflict states like Kashmir and Chhattisgarh, the journalists have been put under extreme pressure not to report on the aspects of the conflict implicating and revealing involvement of the authorities in wrongdoings.

The state agencies have been at it especially in the state of Manipur. They put pressure on the journalists to suppress a certain type of information. Like the editor of the newspaper Sanaleibak was arrested and detained for a week in December 2010 for allegedly working for secessionist groups.

In Jammu and Kashmir too, the journalists have been at the receiving end of the conflict both by the armed forces and by the non-state actors, getting killed in process. There were reportedly no investigations conducted in those killings. Journalists stated that they have been approached by both parties to the conflict to join them, but always refused in order to stay impartial and objective. Journalists covering protests in the streets were on some occasions slapped by law enforcement authorities branding them as “enemies”, and had their equipment damaged. They reportedly lodged complaints, to no avail. The NHRC role has been quite limited in the protection of these media persons working under extreme duress. Time and again they have overlooked the concerns of the media persons, coming under continuous attack in the wake of increasing important role that media is playing as a defender of human rights.

In the conflict state of Chhattisgarh, in January 2011, a reporter with the daily Nai Duniya was killed outside his house near Raipur. A note was found next to the body, on which it was written “if you don’t stop publishing news, you will die”. In December 2010, a Dainik Bhaskar reporter, in Bilaspur district, was shot by unidentified gunmen.

Media and the NHRC

In Karnataka, the chief editor of the newspaper Karwali Ale, was arrested in 2007 and 2008, together with his wife, because his newspaper published a letter from a Christian reader offended by a religious procession headed by a Jain Sadhu who was naked as per religious customs. Mr. Seetharam and his wife were charged with inciting communal disharmony. They were constantly harassed by the police, illegally detained, arbitrarily arrested and tortured by the police. Though the victim approached the NHRC to stop their continuous harassment, the NHRC did nothing to provide relief to Mr. Seetharam except for transferring the case to the Karnataka State Human Rights Commission, who also just sat over the case. The Karnataka High Court ultimately ordered their release.

The NHRC role has been quite unsatisfactory when it comes to the media persons getting attacked by the communal forces, police or the other state authorities. The maximum that the NHRC has done is to ask the report from the police authorities that have been perpetrators themselves. Even their order for compensation gets ignored as so happened in the case of Samiuddin Iliyas Neelu who supposedly got relief from the NHRC on papers, which never got implemented and he continued to face harassment and torture at the hands of the police and the state authorities. In his case also, the report regarding harassment was sought from the same fellow police officers.

Thus we see that the NHRC’s continued diminishing role as a protector and champion of human rights has led to the HRDs especially the media persons to look elsewhere for relief and protection.
Also, because they have to remain less controversial as per their professional requirements, they are hesitant to approach any public forum for legal relief as it creates difficulties in their professional lives. The maximum that they usually approach is the Press Council of India, who is mandated to look after the grievances of the media persons.

Not that only the media persons should approach the supposedly protector and promoter of human rights i.e. the NHRC, when they get attacked, the NHRC has the *suo motu* power to investigate and provide relief into any incidence of violation of human rights. The NHRC role has been very limited in providing relief in such matters.

**The Situation of Media Persons from the Conflict-ridden state of Kashmir**

The media persons from the conflict state of Kashmir, especially those belonging to the ‘labelled’ Muslim community, has been increasingly coming under attack and the NHRC role has been that of a silent spectator in these matters. The torture at the hands of the authorities, of the journalists Mr. Iftikhar Gilani, who was booked and arrested under Official Secrets Act, and Mr. Maqbool Sahil, who was booked and arrested under the draconian Public Security Act, not once but five times, is really disturbing. There are many such incidences which are happening on a daily basis and where the NHRC role as a silent spectator of human rights violations is really baffling.

**The Case of Maqbool Sahil**

The story of Maqbool Sahil is illustrative of the perils of being a journalist in Kashmir. In January 2004, Sahil was detained and accused of being allegedly involved in an espionage network working for Pakistan. For more than 15 days, he was subjected to third-degree torture and finally charged under the Official Secrets Act (OSA) and Enemy Agents Ordinance (EAO), which are non-bailable and carry death penalty.

“It was a hellish experience and the modes of torture inflicted on me during interrogation extended to putting a wooden roller on my legs, suspend me from the roof, cane my feet, besides officials regularly beating me. As I was unable to provide any lead to my alleged involvement in espionage, the intensity of the torture increased. I could not stand on my feet. Other detainees would help me change clothes and eat. My house was raided thrice, and all equipment including a computer, books, CDs and diaries were taken away by the CID personnel, who have not been released till date,” says Sahil. He was released in January 2008 after over 40 months in prison. In his work as a journalist covering the Kashmir conflict, Sahil has faced pressures from both State and non-State actors. But, according to him, the State uses both direct action and undercover tactics to force the journalists to toe its line, which to an extent has intimidated newsrooms in Srinagar to practice self-censorship.

“I see myself as a living testimony of this repression, which has clamped the State for the last twenty years under the garb of restoring peace in Jammu & Kashmir,” he said.

**The Case of Naveen Soorinje**

Naveen Soorinje is another journalist who went through a prolonged period of incarceration. The reason here was not terrorism, but his purported involvement in mob violence against a group of partying teenagers. Soorinje, a reporter for the Kasturi TV news channel in the district of Mangalore in Karnataka, had filmed the moral vigilante attack of July 2012 after being alerted to possible violence by bystanders and residents of the area. His footage was broadcast over the channel, leading to widespread outrage and the quick arrest of the main perpetrators of violence. But in November 2012, the local
police filed charges, including him in the list of the accused.

Soorinje was arrested on 7 November 2012. In a memorandum submitted to local police authorities, the Udupi District Union of Working Journalists pointed out that the incident had led to intense debate within the profession about the manner in which a reporter should go about his job when he is aware of an illegal act being committed. The district union pointed out in this context that neither was there evidence of wrongdoing on Soorinje’s part nor of any prior knowledge of the intent to carry out the attack. His reporting, on the contrary, was of direct utility to the officers of the law in bringing the culprits to account.

Yet, bail pleas at the district court and the Karnataka High Court failed. Finally, after much effort and fight the High Court ruled that he should be released on a bond of Rs. 5,00,000 and a personal surety of the same amount. Consequently, Soorinje was released from detention on 23 March, 2013.

The Shadow of Terrorism

The longest-drawn agony for a journalist in India in recent times was the imprisonment of Syed Mohammad Ahmad Kazmi, arrested on 6 March 2012, on charges of aiding and abetting a bomb attack on an Israeli diplomatic vehicle in India’s capital city. Kazmi was then working for an Iranian news agency in Delhi and also for India’s state-owned TV channel, Doordarshan, as a news presenter in Urdu language bulletins. His bail application which first came up before the Chief Metropolitan Magistrate of Delhi in April 2012 was turned down on the grounds that the investigations were still underway. On 2 June 2012, despite charges still not being laid, the magistrate extended Kazmi’s remand beyond the ninety days permitted.

Bail for Kazmi was finally granted on 19 October 2012, after India’s Supreme Court held that the magistrate had erred in this respect. The whole sequence of events showed how police forces which function with the agenda of securing maximum impact through media coverage, though often in disregard of the law, are able to influence public perceptions and escape serious public scrutiny, even when they victimise innocent citizens.

A substantial part of the case against Kazmi was built on his telephone records, which revealed a number of calls to Iran’s capital, Tehran, around the time that the bomb attack against the Israeli diplomatic vehicle occurred. The Delhi Union of Journalists (DUJ) for one, argued that this was in all probability, only about Kazmi attending to his professional responsibilities as reporter for a news agency based in the Iranian capital city. “Journalists have to maintain all sorts of contacts and speak to a variety of sources for their news stories”, said the DUJ. “Such connections for professional purposes should not be misconstrued as active collusion or connivance in dubious activities, including crime”.

These continued attack on media persons and the continued apathy of the apex human rights institution in India i.e. the NHRC, towards such attack on the freedom of the media and expression as a whole, clearly present a grim picture of the functioning of NHRC.

Draconian Laws and the Freedom of the Press

Though freedom of the press has not been expressly provided for in the Constitution, but is implicit in the Fundamental Right pertaining to the Freedom of Speech and Expression guaranteed to the citizens under Article 19 (1) (a) of the Constitution of India. However, this right is subject to restrictions under sub clause (2), whereby this freedom can be restricted for reasons of “sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt, court, defamation, or incitement to an offense.” Laws, such as the
Official Secrets Act, Public Security Act and Prevention of Terrorist Activities Act (POTA), have been used to limit press freedom as was illustrated with case of Ifthikhar Gilani and Maqbool Sahil, just to highlight a few.

Thanks to the Indian draconian laws, but even more so the lack of tolerance and democratic culture in Indian society, the uncompromising role of journalists in upholding free speech has not been without severe consequences for those who have tirelessly fought to carry stories despite threats to their careers and their lives.

This is particularly so in conflict zones in India like Kashmir, Manipur and Chhattisgarh where journalists are routinely caught in the crossfire between state security forces and militants of different hues and other non-state actors. Both State and non-State actors carry out with impunity, violations of media rights and freedom of expression becomes extremely difficult without inviting physical harm.

Even in non-conflict zones in India, many journalists have been killed while investigating reports against powerful people and political parties. Media offices have been attacked, ransacked and journalists have been assaulted. Criminal defamation cases have been filed against investigative journalists, in order to muzzle them from further reporting. Many journalists, typically from regional language publications and TV channels, have been arrested in such cases and are facing trial; such is the case of BV Seetharam and his publication Karavali Ale.

It is important to note that for the few cases of assault on journalists that are detailed above, there are many, many more. They cover various types of actions which differ in terms of their causes, environment, seriousness and consequences. This is a vast area of journalistic freedom and journalists should familiarise themselves with the challenges they may face beyond those which exist in the relative clarity of the law.

Ultimately, the challenge before the Indian media is to ward off attack from outside by powerful vested interests that use the legal system to curb freedom of speech and expression.

**ATTACK ON RIGHT TO INFORMATION (RTI) ACTIVISTS**

Right to Information (RTI) activists have increasingly been targeted for exposing human rights violations and poor governance, including corruption of officials. RTI activists are the most vulnerable section amongst the HRDs. Unlike other HRDs, the majority of the RTI activists are not necessarily part of any organisation or group. They often act alone, moved by outrage against corruption and other illegal activities. RTI activists are extremely vulnerable as they live in the same areas as the corrupt public authorities, political leaders and mafia who do not want information about their illegal activities to be disclosed. The lucky ones come to the media attention only when they are killed, maimed or are battling for life.

RTI activists have been murdered for working towards implementation of RTI Act, 2005, i.e. for bringing about accountability and transparency in the functioning of the government system. Ms. Shehla Masood, an RTI activist of Bhopal was murdered on August 16, 2011. She is among the many RTI activists who have been killed for seeking information regarding the working of public authorities. Ram Bilas Singh is another RTI activist from Bihar who was killed for seeking information which brought into focus the corrupt practices of the governance.

Even police persons seeking information has been not spared. The Uttar Pradesh State Police Home Guard Jawan Mr. Babbu Singh was killed on July 25, 2010, as he sought information about funds utilised and regarding work done by his village Pradhan in Bahraich district of Uttar Pradesh.
There had been many such cases of killings recorded of individuals who had filed applications under RTI. These activists had denounced: land scams, administrative corruption, corruption in public distribution system and sand mafia, school irregularities, and various malpractices, scams in a welfare schemes, exposed illegal mining, among other corrupt practices and scams.

In March 2011, an RTI activist was beaten to death by unidentified assailants in Jerua, Jharkhand, for having exposed corruption in the National Rural Employment Guarantee Act by contractors. In the state of Rajasthan, RTI activists are facing continuous attacks.

**RTI Activists and the NHRC**

Many face serious physical assaults on regular basis. Those who seek information from their village panchayat and other local administration also face social ostracisation. A large number of threats and attacks including murder do not make news.

When complaints are made by RTI activists, the law enforcement personnel, who are usually hand-in-glove with those threatening the RTI activists, do not take necessary action. The NHRC role in the protection of RTI activists as those working as human rights defender, has also not been of much help. The NHRC role in cases of harassment, threats and killings of RTI activists has been negligible. The complaint handling mechanism of the NHRC is such that the victims are gradually losing faith in it. The NHRC has no sensitivity in dealing with such complaints of attack on RTI activists, who are constantly under threat of local mafias and corrupt officials who are, in most cases, are hand-in-glove with the police officials, who inflict constant pain not on the victims only but their families too.

Even in serious violations cases of killings of RTI activists, what NHRC does is to seek the report from the police officials, who are generally hand-in-glove with the perpetrators and because of whose inaction, the victim has suffered i.e. killed. Such so happened in the case of the murdered RTI Activist Ram Bilas Singh.

It is really ironical that the same officials (the police) because of whose incapacity the victim suffered in the first place, becomes the primary source of investigative information for the NHRC. It is really baffling that even after powers to investigate the cases themselves, especially serious violations cases, the NHRC has time and gain chosen to evade responsibility to protect the rights of the RTI activists and have looked the other way, repeatedly.

It seems like that the NHRC has limited its role to getting the authorities take notice of the case in due process rather providing immediate relief and ultimately justice to the victim of human rights violation. The recognition of misuse of laws or for that matter flaws in the laws that are against the principle of human rights, seems to have been continuously overlooked by the NHRC as so was the case in the now repealed Acts i.e. POTA, TADA or for that matter currently in UAPA, PSA, CSPSA (Chhattisgarh Special Public Security Act, 2005) amongst many others.

The killings of RTI activists Shehla Masood and Ram Bilas Singh and the NHRC response towards it, seems to suggest that the NHRC has no interest in providing relief to the victim, let alone justice. Just knowing that the FIRs have been filed in these cases seems to have satisfied the conscience of the NHRC. The NHRC seem to have no interest in ensuring that the perpetrators of the crime are brought to book and punished, and relief and justice are provided to the victim. The NHRC has closed both these cases citing that the FIR has been filed, so they have no further role to play in these cases.

**The Case of Shehla Masood**

On August 16, 2011, RTI activist Shehla Masood was shot dead in broad daylight on way to rally for
Anna Hazare. Ms. Masood had just got out of her house to attend the demonstration called to support Anna Hazare when she was shot dead by unidentified attackers.

Shehla Masood, known for her initiatives under the Right to Information (RTI) Act and wildlife activism, had allegedly been harassed and threatened by police officer Pawan Shrivastava and had lodged a complaint, but no action was taken on it. In a letter dated 19 January 2010, addressed to the Director General of Police in Madhya Pradesh, Ms. Masood wrote, “One and a half year ago, I had filed a complaint against IPS officer Pawan Shrivastava for making threatening calls to me while he was on deputation as director cultural department. I had lodged a complaint at Maharana Pratap Nagar Police Station in Bhopal. I had also met the then DGP of MP, Mr Puwar, on 27/02/2008. I had provided the evidences, but till now nothing has been done.”

In her letter to the director general of police, Ms. Masood had expressed her fear that Shrivastava being a powerful police officer could implicate her in false cases. Interestingly, the Madhya Pradesh Home Minister had announced that the state would be the first state to treat all complaints as FIRs. However, “nothing has been done on my complaint,” Ms. Masood wrote in her letter.

Ms. Masood’s letter also had a note by the Inspector General of Police, Bhopal, that “legal action or departmental action may be taken as deemed fit.”

According to one environment activist Sumaira Abdul Ali, “Activists are murdered every now and then. Despite making repeated assurances nothing has changed. The message is clear that the government doesn’t mind such things. Shehla was very active in taking up environment issues, particularly mining, which is very risky and a lot of politicians have vested interests in it. It continues to flourish. It is also very clear that we are not safe.”

Describing this as a sad incident, Mumbai-based activist Mukta Shrivastava said, “We don’t know who is behind her killing. She was very much part of the anti-corruption movement. Her killing has once again raised the issue of safety of activists. In Maharashtra farmers protesting silently have been killed. It’s an emergency-like situation and democracy is at stake. Such acts show the reality of state repression and the sorry state of affairs.”

Ms Masood is the latest victim in the list of such attacks that also claimed the lives of whistleblowers and RTI activists.

The Case of Ram Bilas Singh
Mr. Ram Bilas Singh, an RTI activist, highlighted police inaction in the case of Rakesh Kumar alias Bambam Singh of Lakhisarai district who had been booked in two murder cases. One FIR No. 312/05 was registered in Lakhisarai PS under section 302, 120B of IPC on 24 September 2005 and the other was registered in Keul Rail PS as FIR No. 55/08 under section 302, 34 of IPC and Arms Act. In both cases no action was taken by police even after Court orders to seize Rakesh Kumar’s property. It is asserted that the Sub-divisional Police Officer was a close acquaintance of the accused and was protecting him; hence Rakesh Kumar was still at large. The Lakhisarai PS SHO was also protecting him.

Because he revealed this police inaction, Mr. Ram Vidas created a lot of enmity against himself, especially with the local police who were protecting the accused. He also directly accused the SHO of taking bribes and protecting Rakesh Kumar. In fear for his life he requested, by letter of 15 July 2011, that the Bihar SHRC ensure that he was provided protection (Case no. BHRC/COMP 7421/5581). Ram Vilas Singh was then brutally murdered on 8th December, 2011. The NHRC also did not do anything in this case and has closed the complaint citing that FIR has been filed so no further action on their part is needed. No relief or assistance was provided to the victim.
Lack of Protection Mechanism for RTI Activists

The Right to Information Act, 2005, provides no protection to the RTI activists. The Central Information Commission and the State Information Commissions are not mandated either to deal with such threats or attacks or to provide protection when needed. The Central Information Commission and its state equivalents do not have the mandate either to protect or provide shelter. They have been mere spectators of the crime being inflicted on the RTI activists on a daily basis.

On 13 July 2010, the Central Information Commission (CIC) directed the Central Public Information Officer (CPIO) of the Central Bureau of Investigation (CBI) to use his own ‘sources’ and look into the alleged threatening calls made to RTI applicant Manish Bhatnagar for seeking information about asset details of the Director of CBI. The Chief Information Commissioner Wajahat Habibullah in his decision notice stated that if criminal intent is discovered, remedial action will be taken. RTI applicant Manish Bhatnagar had sought information about the details of service records, property statements, details of mobile connections and service perquisites availed by the then CBI Director Ashwani Kumar. However, no reply was given and the victim Manish approached the CIC for intervention alleging harassment by the CBI officials. Mr Bhatnagar also stated that he was receiving threatening calls from a mobile phone. It is not an isolated incident of harassment at the hand of authority. The RTI activists face it on a daily basis.

On Oct 5, 2013, the Maharashtra Chief Information Commissioner Ratnakar Gaikwad asked the chief secretary Jayant Kumar Banthia to provide adequate protection to RTI activists and whistleblowers. Gaikwad, himself a former chief secretary, brought to Banthia’s notice a resolution passed by the Central Information Commission on September 13, 2011. The CIC had expressed shock over the reported killings and assault on RTI activists across the country and underlined the need to take urgent steps for their safety and protection.

Need for Urgent Measures

There are security personnel for politicians, but there is lack of seriousness when it comes to the security of whistleblowers especially the RTI activists. It’s important that the government itself should obtain information on the threat to the lives of RTI activists and then provide security. The RTI activists say that maximum security has been provided to those politicians. But the security and safety of RTI activists has been neglected even after submitting specific complaints.

It’s the duty and responsibility of the state governments to safeguard the life and liberty of the RTI activists. It’s high time that the government should invoke the relevant penal provisions for the prevention and detection of such heinous crimes and take proper steps towards ensuring the safety and security of RTI activists. The NHRC needs to wake up towards the plight of the RTI activists and come to their rescue by following up each and every case of assault on RTI activists, ensuring that the culprits are brought to book and that a fearless atmosphere of their working is ensured.

AMARNATH PANDEY

Human rights are being violated and violence is being faced by everyone, everywhere in India. It is a sad and painful affair. Discussing this issue is a source of great comfort as the difficulties I faced during the previous work that I had undertaken caused a great deal of depression and anxiety. The struggle with police led to great difficulties. In 1998, the first fake encounter was done by Police inspector S.K. Pandey in the Sarguja district situated in the northern part of Chhattisgarh. It was reported that while they were taking an accused from one place to another the naxalites attacked them. Firing took place
where the SP was injured. This was fake news as the SP had no bullets wounds and the accused was killed and his last rites were performed immediately. I started collecting evidence with the help of a fellow journalist friend, Mr Rakesh Singh who is not alive today. The fellow who died in the encounter was a rickshaw puller, killed in sarguja district as the first encounter. When we started working on that case, it was the year 1998.

The SP then called me and told me that the case against my brother was being reopened and converted into 302. That particular case was basically about a friend of my brother called Anil Rai who had drowned in a pond when a couple of friends including my brother were taking a bath in. Within an hour the friends went to his house and then to the police station. After the dead body was taken out, the police conducted a dictum test. Since it took two days for the body to be taken out, it had decomposed and nothing could be firmly deduced. The second dictum test was conducted in Bhopal and the report was that the death was due to drowning.

I asked the SP not to compromise the naxalite encounter investigation by distracting the police with this case since the report of the drowning was self-evidential. But the police changed the dictum report and a different base and water combo was sent to Bhopal which showed negative dictum report and subsequently a case was filed against my brother under Section 302 of the IPC on 1st September 2010 my brother was sentenced to life imprisonment.

People are facing difficulties like this in the Chhattisgarh High Court. Hearings are delayed and justice is denied. The HC is not rendering justice. The hopes from the new state are being quashed. We tried to argue his bail petition but Justice Sharma said that we had manipulated the dictum report even when the information was obtained through RTI. As such, bail was denied.

There is another big problem in our country. If you kill a Muslim and say that he was from Lashkar, nobody will care. The community instantly agrees with that statement and even sympathises with the murderers. If you make an adivasi wear a naxalite uniform and kill him, the public would go ahead and appreciate the police. In 2004-2005, this increased many fold in Sarguja. People were picked up from their home. The DGP late Mr O.P. Rathore had started the scheme of out-of-term promotion for police officers. The acts of bravery that we see in most cases are for that of out-of-turn promotion. In one incident an encounter was carried on for the entire night and in the morning only two bodies of a Naxalite couple were shown to have been killed. This is a common scenario in Chhattisgarh that even though there are 40 people killed in an encounter, only the naxalites that are gunned down are shown. The police, it is assumed, have snipers who are capable of shooting precisely even from a distance. The clothes of the dead are also burnt. But what is recorded in the video footage is the opposite. It is very difficult to work in Sarguja and I already have numerous cases lodged against me. I have filed for anticipatory bail. In one case, some Maoists took my name as their lawyer and said that they had come to kill a certain person who was a witness against me in some other case. I argued my case in the court and tried to prove my absolute unawareness about any such thing. The police officers and government officials are now convicting the lawyers who fight for human rights and against fake encounters.

Talking about legal rules consider the situation of Bastar. The then SP of Bastar who is now a DIG, had gone to Dantewada and shot a person in front of his wife. When she came to me regarding this I complained to SHRC, NHRC, the Home Minister and the Prime Minister via several applications. So they picked up a woman named leda and filed an affidavit using her name at SHRC against me saying that Amanath Pandey is a Naxalite and had asked me to make this complaint promising a compensation money of at least 2 lakhs. They kept leda in police custody for 6-7 months. On 14th January Leda ran away from her house arrest as the police officials were drunk from an adivasi festival, and came to
Ambikapur. She came to me and said that she was raped by Kalluri and other police officers. She was scared to go back to her village and was staying near my house. Mr. Saurabh Dangi was the advocate representing Leda. My petition from Leda’s side was pending. The Police came to ask for NOC from Saurabh Dangi and he told me about it and also mentioned that leda does not want anything from me now. After this the judge ordered to withdraw the written petition. A certified copy of withdrawal was given to NHRC and the NHRC also closed the case of Leda. There was no investigation anywhere and when I enquired about what happened in NHRC. I was told that all the complaints were burnt by NHRC after 5 months so no information can be given.

The lawyers of district court have many false cases like me against them and the survival has become really difficult. Physical as well as mental health is a strong issue for us given to this disturbed form of life. I want to bring out this aspect of the lawyer in front of everyone as it is seldom discussed.

MR. AZIMUDDIN SARKAR
Threatening of Human Rights Defender, Murshidabad District
NHRC Case No. MASUM/SP/MSD/415/3367/12

I, Azimuddin Sarkar, a resident of Village- Bardhanpur, Post Office- Murddpur, Police Station- Raninagar, District- Murshidabad have been working as District Human Rights Monitor for MASUM.

On 14th October 2012 at about 6.00 pm, Mr. Najibur Rahman; the elder brother of mine was at his home at the said village with his daughters and son in laws and discussing about family matters. The son in laws and daughters were assembled at his place to settle distribution of amount received after selling of their family property. At about 7.00 pm the known miscreants of the area; Mr. Mijarul Seikh; son of Mr. Bakkar Seikh; son of Mr. Bakkar Seikh, Mr. Liton Seikh; son of Late Saiyab Seikh, Sfarur Seikh; son of Late Saiyab Nabi Seikh, Mr. Kuddus Seikh; son of Mr. Aziz Seikh, Safikul Islam; son of Mr. Aijit Seikh and many others, all residents of village Chuapara- Bardhanpur under Raninagar police station raided his house with lethal weapons and firearms. The miscreants ransacked the place and dwelling of Mr. Najibur Rahman, looted gold ornaments and other household items. I was not at the place at the time of the incident. The miscreants made verbal intimidation for me while resisted by my elder brother and others by saying ‘we will teach him a lesson’. The police got information on the same day and a police party came to Mr. Najibur Rahman’s house after an hour of the incident. The police asked him to make a written complaint to the Raninagar police station. Next day on 15th of October at morning, Mr. Najibur Rahman and one of his sons in law; Mr. Rezaul Haq went to Raninagar police station to lodge the complain. The on duty officer at that time; Mr. Ajoy Pal; Sub Inspector, Raninagar police station threw the application after recording the whereabouts of Mr. Najibur Rahman and others went to lodge the complaint. He even said that ‘I will frame a counter case against you’. Later, the police officer imparted with a GDE No. to the complainant, vides number 910/12 dated 15.10.2012. The incident made my brother Najibur Rahman shocked and helpless and he made a written complaint to the Superintendent of Police- Murshidabad on 16th of October, 2012.

Thereafter, I contacted one local NGO activist; Mr. Jahangir Fakir and requested him to take account of the incident from the police and to make request to the police for arrest of the culprits. While Mr. Fakir contacted the Officer in Charge of the Raninagar police station; Mr. Sumit Talukdar in this regard, the OC asked him to leave the matter as it is related to MASUM. He also said that ‘MASUM is not the Human Rights Commission, and if any violation occurred, Bhabani Bhaban (office building of State Human Rights Commission) will take action on that incident, MASUM has no right to
pressurizes the police’. In between, on 17th of October at about 11.00 pm, Mijarul Seikh, Liton Seikh, Sattarul Seikh and Kuddus Seikh, all known criminals of the area, assembled at the adjoining area of my residence with lethal weapons and made intimidating remarks and scared Mr. Sarkar and his family by saying that we will kill Azimuddin and his family. Scared, I made a written complaint to the Officer in Charge- Raninagar Police Station and the Superintendent of Police- Murshidabad regarding the issue on 19th of October. Mr. Atahar Rahaman; son of Mr. Panjatan Sarkar, Mr. Sainul Islam; son of Late Arrejjul Mondal, Mr. Anarul Islam; son of Mr. Rainuddin Sarkar, Mr. Islam Seikh; son of Late Ebadul Seikh and Mr. Akbar Ali; son of Late Sabdul Mondal confirmed the incidents as they were the witness of this illegal assembly of miscreants and their threatening calls. The said co-villagers with many others confirmed that the miscreants aided by few political leaders of the area and local police trying to subjugate me for my untiring involvement against tortures by police and BSF personnel and for legitimate deliverances for poor of the region.

While on 4th November at around 4.25 pm, the Officer in Charge of the Raninagar police station contacted on his mobile (973452251) over the matter, he did not attend the calls, later he switched it off. At about 4.36 pm the said Officer in Charge made a call to the mobile phone from which the calls were made to him, and asked for the identity of the caller. Mr. Gopen Chandra Sharma, another District Human Rights Monitor while made his identity clear and asked for the details of police actions on the issue and about the case details for the same, the OC said he has no detail of the case or whether any case has been initiated or not. Half an hour later, Mr. Ajoy Pal, one Sub Inspector of Raninagar police station went to Mr. Najibur Rahman’s (my elder brother) residence and asked them to visit the police station on next day; 5th November. But as the police not served any written notice, they have decided not to visit the police station. It was also reported by the co-villagers of mine that the police of Raninagar police station sending continuous feelers to both the complainants; me and my elder brother to withdraw the complaints lodged at the said police station.

In this context, I am facing intimidation from the nexus of miscreants- local police and posted BSF of that area. In this regard the police of Raninagar police station have taken a mischievous and malicious stance to protect the local rowdies in one hand and in the other trying to frustrate my initiatives to protect human rights of the citizenry of his area.

The complaint was made to the NHRC on November 8, 2012, regarding providing protection to me and my family and for the investigation to be done transparently and effectively by an efficient and impartial agency. And, the involved police personnel of Raninagar police station must be prosecuted for their delinquent acts.

BARUN BISWAS
Murder of Human Rights Defender, 24 Parganas District, West Bengal
A social activist and human rights defender Barun Biswas son of Jagadish Chandra Biswas of village Sutia, Police station Gaighata, district north 24 Parganas was brutally murdered. He as a school teacher at Mitra institution, Kolkata and on July 5, 2012 at about 7pm he was shot by some unknown miscreants on platform one at Gobordanga railway station.

The victim shouted for help. Some nearby people rushed in and took him to Gobordanga Rural Hospital. But it was advised from the said hospital to shift him to better hospital for his treatment as his physical condition was deteriorating. Then the victim was released from the said hospital for the purpose of admitting him in Barasat Hospital but while travelling to the Barasa Hospital, the condition of Barun Biswas deteriorated badly and he had to be brought at Habra Hospital in the midway.
In Habra hospital the victim was declared dead by the attending doctors. On July 5, 2012, the written complaint of the incident of murder of the victim was lodged by the victim’s elder brother Asit Biswas at Bongaon GRP having jurisdiction of the place of occurrence and the police accepting the said complaint registered the FIR vide Bongaon GRP Case No. 51/2011 dated July 5, 2012 under section 302, 34 of IPC and section 25, 27 of Arms Act.

The victim was a known and respectable personality in Sutia area due to his ascending voice against torment against destitute. He was secretary of the organisation namely Sutia ‘Pratibadi Mancha’ which mainly works on civil liberties movements. The family of the victim strongly apprehends that the victim’s social and human rights activities reportedly earned him many foes that saw him as a threat having strong alibi to commit his brutal murder. The family of the victim also stated that recently he started receiving life threats for being witness in a criminal case and he lodged information in this regard at Gaighata PS seeking adequate protection but police did not provide any kind of timely protection to him. This incident uncovered the skeleton of the law and order situation in the West Bengal-Bangladesh border area.

The investigation in the case has been sloth. Although few arrests have been made, the actual culprits are still at large. The complaint was sent to the NHRC on September 8, 2012. It has registered as Case No.1164/25/15/2012. The NHRC transferred the matter to the West Bengal SHRC citing Section 13(6) of the Protection of Human Rights Act, 1993.

CHHAUTHMAL ROY
Torture of Dalit Human Rights Activist, Kotwali PS Fatehpur, Sikar District

The victim Chhauthmal Roy s/o Sukharam Balai lives in Ward no. 2, Fatehpur, Sikar. He is being working as a human rights activist in the area. Here, the atrocities against the dalit victim chhauthmal have been committed by the Ward councilor, the local legislator (mla) and other goonda elements of Fatehpur. The background of the incident is that the victim has previously fought the election against the MLA, and since then he has been continuously harassed and tortured by the people of the MLA. On December 28, 2009, the local goonda people of ward councilor and legislator kidnapped Chhauthmal from his pco shop. After kid-napping he was taken at an isolated placed, tortured, beaten up, and verbally abused. He was let go only after agreeing to the following three conditions:

• Take back the case filed by his father in the high court;
• Whatever has happened now, don’t have to report this matter to the police; and
• Don’t have to file nomination in the next election.

The victim went to the police station to file complaint against this incident, but due to political pressure, he was whisked away without filing the complaint. Later, after much effort, the FIR No. 26/2010 u/s 323, 341, 347, 350, 362, 364, 383 of IPC and Section 3 of SC/ST (PoA) Act, was filed on February 9, 2010. The final report (FR), with FR No. 15/2010, was filed by the police in the Additional Chief Judicial Magistrate Court, Fatehpur Shekawati, Sikar. Against this the victim filed a protest petition, which was dismissed by the court. Subsequently, the court passed its order on April 28, 2011, on the basis of the FR, terming the matter to be false and thus closed. And, the assistant sub inspector (ASI) who filed this report was suspended (line haazir) on the behest of local MLA Khan through sp. This shows the appalling nature of the administration.

So, till now, no justice has been given, and this particular case was closed by the court, terming it to be false. The case is pending in Sikar session court currently under revision. The complaint letter was sent to NHRC on January 11, 2010. The NHRC registered the complaint as Case No. 86/20/24/2010/
UC/M-5, transferred the matter to Rajasthan SHRC, directing the SP of Sikar district to submit a report to RSHRC regarding the same. The RSHRC, though registered the complaint as Case No. 10/29/568 but said that since the matter is in court, they can’t do anything.

SHAMIM MODI
Brutal Attack on Human Rights Activist
Date of Incident – 23/09/2009
NHRC Case No. 1711/13/16/09-10
Place of Incident - Mumbai

I, Shamim Modi, currently serving as an Assistant professor with Tata Institute of Social Sciences, Mumbai was brutally attacked in my apartment in Vasai on 23rd July 2009. Despite sustaining 118 stitches I survived. My opponents, includes former Revenue Minister of M.P. and a present BJP MLA Mr. Kamal Patel, have been after my life, and had planned to get me killed by my watchman and make it look like a simple robbery case, Manikpur police conspired with them.

In light of the fact police has manipulated many evidences, including vital forensic evidences, on 17/11/09 we made formal request letter to Commissioner of Police, Mumbai, DGP, Maharashtra Police and Chief Minister to include Senior Inspector of Manikpur Police Station. CID has done nothing more than recording the statement of former Revenue Minister of M.P. Kamal Patel. Mumbai CIDs team is neither making any effort to further probe the involvement of Manikpur Police in the attack nor probing the role of the alleged Minster. The Senior Police Inspector and in-charge of Manikpur Police Station Ashok Pawar in his effort to alter the motive of the attack from attempt to murder to robbery, has manipulated and fabricated many vital evidences. He neither registered the correct version of FIR nor applied the proper sections of IPC. The case was registered under section 397 of IPC. On the intervention of Mumbai High Court, at the later stage, police applied section 307. The High Court observing biased role played by the police handed over the investigation to CB CID, Mumbai and presently the case is being investigated by their unit 12, Dahisar Branch.

(1) Manipulating Forensic Evidence- The police has switched the night gown of mine which I was wearing at the time of the incident. The night gown which was drenched in blood due to excessive bleeding has not been taken on record as forensic evidence. The Salwar-Kurta which was lying there on the bed, at the time of the attack was shown to be worn by the victim (me).

(2) Victim’s Statement was Doctored- On 24th July while recording my statement I categorically told the senior PSI of Manikpur Police that the attack was not for money and she suspected former Revenue Minster of M.P., Kamal Patel and his business partner Natwar Patel have engineered the attack. At the time of recording the statement, Dr Rajani Konantambgi, Reader at TISS and my brother Munaf Meghani were present at the Nursing Home. Moreover, within few hours of the incident my husband spoke to the Senior Police Inspector of Manikpur Police Station Ashok Pawar over the phone and informed him of the history of consistent threat to her life including two earlier unsuccessful attempts made on my life. But when my husband checked her statement he got to know that my statement has been doctored.

(3) Victims Husband’s Statement was Doctored- On 27th July when my husband Anurag Modi visited Manikpur Police station to deliver his statement, the writer of the Senior PSI just asked him his personal details and took out the print out of his supposedly statement.
that read my wife informed me over the phone that the watchman attacked her for money. He refused to acknowledge that and on 29th July gave his written statement to the police.

(3) Proper statement were recorded after much deliberation - On 30th July we made a written compliant in this regard with Manikpur police and Superintendent of the Police, Thane (Rural). The matter was also reported to Chitra Iyanger, additional Principal Secretary; Home. A delegation from TISS, Mumbai, comprising of faculty; staff and students met her on 31st July and handed over a memorandum signed by about 700 of them. In addition, on 3rd August the delegation of many social groups led by Ex Education Minister of Maharashtra, Prof Bhai Vadiya and Medha Patkar met S.P., Thane (Rural). Finally proper statement of mine was re-recorded by the police.

(4) Appropriate Sections of IPC Not Applied - Despite re-recording of the statements, the proper sections of IPC were not applied by the police and case was still being investigated as another simple robbery case under section 397 of IPC.

(5) Victim’s Father FIR was not Registered - My father was the first one to reach the scene of the crime at around 3.20 pm. He thereafter, admitting me at Prakash Nursing and after obtaining necessary medical papers reached Manikpur Police Station at around 4.15 pm and informed the police about the occurrence of crime and was there with them till 6.15 pm. But, the police did not lodge his FIR since he refused to acknowledge polices version that the attack was aimed to rob me, as he was well aware of the fact that there was threat to my life.

The police, later, complaining that his father was not cooperating called my brother Munaf Meghani, and taking advantage of his ignorance, made him lodge the FIR at around 6.45 pm.

(6) Doctor treating me, was pressurised - The doctor of Prakash Nursing Home Dr. Prakash Shinde, who was treating me, was pressurised by police to change his observation and declare me fit for recording statement. Few days later he was again pressurised to discharge me early from his nursing home.

The NHRC though registered the case but said that the complaint is not entertainable in accordance with the provisions of Section 36 of the Protection of Human Rights Act 1993 read with Regulation 9 of the National Human Rights Commission (Procedure) Regulations 1994, as amended. Hence, no action is called for and the file is closed.

SITARAM MAHAWAR
Harassment with False Case against Dalit Activist, Bhateri Village, Bassi PS, Jaipur district

I, Sitaram Mahawar r/o village Bhateri, Jaipur, am a dalit teacher and an active human rights worker. I strongly opposes the caste and untouchability based discrimination and approaches the court when the matters are related to such discriminatory practices and dalit atrocities. On September 14, 2008, the accused Nathhu Lal, of his village only, beat me, and also misbehaved and harassed the dalit women. In this matter FIR no. 476/08 was registered on September 14, 2008, u/s 341, 323, 354, 379 of IPC. The police didn’t do the investigation of the case properly, filed the final report (FR) in the case terming the matter to be false, and thus closed it.

There are three more FIRs, of crime committed against me and my family, which are as following: FIR no. 535/08 u/s 143, 336, 354, 509 of IPC and Section 3 of SC/ST (PoA) Act dated October 19, 2008; FIR No. 324/10 u/s 143, 323, 341, 451 of IPC dated June 28, 2010; and FIR no. 148/10 u/s 3 (1), 3 (x) of SC/ST (PoA) act dated April 4, 2010. The final report (FR) was filed in all these case without proper investigation, and thus the matter was closed. This all reflects the police’s anti-dalit mentality.
And because of my activeness of in matters related to caste-based atrocities, many influential and dominant people of the village have been harassing and framing him purposefully in serious but false rape and other case. In fact, the accused has registered false complaints against Sitaram on two occasions, with FIR no. 477/08 u/s 143,341,323, 379 of IPC dated September 14, 2008, and FIR No. 322/10 dated June 28, 2010, in the same Bassi police station, to harass me.

The main contention of these atrocities is land where I was staying in his house made on the allotted (patta) land. But there is a baada (a place where domestic animals are kept) of nathhu lal in front of my house, and the accused doesn’t want a dalit house in front of his baada. So, the accused has occupied the common passage, and is trying to make the land of mine as the common passage. When I opposed this, they filed a false rape complaint against him. This was done to defame and harass him socially. But even after all this, I have not given up and is still fighting for the atrocities committed against him.

The complaint to NHRC was sent on February 27, 2009. The police have taken no action against the influential people of the village in these cases but have shown keen eagerness in pursuing (false) cases against me. The NHRC too has not taken cognisance in any of these complaints. no action or investigation has been done in any of these complaints by them.

The NHRC, though registered the complaint sent to it with Case No. 1552/20/14/08-09 but citing section 36 of PHRA, 1993, termed it to be not entertainable by them, and hence the case was closed by them.

**B.V. SEETHARAM**

I am B.V. Seetharam, President & Director of Chitra Publications Pvt. Ltd based in Udupi district. On January 4, 2009, the police arrested me in a pending case. In spite of my voluntary surrender, the police handcuffed me while arresting me. This is clearly in violation of the norms set by the Supreme Court of India, according to which, an individual can be handcuffed only if that person is declared guilty and then tries to escape custody. While being arrested. I did not resist, yet the police insisted on handcuffing me. This is a clear violation of my human rights, and this came as a direct consequence of my highlighting the issues of ‘Special Economic Zones’ and ‘Communalism’ in the Karavali Region in the newspaper ‘Karavali Ale’.

The violations of my human rights by the Udupi Police had been brought to the notice of the NHRC by P B D’SA, of PUCL, through a complaint on February 4, 2009, registered as Case No. 594/10/19/08-09. In the complaint, it was apprehended that the recent communal activities of the Sangh Parivar may be linked to the violations of my rights and the rights of many other individuals and groups. Further, PUCL requested that the commission consider the violations of my rights and the communal situation of Karavali Region, and take necessary action.

**Background of the Incident**

In 2007, *Karavali Ale* had published a couple of write-ups giving expression to a sense of public outrage against the nude parading of certain religious figures. There was a great sense of appreciation among the *Karavali Ale* readers for the bold articles. There was no whimper of protest from any quarter. However, three months after the publication of the write-ups, the president of the local private bus owners association, nursing a grudge against us, went to a police station in Mangalore in the evening and filed a complaint invoking sections 153A, 153B and 295 of the Indian Penal Code (which relate to the charge of sedition) in connection with the write-ups.
Harassment and Torture by the Police

The police, in what appeared to be pre-planned move, registered the complaint immediately and lost no time in barging into my house to arrest me and my wife, who is neither printer, nor publisher, nor editor, to attract criminal liability for publication of the write-ups. It was a well-planned coup sort of thing. We were taken to the judicial magistrate’s house in the dead of night and sent into custody. Our plea for spot bail on the ground that we had been falsely implicated and we were tax-paying responsible citizens and that we would cooperate with the police in the investigation of the case fell on deaf ears. For the next five days we were in custody in Mangalore. Our family members, staff and well-wishers were denied permission to meet us in custody. Home-cooked food was not allowed to us, while dreaded criminals got the food of their choice from outside.

The offence committed by Karavali Ale for its directors to be jailed was exhorting the law enforcement authorities to invoke anti-nudity clauses in the Indian Penal Code in disallowing the nudity of certain pontiffs. Instead of booking lawbreakers, my wife and I of the media group were hauled up notwithstanding that we are only directors of the company. The unfavourable bias of the government towards our publication clearly showed up.

In 2009 the newspaper published criticism of politicians alleging them to be elitist and suggesting they had handled matters inappropriately, I was arrested through a fake warrant to put me behind bars for a month, most of the period of which was declared to be illegal detention by the High Court later.

This was followed by as many as seven cases being booked against my wife and me, invoking the sedition clauses of sections 153A, 153B and 295 of the Indian Penal Code. Body warrants, while I was under detention, were taken by the trial courts to see that I was kept in detention indefinitely. But the High Court obviously came to my rescue. The Court, besides declaring my detention for most of the period illegal, slapped a fine on the police officers, which they paid a year later after the Supreme Court dismissed its appeal against the High Court order. Now they are facing a damages suit by us at the High Court.

All the seven sedition cases under which I was booked in 2009 (apart from the earlier two in 2007), pertained to either letters-to-editor questioning certain irrational religious practices or factual reports on the illegitimate practices of fake godmen.

The High Court came out strongly against the routine application for body warrants by police and mechanical grant of permission by trial courts. The Court declared null and void the fake warrants — setting me free after my illegal custody. Even though the High Court struck down the government action as a mala fide, the question is, who will give me back my freedom for the one month long illegal detention.

After my arrest, I was handcuffed and taken to a Magistrate’s house almost at midnight. The judge, having been woken up from sleep, showed no signs of patience to hear my plea for spot bail on the ground of illegal arrest, and sent me to custody with orders for producing me before the court the subsequent day. My plea, that I suffered from diabetes and required immediate release or hospitalisation, fell on deaf ears. I had to spend the entire night without food in jail and had to be hospitalised early morning. The police took me from the hospital to the court in handcuffs. My picture in handcuffs while being taken to court appeared in the print media and footage was flashed by TV channels. A furor erupted. Civil society reacted strongly. Hon’ble Justice M. F. Saldanha petitioned the High Court against my handcuffing. The Press Council in a suo moto action sent a team of two to Mangalore and.

The Press Council report confirms my handcuffing, even while the State Government sought to make light of thing claiming that it was I who insisted on being handcuffed and the police had no option left.
Once I was produced before the Udupi Court, I was given bail, which I refused as a posse of policemen from Mangalore was waiting outside the court to re-arrest me in connection with a series of sedition cases filed by them. I told the Court that since I was apprehending arrest by the Mangalore police, which could result in my killing, I would prefer to remain in judicial custody for a few days, till we were able to secure legal remedy.

I was sent back to the hospital ward of the jail in Udupi and within hours I was shifted to Mangalore jail without the Court’s permission and from there again to Mysore jail. To avoid the waiting newsmen at the Mysore jail gates, I was taken there early morning, by which time the journalists, after waiting for five hours, had left. Fatigued and tired, I fell unconscious at the jail gates in Mysore. I was readmitted to the hospital, where I remained for the rest of the period which the High Court later identified as ‘illegal detention.’ I should have been released after the judicial custody period of a week but was kept in detention for over a month. I was only released after my wife filed a habeas corpus in the High Court.

The NHRC though registered the complaint but transferred it to the concerned authority i.e. SP of South Kannada district, and closed the case at their end.

IFTIKHAR GILANI

I was arrested on 9 June 2002 by the Intelligence Bureau on [a charge under the] Official Secrets Act related to availability of a document, which is freely available and downloadable on the internet. When questions were raised in Parliament as to why a reporter was arrested, the then Minister of Home Affairs said in his reply that I had been arrested in the national interest. For eight months I was in Tihar Jail in the national interest. I have written a book on my imprisonment, which has been published by Penguin. Last year its Urdu translation got the Sahitya Academy Award.

After I was released another question was raised in the Rajya Sabha as to why government had arrested a reporter and released without substantiation of any charge and also, why was I arrested in the first place? The reply of the Government was that I had been freed in the public interest. So that means the gap between national interest and public interest is getting deeper day by day. Public interest isn’t national interest and national interest isn’t public interest.

My grievances are not so much against the executive, police or the government as they are with the media and judiciary. I guess for the executive, it has become their job to arrest and harass people instead of helping them. Their accountability is to the political bosses and not to the people. But we talk of freedom of the press and independence of the judiciary, but they have been made subservient to the executive or have allowed themselves to become docile before the executive. Rather than being watchdogs they are mostly acting in concert with the administration.

In the case of journalists, it’s very rare to find organisations backing them when they are in trouble. Mine is not a singular case. There was a reporter working for Statesman at Dehradun. He was arrested and we asked his paper to take up his case but the organisation was not ready to back its own reporter. The paper may have had its own reason but it was a very disappointing experience.

When I was arrested I was told that my remand would be put up before a judge. I was very happy that when the judge asks as to why I had been arrested, I could say that the Intelligence Bureau has downloaded a document from my computer which is a freely available research paper on the internet. Based on that they have charged me under the Official Secrets Act. I was sure the judge would reprimand the policemen for making a false case against me and would set me free. But when I was presented
before the Judge, he didn’t ask me anything.

After two minutes I was back in police remand. For the next eight months, I endured constant mental and physical torture. I don’t want to go into that detail but what surprised me was the conduct of the judiciary and some media persons. We made the plea that if the document was freely downloadable from the internet then how could it become a case under the Official Secrets Act. After a lot of difficulty the Judge understood that and asked the police to verify whether the file was present on the internet or not.

The police kept delaying the matter and ultimately got a certificate from a cyber café that the file was not available on the net! We contested their claim. Then the Judge asked us to show the content in the next hearing. I was happy that I would be released in the next hearing.

On the next hearing, we arranged for a computer and requested the Judge to allow us to use her official phone for the internet to be connected. At that time, things like pen-drives or broadband had not hit the market. It was an in camera hearing. But the Judge would just not allow us to use the phone. She even failed to understand that the phone line could be used for an internet connection. She told us that she cannot allow the use of her phone for anti-national activities and ordered us to give a demonstration without phone! When we told her that internet can’t be connected without a telephone line, she retorted by saying that we had been misleading the court and rejected my application.

Around the same time, there was a unanimous resolution by the Press Council of India that any document downloaded from the internet can’t be an official secret and no case can be made on this basis. When my lawyer in the next hearing took this resolution to the Judge, she got wild saying that we were trying to influence the judiciary through some private association. When we told her that Press Council was a quasi-judicial statutory body, she retorted that she did not recognise any Press Council. She said she would hang me for this…

In my case the Government withdrew the case after eight months because there was pressure from journalist bodies. And I was lucky in the sense that I was in Delhi and I had worked with a national newspaper in Delhi. People knew me. I used to cover the political parties so they knew me by my name and face. So after two or three months some introspection began within the Government, that there was something wrong with my arrest.

But end to my suffering was not easy. The military intelligence sent a report to the Home Ministry that the documents related to my case had no security relevance. But the Home Ministry officials changed that report and gave a false affidavit in the court that military intelligence has certified that documents recovered from my residence were in fact sensitive and prejudicial to the security of the country.

To my rescue, my friend from Hindustan Dainik, Umakant Lakhera, managed to get a copy of the original affidavit from the Defence Ministry. When the original affidavit was presented, there was a huge commotion as to how the document of military intelligence was with us. The Judge started asking questions on that. We urged her to verify as to which document was right, whether it was the one with us or one in the police file. She then summoned the Director General of Military Intelligence. He came to the court and verified the document and said that he had no clue about the document with the police. The Judge then again slapped the Official Secrets Act. She said that this person who is in jail for eight months instead got the document of military intelligence so put another case against him. But by that time the Government had understood and we had put up a counter-case of contempt of court alleging that they had presented a fraudulent document and that the Court should have taken cognisance.

So they decided in the Cabinet Meeting itself that the case would be withdrawn and they filed that they did not want to proceed further and wanted to take back the case. When this case was being with-
drawn, I was present in the Court as it was an in camera hearing and no one else was allowed. Instead of asking me they called my wife inside and my lawyer was there too. They told my wife that we had filed a case against the Government for contempt of court and asked what she wanted to do about it, saying they would then pronounce the judgement in the current case. It was total blackmail. I and my lawyer were adamant to fight the case, even though I could have been sent back to jail. The Judge literally blackmailed my wife who was more concerned about my release than anything else. She told the judge that she has nothing to do with the case, but that we will withdraw the contempt of court case. She noted it down and court was adjourned. Fifteen minutes later I was discharged.

I have seen in jail how people rot under Official Secrets Act. This is a blot on our statute books. On one hand we talk about the right to information and on the other hand ministers and officials take an oath of secrecy. What thing are they keeping secret? What secrets do they talk about? They want to keep it secret from the same public which elects them.

Case of Arbitrary Detention
MRS. ROHINI W/O SEETHARAM
Managing Director of Chitra Publications (P) Ltd

My name is Rohini. I am the Managing Director of Chitra Publications (P) Ltd. The Pan-ambur police of Mangalore arrested me along with my husband Mr. B.V Seetharam, in the dead of night on March 3, 2007, on a complaint from one Mr. Rajavarma Ballal under sec-tion 153 a & b r/w 34. According to the FIR, we had “published offensive write-ups against the Jain community and Digambara ascetics of the community in the Karavali Ale newspaper dated January 27, 2007, and with a view to abuse the ascetics and the religion, had made a comparison with nude dancers...” Neither I nor my husband is an editor or publisher of the newspaper. Hence, as per the Press and Registration Act 1867, there was no basis for the police to arrest us.

We were allowed to have some food before our arrest and to receive our daughter home, who was to come from the hospital after treatment. We were taken to the magistrate’s house at around 2:30am, and he denied us bail. For the next five days, we were sent to Mangalore jail where we were denied proper medical care. My husband was taken to the hospital but soon discharged under pressure and brought back to jail. We were allowed to see family members, well-wishers, relatives and friends. However, the food served to us was inedible, medication was denied us, and the jail staffs were obnoxiously rude. There was an attempt on our life in the jail, by sneaking a poisonous creature into our respective cells. After our release from Mangalore jail on March 8, 2007 following court orders, we were taken to Shimoga Jail for the same alleged offence citing a case registered in Sagara Police Station. We were handcuffed and made to travel for seven hours, and paraded on the streets of Shimoga. We were kept in custody for another five days. All of this evoked state wide protests.

A complaint was made to the NHRC on March 3, 2008, detailing this police atrocity, and explaining the violations of human rights and women’s rights that had happened in its course. In the complaint to the NHRC (1733/10/07-08/OC), we had demanded the suspension of the police officials of Sagara Police Station for our illegal detention, and asked for proper compensation. Thereafter I did not hear from the KSHRC. The KSHRC, as I understand, has so far, not conducted any investigation in connection with this complaint.

The NHRC did not take any proper steps to provide relief to us. It closed the case at their end by transferring the case to the concerned authority i.e. DGP of Karnataka, to take action as it deemed
Kashmir’s battered history has pushed it into one of the worst phases of turbulence since 1989. While all the aspects of life went through and suffered in a blood-soaked situation in the State, the fourth estate could not have remained an exception. The journalists in Kashmir valley have performed the most challenging task since the eruption of armed struggle in early 1990’s. Notwithstanding a small community, which has now grown not only in size but also in quality, the press had to face the wrath of all those actors who orchestrated death and destruction in the valley. This institution has been at the receiving end for not pleasing all the factions active in the State. Eleven journalists have so far died in direct or indirect attacks from the state-sponsored repression, security forces and the militant outfits. Many cases are still wrapped in mystery. While the visible and invisible pressures worked to the hilt to demoralise the newpapers, they have been able to fulfill their responsibilities within the given circumstances. The pressures have worked from non-state actors as well, but the state repression is something which cannot be ignored. It has used both direct action and undercover tactics to force the journalists to toe their lines, which to an extent gave birth to self-censorship in newsrooms in Srinagar. Attacks on journalists by security forces and police, kidnappings by pro-government and surrendered militants had become the order of the day in Kashmir. Additionally, many innocent media persons against whom cases fell flat in the courts were arrested, tortured and humiliated. I am one such victim who went through horrible situations after being falsely implicated. The draconian Public Safety Act was used against me five times, charges of sedition were leveled against me, and the infamous Enemy Agents Ordinance was slapped on me. But the government could not prove any of the charges in the court of law. I see myself as a living testimony of this repression, which has clamped the state for the last 20 years under the garb of restoring peace in Jammu and Kashmir.

Since my childhood, I had wanted to become an army officer, and as I passed my school, I told my father that I wanted to join the National Defence Academy. Hearing this he asked me, “do you know that insurgency and militancy in Punjab is at its peak and the number of conflict zones is increasing on the world map, while nuclear weapons have changed the theme of war in the present times. So whom are you going to fight, your own people? The nationals of your own country, the civilians or the rebels?”

I realised that the old man was correct and dropped the idea of joining the army. My next idea of a vocation was to become a journalist, as I found it a thrilling job to expose corruption, anti-national elements, suppression etc. But as I plunged in and reached the middle of this ocean, I found it was so deep and big tides were all around me.

In the beginning, sometimes when provoked, I would have second thoughts, but then the experiences of the new day would hold me back. “Why don’t you switch over to a normal job? It is hard to see you in the centre of trouble,” my father asked me when I came home after a five-day detention in a para-military camp in Srinagar in January 1995. I was beaten up by the security forces while covering a crackdown in the city and was picked up by a provoked officer. In Kashmir a journalist is in the eye of a storm from all sides.

The looming threat from the non-state actors was another strain on the media fraternity in the valley. If a press statement issued by a militant group would not carry the intended meaning in a newspaper, it was hard to convince its leaders. The covering note would always carry a threat (in words) and sometimes it would translate into reality.
The gunning down of a local daily editor by “unknown assassins” in 1990 is still a mystery, like the mystery murders of eleven others, who paid through their lives for us. On the whole, journalists in Kashmir have failed to keep the warring sides happy. If an atrocity by security forces is reported, the journalist may be dubbed as “anti-national” and highlighting the misdemeanours of militants, or if the extra-political activities of separatists are reported, it would mean that he is “anti-Tehreek” (anti-movement). A sword hangs over his head all the time.

The killings of the innocent left a strong impact on my mind initially as I dabbled into journalism. But with the passage of time and events, I found myself getting stronger in taking the lead to have a look at a row of 27 dead bodies in coffins after a military-militant standoff in Hazratbal shrine, and later in Wandhama Ganderbal where the number was 26 and in Nandi Marag in south Kashmir where 34 members of a minority community were targeted. But the shocking moment came when I witnessed a parcel bomb explode in the hands of a young photojournalist, Mushtaq Ali. Within minutes, it was blood all over. He died three days later in the hospital.

Again, in August 2000, I had a close shave. A devastating blast happened just near my office. I rushed out to see the aftermath and found my colleagues already on the spot. Before I could move ahead, a deafening sound threw another lot of bodies towards the road. It could have been me, I told myself. It was just a reprise of terror stories I had been reporting for the last two decades in the Kashmir valley.

In Kashmir, each journalist has a story to tell. Yusuf Jameel, a well-respected journalist who worked with the BBC and Reuters, escaped several attempts. The parcel bomb that claimed Mushtaq Ali's life was meant for him. His office was attacked with grenades. Though threat was a permanent feature in his life, Jameel was awarded an international press freedom award by the New York-based committee to protect journalists. Habib Naqash is a photojournalist who has made a record of not missing a single incident in which media persons were attacked.

Four years ago, a young reporter survived an attack in his office. Bullets pierced through his nose but missed the nervous system. Doctors said it was a miracle how he is leading a normal life. The last victim of the attacks on media was Parvaz Muhammed Sultan, a 36-year-old young and dynamic editor of a local news agency who was gunned down in his office apparently for reporting a feud between two factions of a militant group. For a small community of journalists (not more than 100) to lose eleven members is a big price. And it is difficult to exist and perform with recurrent harassment and intimidation. But amid the daily grind of violence, life goes on, of course with a difference. It is stressful and sleep is difficult. Who knows about tomorrow?

I was one of the five journalists who were taken hostage in south Kashmir by a pro-government militant outfit, Ikhwan. We were locked up in a room and the self-styled commander of the group thundered, “I want bodies of these five tomorrow.” Even though our lives were saved, it was unbelievable.

In January 2004, I was taken under detention from Badami Bagh area of Srinagar while coming out of the headquarters of the 15 Corps of Indian army. The then army public relations officer had given me a ride in his car so that I could collect the payment of a bill of my employer (Weekly Chattan) from his office. After detaining me, the policemen put me in an unmarked white-colour Gypsy and took me to Hari Nivas interrogation centre. There I was told that I had been arrested by the CID, as according to them I was involved in an espionage network working for Pakistan. For more than 15 days I was subjected to third degree torture. They charged me under Official Secrets Act and Enemy Agents Ordinance, which are non-bailable and carry the death penalty.

It was a hellish experience and the modes of torture inflicted on me during interrogation extended
to putting a wooden roller on my legs, suspending me from the roof, caning my feet, besides officials regularly beating me. As I was unable to provide any lead to my alleged involvement in espionage, the intensity of the torture increased. I could not stand on my feet. Other detainees would help me change clothes and eat. My house was raided thrice, and all equipment including a computer, books, CDs and diaries were taken away by the CID personnel, which have not been released till date. On 1 October, I was shifted to the central jail in Srinagar where I was kept for a month. A month later I was again taken to the interrogation centre and then shifted to Kote Balwal central jail in Jammu along with a Public Safety Act detention order for a period of two years. The Jammu and Kashmir High Court quashed the detention order after one year. I was brought back to Srinagar and lodged in an interrogation centre. I was again detained under the Public Safety Act and shifted back to the Kote Balwal jail. The process was repeated four times in forty months till January 2008.

During those forty months in jail and under interrogation, I was almost cut-off from my family. I could hardly see my children and met my ailing mother after two years in Humhama interrogation centre. My physically challenged brother would repair radios and TVs at home to feed my eight-member family during my detention.

In 2007, I was shifted to Amphalla district jail, where I was kept in a dark, solitary cell in the hot summer months of May, June, July and August. There was no fan in my cell and each 24 hours I was allowed only a single visit to the toilet located outside the cell. For the rest of the time, I had to use a tin canister as a toilet and later clean it in the “main” toilet. That was the toughest time for me, but it passed.

It was very difficult to while away time inside a strange and tough place like prison. So I decided to read and write, as there was ample material available in the jail to read. I started interacting with other detainees and each would speak the truth and honestly confess his crimes, if any, but I found that more than 80 percent of the inmates were innocent. During my detention, I almost completed the scripts of seven books, including my jail dairy “Shabistan-e-wajood” which was adjudged as the second best book by the France-based Reporters Sans Frontiers in 2009. My other writings included a story collection, poetry and fiction, which are now in the process of being published.

The authorities were supposed to file a charge sheet against me in a court of law within 60 days of my detention but I was held without trial for more than 30 months. When the courts quashed the fifth Public Safety Act detention order slapped on me, my case was presented before a sessions court in Srinagar. The case is still going on and I have to attend the court every month.

Finally, my release came on 9 January 2008. But, by then I had lost all my professional contacts and it was like starting from the scratch again, after 18 years in the field of journalism. All Party Hurriyat Conference (APHC) senior leader Shabir Ahmed Shah offered me to join Hurriyat Conference but I rejected the offer and started building up my career again to carry on my mission of seeking truth through courage as journalism stood for me always.

SAMIUDDIN ILLIYAS NEELU
Police Torture

I am a staff reporter of Amar Ujala. I am a resident of Lakhimpur Kheri, Uttar Pradesh. In Lakhimpur a food scam took place. The PDS foods of poor were available in the stock for distribution, but administration never allocated these PDS foods to poor. Either they sold this food to the mafia or ate it themselves! I exposed these nexus in the food scam and published it as frontline news in my news
paper. The impact of this food scam news was so intense that CBI immediately took the case and started doing inquiry.

Besides this, one IAS officer and five PCS officer were immediately suspended. So, due to this, the administration was very angry and so they threatened me with dire consequences. They said ‘In future you will face a lot of trouble if you publish this kind of news against the administration’. But I ignored their warning and still I am writing on bold issues without any fear. I also identified the important issue which is prevailing in this area as to how police administration is helping land mafia in a big way, to snatch away the poor’s land for their personal benefit. This case was also published as front line news in my newspaper.

So after this I got many threatening calls but I ignored them and continued with my work. But at other the end, when I heard that they are planning to drag me in a serious false case, I met chief home secretary on 3rd February 2005 in Lucknow and on 5th February 2005, I met DGP with my few journalist friends of Lucknow regarding this. I met chief home secretary and submitted memorandum to him along with all newspaper cuttings, and explained how the SP of that district N. Padamja is threatening me and is trying to kill me, so I requested him to provide me security and also put up an enquiry in this matter as well as transfer the SP from that district immediately. Not going deep into the matter, the chief home secretary thought it to be a small issue like the SP might have just mildly scolded me and so on, and so I came to Lucknow to complain about this to him. He reassured me that nothing is going to happen to me. Contrary to this, what happened is as follows: on 9th February in the morning I reached Lakhimpur, went to my office and finished all my pending works till 10.30pm, then along with my four colleagues, I went out from the office and together we walked for at least half a km and after that everybody scattered on the way to their homes. Then I started going towards my house alone and I didn’t notice that policemen are following me on a jeep and three motorcycles. Suddenly they stopped me and took my bike key, strongly grabbed me and after that one person got down from the jeep and put his revolver on my head. At that moment I could not understand what was going on. I thought, may be police are looking for some criminal and by mistake they have stopped me.

But when I said, what is the matter and why have you stopped me they said, we are looking for you because we have some work, so don’t worry and keep quiet. After that they put me in the jeep and took me to the outskirts of the city and afterwards they discussed something for a few seconds amongst themselves near the railways crossing, and then the police man said to me that today is your last day. I was helpless at that time because nobody was present where this incident took place. I appealed to them to not kill me; that I don’t have any enmity with you people, but have so with the superintendent of police only. If the SP has felt something bad or is upset by any news then take me to the SP office. I will try to clarify my position but don’t kill me. Thus again they put me in the jeep and started moving their jeep towards the railway crossing gate but the gate was closed because some train was coming. They blew the horn to call the gateman to open the gate because the train was late. When the gateman was trying to open the gate, I was thinking that they will kill me today. Immediately I shouted, I am Neelu, a press reporter and these police men are trying to kill me so please help me. But yet again they suppressed me. So, when the gate was opened again they took the jeep straight and stopped near a bush and compelled me to write a suicide note.

When I refused to write a suicide note they threatened to kill me. Then I wrote a suicide note and mentioned the reason for it to be family problem. I reminded them that my hostility is with superintendent of police and not with you people. If you want to kill me let the SP come and kill me because I have already written letters to the National Human Right Commission, the Press Council of India, the DGP,
the chief home secretary and the chief minister. So when the inquiry will start then you will be punished too because the whole city know my hostility with the superintendent of police. Finally they informed and explained everything to their master. As a result they changed their plan and decided not to kill me, but they kept me there till 4 o’clock. Then they took me to the police station and kept me in a cell.

Meanwhile my family members have already started searching for me in different places; they even called my office and friends. They thought some incident may have happened due to dense fog. Around 6 o’clock my friends came to the police station and they were shocked to see me there. I asked them to first find out what charges they have lodged against me. According to the charges I am doing trafficking of animal items like crocodile skins, lion skin, horned rhinoceros and sandalwood. They have made me international smuggler within one night. After that I went to jail and so many people did a lot of demonstration at the district level, state level and also in other state like Uttarakhand and at Delhi too. My case was also raised up in the assembly and legislative council.

As a result SP’s transfer order was issued but since she was very close to Mulayam Singh’s son, her transfer was cancelled. So, then my case was transferred to CID who declared me innocent and charged the police with handling the case in a careless manner. And so I repeatedly demanded that kidnapping, murder charges case should be registered against the police officer but nobody listened to me. After that I came to Delhi to meet the Press Council of India. My application was already there, therefore PTI took the matter.

After the Ayodhaya episode it was the second time PTI formed a fact-finding committee. This committee comprised of five members and its coordinator was Uttam Chand Sharma, the editor of Muzaffarnagar Bulleitine (Hindi).

So, when a summon was sent by PTI for the first time to her (the SP), she didn’t turn up. PTI sent three more summon but she didn’t come then also. Finally, PTI sent a summon letter through the DGP of UP. After which she came for it. PTI even summoned the DGP of UP, and chief home secretary. PTI team also visited the area and took written statement of all members. In February 2010, the PTI passed five point ordinances in which it was strongly recommended that the state government should immediately provide security to me for five years. As I mentioned that when the incident took place, the administration provided me with two gunners’ for security. And, when CB-CID gave me clean chit and they (the administration) found that I am doing strong lobbying for my case in PTI and also putting my case in front of National Human Rights Commission, they decided to remove my security in the year 2007 without any prior notice. But I continued my job without any fear and followed my case in Lucknow and Delhi. The second recommendation of PTI was that every six month my security should be reviewed and observed. The third recommendation of PTI was that, it was noticed that SP Padmja behaviour towards journalist is not satisfactory so she should not be posted in those places where she may have to directly handle or deal anything which is related to journalist and journalism. The fourth recommendation is that all accused police men should not be posted in the same district and fifth recommendation is that the attack on journalist is a serious matter and it should be discussed in all four houses (Lok Sabha, Rajya Sabha, Vidhan Sabha, and Vidhan Parishad).

Besides this they also recommended that if any journalist is arrested by the police, then within 24 hours his/her arrest should be informed to his/her editor and also letters should be send to PTI. All recommendations of PTI were neglected and they didn’t provide any security to me, so again I went to PTI and met PTI officials. I explained to them that state government did not implement any of the recommendation made by the PTI. PTI said that we have the power to recommend and if they are not giving any attention to our recommenda-tion then you can go to high court. Then again I wrote let-
ters to the administration and reminded them that PTI has recommended these points but still it has not been implemented. But administration was unenthusiastic towards the implementation that the PTI has recommended and so they decided to give me a lesson, and for that reason they put forward my final report, which was reserved by them at the time of investigation in the court, so in that situation I decided not to say anything against them. In the meantime National Human Right Commission also forwarded its recommendation.

The Commission said that Rs. 5 lakh should be given to the victim as compensation and also accept that this offence is not less than custodial death. It also ordered for the inquiry by ADG rank officer to see the conduct of SP Padamja. ADGP was appointed by the government. He instead of supporting me was forcing me to compromise but I refused. Therefore he (the ADGP) sends his report to NHRC and recommended to close the case. Reason given by him was that during the proceeding time Mr Neelu was not present in front of the inquiry commission and he did not produce any evidence against the SP so his allegation against SP Padamja is false. When NHRC send me letters and said that ADGP has reported that during the time of inquiry you were not there, I explained to the commission that I was very much there but the ADGP didn’t call me. I have many evidence which can prove that I was there at the time of inquiry. Through my statement the commission (NHRC) was fully satisfied, so again the commission asked them to produce written statement of Mr. Neelu.

As a result they again send their report to NHRC and described these points that whatever allegation I am pointing out in my statement, CB-CID has already done its inquiry and there is no need to do it again. And regarding the Rs. 5 lakh compensation, when the NHRC asked them whether he is a sufferer or not, then the state government send its written statement to NHRC and accepted that he really is a victim, therefore the state government has decided to give him Rs. 5 lakh as compensation. Moreover, when they found that this money will go through SP pocket, all SPs and IAS lobby united and decided to send it for reinvestigation to CB-CID and within 20 days the final report came out and on the basis of CB-CID report they said to the NHRC that the case is still going on so there is no point to give compensation. So in this back ground I met NHRC officials and presented my view on how they are manipulating the fact and also how they are contradicting their own written statement which they have given to the commission. So I asked the commission that this matter should be handed over to the CBI to find out the real truth, and. If the commission will not send this case to the CBI then I will go to high court and even Supreme Court, but I will fight against this victimisation. So many journalists are facing harassment by the police. Even now administration is exploring an opportunity to attack me and is trying to persecute me in my personal relation.

During this period I minutely observed that the main intention is to harass me at any cost, leading to which they are creating plenty of problem and so they are expecting me to compromise thus. I told the commission that I am not going to compromise because I have seen the support when I was in jail. This is not my personal fight. This fight is for our journalist friends. Here I want to share an important point, that when the government refused to accept the PTI recommendations then I went to Sharmaji’s (the coordinator of the five member committee formed by the PTI regarding my case) office again, to meet him and to tell him that the state government is not doing anything. When I reached his office somebody told me that state government has stopped his aid and also framed him in false cases like that of power theft.

Another very important point that I want to discuss is that on the NHRC website my case number is 14303/2006-2007, but it is amongst the cases on the NHRC website, whose details are not available anymore. Before they knew anything about me and my case development, I came to know everything...
thorough the NHRC website only. But they have now blocked my case information through lobbying; and my case can no longer be accessed on the NHRC website. So I am still a victim and continuously facing plenty of problems. I want a law that can stop attacks on media people and if any administrative official is misusing his powers and ill-treating media personnel then he should be punished. The law should be effective and strong.

POLICE TORTURE OF RTI ACTIVISTS
Thakurmunda Village, Mayurbhanj Police Station, Mayurbhanj district
Pranab Kumar Mohanta, Mahendra Nath Behera,
Ghansyam Naik, Jyotiram Das
and Bramhananda Swain

On February 14, 2011, five RTI activists, namely Pranab Kumar Mohanta, Mahendranath Behera, Ghansyam Naik, Jyotiram Das and Bramhananda Swain visited Thakurmunda police station to seek some information under RTI. They went to meet the officer in charge (OC) Mr. Bhagwan Jena, and he, in turn, misbehaved with them. On their way back, a police jeep carrying SOG Jawans stopped by and asked them to visit the police station again. When they reached the police station, Jena, the OC, started abusing them and detained them for about 10 hours.

On February 16, 2011, they filed a complaint with the NHRC against the police torture. The NHRC (registered at the commission as Case No. 469/18/9/2011) transferred the case to OSHRC. The commission directed SP, Mayurbhanj, to investigate into the matter and submit a report to the commission within 6 weeks of time period. On May 19, 2011, SP, Mayurbhanj submitted the report. According to the SP report, on February 14, 2011 a workshop on RTI act was organised at Thakurmunda block under the sponsorship of an NGO called Sambandh. One of the RTI activist, Pradeep Pradhan was invited to the workshop as a speaker for RTI Act. On that day Sub-inspector of Police Mr. Bhagaban Jena, the OC, Thakurmunda PS was also present. Thakurmunda is a naxalite area, so the entrance of the police station is kept closed. Soon after the arrival of the victims at the gate, the guard on duty enquired them about their name and address. But they did not disclose their names and so they were not permit-ted inside. Subsequently, they disclosed their name and addresses and stated that they were the office bearers and activists of an organisation called sambandh and they were deputed as RTI activists after training to enquire about the implementation of RTI Act. Since they were detained at Thakurmunda PS, they informed the matter to the organisers and social activists of the NGO- Pradeep Pradhan, Brahmananda Swain and Joytiram Das. Pradeep Kumar without disclosing his name and address dragged a chair to sit. This act was objected by the aforementioned OC. On that issue there was heated exchange of words between them and subsequently when Pradeep Pradhan, Brahmananda Swain and Jyotiram Das furnished their names, addresses and identity, the CC was pacified and the activists were allowed to sit in the chair and interact with him. They stayed at Thakurmunda PS for about 1 hour in the course of which, local journalists Sarat Chandra Tripathy, Smruti Ranjan Jena and others arrived at the ps. The journalists spoke to the OC in favour of the aggrieved social activist Pradeep Pradhan, Brahmananda Swain and Jyotiram Das and the matter was resolved. On the same day they returned to Bhubaneswar after attending the RTI workshop at Thakurmunda. They narrated the incident in writing before TV journalists and other journalists and hence the matter was highlighted in TV and newspapers. According to the report, there was a communication gap between the two parties.

The NHRC did not provide any relief to the victims of the police torture. In fact, the NHRC closed
the case at their end saying that “The grievance raised in these complaint relate to matters, which are subject of the State. Let the complaints be transferred to the Orissa State Human Rights Commission u/s 13 (6) of the Protection of Human Rights Act, 1993, as amended by the Protection of Human Rights (Amendment) Act, 2006, for disposal in accordance with the provisions of the Act”.

Murder of a RTI Activist, Lakhisarai District, Bihar

LATE RAM BILAS SINGH

Mr. Ram Bilas Singh, an RTI activist, highlighted police inaction in the case of Rakesh Kumar alias Bambam Singh of Lakhisarai district who had been booked in two murder cases. One FIR No. 312/05 was registered in Lakhisarai PS under section 302, 120B of IPC on 24 September 2005 and the other was registered in Keul Rail PS as FIR No. 55/08 under section 302, 34 of IPC and Arms Act. In both cases no action was taken by police even after Court orders to seize Rakesh Kumar’s property. It is asserted that the Sub-divisional Police Officer was a close acquaintance of the accused and was protecting him, hence Rakesh Kumar remained at large as the Lakhisarai PS SHO was also protecting him.

Because he revealed this police inaction, Mr. Ram Vilas created a lot of enmity against himself, especially with the local police who were protecting the accused. He also directly accused the SHO of taking bribes and protecting Rakesh Kumar. In fear for his life he requested, by letter of 15 July 2011, that the Bihar SHRC ensure that he was provided protection (Case No. BHRC/COMP 7421/5581). Ram Vilas Singh was then brutally murdered on 8th December, 2011.

The NHRC received a complaint, registered as Case No. 2658/4/19/2011, regarding the alleged murder of an RTI activist and whistleblower in Lakhisarai district, Bihar, by unidentified assailants. Vide proceedings dated 20/2/13, the Commission considered the report from SP, Lakhisarai that on the statement of the deceased’s son, an FIR No. 522/11 dated 08/12/2011 u/s 302/34 IPC r/w 27 Arms Act was registered. DGP, Govt. of Bihar was asked to consider the complainant’s comments, take further action in accordance with law and submit a report. DGP, Govt. of Bihar vide communication dated 24/6/13 has enclosed a report dated 24/5/13 from DIG, Range Munger that in FIR No. 522/11, the accused have been arrested and on the basis of statement u/s 164 Cr.P.C. charge sheet No. 6/12 have been filed. Instructions have been issued to expedite and file a supplementary charge sheet against the remaining accused. The matter is pending disposal in the court. The Commission has considered the material placed on record which reveals that regarding the murder of an RTI activist, FIR No. 522/11 dated 08/12/2011 u/s 302/34 IPC r/w 27 Arms Act has been registered in which the charge sheet has been filed and necessary instructions have been given to file the supplementary charge sheet. The matter is pending disposal in the court. In view of the aforesaid circumstances, no further intervention by the Commission is required. The case is closed. To date the commission has failed to take any positive action in this case.

Case of Harassment by Ex-local Mukhiya and Torture by Police of a RTI Activist

RAM PRAVESH RAI

Place of Incident: Patna District, Bihar

NHRC Case Nos.: 1236/4/26/2011 & N/A

I, Ram Pravesh Rai, sent my complaint to NHRC on 26.6.2011. This is about a complaint that I made to the District Magistrate, Patna, regarding irregularities and corruption in preparation of list of BPL
persons. The DM called for a report from the subordinate officers but even after a lapse of one year no report was received. It is to be noted that the persons responsible for the corruption have a grudge against me and may harm me and my family. So, I requested intervention of the NHRC and action against the corrupt people. A report dated 9.11.2012 was received by the NHRC from the S.D.O. Barh, in which the allegations levelled my complaint was refuted.

The NHRC said in its order, “From perusal of the complaint it is apparent that the allegations of the complainant are general in nature. He has not made specific complaints about corruption or assault on his family members. The report claims that regarding so called attack on his family members no FIR was lodged in the concerned police station. It is reported that on one complaint a case u/s 107 CrPC was initiated against his opposite party. Regarding corruption he has not named any person against whom enquiry could be conducted. The report claims that the complaint is baseless and false. A copy of the report was sent to the complainant for his comments, if any, but he has sent none. The commission, therefore assumes that the complainant has nothing more to urge in view of the police report. In the circumstances the case is closed.”

I have been filing RTIs to seek information regarding the government work being done in my area. In one such RTI, regarding Solar Lamps, the corrupt practices of the people were exposed, who are now after me and my family, threatening and harassing us continuously. The ex-Mukhiya and the local Sub-Inspector of Police are involved in this. So, now they are after me and my family. I have been staying away from my home fearing for my life. My family is being continuously harassed by the police. I have sent complaint regarding this to NHRC in February 2013, about which I have yet to receive any reply.

The accused have filed false cases against me in Barh SDJM Court as Case No. 410(C) under section 457, 354 and 323 of IPC and under Section 3 (4) of SC/ST (PoA) Act, to harass me.

Fearing the threat to my life, I have running scared. I don’t know what to do or where to go?

RAMESH AGGARWAL
RTI and Environment Activist Attacked, Arrested and Illegally Handcuffed
Place of Incident: Raigarh, Chhattisgarh
NHRC Case No. 282/33/0/2011

A Right to Information activist was fired at by unidentified men at his office in Raigarh district in Chhattisgarh today. Ramesh Agarwal, who is also an environmentalist, suffered two bullet injuries - one on his thigh and another on his hips. He was rushed to the district hospital where the bullets were removed from his body.

On wee hours of morning of 28th May 2011, Shri Ramesh Agrawal and Dr. Harihar Patel two longstanding and strong-willed activists from Raigarh district of Chhattisgarh were arrested from their homes by the district police. Both Agrawal and Patel had been raising concerns about the social and environmental impacts of rapid and indiscriminate industrial expansion in the district for the last several years. They had actively participated in mandatory public hearings being organised as part of the environment clearance procedure of India, wherein locally affected people and concerned citizens can raise their concerns and objections to any industrial or infrastructure related project that is to be set up.

Shri Ramesh Agrawal was part of an active group called Jan Chetana and lived in Raigarh town from where he carefully acted as a watchdog and a whistle-blower to several irregularities related to environmental compliance, water pollution and social impact issues of different project being proposed
in the district. He had filed several Right to Information (RTI) applications and had on a regular basis highlighted the plight of environmental governance and disregard to environmental norms in the district before the concerned state and central level authorities and ministries. He had also taken up several matters before the National Environment Appellate Authority (NEAA) and other regulatory authorities raising concerns about faulty impact assessment, infective public hearings and instances of construction before mandatory approvals.

Both Agrawal and Patel had participated in a public hearing on 8th May 2010 and raised objections against the expand an existing thermal power plant of Jindal Steel and Power Ltd (JPSL) with an additional capacity of 2400 MW. The Chhattisgarh Environment Conservation Board (CECB) had visited the plant site in February 2010 and made observations that the company had initiated construction activity even prior to the public consultation being being completed and an environment clearance issued based on people’s responses and the contentions of an Environment Impact Assessment (EIA). Both Agrawal and Patel had raised these and many other issues at the public hearing along with their colleague Rajesh Tripathi.

A complaint was filed against the Aggarwal and Harihar Patel by Jindal Power Ltd. A perusal of Complaint filed before the Police shows that Sections 501, 502, 503, 504, 505, 506 read with 34 and 35 of IPC have been registered against Ramesh Aggarwal for statement made at the Public hearing for the proposed project. The offences alleged are mainly dealing provisions of defamation, insult, making false statement with intent to cause offence against public peace etc. and criminal intimidation.

Ramesh Aggarwal has been handcuffed and chained to the bed. This is illegal and violates Supreme Court orders and clearly invites contempt of Court.

Ramesh Aggarwal has been spearheading the fight against unplanned industrialisation and exploitation of the natural resources of Chhattisgarh. He has been critical in challenging environmental clearances granted by the Ministry of Environment and Forests without proper Environment Impact Assessment studies and public consultation.

The NHRC in its response said that “Shri Ramesh Aggarwal of Raigarh, Chhattisgarh, is an RTI Activist. He spoke at a Public Hearing against the Jindal Group and the company approached the Court U/S 200 Cr. P.C. alleging that Shri Ramesh Aggarwal and two others had abused and threatened company officials and attempted to instigate the public by making inflammatory speeches. In pursuance of the Court order, FIR No. 115/10 U/s 500/501/502/503/504/505/506/34 IPC was registered at Police Station Tamnar. Thereafter Shri Ramesh Aggarwal and another were arrested on 28.05.2011 and were sent to jail. Shri Aggarwal being a patient of hypertension and diabetes, complained of high blood pressure and he was taken to the District Hospital, Raigarh for treatment on 31.05.2011 and was kept in the ward reserved for prisoners. There was another prisoner in the ward at that time and there was only one guard in the ward. Since the other prisoner was to be taken for C.T. Scan and X-ray, the guard had to accompany him. In these circumstances, the guard handcuffed Shri Ramesh Aggarwal till his return to the ward. These complaints are against handcuffing of Shri Ramesh Aggarwal. The Inspector General of Prisons, Chhattisgarh, has now informed the Commission vide his letter dated 27.03.2012 that after a departmental inquiry, the Constable has been found guilty and he has been punished with stoppage of increment for one year. He has also forwarded a copy of the hand written application made by Shri Ramesh Aggarwal to the Director General of Prisons. He seems to have pardoned the police guard. Keeping in view the facts and circumstances of the case, no further intervention of the Commission in the matter is required and the case is closed”.

Thus, the NHRC continues to remain a silent spectator of these human rights violations.
Murder of a RTI Activist
Place of Incident – Bhopal
Date of Incident – 16/08/2011
LATE SHEHLA MASOOD

RTI activist Shehla Masood was shot dead in broad daylight on way to rally for Anna Hazare on August 16, 2011. The woman, who was known for her activism to protect wildlife and the environment, had complained about receiving threats from a police officer.

“Gandhi: the purpose of civil resistance is provocation. Anna has succeeded in provoking the government and the opposition. Hope he wins us freedom from corruption. Meet at 2pm Boat Club Bhopal.” Thus read the last note on the Facebook page of Shehla Masood. It was also the last noting by the Bhopal-based activist who was murdered outside her residence in broad daylight today. Ms Masood had just got out of her house to attend the demonstration called to support Anna Hazare when she was shot dead by unidentified attackers.

Shehla Masood, known for her initiatives under the Right to Information (RTI) Act and wildlife activism, had allegedly been harassed and threatened by police officer Pawan Shrivastava and had lodged a complaint, but no action was taken on it.

In a letter dated 19 January 2010, addressed to the director general of police in Madhya Pradesh, Ms Masood wrote, “One and a half year ago, I had filed a complaint against IPS officer Pawan Shrivastava for making threatening calls to me while he was on deputation as director cultural department. I had lodged (a complaint) at Maharana Pratap Nagar Police Station in Bhopal. I had also met the then DGP of MP, Mr Puwar, on 27/02/2008. I had provided the evidences, but till now nothing has been done.”

Ms Masood was also involved in issues of good governance, police reforms, the environment, ‘Save the Tiger’, women’s and minority rights, and transparency. She was also active on many blogs where she discussed issues like anti-corruption, women’s empowerment and progress. Her recent blog updates on scratchmysoul.com are on corruption.

In her letter to the director general of police, Ms Masood had expressed her fear that Shrivastava being a powerful police officer could implicate her in false cases. Interestingly, the Madhya Pradesh home minister had announced that the state would be the first state to treat all complaints as FIRs. However, “nothing has been done on my complaint,” Ms Masood wrote in her letter.

Ms Masood’s letter also had a note by the inspector general of police, Bhopal, that “legal action or departmental action may be taken as deemed fit.”

Reacting to the news of the killing of Ms Masood, the environment activist Sumaira Abdul Ali, said, “Activists are murdered every now and then. Despite making repeated assurances nothing has changed. The message is clear that the government doesn’t mind such things. Shehla was very active in taking up environment issues, particularly mining, which is very risky and a lot of politicians have vested interests in it. It continues to flourish. It is also very clear that we are not safe.”

Describing this as a sad incident, Mumbai-based activist Mukta Shrivastava said, “We don’t know who is behind her killing. She was very much part of the anti-corruption movement. Her killing has once again raised the issue of safety of activists. In Maharashtra farmers protesting silently have been killed. It’s an emergency-like situation and democracy is at stake. Such acts show the reality of state repression and the sorry state of affairs.”

Ms Masood is the latest victim in the list of such attacks that also claimed the lives of whistleblow-
The complaint regarding this incident was sent to the NHRC on September 12, 2011, registered as Case No. 1587/12/8/2011. The following was what NHRC concluded in its investigation of the murder of the RTI activist Shehla Masood – “The case relate to murder of RTI Activist Ms. Shehla Masod in Bhopal, Madhya Pradesh, on August 16, 2011. The IGP (Complaints), Police Headquarters, Bhopal, has informed the Commission vide his letter dated 09.12.2011 that in pursuance of the notification No.28/56/11/ABD-2 dated 02.09.2011 issued by the Government of India, investigation of FIR No. 533/11 U/S 302 IPC of Police Station Kohefiza, registered on the murder of Ms. Shehla Masod, has been transferred to the CBI, Bhopal and the same is being carried out by it. Since the case is now being investigated by the CBI, the premier investigating agency of the country, it is hoped that the culprits shall be brought to book. As per media reports, some arrests have already been made in this case. In the facts and circumstances of the case, no further intervention of the commission in the matter is required and thus the case is closed.

Thus, the NHRC has again skipped its responsibility of seeing to it that the justice is ensured to the victim of human rights violation. It has very easily evaded it by closing the case at their end.
COMMUNALISM AND
THE RESPONSE OF NHRC
The Role of the National Human Rights Commission in Combating Communal Violence

INTRODUCTION

In understanding the dynamics of collective violence, it is significant to distinguish the different forms of such violence, for example, riots, pogroms and genocide. Due to the political nature in which these different types of mass violence are defined, so are the causes behind each explained and those explanations controlled. While riots carry the appearance of spontaneous, intergroup mass action, pogroms manifest deliberately organized and especially State supported killings and the destruction of property of a targeted group. Genocide entails mass killings of a retributive nature where the blame lies upon a particular or general source, e.g. the State, a leader or a whole people (Brass, 2005). Also, what is mostly interpreted and presented as Hindu-Muslim riots has to be unraveled and debated regarding whether or not these conflicts are indeed a feud between two religious communities or the by-product of what Paul Brass calls the “institutionalized riot systems”. The institutionalized systems were most pronounced in Gujarat in 2002, judging by the deliberate staging, provocation, dramatization and intensification of the targeted violence against Muslims in the State.

Recently, the National Human Rights Commission (NHRC) has been pronouncing its role and interventions regarding the Muzaffarnagar violence of August 2013. The riots were interpreted as a clash between Jats and Muslims and claimed over 43 lives in addition to brutal incidents of gang rapes including 13 registered cases of rape and sexual harassment. Teams from the NHRC visited Muzaffarnagar thrice and their observations and recommendations are yet to be shared with the State Government of Uttar Pradesh. The NHRC also took cognizance of a complaint alleging gang rape of

1. Brass, Paul, Forms of collective violence: Riots, Pogroms and Genocide in Modern India. India, Three Essays Collective, 2005
2. http://post.jagran.com/nhrc-to-meet-up-officials-on-january-17-over-muzaffarnagar-
a 20 year old on November 2, 2013, in a relief camp for the riot victims of Muzzafarnagar.

The following sections shall explore the role of the National Human Rights Commission in regards to the communal violence executed in Gujarat in 2002, Mangalore in 2008 and Kandhamal in 2007-08. In the context of targeted violence against minorities, the response of the NHRC to the Batla House “Encounter” in 2008 shall be considered.

GUJARAT CARNAGE 2002

Background and Events
Beginning 28 February, 2002, a fierce 3 day pogrom erupted in the city of Ahmedabad and the surrounding central provinces of Gujarat. Following the initial incident, sporadic outbreaks of violence against the minority Muslim community continued throughout the State for at least three more months. Incendiary leaders emerged, appealing to Hindus to awake to the defense of their religion, and thousands did. When the violence ended, tens of thousands of Muslim homes and religious structures were desecrated or destroyed. 150,000 individuals had been displaced. 1000 people lay dead. Normalcy did not return to Gujarat until over a year later.

Officials rationalized the violence as a reaction—pratikriya—to the Muslim riot in Godhra in eastern Gujarat on February 27 2002. 57 Hindus were burned alive on the Sabarmati Express train, including 25 women and 14 children. The train was returning from Faizabad, where a large group of Hindutva activists had travelled to build a temple to Ram over the recently demolished Babri Masjid. Accounts from that day indicate that Muslim passengers were being harassed on the train during the return journey. An unknown passenger pulled the emergency chain, making the train come to a halt in the middle of a Muslim neighborhood. Anywhere from 500 to 2,000 Muslims surrounded the coaches occupied by the activists and attacked it with stones and torches. Coach S-6 caught fire, killing 57 people. Some commentators have disputed this version of the events, arguing that the train attack was a “staged trigger” for the already planned-out riots. Multiple reports, including the Banerjee Committee report and the Hazards Centre report found that the fire had begun inside the train.

By order of the State Government, the bodies were transported from Godhra to Ahmedabad for a public ceremony to be widely broadcast on television. Narendra Modi, then the Chief Minister of Gujarat, declared that the attack on the Sabarmati Express had been carried out by “terrorists”, signaling Muslim responsibility. On the evening of February 27, 2002, the VHP called a statewide “bandh”, a signal its cadres interpreted as a call to action. The State Government issued a press note at 8 pm on 27 February endorsing the bandh, signaling their complicity with the preplanned atrocities. Local newspapers and other media joined the Government in fanning the flame, printing headlines such as “Avenge Blood with Blood” on the morning of the 28 February 2002. The stage for mass violence had been set.

On February 27, retaliatory attacks against Muslims had begun in Rajkot, Vadodara and Bharuch. The next day brought widespread rioting and attacks on Muslim homes and establishments. Attacks occurred in an eerily similar pattern; thousands of men wearing the saffron robes and khaki shorts of the Hindutva movement would arrive en masse in trucks at 10:30am. They carried guns, swords, explosives, gas cylinders and computer printouts listing Muslim homes and establishments. They even carried water bottles “so as to be fully prepared for a long day’s work.” Shouting Hindutva slogans, they embarked on a campaign of violence and destruction. The rioters were organized and disciplined, using

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182 RUGGED ROAD TO JUSTICE
mobile phones to coordinate attacks in other neighborhoods and leaving Hindu homes and businesses unharmed. In many cases, police actively aided the rioters, aiming and firing at Muslims who tried to defend themselves. In other cases, mass acts of violence would occur less than a kilometer from police stations.

In all, 26 major towns and talukas (sub-districts) in Gujarat were affected in the first week of violence. However, the worst of the violence was concentrated in Ahmedabad. In the initial spate of violence 200 people were killed in the Naroda Gaon and Naroda Patia areas alone when an armed hoard of several thousand attacked Muslim homes and shops. Six other neighborhoods in the city faced similar attacks. After three days of terror, 1,679 houses, 1,965 shops, 21 godowns (warehouses) were burnt and 76 shrines were destroyed in Ahmedabad. The death toll stood at 850, with many reports estimating much higher figures.

Naroda Patia, located just across the road from the State Reserve Police headquarters, was the site of some of the most brutal attacks. On 28 February at least 65 people were killed and countless were injured when a mob of over 5,000 torched the entire locality. Women and girls were gang-raped in broad daylight before being slashed or burned to death. Homes and shops were looted and destroyed while the Noorani Masjid, the community mosque, was demolished using high-tech explosives. Hindu homes remained completely unscathed. In the following days, the neighborhood was occupied by hundreds of youths shouting “Jai Shri Ram”, armed with swords, axes and iron rods these youths completed the demolition of the neighborhood. Eyewitnesses testified the police had been complicit and even aided rioters during the attack on Naroda Patia. Naseem Banu, a local resident, told Human Rights Watch: “Wherever we hid, the police showed them where we were. The police remained standing when our homes were burned down.” A 13-year-old boy who survived the attack told Human Rights Watch that the police shot tear gas shells at the local boys attempting to save their mosque. His family called the police when their home was attacked. The phone was hung up when they heard the caller was from Naroda Patia.

In the Gulmarg Society neighborhood in Ahmedabad, over 250 people attempted to take refuge on 28 February in the home of Ehsan Jaffrey, a well-respected former member of parliament. Jaffrey made repeated calls to the police begging for protection as the 5000 person mob, led by the VHP and the Bajrang Dal, gathered outside his complex. The nearest police station was less than a kilometer away, but no help came. The attack began at 10:30am and the mob, armed with swords, pipes, acid bottles, kerosene, petrol, hockey sticks, stones, and trishuls attacked the property unrestrained for over 6 hours. 65 people were left dead, including Jaffrey himself. Eyewitnesses testified that he begged the rioters to spare the women and children to no avail. Mansoori Abdulbhai, a resident of the Gulmarg Society, lost 19 family members in the attack. He described how the rioters tortured their victims, cutting them first so they couldn’t run and then setting them on fire.

Unlike many previous instances of communal violence in Gujarat, the violence soon spread to rural areas as well. Hindutva activists arriving from the major cities were able to exploit economic resentments towards middle-class Muslim shopkeepers and moneylenders to incite mass violence. In some villages such as Halad in north Gujarat, the bodies of Hindu activists killed in the Godhra train attack were paraded through the streets, resulting in a wave of attacks against local Muslims. Altogether, over 1,200 villages were affected, particularly in the districts of Panchmahals, Mehsana, Sabarkantaha, Bharuch, Bhavnagar and Vadodara. In Vadodra, peace was not restored until the army was called in on

5 March. In Sabarkhanta, 2,161 houses, 1,461 shops, 71 workshops and factories, 38 hotels and 45 places of worship were looted and entirely or partly destroyed. 2,500 Muslims from 22 different villages were evacuated and moved to refugee camps. Many villages no longer had a single Muslim resident according to the District Magistrate.

Sporadic outbursts of violence continued for months after the Gujarat government officially declared that stability had returned. On 24 March, thirty-year-old Mumtazbano was stripped in public and stabbed to death by a mob in the Vejalpur area of Ahmedabad. On 6 April, at least five people were killed in Ahmedabad; two were stabbed to death and three were killed by police gunfire dispersing Hindu and Muslim mobs. On 17 April, three people were stabbed to death and fifteen were injured in Hindu-Muslim clashes in Ahmedabad. On 21 April, six Muslims were shot by police officers in revenge for the death of a policeman in Ahmedabad. On 20 July, the day after the assembly was dissolved, two people were killed and 14 others wounded by stone-throwing and police gunfire, again in Ahmedabad. On 17 September, Muslim shops in Borsad were torched after a Muslim motorcyclist accidentally hit a young Hindu. The riot left one dead and 13 wounded. On 2 October, riots burst out during the festivities for Gandhi's birthday. On 15 October, a makeshift bomb exploded in a bus in Godhra, wounding six.

The rioters focused much attention on destroying Muslim cultural centers and mosques in an attempt to erase the Muslim cultural presence from their cities. 230 mosques and dargahs were destroyed. Many were intentionally attacked on 1March during Friday prayers. Historical monuments were not spared, as the famous 500-year-old masjid in Isanpur was destroyed with cranes and bulldozers while the Urdu poet Wali Gujarati's dargah was razed and paved over the next day. With perverse symbolism, saffron flags and makeshift Hindu temples were erected in the ruins.

Rape and sexual violence was widely used as an instrument of violence to demolish the spirit of the Muslim community in Gujarat. Hundreds of reports of gang-rape, often in the presence of family members, emerged in the wake of the violence. A female eyewitness from Naroda Patia told Human Rights Watch, “They raped them, cut them and then threw them in a well. They cut them with swords. Everything is gone, you won’t even find dogs there.” Another female resident reported that, “Some girls even threw themselves into the fire, so as not to get raped.” A ten-year-old girl added that she watched as another girl was raped and cut in half. In the Gulmarg Society, even pregnant women were not spared. The husband of an eighteen-year-old woman 9 months pregnant told the Citizens’ Initiative that rioters cut open his wife’s belly and burned the mother and unborn child together. Others could not find words to describe what they had endured, telling activists: “You won’t be able to bear it if we tell you.”

While Muslims bore the brunt of the suffering, they were not the sole victims of the 2002 Gujarat riots. It is estimated that 200 police officers died trying to control the violence. Human Rights Watch reported acts of exceptional heroism by Hindus who died trying to save Muslims from the violence. Over ten thousand Hindus were displaced following the riots, and many live in fear of retaliation or of being mistaken for a Muslim. Occasional reports of reprisal killings against Hindus emerged. On 17 March, violence broke out when Muslims attacked Dalits in the Danilimda area. In Himmatnagar, a young man who went to a Muslim-dominated area to do business was found dead with his eyes gouged out. In Bharuch, the murder of a Muslim youth led to mass violence.

Government Response
Following the violence, the sSate government of Gujarat failed to provide effective relief to those displaced by the riots. Security in the camps was precarious, and women were under constant threat of
sexual abuse. The camps experienced serious delays in the delivery of assistance and rehabilitation. Food rations took a full week to arrive to the camps. The Hindustan Times reported that camps housing thousands of people had only six toilets and people were receiving six grams of wheat per day. Government officials are absent from the camps and the burden of providing food and medical support was carried out largely by Muslim NGOs. Authorities hindered the aid delivery of these charities, stopping relief trucks under reports that the trucks might be smuggling arms. However, the situation in the few Hindu camps was much more favorable, receiving higher levels of government attention and increased food rations. While larger camps housing Muslims had virtually no official support, the Kankaria camp for Hindu victims was run by a local deputy collector.

The Modi Administration promised that not one culprit guilty of crimes during the riots would be spared by the administration. However, no arrests were made on any members of the VHP or Bajrang Dal who spearheaded the operations. The administration has justified this with false grounds such as that no “specific complaint” had been received against them. They have released misleading statistics on arrest figures hiding the fact that none of the leadership for the attacks had been threatened. In fact, it can be said the State administration engaged in a massive cover-up to hide the extensive involvement of Sangh Parivar groups and BJP members. Police officials, under immense pressure from the State Government, refused to name Sangh Parivar activists in FIRs. Police who pursued charges against the Hindutva leadership have been disciplined or transferred. According to an article in the Asian Age, a top police official commented, “It is politically incorrect to arrest [Sangh Parivar leadership] and we are under tremendous pressure to not to act against them.” In the meantime, Narendra Modi himself has gone so far as to tacitly justify the attacks as the “natural and justified anger of the people” in response to the “terrorist” provocation at Godhra.

The riots were extremely well-planned and well-executed. Members of the BJP took leadership roles and VHP, as identified by police reports, used cell phones to coordinate riots across the state. The exceedingly strong coordination of the attacks testifies to two high probabilities: that the attacks were premeditated and that they were undertaken with government complicity. The patterns of violence were remarkably similar in execution and exhibited remarkable control in leaving Hindu shops and homes completely undamaged. On the morning of 28 February, the leaders of the riots possessed incredibly accurate lists of Muslim shops and homes reflecting significant premeditated research that would have taken weeks if not months to collect. According to a report in Outlook magazine, attempts to pinpoint the exact location of Muslim businesses began months ahead of time. The report also asserts that members of the Bajrang Dal and VHP were distributing arms in rural areas as early as six months before the violence began. The level of organization also strongly suggests active Government involvement. On the evening of 27 February, two of Modi’s Ministers, Ashok Bhatt and Prabhatsingh Chauhan, along with 50 other Sangh Parivar officials, organized a rally in Lunawad, a village in Panchmahals, of which Gohad is district headquarters, to plan “reprisals.” Furthermore, the fluid transportation of thousands of well-armed men would not have been possible without State logical support, and questions of how rioters came into possession of high-tech explosives such as Liquefied Petroleum Gas (LPG) cylinders remain unanswered. More than anything else, a complicit government can only explain the delay in the State’s response. The lack of action on the part of the police or the military constituted de facto permission on the part of the State government for the riots to go on unabated.

The local police played an undeniable and unconscionable role in aiding and abetting the rioters,
often acting as the extended arm of the mob\textsuperscript{6}. Police crimes range from inaction to actual participation as reports have emerged of police joining the mob in looting and burning Muslim-owned buildings and slaying Muslim residents. Human Rights Watch observed several police posts less than 50 feet from burned-down Muslim establishments in Ahmedabad. When terrified Muslims reached out for police protection, they were informed that the officers had “no orders to save you.” Many people testified that police stood at the head of the crowds, directing them to Muslim establishments. They shielded rioters, permitting them the rape, murder and destroy with police protection. Resistance to the rioters was crushed with tear gas shells and bullets aimed at groups of Muslims attempting to save their homes. After the first days of the violence Chief Minister Modi defended the actions of the police by stating that they had been acting on kill-on-sight orders against any rioters. Yet examinations of the FIR reports have found that a majority of the official deaths in such cases have been Muslim victims. A resident of Chartoda Kabristan camp in the Gomtipur area described the despair in his community when the police joined hands with the rioters: “We were able to handle the crowd but when the police joined in then we couldn’t stop them. Our spirit was broken. They were shouting, ‘Kill them, cut them, look for Miyabhai [Muslim man].’ The police burned the houses with their own hands.” Twenty-two-year-old Mohammed Salim from Bara Sache ki Chali testified to Human Rights Watch that most of the deaths in his neighborhood were caused by police shooting.

The reasons for police impotency and involvement are clear. Tacit approval for their activities percolated down from the highest levels of government. Insiders from the BJP have admitted that police were under orders from the Modi administration not to act firmly. Reports have emerged that the Modi administration made clear to top police brass on the night of 27 February that the Hindu reaction to the Godhra train deaths was legitimate. Senior civil servants admitted to the NHRC investigators that on 28 February the Gujarat Interior Minister, Gordhan Zadafira, and Health Minister Ashok Bhatt directed the advance of the assailants from the “City police control room” of Ahmedabad while the Urban Development Minister, I.K. Jadeja, had set up his headquarters in the Gujarat “State police control room” in Gandhinagar. All ordered the police forces not to intervene in the violence. Army units began arriving 36 hours after the violence began in Gujarat. However, the State intentionally withheld troop deployment until the most severe aspects of the violence had ended. Aside from a few “flag marches,” the troops remained on stand-by under weakly veiled pretenses. Furthermore, the government actively hindered the military’s ability to rapidly intervene by failing to provide requested transportation support and intelligence.

Gujarat is known as the “laboratory of Hinduutva” and activists in the state have given themselves the role of the vanguard of the Sangh Parivar since at least the late 1980s. Their ideology explicitly ties membership to Indian national identity and to an understanding of India as the holy land with the Hindu religion sitting at the center. This identity is inclusive of Jainism, Buddhism and Sikhism but explicitly excludes Muslims and Christians. It is this conception of self-identity that postulates Muslims as a “fifth column” threatening the Indian identity from within. The Hinduutva parties have codified this ideological pattern into a justification for violence, learning to mobilize the general population with sensationalized notions of sacred symbols under jihadi threat. Their success in polarizing Gujarati society along religious cleavages has resulted in a long-standing reputation of Gujarat being known for communal violence. Between 1970 and 2002, Gujarat experienced 443 Hindu-Muslim riots and counted the most riot victims per inhabitant in India.

\textsuperscript{6} http://hindu.com/2002/03/03/stories/2002030303170800.htm
However, many commentators have suggested that the riots were instigated by less ideological motivations; they came at a time that the BJP’s hold over Gujarat was weak, and activists sought to use the riots to polarize the upcoming elections along religious lines. This has been a brutal yet effective strategy the BJP has honed in Gujarat since the early 1990s. Modi’s administration effectively capitalized on the violence with early elections. Modi’s campaign was loaded with anti-Muslim references and successfully portrayed him as the man to protect Gujarat’s Hindus.

**NHRC Response**

The NHRC did a commendable job with regards to the Gujarat riots under the strong leadership of retired Justice J S Verma. It was the bold intervention by the NHRC that helped the outside world know the reality of what was happening in Gujarat. The NHRC overcame litigation seeking to bar its investigation in the Gujarat High Court to issue serious allegations of State misconduct and put forth detailed recommendations on how the State government could meet its human rights obligations. The Commission noted the response of the State government to the notice received in the second week of March was “rather perfunctory and silent on many vital aspects” and therefore felt “consideration of the matter involving continued violation of human rights of a large section of people cannot be deferred any further” and the chairperson decided to lead a team of NHRC officials to the State for an on the spot assessment.

Concerned that “normalcy had not been restored in the State despite the passage of three weeks since the tragic events in Godhra,” the National Human Rights Commission conducted a fact-finding mission in Gujarat from March 19 to March 22. That the State government was not effusive in welcoming any intervention from the NHRC became clear no sooner than the meeting with senior officers commenced. The Commission observed, “no doubt whatsoever about the gravity of the Godhra tragedy, it is the considered view of the Commission that, that itself should have demanded a higher degree of responsiveness from the State Government to control the likely fall-out, especially in the wake of the call for the Gujarat bandh and publicly announced support of the State Government for that call”. The Government had constituted a one man Judicial Commission on March 6 (a week after NHRC took cognizance of the issue) to enquire into the Godhra incident and the subsequent riots. Section 36 (1) of the PHRA, 1993 limits the authority of NHRC to look into events which are ‘pending before’ any other commission. Taking over the perceived legal hindrance, the Chief Secretary questioned the National Human Rights Commission’s jurisdiction in the matter. Justice Verma succinctly brushed this aside saying the State Government need not worry about such legal aspects especially because the NHRC took cognizance of the issue before the Enquiry Committee was set up. Hindrances were created using the “jurisdiction issue” not only in the investigation carried out by the Commission, but also when the Commission was to make public its findings and recommendations. The legal battles as well as the hastiness with which the report was demanded (more to prevent the report rather than any sincere interest in the facts it would bring out) made it apparent the State Government was adversely interfering in the NHRC processes. Pointing out that it was the “primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity” of all its citizens, it was asserted that in discharging this responsibility, the State had to ensure “that these rights were not violated wither through overt acts or through abetment or negligence”. Two acts that pointed towards the invidious

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8. Ibid at 7
9. Ibid at 7
preferences of the State came in for sharp criticism from the Commission. One was the issue of compensation to the next of kin of those killed in the violence. The Sabarmati express victims’ compensations were Rs. 2 lakhs while the others were to be given half this amount. Secondly, the stringent provisions of POTA were applied only to the Godhra case but not against those involved in acts of similar violence.

Justice Verma noted that investigations following the riots were being unduly influenced by members of the State administration and recommended that the CBI\textsuperscript{10} make its own investigation into five cases: Godhra, Gulberg Society, Naroda Patia, Best Bakery in Vadodara and Sardarpura in Mehsana. A year later, after a local court acquitted the accused in the Best Bakery case, the NHRC petitioned the Supreme Court for a retrial in this and four other cases outside Gujarat. Following the Gujarat Government’s failure to promptly respond to the NHRC, Justice Verma took suo motu consideration of the situation and advised the establishment of special courts to try the cases. In May 2002, the NHRC suggested that a security adviser be appointed to the Chief Minister. Subsequently, retired IPS officer KPS Gill was deputed to Gujarat in 2002.

The commission also warned that “the danger persists of a large scale and unconscionable miscarriage of justice if the effort to investigate and prosecute the crimes that have been committed is not directed with greater skill and determination, and marked by a higher sense of integrity and freedom from extraneous political and other influences than has hitherto been in evidence”.

The Commission concluded that there was a “comprehensive failure on the part of the state government” to control the persistent violation of the rights to life, liberty, equality and dignity of the people of the State. The Commission faults the State Government for a “failure of intelligence and action” with regard to the events “leading to the Godhra tragedy and the subsequent death and destruction that occurred” and found that the Government failed to control violence in a timely manner. The report strongly condemned the failure of the police force to act and strongly implied governmental responsibility. The NHRC recommended that governmental officials visit the camps to restore the confidence of the victims, and advised that displaced persons not be asked to leave until appropriate safety measures had been constructed. The NHRC took note of the serious psychological damage caused by the violence, asking that government agencies implement programs to ensure that proper psychological care was received. The Commission recommended that destroyed or desecrated places of worship be repaired immediately.

\textbf{KANDHAMAL VIOLENCE 2008}

\textbf{Background and Events}

On 24 December 2008 a group of 150-200 people in the town of Brahmanigaon, in Phulbani District protested the removal of an arch put across the road by Christians. The protest quickly devolved into violence, resulting in the deaths of three people and the destruction of hundreds of homes and over 50 churches. While the government blamed the violence on a spontaneous eruption of inter-communal tensions, eyewitnesses report that the mob was led by local RSS and VHP leaders, and evidence suggests that it had been carefully planned in advance.

The origin of tension between the Christian Panas and Hindu Khandas predates Independence. Christian missionaries have been highly active in Odisha since the beginning of the 20\textsuperscript{th} century; Panas converted in large numbers to escape their Dalit status in Hindu society. Following their conversions,


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the Panas prospered financially relative to the Kandhas, who mostly remain impoverished and disempowered.

A number of activist groups operating under the Sangh Parivar umbrella have exploited this socio-economic division to incite hatred in the Kandha community towards the Panas. In particular, the RSS and VHP have taken a leading role in inciting violence towards Christians under the guise of Hindu pride and fostering suspicions within the Kandha community that Panas were gaining Kandha land under fraudulent means. Tensions were inflamed by demands by the Pana community to gain ST status along with the Kandhas. Sangh Parivar advocates have led Kandhas to believe that quotas meant for them would be stolen by the already financially advantaged Panas.

The leader in this initiative is the VHP leader Swami Laxmanananda Saraswati who established his ashram in Kandhamal in 1969. His ashram began the Hindutva movement in the region, acting as a base to expand Hinduizing efforts on the tribal population. Under his leadership, the VHP has managed to bring the Adivasis into the mainstream Hindutva agenda by carefully building a tribal Hindu consciousness. From its humble beginnings at the Swami’s ashram, the Hindutva has grown to include multiple lakhs of active members in Sangh Parivar organizations. Since 2000, the Sangh has been strengthened by the Bharatiya Janata Party’s coalition government with the Biju Janata Dal in the state government.

What happened in Kandhamal is no way an isolated event; the RSS and VHP actions in Kandhamal are just a small part of the Sangh Parivar’s national strategy under the ideology of Hindutva. Their goal is to promote India as the homeland of the Hindus at the exclusion of all other religious identities. In Kandhamal, that project is borne out in their fight against the Christians, who they see as the product of illegal conversions to be immediately rectified and halted. The presence of a politically and economically strong Christian community constitutes a threat to the Hindu identity in the area. Thus, conversions have become their principle issue and the specter raised to motivate their Hindu cadres. The Kandhamal riots were the outcome of a sustained effort to solidify the Hindu identity in Kandhamal by “otherizing” and intimidating the Christian community.

Thus when the Kui Samaj, a local political organization representing the Kandhas, called for a bandh on Christmas Day 2007 against the Pana, Saraswati and Sangh Parivar lent their full support. The protests focused on a building the Christian community had erected with official permission. The protestors argued that it was intentionally erected on the same site used by Hindus to celebrate the Durga Puja. The people sought to protest via a general strike in the market. When Christian shopkeepers refused to comply violence broke out, the structure was burned and more than 20 shops were looted. Immediately after, the Church of Our Lady of Lourdes in Bamunigan was looted and set on fire while police personnel looked on. Two young boys, Sillu (age 12) and Avinash Nayak (age 15), sustained bullet injuries but survived. Three people were killed: a Christian, a Hindu and an unidentified person.

Over the next three days, five parish churches, 48 village churches, five convents, seven hostels and several church-run institutions were attacked along with 500 Pana Christian homes. Trees were felled all along the major highways to prevent interference. Death toll reports have varied between 3 and 11 people, with many more missing. The simultaneity of the strikes suggests that they were meticulously planned in advance; possibly by the VHP.

The violence intensified after December 25, after news spread that Lakhanananda had been at-
tacked and injured by a Christian mob\textsuperscript{14}. Reports from that day are inconclusive as to whether or not Lakhanananda’s supporters had instigated the fight and the degree to which the Swami had actually been injured. Regardless, following the incident over 3,000 Kandha adivasis torched the Tikabali police station and rioted. In response, around 100 Hindu houses were burned by Christian extremists possibly under the direction of Naxalite groups. A final night of violence occurred on the 31 December, when at least 20 houses and shops were burnt down at Phiringia, Khajuripada, Gochapada and Brahmanigaon.

**Government Response**

The local government’s response was limited to hasty repairs for the two police stations that were demolished. Relief camps were poorly run and accusations emerged that care was unevenly distributed in favor of Hindu victims. The government blamed the violence on a spontaneous general reaction against the attack on Lakhanananda, despite the fact that the violence began before the attack on the Swami. Additionally, Christian leaders anticipated trouble and warned state officials well in advance of the riots. Questions remain as to why appropriate measures to defuse the situation were not taken.

On 23 August 2008, Swami Lakhanananda Saraswati and four others were murdered at his ashram. Police arrested local militant Christians for the murder although it is widely suspected that Maoist groups were involved as well. His murder set off a second wave of riots in the area beginning on 25 August. Between 25 and 28 August, riots claimed the lives of 38 people and displaced as many as 25,000 people. Thousands of homes and hundreds of churches were destroyed. Evidence suggests that the violence was incited by the VHP as well as local political leaders, including the sitting BJP MLA Manoj Pradhan\textsuperscript{15}, who was sentenced to six years imprisonment for his involvement in the riots.

In response to the killings, the VHP and the Bairang Dal called for a statewide bandh on 25 August. The VHP openly promised violent revenge against the Christians for the death of the Swami and the protests quickly turned violent. Many churches, prayer houses and other Christian institutions were attacked in Kandhamal, Bargarh, Koraput, Rayagada, Gajapati, Boudh, Sundargarh and Jaypur districts. Mobs raped and burnt alive nuns and teachers in orphanages and churches, chanting “Kill the Christians; destroy their institutions.” A Catholic nun was burnt alive while teaching in an orphanage. Another nun was gangraped by Hindutva extremists before they set her church on fire. Reports emerged of other priests captured from their parishes, doused with gasoline and burnt alive in the streets. Violence continued despite a curfew across Kandhamal and a heavy infusion of paramilitary forces. Although the government declared the situation under control on 1 September, sporadic violence continued throughout the month.

Significant blame for the Kandhamal Riots must be placed at the feet of the Odisha government. Before both outbreaks of violence, the government had significant warning from both sides and took no effective actions to prevent the violence, and was completely unable to control the situation without the intervention of centralized paramilitary forces. Relief camps were poorly managed and relief packages were distributed idiosyncratically and without sincere research taken to discover where relief was most needed. Both sides accused the government of favoring the other in the distribution of relief aid. Furthermore, rehabilitation efforts were mostly non-existent and the government has taken no action to defuse the underlying tensions that were the root cause of the riots.

Efforts to bring the perpetrators of the violence to justice have completely failed. Following the riots, more than 84,000 people had been named in 3,132 complaints made to the police. Yet only 828

\textsuperscript{14} http://indiatoday.intoday.in/story/VHP+leader,+four+others+shot+dead/1/13739.html
FIRs were ever registered and only 3,181 were brought to trial. Few of those ever faced court and even fewer convictions were ever made. Witnesses are routinely threatened to withdraw their testimonies and evidence is frequently destroyed. Even those who were punished received light penalties of 3 to 6 years despite charges of murder. Thus many years later, most of the perpetrators remain free. Disconcertingly, the state and even central governments’ inability to bring the Hindutva fanatics responsible for the riots to justice and refusal to restrain the virulent Hindutva hate speech that continues to be propagated in Kandhamal by the Sangh Parivar hints at ideological linkages and strategic relationships between both major political parties and the Hindutva extremists.

NHRC Response
The NHRC has also been widely criticized for its inaction regarding the Kandhamal riots. Former Delhi High Court Chief Justice AP Shah, who headed a fact-finding report submitted to the NHRC in 2010, decried the Commission’s complete lack of action, saying that “It is surprising that NHRC has taken cognisance of various cases across the country but not in the case of Kandhamal communal riots.”

An experienced reporter from the region noted that the Commission might have done some things in Delhi, but took very little action that had real impact on the ground. He accused the NHRC of acting as a PR agency for the temple and writes that the Commission has failed the people of Kandhamal. The NHRC did send a fact-finding team to Kandhamal following the first wave of violence in December 2007. Yet the NHRC’s intervention and suggestions were completely ineffective in preventing the second and larger wave of violence in August 2008. Furthermore, in response to a Supreme Court order, the NHRC did press the Odisha government for a report on the relief and rehabilitation effort. In total, the NHRC has yet to issue a single order or report regarding the Kandhamal riots.

MANGALORE VIOLENCE 2008

Background and Events
In September and October 2008, the Christian community in Mangalore and the surrounding areas suffered a wave of violence caused by Sangh Parivar cadres and specifically by the Bajrang Dal and Sri Rama Sena. Karnataka has a history of Hindu-Muslim tensions and Hindutva activists have a strong regional base. However, the incident was the first case of open conflict between Hindus and Christians in recent history. The attacks were prompted after vocal accusations by the Bajrang Dal that the New Life Fellowship Trust (NLFT), a non-denominational Christian Church, was responsible for forced conversions of Hindus to Christianity. However, the attacks were widely perceived by Christians in southern Karnataka as retribution from the Sangh Parivar for their outspoken opposition to the Kandhamal riots.

Isolated incidents against Christians were reported beginning on 17 August onwards, sparked by the raging violence in Kandhamal. On 17 August and again on 24 August, demonstrators performed a hunger strike and burned Christian literature in front of the Nitya Jeeva Devalaya church. On 27 August, a pastor at a Christian prayer hall was attacked in Uchangidurga, leading to 8 arrests. On 29 August, 45,000 institutions across India held a prayer for “peace and communal harmony” in response to the riots. 2000 Christian schools in Karnataka went on strike for varying durations until 5 September.

in violation of government orders. Under heavy pressure from the Bajrang Dal, the State government denounced the State’s Christian institutions, issuing show-cause notices and threatening the schools with shutdowns. Christian organizations felt that these actions signaled to the Sangh Parivar that the government was aligned with their priorities.

On 7 September, a group of about 300 individuals attacked the Yesu Kripalaya Church, in Davangere District, vandalizing the property and burning bibles. 10 were arrested. The attacks began in earnest a week later, on 14 September. At around 10:30 am, a group of 15 Bajrang Dal goons entered the chapel of the Adoration Monastery of the Sisters of St. Clare and in quick succession demolished the tabernacle and the Eucharist, the monstrance, a crucifix, oil lamps, alter vases and statues of saints. Eyewitnesses in the chapel reported the goons were heavily armed with stones and lathis. When the nuns and other faithful attempted to stop them, they beat them. Two nuns and a couple praying at the church were injured.

Within an hour, vandals had attacked between 14 and 17 churches and prayer halls in the Mangalore area. The church interiors were gutted as the vandals destroyed all they could. A group of 30-35 masked goons on motorbikes armed with iron pipes and lathis attacked the empty Church of South India building in Kodaiakal. In Shiroor village in Udupi district, a gang of 25 people armed with sickles and sticks attacked the Life and Light Ministries prayer hall, assaulting the pastor, burning a car parked outside and vandalizing the interior. 5 were arrested. In Udupi city, the New Life Fellowship hall was attacked. Windows were smashed and furniture was damaged. 5 were seriously injured, including one child. The Believer’s Church in Bannur village was vandalized and four were arrested. In Kodical, Mangalore city, a Tamil protestant church was attacked by 15 persons in the middle of prayers, smashing furniture and vandalizing the interior. Four persons were arrested. In Kavoor, Mangalore city, 20 persons vandalized and desecrated the Assembly of Prayer Fellowship and brazenly attacked on-duty policemen. Four arrests were made. In Shakti Nagar in Mangalore Rural taluk, around 60 persons vandalised and desecrated the Jesus Christ Church, yet no arrests were made. At Kalanja village, Dakshina Kannada district, around 15 persons assaulted devotees with sickles and desecrated the prayer hall of the Indian Pentecostal Prayer Hall. Nine arrests were made. A number of other churches sustained serious structural damage, smashed windows and destroyed furniture, sculptures and Bibles.

The violence continued over the next week. Motorcycle-borne vandals in Mangalore broke the windowpanes of the Believers’ Church and destroyed idols and pelted stones at the Capuchin Church. On 16 September, vandals damaged a century-old statue in Kolar town, desecrated the Rima Worship Centre in Mangalore and attempted to set St. George’s church on fire. On 19 September, vandals in Mangalore pelted stones at St. Xavier’s church and destroyed its idols. Two days later, a group broke windowpanes of a prayer hall in Kodagu district. The rioting touched Bangalore as well, as thefts were reported from the St. James Church and the Holy Church at Rajarajeshwarinagar in Bangalore was stoned and a statue destroyed on 21 September.

Within hours after the initial attacks on 14 September, the Christian community organized a broad response with mass protests. In Karkala, the local Catholics organized a 3 km silent protest march the following day. Other protestors blocked city roads in protest in places such as Hampankatta, Kulshekar, Bejai, Derebaila and Thokottu. In response to the Christian protests, the police suddenly became extremely assertive, violently dispersing the crowds. At Milagres Church, over 4000 Christians united in protests and to defend the church. It is not known if the violence began when the police fired teargas.

at the protestors, or whether the tear-gas was a response to stone-throwing. Police forces reacted to the stone-pelting, initiating lathi charges firing tear-gas indiscriminately. Eyewitnesses have alleged that the police chased the dispersing crowds and picked up stones and glass bottles to throw back. Violence broke out at the Adoration monastery as police caned stone-pelting protestors and burst tear-gas shells. Christian protestors and police also clashed at St. Sebastian Church in Ullal as tensions flared over police failure to arrest Sangh Parivar activists responsible for the vandalism. Following the confrontation, Christians attacked Hindu houses and four Hindutva activists were injured and ten people in total were injured. By the end of the confrontations, 150 arrests had been made\textsuperscript{20}. 30 to 40 people were injured by the police response.

Evidence from the riots suggests that the outbreak of anti-Christian vandalism and rioting was the result of careful coordination over a significant period of time rather than a rash outbreak of violence. However, the BJP legislator of Dakshina Kannada, Ganesh Karnik insisted that the events were not at all planned. He furthermore attempted to justify the violence by raising the specter of conversion. He alleged that the attacks were not on mainstream churches but on prayer halls blatantly proselytizing to poor Hindus. Save for the attack on Adoration Monastery, an incident Mr. Karnik described as a case of “mistaken identity”, the attacks generally targeted New Life evangelical centers.

**Government Response**

The BJP-ruled Karnataka state government faced accusations of complicity and even active involvement in the violence. Although reports have emerged of police acting to prevent atrocities against Christians, police were reported to have direct knowledge of imminent attacks and took no action to prevent them. The police response during the riots was heavily anti-Christian, and many human rights groups claimed that they had used the event as a pretext to attack the Christian community. The events indicated the police not only gave free license to the Hindutva activists, but actually conducted themselves in the service of the activists. The Mangalore Police Superintendent N Sateesh Kumar shockingly admitted openly that the police had information that some pro-Hindu organizations were planning to attack Christian places of worship in the district and he took no action to prevent them.

Justice B. K. Somasekhara of Karnataka, however, concluded that the police and government helped maintain order and were not responsible for the attacks. His report was vehemently refuted by retired Justice M.F. Saldanha who published a report in 2011 describing the attacks on Christians as “state-sponsored terrorism.” The main state Congress party leader Mallikarjun Kharge echoed his sentiments, stating flatly that the “BJP is responsible for the attacks. It is creating social disharmony.”

**NHRC Response**

Following a complaint by the Ahmedabad-based NGO Prashant, the NHRC issued a notice to the Karnataka Government to submit a report\textsuperscript{21} on the violence against Christians in the state. The NHRC has alleged that the local administration was complicit in the violence of September 2008, and sent three separate teams to conduct its own investigations\textsuperscript{22}.

The Christian establishment in Karnataka has attempted to protect itself by distancing itself from evangelical orders such as New Life. It is these institutions that draw the most ire of the Sangh Parivar


\textsuperscript{22} http://articles.timesofindia.indiatimes.com/2008-11-12/bangalore/27925395_1_national-human-rights-commission-nhrc-members-church
as hotbeds of “forcible conversions”. However, it is unclear exactly how big the problem of “forcible conversions” actually is. A local rights activists points out the police, who have tried to proactively fight forcible conversions, have booked hardly any cases in recent years. Nevertheless, the Sangh Parivar continue to make outsized claims regarding the threat of forced conversions. The Bajrang Dal alleged that over 15,000 people had been forced to adopt Christianity in the year preceding the riots in Mangalore alone. The VHP claims to have reconverted over 50,000 people in Karnataka. It appears that more than an actual issue, forced conversions are merely a convenient wedge issue for the Sangh Parivar to inflame the passions of the Hindu majority.

Mangalore has had a Christian presence since the 16th century, and the community has generally lived in peace with the Hindu majority. The September 2008 riots were the first instance of communal clashes between the two groups in recent history, and directly reflect the success the Sangh Parivar has had in radicalizing the region. Although politicians attempted to portray the violence as a sudden, unpredictable explosion of violence, experts have noted that Mangalore has been on slow boil for years as Sangh Parivar activists have successfully utilized sensationalized issues such as forced conversion to solidify communal lines.

Before the September 2008 riots, the Sangh Parivar incited hundreds of minor provocative actions in the district, particularly towards Muslims following the demolition of Babri Masjid. Sangh Parivar activists seized on any available pretext—cow slaughter, conversions, etc.—to incite communal tensions. Under the pretext of defending the Hindu motherland, the Sangh Parivar have continually taken the law into their own hands. In effect, the Hindutva activists, particularly the Bajrang Dal and Hindu Sena, have been running their own moral policing system with complete impunity from the police.

The Hindutva presence in the region has been greatly enhanced by the BJP’s stranglehold on regional politics. The 2004 elections saw the BJP make a virtual sweep of the 11 legislative assembly seats from the district. This nexus has observers increasingly concerned about the possibility of future violence in Karnataka. The Karnataka Komu Souharda Vedike (Karnataka Forum for Communal Harmony), a coalition of 200 organizations working against the communal polarization of Karnataka stated, “Ananth Kumar, the BJP MP from Karnataka, had declared in 2002 that the Bababudangiri was the Ayodhya of the South. Against the backdrop of the Gujarat riots in 2002, the implicit reference was to transform Karnataka into Gujarat.” This statement was transformed into reality in September 2008, when the Christian community was targeted through physical attacks, looting and church desecration.

BATLA HOUSE ENCOUNTER

Background and Events
On 19 September, 2008 two people, Md. Atif Amen and Md. Sajid, were killed in a shootout at L-18, Batla House in New Delhi. The police claim that the slain persons were known terrorists involved in the serial bomb blasts that had occurred on 13 September and killed 26 and injured 133.

The Delhi police testified that in the wake of the bomb blasts, surveillance and intelligence revealed one Atif Bashir, who had been involved in the blasts, was residing on a top floor flat of Batla House. On the basis of this information, Inspector Mohan Chand Sharma along with a few other officers raided the building while another contingent of police covered the building from the ground floor. The team knocked at the main door of the flat and announced their presence but received no response. The team was able to enter the flat from a side door to apprehend the suspects. The residents of the flat opened fire; the police team responded in self defense. During the crossfire, Inspector Mohan Chand Sharma
and HC Balwant Singh and two militants sustained bullet injuries while two other militants managed to escape. Another militant hiding in the bathroom, Mohd. Sadaab Ahmad, surrendered in the flat. The two escaped militants were revealed to be Junaid Ariz and Shahnawaj Pappu.

After the hour-long encounter, two dead bodies were recovered from the fourth floor of the building. The injured police officers and the militants were taken immediately to hospital. The militants were declared dead on arrival while Inspector Sharma succumbed to his injuries at the hospital. During the initial search of the apartment, two .30 caliber pistols, one AK series rifle and two magazines of 30 live rounds, as well as a bullet proof jacket with two bullet marks were recovered.

**Political Response**

Following the incident, a number of prominent political voices questioned the official version of the events at Batla House. Samajwadi Party president Mulayam Singh demanded a judicial inquiry into the encounter, asserting that those killed in the encounter were innocent and educated youths of Jamia Millia. The AICC general secretary Digvijay Singh also called for a judicial inquiry into the “staged” encounter.

A number of details from the encounter have caused observers to doubt the police account of the Batla House encounter. For example, many have wondered how two militants escaped given there were only a few doors out of a building completely surrounded by police forces. Observers questioned why Inspector Sharma entered the apartment without his bullet-proof vest despite knowing that the apartment probably contained hardened terrorists. The post-mortem reports from the dead bodies of the militants raised further concerns. One of those killed, 17-year-old Sajid, had four bullet holes in the top of his head, which indicates an execution-style killing rather than wounds received from a pitched battle. Furthermore, the skin had peeled off Atif’s back and other bodies had blunt force injuries that cannot be explained by the police version of the encounter, leading some to suggest that the militants were tortured before they were killed. A report published in “Mail Today” on 24 September 2008, asserted that Inspector Sharma was shot in the back. The complaint alleged that Sharma and another police officer Rajbir Singh had been involved in serious disputes and therefore Sharma’s death might be the result of an intra-departmental rivalry.

**NHRC Response**

On 19 September 2008, the NGO Real Cause submitted a complaint to the NHRC regarding the Batla House encounter. It asked the Commission to order a CBI inquiry. The NHRC adopted the complaint on 23 September. The Commission accepted the police account of the encounter and found that Real Cause’s concerns were baseless. The police had properly investigated the encounter and thus no CBI inquiry was required. After receiving further communication from Real Cause on 14 October, the Commission inquired as to the need for a magisterial enquiry. As the militants were found to be members of the known terrorist organization the Indian Mujahideen and the evidence suggested to the Commission that the police had acted in self-defense, no magisterial inquiry was required.

Following a plea filed by ANHAD (Act Now for Harmony and Democracy) on 21 May 2009, the

25. [http://nhrc.nic.in/](http://nhrc.nic.in/)
Delhi High Court asked the NHRC to examine the police version of the encounter in greater detail. The Commission examined the post-mortem reports and determined that the injuries on Inspector Sharma corroborated the police version of the encounter.

The NHRC examined the firearm report as well, which they found conclusively established that Atif Ameen and Sajid had both used fire arms at the time of the incident. It held that there were a number of reasons Inspector Sharma might have chosen not to wear his bullet-proof vest and decided it not proper to speculate as to why. The Commission concluded that the occupants of the room initiated firing at the police and the police had retaliated in self-defense. The fact that Inspector Sharma and HC Balwant Singh received gunshot injuries to the fornt of their bodies was given as definitive proof. The Commission found that there was no violation of human rights during the Batla House encounter and closed the case.

A number of observers levied heavy criticism against the NHRC report. They pointed out that the NHRC conducted almost no independent investigation, merely relying on flawed police reports. The Commission did not examine Saif, the third boy picked up by the police from the flat, nor any of the witnesses of the Batla House encounter who had deposed before the People’s Tribunal. Furthermore, they point to the fact that the NHRC allowed the police to avoid a magisterial enquiry, which violates the NHRC’s own guidelines regarding encounter killings.

CASE OF VICTIMS OF GUJARAT RIOTS 2002 NOT BEEN COMPENSATED

GUJARAT

The Gujarat Government had released a compensation package for the riot victims of the 2002 Gujarat carnage in 2007. A PIL was filed in the Gujarat High Court demanding the early disbursement of the compensation to the victims. The central government released the package with a strict guideline, that those who have already received the compensation in 2002 will be considered for the entitlement. Centre for Social Justice, a civil society group in Ahmedabad filed a complaint with the NHRC regarding a huge chunk of people who still remained deprived of any sort of compensation, including us.

The Central Government along with the release of the ex gratia amount, also approved:

• Giving preference to children, family members of deceased victim in recruitment by giving necessary age relaxations
• Launch a special recruitment drive to accommodate eligible members from riot affected families
• Allow persons who had lost their jobs to rejoin by treating the period of absence as ‘dies-non’
• Give necessary pensionary benefits by relaxing the normal rules to the extent possible to those who had to leave their jobs due to riots and have already crossed the age of super-annuation.

Our fight still continues, the matter has been taken to the Supreme Court, for those who have not received any compensation till date and for those who have yet to receive employment as mentioned by the central government. The Special Leave Application no. is 15284/2012.

The present SLP in the Supreme Court has specifically asked for the materialization of this compassionate appointment.

The complaint that went to the NHRC also brought attention to the fact that it is not enough to just consider the kin of the deceased alone for these appointments. But people who have had permanent disability and children who were orphaned because of the riots are of age to avail these jobs (age group
2. CASE OF FALSE ARREST IN CONNECTION WITH
THE BATLA HOUSE ENCOUNTER

BATLA HOUSE, NEW DELHI

Shahzad Ahmad aka Shahnawaj aka Pappu was allegedly escaping from the site (L-18, Batla House) where the ‘encounter’ resulted in the death of Inspector M.C Sharma and two young men Atif Ameen and Md. Sajid. A number of questions arise from the police’s version of events which was not corroborated by physical or other evidence. Jamia Teachers’ Solidarity Association’s report “Beyond Reasonable Doubt: The conviction of Shahzad Ahmad” states that HC Satender and ASI Udaiveer who in their initial statements could not describe the appearance of the escapees in their statement yet they were able to identify the accused as one of the escapees later during the trial. The court took no notice of the above discrepancy wherein an ‘eyewitness’ who is unable to describe the escapee is later able to identify him. Moreover, neither the prosecution nor the police attempt to explain how the two ‘terrorists’ including Shahzad, escaped in during an encounter when ideally, the police should and would have sealed the entire area. Moreover, the ticket from Delhi to Ajamgarh that Shahzad was accused to wanting to use to flee, was stated that he planned to leave Delhi after that ‘operation’ – if by that operation they meant the encounter, then how did they have advance knowledge of the said operation, and if the operation meant the serial blasts that took place on 13th September 2008, then why would the accused wait for 11 days to flee the city?

Even the NHRC report endorsed the report submitted by the Additional Commissioner of police, vigilance, Delhi, by naming Shahzad aka Shahnawaj aka Pappu as one of the escaped militants without conducting an independent inquiry of its own.

–Afroz Alam (Journalist, on behalf of Shahzad Ahmad)

3. CASE OF POLICE BRUTALITY TOWARDS
THE MUSLIM COMMUNITY IN GUJARAT

GUJARAT

In a public hearing held by ANHAD in February 2011, socking incidents of brutality towards the Muslim Community were revealed. During the hearing, 50 people testified about the brutal police atrocities against them. Centre for Social Justice, has been intervening directly in 11 of these cases. In one such case of Mansur Rashidaben Daudbhai FIR no. 89/2009 as been brought to the notice of the NHRC.

The said application was sent to the commissioner of police, Ahmedabad city by additional DG of police vide his office letter no – G-2/1927/HR/Arj/45-12/1336/12 DATED 11/7/2012. The said application was sent for inquiry to DCP Zone 1 on 19.7.2012. During inquiry, statement of Smt. Nupurben Parmanad Sinha, Executive director, Centre for Social Justice, Ahmedabad was recorded by PSI Judges Bunglow, which shows that applicant Rasidaben Daudbhai Mansur is an advocate practicing at Himatnagar.
Initially, this offence was investigated by PSI Thasra Police station. Thereafter, the offence was investigated by DYSP Nadiad. The reading of the case papers shows that in the house of ‘Devbhai Somabhai Talpada, dead bodies of Roshanbanu and Devabhai were found lying and the said house was closed from inside. After opening the door, an inquest panchnama of both dead bodies was done. The head of Roshanbanu was separated by cutting with sharp large knife and nearby this dead body, the body of Devabhai and blood stained knife were found. Post mortem of the bodies were done at Karamsad Hospital. As per the post mortem report, the death of deceased Roshanbanu was found due to sharp injuries with knife and she was intercourse. During investigation, statements of witnesses were recorded but no one has seen the incident.

The report sent by SP, kedha-Nadiad, stated ‘there is no communalism in the village and since 2002 till today there is no such harassment by police or any other community and looking into the facts and circumstances as well as the statement of complainant, it is found that there is no discrimination against minorities or brutal atrocities by the police on minorities as alleged.

The NHRC basing its statements on the SP’s reports stated that as per the report received the allegations have been denied and the report was sent to the complainant for his comments if any.

–Centre for Social Justice (complainant)

4. CASE OF DEATH DUE TO POLICE TORTURE

MANGALORE, KARNATAKA

I, Teesta Setalvad, an activist of NGO, PUCL, would like to intimate that on 06.10.2009, a Hindu youth and a Muslim girl were attacked by some miscreants in Swagath Hotel. They were taking refreshments together when the PFI activists attacked them. While investigating, the police P.S. Bajpe found that one Jarik (Sheik Ahmed’s son) was an eye witness and had gone missing since the incident happened. The police started searching for him and on the mid-night of 08.10.2009, they knocked on the door of Sheik Ahmed’s house but his wife refused to open the door since they were all women and minor children.

The police then went to the next door neighbor B. Muhammed and then told him to accompany them to Jarik’s house. They searched Jarik’s house but could not find him. They went away after that and B. Muhammed went back to his own house and within moments, he had a heat attack leading to his death and died in the hospital at Mangalore due to cardiac failure about 45 minutes later. He did not have any heart ailment earlier. B. Muhammed was frightened of the police which lead to a heart attack leading to his death. The police was continuously threatening and abusing Jarik’s family for production of Jarik. The family of Sheik Ahmed had to face constant insult and humiliation because of the police officials.

The Muslims of this area appear to be decent and law abiding citizens. Their children attend schools/ colleges and are trying to educate themselves. According to some locals, they have victims of police harassment for quite some time. It is particularly noticed that the police don’t do their home work properly before calling a person to the station for enquiry. Based on false information given by false informers, innocent boys are picked up, harassed and tortured. Often the police even resort to blackmailing the neighbors and family members, especially womenfolk and the elderly, who are usually found at home. It seems that the Bajpe police has a prejudiced and communal mindset and it’s very dangerous in the long run.
The case was filed with the N.H.R.C. on 12.10.2009. It was placed before the Commission on 16.11.2010 in which the Commission directed that the police came to know quite later that B. Muhammed had died of cardiac arrest. The medical sheet of B. Muhammed obtained from Unity Hospital stated that the patient suffered from chest pain since 10 p.m. on 07.10.2009. He died on 0600 hours on 08.10.2009 due to cardiac arrest. Thus, the Commission found that the allegations against the police were not substantiated and were found to be baseless and fictitious.

The Commission only considered the aspect of death of B. Muhammed and not the mid-night raids at Sheik Ahmed’s house. The Commission has denied all the allegations leveled by us and they have asked us to submit a report for any comments within six weeks. The Commission has to re-consider the matter and ensure that the police officials responsible for the injustice done to B. Muhammed are punished and he gets justice. In the interest of a healthy society, we demand that the policemen be suspended forthwith and departmental enquiry be conducted against them.

–Complainant - Teesta Setalvad, an activist of NGO, PUCL

5. CASE OF ILL-TREATMENT AND ASSAULT BY POLICE

MANGALORE, KARNATAKA

I, M.A. Abdullah, was robbed on 20.05.1999 at about 6:45 a.m. but I caught the robber. On verification, I found that he had committed a theft of Rs. 600/-, one gold chain, one ladies wrist watch, one finger ring and some other things. I verified everything in the presence of my neighbors numbering about 29. The culprit was handed over to the police after being telephonically informed. We were called to the police station by the police to file a complaint in the matter and therefore, I along with some neighbors went to the police station.

Soon after we reached there, the A.S.I. and the subordinates started saying that I had snatched the above mentioned articles from the thief himself and started abusing me. We went to the police station again at 10:00 a.m. after the arrival of the S.I. along with Ismail Shaffi and Abdul Karim. The S.I. then started assaulting me with hands in all different parts of my body and he banged my head several times to the wall and pushed me into the lock up. I was released only after the arrival of the public in large number.

In the afternoon, I had to go to the Mangalore hospital and get treated. Not being satisfied, I went to another hospital for further treatment. I would just like to bring to the notice of everyone the injustice done to me in the entire episode whether it is the assault in the police station, wrongful confinement or the use of abusive language and intimidation. It is requested that criminal cases be booked against the concerned accused police officers.

The case was placed before the N.H.R.C. on 16.10.2000 who gave the order that the cash that is alleged to have been stolen was found with me which I produced later on and not immediately. They also said that when the spot was verified, it was found that it was a house under construction which could not have been occupied by anyone at that point of time as the doors and windows were not fixed to the house. It was found by the Commission that the allegations made by me were false and baseless. They also said that the question of communal bias as alleged does not arise at all, since nowhere in the complaint or in the enquiry communal discrimination is revealed.

But the Commission has taken its decision on a communal bias. They are not taking my case seriously and do not seem interested in understanding the fact that bias is being done against me. The
Commission should re-consider the case and give me my much deserved justice. They should punish the culprit who committed theft in my house and also punish the police officials who were biased. It is high time and we should not have to face the continuous communal bias anymore.

– M.A. Abdullah

6. CASE OF COMMUNAL VIOLENCE BY THE POLICE

MANGALORE, KARNATAKA

In this case, one Mr. Abdul Rauf, a bus driver and resident of II Block, Katipalla, Mangalore, was murdered on the night of 21.08.2001 by Madhav and others. All the accused formed an unlawful assembly to kill Abdul Rauf. The five accused persons were arrested on 23.08.2001 and the remaining 4 were arrested subsequently. The incident was followed by a “Bund” on 22.08.2001 called by the Bus Workers Association. The funeral of the deceased took place on the same day peacefully. On 23.08.2001, when the situation was normal in the locality, Mr. H.R.S. Shetty, PI, Suranthkal PS came to Katipalla in a jeep accompanied by a dozen of policemen and started abusing the businessmen in vulgar words. As per his instruction, the police fired teargas and assaulted innocent people and even others suffered as a result of this assault.

Further, Mr. H.R.S. Shetty arrested one Mr. Abdul Salam who is a well known social worker and assaulted him as well. The police entered the houses, dragged people out and then ransacked the houses. On 23.08.2001, the police arrested 69 persons from the locality. Out of them, 42 were released on the same night and the rest were released on 29.08.2001 by the Hon’ble Court. All the people who were arrested were subjected to severe physical assault and torture by the police at Panambur Police Station. Out of the 27 released by the Court, 8 persons were admitted to the hospital following the physical assault.

The police are saying that they fired teargas only after some youngsters stopped the buses from flying and obstructed the traffic on the road. The youngsters forced the shop owners to close their shops and threatened the bus drivers and conductors. The mob started pelting stones and soda bottles at the Police in spite of request and persuasion by the PSI and PI of Surathkal police station. They say that they only acted after the situation got out of control. Then, the police had to do a mild lathi charge to handle the situation.

The police have turned this into a communal issue as they had a biased mind and strong ill-will bordering on hatred against Muslims. Under the provocation of Surathkal Police, the KSRP has let loose a reign of terror on the innocent people. Both the Surathkal Police and the KSRP need to be punished. Serious steps should be taken against the Magistrate also because he did not take cognizance of the complaint of atrocities committed by the police against the people produced before him. The SP DK in its investigation has found that the allegations against the police personnel that they were responsible for the atrocities are not substantiated and also that the swift, timely effective action taken by the Police to control the mob has averted imminent law and order problem of serious and communal nature.

The complaint was filed with the N.H.R.C. on 30.10.2001 and it responded on 03.06.2002 saying that the report of IG Police, Mangalore is taken into consideration and if the complainant has further complaints, they can write back within four weeks failing which the case will be closed presuming that there is nothing more left to urge in the matter. But PUCL wrote back on 06.10.2003 stating that the Commission cannot base its decision on the investigation conducted by the very party who is responsi-
ble for these atrocities. Justice cannot be achieved in this way. If the N.H.R.C. does not re-consider its
decision and the people come to know that the N.H.R.C. has based its judgment on the report submit-
ted by the Karnataka police, people will lose their patience and more violence could take place. But no
response has been received by the Commission ever since.
–P. B D’Sa (PUCL, Mangalore)

7. CASE OF FAKE ENCOUNTER

MEDAK, ANDHRA PRADESH

In this case, a police officer who was involved in a fake encounter of a Muslim youth (Mohd. Shafi)
in Zaheerabad has been promoted and posted at the same police station i.e. Zaheerabad where this
encounter killing took place. According to the police, the deceased had entered a confectionary-cum-
Kirana General Store near Ambedkar Statue in Zaheerabad area by removing the roof sheets. When the
police got the information a patrolling police party rushed to the spot. The shop was found locked from
outside. Sub-Inspector P. Sridhar Reddy unlocked the shop and entered with Constable N. Gopal. SI
had a loaded service pistol and Constable .303 rifle. The deceased allegedly snatched from the Constable
his rifle and pointed it towards him. The SI warned the deceased to handover the rifle and surrender
himself but he did not do so and rather put his fingers on the trigger. Only then SI opened fire with his
service revolver in self defence and fired four rounds resulting in the death of Mohd. Shafi.

This seems to be a matter of grave concern for the whole civil society that a police officer who is
accused of a fake encounter killing and who is facing enquiry is promoted and appointed in the same
police station. It seems that he has strong political support and by taking advantage of it, he wants to
suppress the people who have come forward against him. What cannot be understood is that why the
Director General of Police has issued an order of promotion while the N.H.R.C. is still investigating
the case. It is quite clear that the higher police officials are protecting the accused police officer and the
killing of Mohd. Shafi seems to have some big names involved and it seems to be nothing but contract
killing.

N.H.R.C. in its report dated 07.09.2009 has found that the police seemed to have woven the story
in a way to make it seem like a ‘genuine encounter’. It was further observed that even otherwise the
force used was excessive as the Sub Inspector pumped four bullets in the body of the deceased, a petty
thief, at vital parts. The Commission has ordered the State Government to pay an additional sum of Rs.
280000/- along with the original Rs. 20000/- to the family of the deceased. As far as the case against the
delinquent police officials are concerned, the case has been registered u/s 302 but no decision has come
out yet. Although the family of the deceased has got the financial compensation of Rs. 3 lakhs, they are
still waiting for the murderer of their son to be put behind bars. The commission needs to take an action
soon so that the police officials are punished for the atrocity that they have committed.
–Lateef Mohammed Khan (Civil Liberties Monitoring Committee)

8. GROUP SUBMISSION TO NHRC W.R.T KANDHAMAL VIOLENCE 2007-08

An18 member delegation from Kandhamal mostly the indigenous women and the activists affected in
the last violence are campaigning for peace and justice in Delhi. This delegation met with the NHRC
and presented their case along with their plea for help in restoration of the lives of these people. They
also asked for the government to do something about the Hindu fundamentalists who are still at large. The NHRC has taken no concrete action regarding this plea.

I Smt. Priyatama Naik aged about 35 years wife of late Abhimanyunaik of village barapali, chakapad block, Panchayat -pasara, ps- Tikabali, Dist- Kandhamal was severely affected in the last Kandhamal violence. My husband was burnt alive while I was sleeping in my house on Thursday at about 11 pm by the Hindu fundamentalists under the leadership of Jaya Gauda, PrakashGauda, Prafulla, Rama and many others. I am a housewife and dependant on daily labour and also my husband and I have 4 children. it was an organized crime after the killing of Swami Laxmanananda Saraswati. Before the death of my husband I physically watched the dead body of my husband in a helpless and miserable condition for 4 days. Half of the dead body was eaten up by dogs in my presence. The dead body was put into a grave in a despicable condition with the help of a few other villagers. On 9th day the police dug the grave up again to take the body out for post mortem. Even after the delayed police action till today, no culprit has been arrested. I have lost all my possessions including my land records, my ration card and my other household possessions. If I do not convert to Hinduism and withdraw the case im not allowed access to basic means of survival such as water, firewood etc. I appeal to the govt. and the society at large to help me for my survival.

I Smt. Basanti Digal wife of AjitDigal aged 28 years of village- Tulasisahi, Shankarakhole, Panchayat- Shankarakhole, PS- Tikabali, Block- Chakapad, Dist- Kandhamal. I was affected in the last Kandhamal violence as I supported the cause of the affected victims though I belonged to a Hindu family. I am the leader of the local women federation and known to the Govt. Administration and Police for my activities relating to women socio- economic development. I am also an indigenous woman from the marginalised society and am dependant on agriculture and forest resources. While I away doing my daily chores one day my house was burnt, property looted and destroyed, my recorded land with foundation is being forcefully occupied by a higher caste gold businessman KailashSahoo. My community store managed by the SHG group has been locked up; illegally in my absence Rs. 30,000 has been withdrawn from my account. The higher class people have made sure that I cannot go back to my ancestral land. All the indigenous communities have been working together with me to try and counter the rich folks but it has been impossible as they have political backing. i appeal to the society at large to help basic fundamental rights be ensured to us.

I Smt. Nurma Digal wife of Tupa Digal aged 45 years, village – Terabadi, Panchayat – Sraniketa, PS- Daringbadi, Dist. – Kandhamal. I belong to a minority Christian community. My family has been constantly harassed and physically assaulted time and again by the Hindu fundamentalists till 2006, during which year there was firing in Kalinga Nagar. I am a social women’s rights activist and also worked for the restoration of peace in the area. After the death of Swami Laxmanananda several hindu fundamentalists came and told us to convert to Hinduism and also tried to burn down our church. We are now under terrible pressure as of now. Our land and property has been taken away by the miscreants and we are threatened of physica violence on a daily basis, and also openly threatened to be gang raped. We need an appropriate intervention to setrite the chaotic situation in Kandhamal.

I Smt. Runima Digal wife of late Iswar Digal aged 30 years, village- Mallikpoda, PS- Gutingia, Dist- Kandhamal was staying in G. Udayagiri Relief camp. At the time of the killing of Swami LaxmanandaSaraswati I had been to my father in law’s house along with my husband on 19th Sept 2008 evening. The Hindu fundamentalists call upon us and asked us to convert to Hinduism out of fear my husband and I escaped into the jungle on a bicycle. My husband was killed by the above mentioned miscreants, I managed to reach a nearby police station and inform them of the instance along with the
district administration. Till then the search for the dead body of my husband is going on. No concrete steps have been taken towards identifying and arresting the killers. As of now I’m living at the relief camp with no security of the future. I have filed an FIR in the Paburua police station which has also not led anywhere. I appeal to the government to help me secure my basic fundamental rights.

I Smt. **Bhabanti Nayak** aged 55 yrs w/o Pardesinayak, Village Gadabisa PO- Gressingia, PS- G. Udayanagiri, and Dist. –Kandhamal was a victim of the violence which took place after the killing of Swami LaxmanandaSaraswati on 23th August 2008. I am a social development activist involved in different issues regarding the same. I am also involved in peace building processes in the area in collaboration with the government. Since I am a Christian I was attacked by the Hindu fundamentalists, on 27/8/2008 they attacked my house and looted my property. I filed a FIR regarding this at the G. Udayagiri Police Station but no action was taken. The miscreants threaten me of dire consequence if I try to return back home. The is no source of income for me and the basic necessities of life have been taken away from us. I wish that the right kind of intervention is made and peace is restored to the region.

I Smt. **Karpura Digalaged** about 50 year’s wife of late KanthewarDigal of Village- Hatapada, Shankarokhole under Chakapad Block was a serious victim of the last Kandhamal violence. On 24th Sept 2008 when my husband was travelling by bus from Shankarakhole to Phulbani his bus was stopped by some Hindu fundamentalists who dragged him out of the bus and brutally murdered him. A formal FIR was registered on 27th Sept 2008. There was nothing done about it. Subsequently my house was looted and all my possessions taken away, my fields were destroyed. In fear of losing my life I left and am now living in Bhubaneswar. I am by the miscreants regularly, they threaten to kill me if I would return and that if I wished to come back I was to take to hinduism. in this regard no clear action has been taken as of now.

I Shri **Indranath Nayayak** aged 48 yrs son of Pakenga Nayak, village – Sujeli, Panchayat- Kalinga-was attacked on 25/8/2008 at 11am. My house was attacked and set on fire and all my household materials were destroyed after the riots broke on 23rd August 2008. The day my house was attacked I fled to the forest and spent the next 7 days there, after which, I went to the G. Udayagiri Relief Camp. Seeing the inhospitable conditions there I came to Bhubaneswar. I have not filed an FIR in this regard till date out of fear. The miscreants threaten me on a regular basis and ask me to convert and become a Hindu If I ever wanted to come back to my own land. I pray for protection and some relief from the government.

I Smt. **KalpanaNayak w/o Debeendra Nayak** aged 37, village – Lingapad, Distt – Kandhamal was a victim of the riots after the death of Swami LaxmanandaSaraswati. The Hindufundamentalists came to my house snatched my mobile and threatened my family if we did not come out and join the movement. In my absence my house was burnt and looted several times. Out of fear for my life my family and I came to the G. Udayagiri relief camp where we were denied basic amenities of life. We are moving here and there and are yet to get any compensation of any regard from the Govt. I draw the attention of the concerned authority for necessary action.

I Smt. **Jubati Pradhan** aged 57 years w/o late PedraPradham, Village- Belkati, DistKandhamal. On 25th August 2008 my house was attacked by some Hindu fundamentalists they destroyed everything that was there including all my possessions. They asked me to convert to Hinduism or leave the village. I ran for my life and am now living in the Raikia Relief camp. The fundamentalists continually threaten to take my life in case I don’t abide by what they say, they have asked me to strictly vote as per their directions. I need life protection and compensation for my damage.

I Sri **Naha Digal** aged 45 years son of Sukara Digal, Village- Lujurumunda, and Dist. Kandhamal. During the riots the hindu fundamentalists attacked my house and destroyed my fields by setting them
on fire. There was a FIR filed in this regard but no police action or attempt to arrest the culprits was made. I have been given no compensation or aid for this destruction. I have been threatened and told to not return to my village. I pray to the government for protection and a free pass to my home.

I Kadamfula Nayak aged 45 years wife of late SamualNayak, village Ketangananju of Bakingia District - Kandhamal. In the 2008 riots my husband was chased and butchered by swords. And there after my mother in law was dragged out on the street and burnt her by pouring Kerosene on her. As of now, I am staying at the Raikia Relief Camp the camp officials are asking us to leave and the rioters won't allow me to get back to my village. My lands are being forcefully taken away by the fundamentalist on the plea that the land does not belong to us as we had converted to Christianity. I ask the government for only one thing, - protect me.

I Sri Galiyata Pradhan aged about 46 years sone of Ladu Pradha, village Bakingia, Dist - Kandhamal. On 26/8/8 at about 10 am the hindu fundamentalists came and ransacked and looted my house in broad daylight. Out of fear my family and I fled to the Raikia Relief Camp and have been here ever since. I have informed the police in written but they did not register an FIR. The hindu fundamentalist do not allow us to go back and re build the house with the money the govt. gave us for that purpose, they ask us to convert to Hinduism if we ever wished to see our lands again. I ask for protection from these fundamentalists and restoration of my life.

I Sri Isaac Digal, aged about 47 years, son of Nandia Digal, Dist - Kandhamal. During the riots of 1994 my house was looted and destroyed while I was at Bhubaneswar. I was threatened by the miscreants time and again and did not dare to file an FIR against the culprits. I am right now involved in attempts to restore peace in the area by holding negotiations and peace talks and joint committee meetings and dialogues.

I Sri Debendra Nayak, 47, am a resident of Kandhamal district. My brother’s land was attacked by the activist of the Sangha Parivar and my house was set fire by the rioters. I reported this case in the police as well as Human Rights Commission but no action has been taken against the culprits. On 27.08.08, several Hindu fundamentalist came armed with weapons and attacked my houses and chased me into the jungle. After remaining at the forest for some days, I went to the relief camp G.Udayagiri and have been staying there ever since. Even though an FIR was lodged on 02.09.08 at G.Udayagiri police station, no action has been taken. Moreover no compensation has been given for the construction of my house and my rehabilitation. I have been working for the amity of both the communities but I have been prevented by the Hindu fundamentalist to work for that cause.

I, Sri John Digal, 48, was attacked by a group of Hindu fundamentalist on 27.08.08. While I was in my village, the rioters destroyed the property in my house. After I took shelter in the nearby jungle for three days, I came to the Baliguda relief camp. As we did not get proper food and shelter in the camp, we had to move here and there. On 10th October 2008, we were forced to vacate the camp with a cheque of Rs. 10000/- . When we returned back with the help of police and administration, we were forced to be converted into Hinduism. We were again attacked by the Hindu fundamentalist and our property was destroyed. We filed an FIR in the Baliguda police station but no action was taken to give us physical protection. On the other hand, a false case instituted against my brother on 29.12.08 by the fundamentalist and a few other members of our village and put to jail. We are leading a miserable life without proper food, compensation and security of our life. We are denied of land, construction materials and forest resources. We are also deprived of our daily labor. We have been threatened to get killed if we vote in the coming election. We would like to draw the attention of the authority to take necessary action for a permanent peace and justice in the area by taking strong action against the culprits.
I, Smt. Keshamati Pradhan, 45, wife of Baleswar Pradhan of co-convenor of “Kui Dina forum for peace and justice” of village Nusahi, G. Udayagiri have been working for the peace process in the aftermath of communal riots in Kandhamal. I had filed a writ petition before the Hon’ble High Court of Orissa for the protection of the riot victims in relief camps and I pray for the compensation of the victims and for a scheme for their rehabilitation by the Government. But no action has been taken by the government even though relief camps are being closed without any proper protection for the life of the victim and against forceful conversion by the Hindu fundamentalist.

I, Sri Susanta Kumar Mishra, Advocate, Orissa High Court, Cuttack 45, am espousing the cause of the victims of the recent riots of 25th December, 2007 and August 23rd 2008 through filing writs before the Hon’ble High Court for their protection and for compensation. I have been an observer of communal tension in the Kandhamal area from the beginning and have been working for peace and justice of riot victims.

I, Hemant Naik, 54, am a human rights and development activist of Kandhamal and have been working for the right of indigenous people particularly women and children of Kandhamal for more than last three decades. I have been involved in restoration of peace process during communal disturbance created by vested interests and has contributed a lot in bringing normalcy in cooperation with the district administration. I have also been involved in organizing peace meetings and collective interaction programs even after two major violence took place in Kandhamal district during December 2007 and August 2008 after the killing of Swami Lakshmananda Saraswati along with other groups and activists of the area.

–Manas Ranjan and Hemanta Naik (deposed at the IPT)

IPT: Expert Testimonies

GAGAN SETHI
Vice-Chairman, Centre for Social Justice

ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION POST GUJARAT RIOTS 2002

These submissions pertain to the role of the National Human Rights Commission [Commission] following the Gujarat Riots in 2002. In particular, they point to instances where the Commission could have taken a more pro-active role in addressing issues that arose after the riots. In this respect, specific considerations arise with regard to a) The Relief and Rehabilitation Process, b) Atrocities committed against Muslim Youth. It is a suggestion reflected in the tenor of these submissions, that the Commission was not very visible in these processes, and could have taken a more pro-active role in addressing these issues through its statutory powers and functions. Insights have been derived from the 12 Gujarat Orders of the Commission published on its website, media reports, important documents pertaining to the response of the Commission on specific issues and complaints, and discussions with activists who have been actively involved in the post 2002 riots work.
I. Significant Statutory Powers of the NHRC
1.1 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 suo moto or on the basis of complaints made to the Commission. Specifically, the following powers and functions are of significance:

- **Section 12(a)** of the Act gives the Commission the power to inquire, suo motu, 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.

II. Orders of the NHRC on Gujarat Riots
2.1 Since the Gujarat Riots in 2002, the Commission has passed 12 orders as displayed on its website. Out of these 12 orders:

- 2 orders detail the Recommendations made by the Commission after the inquiries conducted on the State’s immediate response to the riots in 2002.
- 3 orders refer to the Best Bakery Case
- 1 order refers to the transfer of other cases to different courts
- The remaining orders refer to the Commission’s comments, observations and follow up on the reports submitted by the State Government and Central Government.

III. Rehabilitation and Relief
3.1 The Commission in its earlier order on 1st April 2002 recommended that:

- a) Adequate compensation should be provided to those who have suffered.
- b) places of worship must be rebuilt and assistance must be provided for the same

3.2 Subsequently in its order on 31st May 2002, the Commission expressed its comments on the report of the State Government on the measures taken or relief and rehabilitation. However, subsequently, there are no orders indicating a follow up on the number of victims who had been compensated during this period.

3.3 In 2008, a PIL was filed in the Gujarat High Court in the case *Mr. Gagan S Sethi and Mr. Yusuf*
Shaikh v/s State of Gujarat and Others SCA 14664/2008 for directing the State Government to provide compensation to the riot victims based on the compensation package that it had announced in 2007 along with the compensation package announced by the Central Government.

3.4 In 2010 the Gujarat High Court in the same case ordered dis-imbursement of compensation to 752 riot victims for residential, commercial and industrial property.

3.5 On 7th September 2011 the High Court announced its final judgment on the matter directing the State Government to pay compensation to all remaining victims as per the compensation package. However, it is pertinent to note that as per the records available on the website there was no active follow up by the NHRC (which may be traced through orders) in monitoring the compliance of the State Government with all the orders of the High Court in the above mentioned case.

3.6 On 15th February 2012, the Gujarat High Court issued contempt notice to the State Government for not obeying its order to compensate people whose shops were burnt down in the post-Godhra riots based on a petition filed by 56 riot victims whose shops were gutted during the 2002 riots. This was reported in the media.26

3.7 On 15th May 2012, Centre for Social Justice (CSJ), based on several affidavits, registered a complaint with the Commission on non-disbursement of compensation to the riot victims.

3.8 On 17th December 2012, the Commission issued directions to the effect that it had received a report from the Dy. Secretary to Govt. Of Gujarat stating that compensation had been disbursed according to the judgment passed by the High Court on 7th September 2011 (above mentioned case). On the basis of the Report the Commission stated that no further intervention was required on part of the Commission.

3.9 It is pertinent to note here that the Commission in this instance could have pursued the matter in more depth considering that CSJ had received affidavits from several victims who had not received compensation, not to forget the contempt proceedings initiated by the High Court against the government. Hence, there were valid considerations in the complaint registered by the CSJ, which merited a deeper inquiry into the disbursement of compensation, but was not undertaken as per the records available.

3.10 Further on 19th September 2012, CSJ wrote a letter to the Commission requesting it to take cognisance of the matter on the compensation package announced by the Central Government in 2007. The package created different categories of compensation such as compassionate appointment of children/family members of the deceased, recruitment drives for members of riot affected families, etc.

3.11 The matter was taken to the Supreme Court (SC) for those people who have not received any compensation till date or are yet to receive employment by the Central Government, and is sub-judice in the SC. The SC has till now ordered for materialisation of compassionate appointment. (The High Court did not pay heed to the entitlements under this package since it stated that it is not a policy making body). It is pertinent to note that the Commission as per available and accessible records has not taken any active steps in this regard or followed up on the implementation of the compensation scheme announced by the Central Government.

3.12 In 2007, Times of India reported that upset with the Gujarat government’s repeated “vague” replies on compensation and rehabilitation of more than 50,000 victims of the 2002 riots, the NHRC had decided to visit the state in the near future to “find a solution”27.

3.13 Further, on 27th August 2013, the Advocate General of Gujarat assured the Supreme Court

that the State Government would make a plan to repair over 500 destroyed/affected places and places of worship belonging to Muslims.

3.15. In both the above mentioned situations there has been no follow up report or order by the Commission which has been traceable.

Conclusion
3.16 It is a submission that based on the developments on the issue of relief and rehabilitation, the Commission has not taken a pro-active stand in monitoring or inquiring about the status of disbursement. Based on the significant powers accorded to it, the Commission could have taken an active stand in monitoring and following up with the compliance of the State Government with its duty to provide compensation as per the schemes formulated by it. The Commission could have also investigated in depth the case made by CSJ about the State Government not complying with the High Court orders on disbursing compensation however there was further action on that count. There has also been no pro-active involvement of the Commission in ensuring that the State Government’s takes measures to ensure the rebuilding of the damaged mosques and places of worship belonging to the Muslim community.

IV. Atrocities against Muslims Post-Riots

4.1 According to an Indian Express Report dated 3rd April 2009, Gujarat has topped the list of states in the country with regard to complaints of communal violence, followed by Uttar Pradesh, according to the Commission’s figures. Of the total 324 complaints relating to communal violence in the country received by the Commission since January 2008, 72 are from Gujarat. The details of a follow up/investigation/inquiry into these cases have not been traceable from the website, or anywhere else. There are no orders/directions/recommendations by the Commission in this effect either.28

4.2 According to report on fake encounters by the Commission (reported on India Today on 14th July 2013), Gujarat has a track record of 8 alleged fake encounters from 2009-Feb’2013.29 There are no details traceable in terms of orders/directions/recommendations on the Commission’s involvement in tracking, investigating and inquiring into these cases.

4.3 According to a Press Release by the website www.countercurrents.org on 30th September 2009, a number of Muslim youth were picked up by police officials in plain clothes, illegally detained and severely tortured, before they were sent to judicial custody. They were taken to private farmhouse for illegal detention and were tortured. An appeal was made to the Commission, National Commission of Minorities and Govt. of India for investigating the matter and punishing the guilty police officials. No order/directions/recommendations of the Commission taking cognizance of this issue have been traceable from the records accessible.30

4.4 On 14th May 2012, CSJ sent a complaint to the Commission following a public hearing which revealed a shocking incident of brutality towards a member of the Muslim Community by the name Sirajmiya Ahmedmiya Shaikh in village Angadi, Gujarat. The Commission received a report from the DGP, Gujarat that denied allegations of brutal treatment of the concerned person by the police. There

seems to have been no further investigation of the case by the Commission in this case.

Conclusion

4.5 There are no orders of the Commission available directing investigations, or inquiries in these cases. It was possible within the mandate of the Commission to institute inquiries in these cases or approach the Supreme Court or High Court for appropriate orders. In the light of this, it is suggested that the Commission has failed to take a pro-active stand on addressing the alleged atrocities committed against Muslim youth in Gujarat post the 2002 riots.

V. Other issues

i) In its order on 1st April 2002, the Commission amongst other things recommended that action should be initiated to identify and proceed against those public servants who have failed to act appropriately to control the violence in its incipient stages, or to prevent its escalation thereafter. It was open to the Commission, based on its powers prescribed under the Statute to launch inquiries and investigations into the complicity and culpability of public servants in failing to control the violence in the early stages. It was also the prerogative of the Commission subsequently and throughout the period after the riots, to pursue this matter and approach the Supreme Court or High Court for further directions. However, the Commission failed to play a pro-active role in this regard, whereas it could have set an example by investigating and identifying the role of important public servants whose complicity had exacerbated the situation of the riots in 2002.

JOHN DAYAL

NHRC apathy in responding to the mass violence against Christians Community in Kandhamal, Orissa, India in 2008 and subsequent plaints by victims-survivors, defenders and activists

Expert Testimony at the Peoples Tribunal held at JNU by Dr. John Dayal, Member, National Integration Council, Government of India and Secretary general, All India Christian Council [john.dayal@gmail.com; +919811021072]

You are aware of the carnage against the Christian community, mostly Dalits and Tribals, in the Kandhamal district of Orissa and in several other districts including the state capital of Bhubaneswar from 23rd August 2003 following the killing of Vishwa Hindu Parishad leader Swami Lakshmanananda Saraswati, reportedly by Maoist groups who have been operating in the state for some time. The violence later spread to some other states, specially Madhya Pradesh and Karnataka as also some other states.

More than 56,000 men, women and children were displaced in the violence that continued for several weeks. They first survived in the forests, and then in government refugee camps for almost one year. More than 5,600 houses and over 300 churches and Christian institutions were totally destroyed in Kandhamal alone. We have a list of more than 100 persons who were killed, though the government admits to fewer dead. There were several rapes, including the gang-rape of a Catholic Nun. Several Catholic priests and protestant pastors were injured and one Catholic Priest, Fr Bernard, then treasurer of the diocese, died later of injuries he suffered.

We have been extremely unhappy and dissatisfied with both the relief and the rehabilitation process of the government and the pace and quality of the criminal justice dispensation system, including the police investigations.

The Christian Community has filed Public Interest Litigations in the Supreme Court demanding
better relief and rehabilitation, and retrial of murder cases.

In the relief and rehab, many who lost their jobs have not been rehabilitated or compensated, nor children compensated for trauma and lost education. The government’s package for constructing houses was meagre and people would have remained without a roof over their heads if it were not for the assistance of church organisations which gave the bulk of the money for the houses and for helping families start a new life.

The charts we give will tell you the state of justice. It is strange there has been just one conviction for murder and most culprits have got away scot free. The government’s Judicial Enquiry commissions have after five years not yet given their reports. The Fast track courts were wound up on 31 March 2013, and Sessions Courts in Kandhamal are now trying the cases.

There is urgent need for real justice including proper and adequate rehabilitation, compensation and reparations to the survivors and victims of Kandhamal.

Of the many national commissions that we have approached over the years, only the National Commission for Minorities responded, even though inadequately. Over the years, three members actually visited Kandhamal and submitted reports encouraging the government to take adequate steps on criminal justice dispensation system as well as in rehabilitation. Though many girls and women were raped, the National Commission for women failed to take notice. Though Dalits and tribals were killed and displaced, the respective national commissions did not even listen, neither did the National commission for child rights act though if were the children who suffered the most, and many are still suffering. I understand the chairpersons of these commissions are deemed members of the National Human Rights commission. The respective commissions at the state level have been almost entirely silent on Kandhamal.

We had therefore set our hopes high that the National Commission for Human Rights would be more sympathetic and proactive. I and my colleagues have called on the NHRC to file complaints. The women victims came to Delhi to meet the Commission. Other victims on more than one occasion went to the NHRC office. There was no result.

Initially, the NHRC brushed off all representations saying they were in the realm of the Minorities commission. Kandhamal has seen great police inaction, if not complicity. The state government has been remiss. Its ministries have not been held responsible. These are issues that come within the ambit of the NHRC, but they did not act. All they did was to send two junior police officers to Kandhamal. We do not know what the police officers reported. I fault the NHRC on a large number of counts, including abdicating its responsibility in Kandhamal. We had to go to the supreme court in a series of PILs. The NHRC should have come to our assistance in the Supreme court and filed supportive PILs. It failed to do so. NHRC has disappointed us sorely.

I give below the current status of the justice process to highlight the gravity of the situation:

<table>
<thead>
<tr>
<th>Status of Cases in Fast Track courts [upto 31 March 2013] and in District and Sessions Court [from 1 April 2013]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data obtained through Right to Information Act</td>
</tr>
<tr>
<td>Note on the crisis No. of complaints filed</td>
</tr>
<tr>
<td>No. of FIRs registered</td>
</tr>
<tr>
<td>No. of cases not registered</td>
</tr>
<tr>
<td>Total no. of charge sheets filed</td>
</tr>
</tbody>
</table>
Total no. of cases treated as final reports and closed | 315
---|---
Total no. of accused persons | 84,000
No. of cases committed to Fast Track Courts | 327

Details of cases as of 31st March, 2013

| | |
| No. of cases disposed off | 260 |
| No. of cases pending | 252 |
| No. of accused | 84,000 |
| No. of convictions | 76 |
| No. of persons convicted | 478 |
| No. of appeals/revisions filed in convictions | 5
| No. of cases resulting in acquittal | 184 |
| No. of appeals filed by the State in acquittal cases (As per State of Orissa’s Reply to Criminal Writ Petition No.126 of 2012) | 15 |
| No. of persons acquitted | 2743 |

Cases under serious offences

| | |
| No. of cases under Section 302 IPC (Murder) | 31 |
| No. of cases under Section 307 IPC (Attempt to Murder) | 16 |
| No. of cases under Section 376 IPC (Rape) | 2 |
| No. of cases under Section 394 IPC (Robbery with injuring victim) | 1 |
| No. of cases under Section 395 IPC (Dacoity) | 141 |
| No. of cases under Section 3977 (Robbery with aim to murder) | 7 |
| No. of cases under Section 436 IPC (Destroying house - arson/explosive) | 436 |

UPDATE ON CRIMINAL WRIT PETITION NO. 126 OF 2012 (INITIATIVE TO JUSTICE PEACE AND HUMAN RIGHTS & OTHERS V. State of Odisha & Others) seeking fresh investigations and trial in cases of murder

The case was filed in the Supreme Court in 2012 and it is being headed by the Initiative to Justice, Peace and Human Rights, a registered charitable Trust as the main Petitioner. The co-petitioners in this case are persons who have been affected by the violence that took place in Kandhamal in 2008.

The Petition challenged the investigation conducted by the State investigative agencies as well as the inefficiency of trials conducted. It further sought the re-opening of several murder cases on the grounds there were various lacunae in the investigation as well as the prosecution of the accused.

A few specific examples of lacunae in investigation by the Police are:

a. In ST 37/2010 (State v. Sambhu Arjaji) tried by the Fast Track Court-I, Phulbani the Police did not seize the ashes of the victim who was burnt to death to send it for chemical examina-
tion in the laboratory.

b. In the case of ST 17/43 of 2009 (State v. Pappu Pradhan & Others) tried by the Fast Track Court-II, Phulbani, where only the bones were seized from the spot, the police again did not send the bones to determine whether it was human bones or animal bones.

c. The police also did not conduct Test Identification Parade of the accused in ST 08/2009 (State v. Pradeep Kanhar & Others) tried by Fast Track Court-II, Phulbani which is a basic requirement in such cases.

d. The police also failed to produce important witnesses before the Magistrate so that their statements under Section 164 Cr. P.C. could be recorded.

The number of cases that have been treated as FR cases are a clear indication of the lack of proper investigation done by the police. That on 27.11.2011 in a Lok Adalat which was presided by the Judicial Magistrate First Class (JMFC), G. Udaygiri, several cases were closed by the Learned JMFC on the ground that the complainant did not wish to proceed any more in the case and hence the FRT case is accepted and the case is closed. A bare perusal of the Orders show that there was no application of mind on the part of the JMFC while passing such orders and shows a mechanical acceptance.

That the failure of the justice system is also reflected in the failure of the Public Prosecutor to produce the doctor who conducted the autopsy of the deceased as a prosecution witness in ST 109/37 of 2009 in the matter of State vs. Manoj Pradhan tried by the Fast Track Court-I, Phulbani.

31. Recording of confessions and statements. - (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

*Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

[Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.]

*[(Both proviso to sub-section (1) inserted vide Code of Criminal Procedure Amendment Act, 2008)]

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B. Magistrate”.

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.
Early this year, the State of Odisha along with the Central Bureau of Investigation filed their Reply to the Petition. In their Reply, the State has said that out of 827 FIRs which were registered, they have set up a Special Investigating Team who took up investigations into three important cases. The State however did not specify which three cases were given prominence and why.

A sitting MLA of G. Udaygiri assembly constituency, Mr. Manoj Pradhan, was due to his actions and brazen participation charged under Section 302 of the IPC in seven (7) out of the twelve (12) cases in which he has been charged. However, he was either convicted for lesser offences or acquitted. The State has failed to file any appeals against his acquittals and three of his cases are still pending.

The High Court of Odisha had also in several instances passed orders directing the Sub-Divisional Judicial Magistrate courts to release the accused on “bail on such terms and conditions as the learned Magistrate may deem just and proper” in apparent oversight of the procedure established by law as the Magistrate’s Court is not the appropriate authority to grant bail in cases triable by the Sessions Court. Yet again the State failed to appeal against the said erroneous bail orders.

On the 18th of November, 2013 when the matter last came up for hearing in the Court, the Counsel for the State sought some time to file an additional affidavit indicating the latest status as on November 15, 2013 and was granted four weeks time to file the same.

P. B. D’Sa
Vice-President, PUCL

“Violence in Mangalore and the Response of NHRC: Communalism”

Mangalore comes under Karnataka State and is the Head Quarters of erstwhile South Kanara, where maximum communal Disturbances have occurred since the last 5 years under BJP rule though there have been such sporadic disturbances since 1990 onwards. It is very pertinent to mention here that RSS has chosen Karnataka to be another Gujarat, especially the coastal belt of Karnataka. Bababudan Giri where a dispute similar to Babri Masjid exists is treated as Babri Masjid of the South. Communalism is a complicated subject which does not affect only the Muslim and Christian minorities, but it also affects Dalits and other backward classes adversely, though the brunt of the affect is faced by Muslims and Christians. Communalism and castism is closely interlinked in India. Though the recent communal disturbance is known as “Mangalore violence”, it has occurred all over coastal Karnataka, but the seriousness of violence was deeper and greater in Mangalore than in other places, because Mangalore, which is known as Rome of the East by Christians, was used as a trial ground to attack Christians and their prayers places. RSS has chosen this place as a laboratory for their Hindutva Agenda.

We have brought out several reports on the subject. To quote a few important ones, they are, A chronicle of communal incidents in the coastal Districts of Karnataka, cultural Policing in Dhakshina Kannada and Udipi. Another report to the People’s Tribunal Enquiry is on church attacks on 14.9.2008, headed by Justice M.F Saldanha (Retd). These reports are based on newspapers and we might have missed several entries Attacks were directed on the Christains accusing them of conversions, and to Muslims in the name of Love Jihad and transportation of cattle etc. The attacks are still going on as around 3-4 years back when V. S. Acharya was the Home Minister, he had given instruction to the police that every police station should book at least 20 bogus cases of conversion as there were no cases booked under conversion till that day. The report,. If there was 1 incident in 2001, it came up to 91 incidents in 2009, 94 in 2010, 126 in 2011 and 179 incidents in 2012.
The hindutva have been extremely successful and attracting into their fold a large number of local caste Hindus and Dalits. This is managed mainly through a combination of appealing to their religious sentiments and offering some substantial rewards in cash or kind. Consequently, a network of foot soldiers for quick communciation and action exists in the form of hotel employees, private bus personnel, booking agents, auto-rickshaws, taxi and jeep drivers, newspaper boys, private security personnel, police men etc. These are supported by a large section of the administration, police and the media as there has been a systematic infiltration of elements sympathetic to the Hindutva cause. Earlier, Mangalore was the most harmonies metropolitan place.

The church attacks made International news and SHRC Karnataka took up the enquiry Suo motu, but to our Knowledge NHRC did not bother to initiate any steps, though the violence was unprecedented and took place at 17 places simultaneously and continued for two days.

It was a planned attack, planned by the Govt itself and personally supervised by the Home Minister of the state by name Dr. V.S Acharya, and the Police were used to support the attackers and to protect them. Police, not only gave a cover to the attackers in but played an important role in wiping out and destroying the evidence by cleaning all places of attack by picking up broken tube lights widow glasses, stones etc, immediately after the attack. This showed that attackers were protected and monitored all the time by the government.

By 2007 we had our own SHRC, we had stop writing to NHRC. But we still wrote a 19 page report to NHRC giving various communal incidences including the church attack on 17.12.09. We have received the acknowledgement but no further action has been taken by NHRC or the SHRC and no compensation has been paid.

SHRC came to a funny conclusion of issuing guidelines to the Administration and Police department as to what they should in future and demanded certain past statistics, instead of finding out who the guilty is and recommending criminal prosecution and suitable compensation.

There was a commission appointed by the Karnataka Govt. to probe into the Church attacks, just to escape from the truth, which commission funnily accused the Government and Sangh Parivar in its interim report, but exonerated all of them in the final report.

During the year 1995 to 2010 we have sent 35 complaints to NHRC and except in one case all other cases we have not received any relief at all.

SHRC was approached in 31 cases from 2007 to 2012. In one case it recommended punishment to a S.I but punishment was not implemented by the Govt. In one of the cases were Naxals had killed some Police men and vice versa, SHRC advised Govt. to carry out socio-economic development in Naxal areas but never bothered to arrive at who the guilty were.

We started advising victims to approach the court instead of approaching to NHRC or SHRC, as we are convinced about the ineffectiveness of these toothless bodies, which finally protect and give legitimacy to the criminal acts of the Govt. officials.

Following are a few cases sent to the commissions by us:

**NHRC CASE NO 10 / 42 / 95 LD**

One Idinabba aged about 45 years approached us on 14.4.95. This is a case in which Police abducted from his house and tortured a young Muslim boy named Anwar Hassain on 20/21 – 2 – 95 (12:30am) Torture took place for 6 days. He was produced before a magistrate only on 26.2.1995 and admitted
to the Hospital in an unconscious condition in the first week of March 95. When I visited the hospital on 14.4.95 the boy was in a dazed condition and passing stool and urine now and then without any control. Doctor on duty told me that his kidneys are seriously affected and there were injuries on his body all over, even though I visited nearly 24 months after his arrest.

There was a deep injury on his back from where I could see his backbone. Earlier I was told by his father Idinabba all the details of arrest torture etc, which were corroborated by Anwar as well as his two neighbours whom I met in the Hospital. His father also told me that Police visited their house constantly and threatened to kill them if they proceed against them. This is a normal modus operandi of the Police.

In three months time we heard that Idinabba had to sell his house, because of expenses incurred on his son’s treatment and Idinabba developed heart disease and died within a year, though he was only 45 years old.

We sent a letter to NHRC on 28.7.1995 reporting the incident. Because of the shock and mental torture and financial burden to treat his son, Idinabba, father died of Heart attack on 8.12.1995. He had earlier sold his house to meet the medical expenses. NHRC wrote to us asking for our comments on Govt. of Karnataka report dated 13.2.1995, which was never received by us. NHRC wrote to us once again on 19.2.1996, stating that our response is not received. We wrote back once again on 1.3.96 asking for the copy of report dated 13.12.1995 which was not received by us.

Finally when we received the report we replied in detail on 30.3.1996 rejecting the report.

In the mean while there was a departmental enquiry held and as per letter dated 1.3.1996 of S.I of Mangalore South Police Station, he had confirmed the assault done by his Police men.

In December, 1996, Sri P.S. Rao a Dy. S.P from NHRC visited Mangalore and we provided him with all Documents, Medical records and he also met the victim. This man was moving around in a Jeep provided by the accused men and needless to say was a guest of the accused men. But finally the NHRC closed the case saying that a department enquiry has been initiated by the Police Dept.

We wrote to NHRC on 29.9.2001 objecting to their approach and the silly reply was that “Charges against them could not be proved due to lack of oral and documentary evidence, they were exonerated”. It is paradoxical South Police Station confirms the torture but NHRC simply closes the case saying that because of lack of oral and documentary evidence they were exonerated.

**CASE NO 13/10/2007-2008**

On 11.4.2007 we sent two reports to NHRC as follows:

1. Encounter killing of one Sudhier by police on 19.12.2006 in the presence of one Kabir and Abdul Rehman who had filed an affidavit to that effect before the JMFC II court in Mangalore. – NHRC did not enquire into the case.

2. Another double encounter death which took place on 1.12.2006, while a funeral procession was moving; the S.P’s body guards deliberately used AK.47 to kill 2 youngsters who had defied the S.P during the procession. Strangely enough though the Inspector General of Police, Western Range, Mangalore acceded that as per the circular of Home Ministry No IV/13012/12/89- G and O dated 22.5.1990 “under no circumstances rifle AK47 to be used by Police forces deployed to control L and O situations, mob violence, riots etc” the NHRC closed the case, stating that during “independent magisterial enquiry, justification for the Police firing has been found” Strangely enough the law demands that it should be an enquiry by
a Judicial Magistrate and not by a Executive Magistrate.

NHRC depending on an Executive Magisterial enquiry is illegal. Paradoxically same NHRC, on continuous persuasion, personal visits to their office by one of our members later ordered Rs. 5 Lakhs compensation to be paid to each of the 2 families of dead youngsters but it never recommended any action against the S.P and 2 Police men for killing two youngsters.

NHRC CASE 369 / 10 / 2001 – 02

On 30.10.2001 we sent a report to NHRC about atrocities on 69 Muslims of Katipalla in Surathkal that occurred on 23.8.2001.

NHRC took up the matter for investigations IGP western Range Mangalore submitted a report denying the charges made by us. Though I.G Police’s report was received by us we are unable to trace our reply to the same. However, the fact of the matter is that once we have sent a detailed report to them, it is their duty to investigate in detail. Once we have prepared a detailed report, then we are left with no other evidence to produce before them. The duty is on the NHRC to send a team to Mangalore to investigate and produce evidence before them and arrive at a fair conclusion. To give more credence to the reply of an accused without subjecting him to a critical appraisal and cross examination is totally wrong. Benefit of doubt should be given to a victim in Police atrocities, as Police do not leave any evidence for their sins of commissions and omissions.

Further, it is necessary to give due importance and credence to the report submitted by organizations like that of ours, who are totally neutral and credit worthy. We do not represent either the victims or NHRC we look at everything from Human Rights angle.

NHRC NO 275 / 10 /28 /09 -10

This is a case of death of two Muslims youngsters by alleged drowning (doubtful). Circumstances led us to believe that it was a murder and then thrown in the river. Out of 5 persons transporting cattle on 9.9.2009 two died, two escaped one was arrested. Family members came to know of drowning only at 11 am on 10th September 2009. Police refused to join the search as they said they do not have necessary men with them. However, nearly 300 volunteers searched for the drowned bodies till 12th morning.

Background
A Scorpio was following them while they were transporting some cattle in a Quavalis. They were Hindu activists. When they reached a minor bridge with shallow water level, the Scorpio blocked their way and they found 3 Police men with 3 or 4 Saffron wallas getting down from the Scorpio.

This is a typical case of attack by Bajrang Dal on Muslims minority, especially those involved in cattle trading. Cows, Buffalos are reared and sold by Hindus, but Muslims are attacked while transporting them and false cases are booked saying they are stolen cattle.

As per the version given by Dadapeer, All of a sudden a Maruti van and an Indica and a Jeep appeared in front of their vehicle and at the back Scorpio was following them. This explains that this was a planned operation.

The spot where the 5 youngsters got down from their vehicle, one cannot Jump and swim as the river is only knee deep on this side and about 3 meters deep on the opposite bank. Hence jumping into the river is ruled out. According to the marks on the dead bodies it was obvious that one was killed and
thrown in the water, other one was drowned forcefully by the saffron gang.

As usual policy has provided their false report in their usual style and NHRC has more trust in our police force, whose ability to produce fake and false reports are well known to the entire world.

We demanded re-opening of the file by our letter dated 10.5.2011 because NHRC came to a conclusion before getting the postmortem report of Mohammad Mustafa.

Yet NHRC concludes that the death did not occur on account of Police negligence.

Our demands were not only to find out the guilty and dereliction of duty by the Police, the incident had raised the issue of criminal acts of Hindutva brigade and therefore had demanded a CBI enquiry as we had no trust in the ability of NHRC in delivering the goods. They catch hold of minor issues in the case and deliver a order which has nothing to do with the main issues. They have not bothered to probe into the connivance and collaboration of Police with the saffron gang, which was continuously disturbing the communal Peace of South Kanara (Dakshin Kannada and Udupi ) and dividing the country with serious future consequences.

MANISHA SETHI

JTSA's Submission to IPT on NHRC

On 19th September 2008, a raid by the Delhi Police Special Cell in a flat in Batla House, Jamia Nagar (Delhi), ended in the killing of two inmates, as well as left Inspector Sharma grievously injured. He succumbed to his injuries later in the evening. Civil rights groups raised question marks over the police story –though the media on the whole, barring a few exceptions, tended to push the police version. Regardless of accusations and counter questions, the NHRC guidelines on encounter killings required that a magisterial probe be conducted into the encounter. (see appendix for guidelines).

NHRC and the Magisterial Probe:
The magisterial probe was subverted by the refusal of the Lieutenant Governor (LG) to grant permission for the enquiry.

The NHRC sought a response from the Delhi Police on the encounter. There were stories in the media released by the Delhi Police that the NHRC had appeared to be satisfied by its submissions; this was however refuted by the NHRC. Meanwhile, Act Now for Harmony and Democracy (ANHAD) filed a petition in the Delhi High Court seeking a direction of judicial probe.

In February 2009, a delegation of JTSA met with the chairperson of the NHRC, Justice Rajendra Babu, and expressed their concern at the gross violation of the NHRC guidelines on encounter killings by the Delhi Police and the government. The Chairperson also communicated his dissatisfaction with the LG’s recommendation against magisterial enquiry, and assured the delegation that this would be challenged by the NHRC’s lawyer in the High Court, where the matter was to be heard. The JTSA delegation impressed upon the Chairperson to constitute an independent enquiry committee constituting of members with credible track record in the field of human rights.

NHRC’s enquiry into the Batla House ‘Encounter’
The NHRC did state court that magisterial enquiry was mandatory. But still, even though familiar with the non cooperation of the Delhi Police in submitting reports to the NHRC, cognizant of the doubts being raised by civil rights groups over the police account of the encounter, the NHRC still chose not to initiate an independent enquiry on its own, till pushed to do so by the High Court. It released its
But its conclusions, pronouncing the Delhi Police of any foul play, were blatantly partisan. The NHRC’s investigations into the police action on 19th September are based on evidences provided by those accused of encounter alone. The Commission’s enquiry is based on the responses of the following officers of the Delhi Police:

1) R.P. Upadhayay, Additional Commissioner of Police, Vigilance;
2) Satish Chandra, Special Commissioner of Police (Vigilance), Delhi;
3) Neeraj Thakur, DCP (Crime & Rly.), Delhi;
4) Karnail Singh, Joint Commissioner of Police, Special Cell, Delhi.

No Attempt at Neutrality
As it appears from the Report, the Commission did not even bother to pay a visit to the Batla House locality and Flat No. 108, L-18, the site of the said encounter. There was no attempt to collect the versions of the eyewitnesses, neighbours or relatives of those killed. The Fact-finding reports of various civil rights groups including the Jamia Teachers’ Solidarity Association’s Encounter at Batla House: Unanswered Questions, a damning indictment of the police version with corroborative evidence was given no cognizance. Applications filed by individuals from Azamgarh wishing to depose before the Commission were ignored and not even acknowledged.

The Commission also cites the post mortem reports of the deceased, which had thus far been treated as state secrets. While wounds suffered by the slain police officer has been provided with great detail such as the places in the body where bullet injuries were found, their impact, ‘entry and exit points’ etc. Even the injury suffered in the arm by injured Constable Balwant Singh carries all this information but the same treatment is curiously absent in the case of Atif and Sajid, the slain ‘terrorists’. It mentions the injuries and bullet entry wounds on Atif’s and Sajid’s bodies but refuses to consider the fact that Sajid had several bullet wounds on his forehead and head regions, which suggests that he was shot while made to crouch or squat.

Further, in both Atif and Sajid’s case, the postmortem report mentions ‘several ante-mortem injuries including firearm wounds’. This only suggests that there were at least a few ‘non-firearm wound’. In what circumstances were these caused? The enquiry team provides us with no explanation. In the absence of any description, the suspicion that they could have been tortured before being encountered gets strengthened.

NHRC’s deliberations on the post-mortem reports of Inspector M.C. Sharma, Atif Ameen and Md. Sajid tells it own tale.

In the NHRC’s proceedings on the Batla House ‘encounter’, the Commission expends 630 words (pp.14-16, 20). While the actual autopsy report of Inspector Sharma is roughly about a page and a half.

On Atif Ameen’s autopsy findings the Commission expends only 73 words (pp.16-17); whereas the actual autopsy report runs approximately into four 4 pages.

Similarly, the Commission very conveniently spends a mere 17 words (p. 17) while deliberating on the post-mortem report of Md. Sajid; again the actual autopsy report runs approximately into four 4 pages.

Why was the Commission so verbose with Sharma’s autopsy while cryptic with the autopsy of the slain boys, especially with that of Sajid, who was shot in the head?

In the police’s defence, it cites the serological report, which says that the blood group matching that of Atif, Sajid and Balwant Singh (the police man who was injured in the 19th September operation)
was found on the floor, gate, drawing room, walls, gate and furniture of the flat No. L-18. So what does this prove or disprove? Except that two people were killed and another injured. But most interestingly, it does not mention at all whether the blood matching the blood group of Inspector Sharma was found in the flat.

This is glaring as the Commission’s report in the very next few paragraphs confidently corroborates the police version that a “volley of bullets was fired on the police team as soon as it entered Flat no 108, L-18 through the side gate. …” If Balwant Singh was “also with Inspector Sharma” and sustained bullet injuries leading to the spilling of blood mentioned in the serological report, how is the serological report completely silent on the blood of Inspector Sharma? The weapons which killed Inspector Sharma, W/2 and W/3, according the Commission, belonged to no one in the police party, and were therefore quite obviously it concludes, the possessions of the slain youth, Atif and Sajid. The NHRC here places an implicit faith in the Delhi Police, and chooses to ignore what the civil rights activists have been saying from day one, that no panchnama or seizure list was prepared in the presence of any independent witnesses, as is procedurally required.

It also refuses to comment on questions being raised on the police claim that two alleged terrorists escaped during the operation, declaring it to be beyond the scope of its enquiry. In fact, it seems to be accepting the police version that ‘each flat has two doors and a crowd had gathered outside at the time when the exchange of fire was on’. Going by the police version the NHRC concludes, ‘in the melee it was possible for some persons to escape’. But the contradiction in the police report itself is not taken note wherein it is claimed that while Inspector Sharma led a few staff inside the building, the rest of the team members were guarding the ground floor. Now, had the NHRC team visited the site, it would have noticed that even if the flats have two gates, but the entry gate to the building is only one, on the ground floor and that was being manned by the police party. The residents of the other flats had been told to stay inside, but this again could be gathered only if the NHRC team had recorded the eyewitness accounts. How could it be possible for the two alleged ‘terrorists’ to flee?

The NHRC conveniently skirted all uncomfortable questions in its urgent rush to declare the innocence of the Delhi Police.

REVISED GUIDELINES/PROCEDURES TO BE FOLLOWED IN DEALING WITH DEATHS OCCURRING IN ENCOUNTER DEATHS ISSUES IN 2003 BY NHRC

A. When the police officer in charge of a Police Station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.

B. Where the police officers belonging to the same Police Station are members of the encounter party, whose action resulted in deaths, it is desirable that such cases are made over for investigation to some other independent investigating agency, such as State CBCID.

C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall invariably be investigated by State CBCID.

D. A Magisterial Inquiry must invariably be held in all cases of death which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.
E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/polic investigation.

F. Question of granting of compensation to the dependents of the deceased would depend upon the facts and circumstances of each case.

G. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officer is established beyond doubt.

H. A six monthly statement of all cases of deaths in police action in the State shall be sent by the Director General of Police to the Commission, so as to reach its office by the 15th day of January and July respectively. The statement may be sent in the following format along with post-mortem reports and inquest reports, wherever available and also the inquiry reports:

1. Date and place of occurrence
2. Police Station, District.
3. Circumstances leading to deaths:
   i. Self defence in encounter
   ii. In the course of dispersal of unlawful assembly
   iii. In the course of effecting arrest.
4. Brief facts of the incident
5. Criminal Case No.
6. Investigating Agency
7. Findings of the magisterial Inquiry/enquiry by Senior Officers:
   a. disclosing in particular names and designation of police officials, if found responsible for the death; and
   b. whether use of force was justified and action taken was lawful.

Footnotes

1. As of responded dated 12.01.2012 by Odisha Police to information sought under RTI
2. Section 302 IPC-Murder
3. Section 307 IPC-Attempt to murder
4. Section 376 IPC-Rape
5. Section 394 IPC-Voluntarily causing hurt in robbery
6. Section 395 IPC-Punishment for dacoity
7. Section 397 IPC-Robbery or dacoity, with attempt to cause death or grievous hurt
8. Section 436 IPC-Mischief by fire or explosive substance with intent to destroy house
VIOLATION OF WOMEN’S RIGHTS
AND THE RESPONSE OF NHRC
INTRODUCTION: POROSITY OF PATRIARCHY, DIVERSE IDENTITIES AND THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION

India is known for its ‘celebration’ of diversity and pluralism. Yet, it is the same country where difference becomes an excuse for violence, be it a difference in religion, in caste, gender, physical or mental abilities. Although we acknowledge that the terms ‘woman/women’ is not homogenous, for the purpose of critically assessing the National Human Rights Commission’s role and interventions, we shall use the terms ‘woman/women’, keeping in perspective its multi-faceted and overlapping inter-linkages with factors such as caste, class, religion, ethnicity and disability. Nivedita Menon argues that the factors like caste, race and religion are identities, the continuation and purity of which is dependent on the strict policing of sexuality that in turn governs gender appropriate behavior1.

The patriarchal structure of Indian society permeates the State through its laws, religious institutions and family traditions, in turn ensuring the sustenance of male domination through the policing of sexuality through these societal institutional structures; With the advent of the second wave of feminism in the 1970’s, the source of patriarchal domination across societies came to be understood as having its roots in the socio-economic-political structures of modern capitalism2 (Millett 1969, Mitchell 1971). These structures (e.g. family, state, religion, education, technology) legitimize and validate violence, coercion and oppression of women, also discursively and culturally codifying the diktats of gender roles, where the construction of normative sexuality is representative of the patriarchal power relations of a given society. Feminists like Kate Millett (Sexual Politics, 1969), Susan Brownmiller3 (Against Our Will, 1975) and Shulamith Firestone4 (The Dialectic of Sex, 1971) established that power is constituted by and exercised through the interconnection of sexuality, aggression, violence and the construction of normative gender roles, where acts of sexual violence

(like rape) are institutionalized in order to direct and coerce women into submission. Sexual violence, in feminist thinking and analysis, has been seen as institutionalized, generating in women a constant fear psychosis, which governs their bodies, sexualities, mobility and desires. Sexual violence hence becomes a bastion of patriarchal power and domination.

THE NHRC COMPLIANCE WITH THE PARIS PRINCIPLES

The NHRC is an A grade member (from 2011-2016)\(^5\) of the International Coordination Committee (hereinafter referred to as ICC). The ICC promotes and strengthens National Human Rights Institutions to be in accordance with the Paris Principles. Therefore, the accreditation of the NHRC is based on its compliance with the Paris Principles, i.e. its effectiveness with respect to the following six criteria:

- A clearly defined and broad based mandate based on universal human rights standards
- Autonomy from the government
- Independence guaranteed by legislation or the Constitution
- Pluralism, including membership that broadly reflects their society
- Adequate resources
- Adequate powers of jurisdiction

Certifying NHRC with an ‘A’ status means that it fully complies with the Paris Principles (while ‘B’ status implies partial compliance to the Paris Principles). In the following sections we shall gauge the NHRC’s role in intervening in complaints related to women in line with the relevant Paris Principles.

A CLEARLY DEFINED AND BROAD MANDATE

Established in 1993, the National Human Rights Commission seemingly has a broad human rights mandate as set out in the NRHC’s functions at section 12 of the Protection of Human Rights Act, 1993. The NHRC has the power to take up cases suo-motu or on petitions presented by complainants of violations of human rights or the negligence by a public servant in the protection of human rights, review safeguards provided under the Constitution or law and recommend measures for their implementation, undertake and promote research in the field of human rights, and encourage efforts of Non-Governmental Organizations for the protection and promotion of human rights. Thus, in addition to intervening in individual complaints regarding violations of human rights, the NHRC also has a mandate to undertake research and liaison with women centered civil society organizations or any NGO that works on women’s issues. In this regard, the NHRC is given power to investigate wider systemic issues in an effort to prevent violations of human rights.

However, the NHRC appears to have neglected the rights of women by focusing mainly on the bundle of rights commonly referred to as ‘civil and political rights’ at the expense of other rights referred to as ‘economic, social and cultural rights’. Traditionally, the rights of women are grouped in the latter bundle as economic, social and cultural rights.\(^6\) This inattention to human rights violations against women is also evident in the NHRC Annual Report 2009-10\(^7\) where only two case studies regarding women are referred to under the heading Atrocities on Women and Children and no reference whatsoever is made to the rights of women in the section of the report dealing with Economic, Social and

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7. There are no NHRC Annual Reports available for the years since 2009-10

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Further, the Annual report does not provide any useful information in relation to the percentage of individual complaints made by women. Nor is there an analysis categorizing individual complaints to provide an overall picture of the types of human rights violations alleged by women.

The overlap in authority between the NHRC and the State Commissions coupled with the broad discretion of the NHRC to transfer complaints to the State Commissions may be seen as the NHRC shirking responsibility for investigating complaints within its mandate. Presently, there are no guidelines governing when it is appropriate for the NHRC to transfer a complaint to a State Commission, other than the very provision that the transfer is ‘necessary or expedient’. No other factors or criteria have been established. The NHRC should be required to provide a detailed explanation as to why it has considered it necessary or expedient for the complaint to be transferred to a State Commission pursuant to s13(6) of the PHRA, 1993.

The NHRC perceives that the increasing number of cases it received over the years is indicative of the growing faith of the people; however they fail to weigh their misplaced optimism against mounting frustrations of the people as well the civil society with its complaints handling, structure, actions and inactions.

**ADEQUATE POWERS OF JURISDICTION IN RELATION TO INDIVIDUAL COMPLAINTS HANDLING**

A substantial factor limiting the jurisdiction of the NHRC to consider human rights violations is the requirement in section 9(vi) of the National Human Rights Procedure (Regulations), 1994 that individual complaints can only be entertained if the allegation of a violation of a human right is against a public servant. The significant lack of jurisdiction to investigate complaints against other non-State entities and individuals disproportionately impacts violations of human rights effecting women in light of the prevalence of sexual and domestic violence against women in India. The main human rights issues faced by women are discussed below and it is clear from a cursory understanding of those issues that the perpetrators of human rights violations against women include non-State entities.

Moreover, the NHRC is also limited in its jurisdiction in relation to complaints made against the armed forces. In 2012, a bench of Justices B.S Chauhan and Swatenter Kumar explicitly stated that the Army could not claim blanket immunity under AFSPA for offences like rape and murder. Such offences should be treated like a ‘normal crime’ with no ‘sanction from the government’. “You go to a place in exercise of AFSPA, you commit rape, you commit murder, and then where is the question of sanction? It is a normal crime which needs to be prosecuted, and that is our stand.” The NHRC, under the Chairmanship of Justice K.G Balakrishnan, held a Core Group meeting on March 22, 2013, where Mr. Suhas Chakma (Director, Asian Centre for Human Rights) recommended that the NHRC visits or holds a public hearing in Manipur, in view of large number of cases of human rights violations in the State.

In October 23rd - 25th 2013, the NHRC held a ‘Camp Sitting’ at Imphal, Manipur where it declared at least 22 cases of encounters to be false. Curiously, the NHRC was conspicuously silent on the issue of  

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8. See note 7: 44-50  
9. Section 21(5) PHRA, 1993 and List III in the Seventh Schedule to the Constitution of India  
10. Minutes of the Core Group meeting on 10.02.2012  
11. Section 19 PHRA 1993  
13. [http://nhrc.nic.in/coregroupofngo.htm](http://nhrc.nic.in/coregroupofngo.htm) (Minutes)
rape by the army in the state, so much so that it did not even feature in the list of issues discussed that were “raised by NGOs”\textsuperscript{14}. The NHRC took up the issue of the denial of visitors to Irom Sharmila as a gross violation of human rights.

The NHRC in its Core Group meeting held on February 10, 2012\textsuperscript{15}, held that it was concerned with the ‘authorization’ of complaints by victims since many NGOs filed complaints based on newspaper articles, etc. without seeking authorization for the same. However, this concern, discounts the challenges faced by NGO’s when bringing complaints to the attention of the Commission. Those challenges include lack of expertise or awareness on the part of some grassroots organisations and physical inaccessibility to the location of the victim. Also, if the issue concerned is a serious violation of human rights, cases relating to violence against women for example, the NHRC can proactively look into such a case if brought to its attention by exercising its suo-motu jurisdiction, and use of its investigative apparatus\textsuperscript{16} to seek any information or authorization necessary to proceed with the case. Moreover, the NHRC does not accept complaints concealing the victim’s identity. This clearly weakens its complaints process, as many victims may not be forthcoming with their complaints for fear of being exposed to perpetrators. Whilst the names of rape victims, victims of child sexual abuse and those complainants diagnosed with HIV/AIDS are not made public, the majority of victims cannot have their identity concealed\textsuperscript{17}.

The NHRC has the power to dismiss a case in limini for a number of reasons, e.g. it being sub-judice, want of jurisdiction, expiration of a year from the date of incident, without considering the individual merits of the case\textsuperscript{18}. Some cases are not brought forth to the commission for many months; in cases like rape or sexual assault of a woman, it could take months for the victim to gather the courage to be vocal about the incident as retelling the events could traumatize her even further. In such circumstances, the one year bar preventing such cases from being considered by the NHRC discourages complaints of such nature being reported to the commission. Therefore, the NHRC becomes a body, perhaps indifferent to the psycho-social care that many victims of sexual violence need to fight their case. To refuse such cases on the basis of a strict adherence to an arbitrary limitation period without the possibility of any discretion on the merits amounts to a gross miscarriage of justice.

In addition, decisions, orders and directions made by the NHRC cannot be appealed. There is no formal possibility to appeal threshold decisions made by the NHRC about whether a complaint will be accepted or rejected, nor is there any review process in relation to decisions made during the course of a complaint being investigated or its final outcome. According to section 32 of the National Human Rights Commission (Procedure) Regulations, “no party shall have a right to seek review of the order/proceedings of the Commission”. In cases relating to women, where complainants strongly feel they have not been treated fairly or the decision arrived at by the Commission is questionable, there should be recourse to seek a right of review. To provide transparency in decision-making, where the NHRC rejects a complaint in limini, the NHRC should be required, by statute, to provide meaningful reasons to the complainant explaining the rejection of the complaint. A legislative mechanism for an internal review by a more senior NHRC staff member of an in limini rejection of a complaint should be established to implement greater accountability in decision-making.

\textsuperscript{14} http://nhrc.nic.in/dispArchive.asp?fno=12990
\textsuperscript{15} Ibid at 13
\textsuperscript{16} Section 12 and section 13, PHRA 1993
\textsuperscript{17} From Hope to Despair: The complaints Handling Mechanism of the NHRC of India, People’s Watch, 2006: 81
\textsuperscript{18} Ibid at 19, P9 99
PLURALISM

Restrictions on Commission composition and selection

Twenty years since its formation in 1993, with the exception of Justice Fathima Beevi (period of office: 1993-1995) and Justice Sujata Manohar (period of office: 2000-2003) as members, the National Human Rights Commission has been remarkably deficient in adequately representing women in both Chairmanship and Membership.

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation (SCA) while recommending ‘A’ status to the NHRC in its session held in Geneva from 23-27th May, 201119 pronounced its concerns related to the composition and pluralism in the NHRC. It pointed out that the ‘provisions of the PHRA (Amendment) Act 2006, dealing with the composition of the commission are unduly narrow and restrict the diversity and plurality of the board’, ‘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’, and the requirement that ‘the majority of members are recruited from the senior judiciary further restricts diversity and plurality’. The SCA stated that determining the composition of the NHRC’s senior membership in this way ‘limits the capacity of NHRC to fulfill effectively all its mandated activities’. The ICC SCA further emphasized the need to maximise ‘the number of potential candidates from a wide range of societal groups’.

Utilization of ex-officio members

According to the NHRC website, Full Commission meetings were held on 7 Feb & 7 Dec 2012. There is no information available to suggest further meetings were held in 2013. The minutes of the Full Commission meeting on 7 December 2012 disclose a number of issues relating to women’s rights were discussed both at the meetings on 7 December 2012 and the prior meeting on 7 February 2012.

During the meeting on 7 February reference was made to following up on the recommendations of the Conference on ‘Combating Human Trafficking in India’ organized jointly by the NHRC and the NCW. It was noted that the NRHC had not received the draft recommendations on rescue and prevention aspects of human trafficking from the NCW. The Full Commission meeting in February 2012 also discussed the amendments to the Indian Penal Code (IPC) to introduce a separate chapter in relation to violence against women. However, the recommendation to change the IPC would need to come from the Law Commission and that organization was not operational at the time of the meeting.

At the Full Commission meeting in December 2012 women’s rights issues regarding reporting obligations in accordance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) were discussed. The important issue of the increasing number of acid attacks on girls and women was also raised at the meeting. The NCW noted an increase in the number of cases reported and the necessity for national guidelines in prevention and medical treatment of victims. The NHRC stated it had not received any complaints regarding acid attacks. While noting the problem was “an important human rights issue and one that must be addressed in all earnest” the minutes do not evidence an intention by the NHRC to take any action on the matter. The minutes reflect that perhaps the NHRC is not utilizing the expertise of the ex-officio members fulsomely in its broad mandate to current research and investigate wider systemic human rights issues.

19. Information from RTI filed by All Indian NGOs Network on NHRIIs (AINNI) on 19.03.2012
Dr. Mohini Giri, who was the Chair of the National Commission for Women from 1994-1998, during the Independent People’s Tribunal, lamented how the NHRC had not given significant importance to the meetings of the full commission. “However, I am appalled to see thereafter, 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. Five of them in the year 1998, 4 of them in the year 1999, once in the year 2000, four times in the year 2001, four times in the year 2002, twice in the year 2003, once in 2004, twice in 2005 and one each in the years 2006, 2007 and 2008. This alone will speak of the importance given by the NHRC to the meetings of the full commission.”

She also stated, “I am pained to state that in another two days it will be one year of the now known Delhi rape incident. Sadly, these incidents have multiplied several folds in the past one year. It is sad for people like me who had led the women’s commission in this country to note that when the government decides to constitute a committee, to propose changes to laws governing violence against women in this country, neither the NHRC, nor the NCW nor any of the deemed members of the NHRC were considered by the govt. for this honorous task that late Justice Verma so efficiently and meticulously performed with esteem”

Effectiveness of Core Group mechanism

The ICC’s SCA quoted the Paris Principle B.1 (a)that states the appointment in NHRI’s should be representative of ‘Non-Governmental Organizations’ responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations for example associations of lawyers, doctors, journalists and eminent scientists’. The NHRC, by its very design, excludes this principle as reflected in its composition and membership from 1993-2013. The NHRC cites the existence of its Core Groups as the means by which it complies with the Paris Principles requirement for pluralism and engagement with civil society and human rights defenders. However, the ICC’s SCA noted that the ‘information provided by civil society groups including those actually represented on the Core/ Expert Group indicates that these mechanisms are not functioning effectively as a means of engagement and cooperation between NHRC and civil society defenders’.

Women in India: Issues at the Forefront of Human Rights Violations

According to census data, the sex ratio in India has improved from 933 women per 1000 men in 2001 to 940 women per 1000 men in 2011. The neighboring South East Asian countries [Sri Lanka’s being 1034, Nepal’s being 1014, Myanmar’s being 1048] have a better sex ratio compared to India. Domestically, according to the 2001 census, certain states were marked for their low sex ratio: Jammu and Kashmir- 892, Uttar Pradesh- 898, NCT- 821, Haryana- 861, Punjab- 876, Sikkim-875, Arunachal Pradesh – 893 and Nagaland- 900. The situation has changed considerably according to the 2011 census with the following figures: Jammu and Kashmir- 883, Punjab- 893, Haryana- 877, Sikkim- 889. The 2011 census data reveals that India’s total literacy rate is 74.04% with total male literacy being 82.14% and total female literacy being 65.46%. These statistics are reflective of the structural disparities between men and women that shape their economic and social conditions.

Sexual Violence

Sexual Violence against women is a concern for both national and international human rights organizations. Recently, the issue of sexual violence against women in India came to the forefront after the brutal

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20. Ibid at 11
gang rape of a 23 year old woman in Delhi in December, 2012. While this happens to be one of the recent cases, there have been other incidents of sexual violence as well. In March, 1972, a 16 year old tribal girl named Mathura was gang raped by the police; in a police station while her relatives, who had come to file a complaint, waited outside unaware of what was happening; in 1973, Aruna Shanbaug, a nurse in Haldipur, Karnataka was sexually assaulted by a ward boy and consequently went into a vegetative state; in 1978, an 18 year old Muslim woman Rameez Bee was raped by the policemen who also killed her husband; in September, 1992, Bhanwari Devi, a saathin in a village in Rajasthan was gang raped by the upper caste men of her village for having the audacity to challenge the practice of child marriage despite her lower caste status; in July, 2004, a Manipuri woman Thangjam Manorama was picked by the paramilitary forces on the pretext of being a secessionist and was later raped and shot through her vagina; in May 2009, two Kashmiri women in the Shopian district of Jammu and Kashmir were allegedly abducted, murdered and raped under mysterious circumstances. All these cases not only highlight the prevalence of sexual violence against women in India, but also bring to our attention their insidious nature constituting entrenched patriarchal power structures in India, while also bringing out the intersection of factors like class, caste, religion and ethnicity in the exercise of institutionalized sexual violence against women in India.

Sexual violence against women in India manifests in many forms. Recently sexual harassment in the workplace has become a very poignant issue demanding immediate socio-political-legal attention and intervention. Bhanwari Devi’s case in 1992 brought to public attention the necessity of political and legal intervention in order to address the issues of sexual harassment in the workplace. Consequently, in 1997, the Supreme Court of India stipulated the Vishaka Guidelines to address sexual harassment in the workplace. In April, 2013, Sexual Harassment of Women at Workplace Act (Prevention, Prohibition and Redressal) was passed, mandating employers set up Internal Complaints Committees (ICC) at workplaces and government to set up Local Complaint Committees (LCC) at district level to investigate cases of sexual harassment at workplaces. ICC and LCC have the power to undertake interim measures to address the grievances and the complaints of the employees. The guidelines obligated all employers to ensure:

- a safe working environment
- display conspicuously at the workplace the penal consequences of indulging in acts of sexual harassment at workplace
- organize regular workshops and awareness campaigns to sensitize employees on the issues and implications of workplace sexual harassment and organizing orientation programs for members of the Internal Complaints Committee
- establish sexual harassment at workplace as misconduct under service rules and initiate action for such misconduct
- the employer is required to regularly monitor the reports submitted by the ICC.

Non-compliance with the provisions of the Act will lead to the employer being penalized with a fine of Rs. 50,000. Further non-compliance will lead to higher penalties and cancellation of the license.

or registration to conduct business.

Despite these Acts and remedies being in place in our statute books, the country recently witnessed two appalling cases of sexual harassment at workplace; a law intern has accused a retired Supreme Court judge of sexual harassment while in his employment in December 201229; a junior journalist working at the renowned news magazine Tehelka, has accused the editor-in-chief of the magazine TarunTejpal30, of sexually harassing her twice at a global conference in Goa. The two cases clearly demonstrate the incredibly vulnerable position women are in when confronted with the sexual wrongdoings of extremely powerful men. Moreover, the reluctance of the concerned organizations to undertake interim measures to provide justice to the complainants has led to a nationwide outcry and has further corroborated the patriarchal, misogynistic power relations underlying our workplaces and the system at large. Nivedita-Menon (2013) writes:

_The workplace - from the classroom to the court to the newsroom, every single workplace in short – is utterly sexualized. It is sexualized in a masculinist and misogynistic power-laden way. The continuous invocation of the possibility of sex and of women as sexual objects is the very air of the workplace. Women learn to take most of it with that uncomfortable smile, or to join in so as not to appear strait laced, or of course, to protest, knowing full well the price they will pay._

While these two cases have been able to garner much media limelight and public outrage due to their urban and middle-class positionality, sexual harassment cases from non-urban, lower class and lower castes settings have hardly managed to irk and vex national sensitivities. Women working at construction sites, as landless farmers, as paid domestic workers in houses and in every other kind of working class scenario face sexual harassment on a regular basis that does not feature in the popular consciousness of our society and clearly escapes the ideological agenda of the political and the intellectual elites and civil society.

In April, 2010, Dalit SthreeShakti came out with the case of 20 year old AnkhuriPushpa, a Dalit woman working as a paid domestic worker in the house of G.N. Agarwal, a retired army official. The employer along with his brother B.K. Agarwal would sexually assault Pushpa and blackmailed her into acquiescence by publicly revealing her nude photos and footage. In 2006, four tribal girls were gang raped by the SPOs in a village in Chattisgarh. When they tried to speak up, they were detained for five days, beaten up by the accused and forced to give their thumb prints on blank papers31. While the December, 2013 gang rape case and the recent incidences of sexual harassment at workplace have managed to harvest much socio-political attention, the sexual violence cases from non-urban, lower class and lower caste settings have not managed to raise the same public attention nor legitimate political action. Certain grassroots organization toil hard to bring to attention and condemnation such caste and class based atrocities but the majority of our middle and upper classes have very conveniently managed to ignore the issues. Many feminists have questioned why one singular instance of a urban based gang rape earned so much attention, whereas working class women are sexually exploited everyday at their work sites, landless women farmers are routinely raped by the feudal lords in their villages and lower caste women are the first recipients of violence at the hands of upper caste men? Despite the public uproar and many citizens taking to the streets in light of the recent events, what still needs to be dis-

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sected is the urbane, reformist and masculinist moral undertones apparent in the furor. While we have highlighted a few cases, there are many other cases that do not even remotely figure in the agendas of our mainstream media and hardly ever touch the sentimentalities of our urban based citizens. “Sexuality”, “sexual violence”, “perpetrator”, “victim”, “woman” and “man” all remain normatively and singularly defined in the popular consciousness, hardly ever taking cognizance of multiple locations and patriarchal reification.

It is however important to note, that of the cases we collected on violence against women, there were petitions on serious violations of women’s rights, like in the case of Phoolidevi (see case 1), who was sexually assaulted and escaped only due to help from her co-workers at MGNREGA. Her E.I.R was filed under the wrong sections, her medical examination was not done, she was refused a copy of the E.I.R and could not even claim the interim relief under the SC/ST Act 1989. Her complaint was filed with the NHRC on August 8, 2013 but she has not received a response from the NHRC as yet.

In another incident, Madwi Budri (see case no. 19), a tribal woman from Chhattisgarh’s Aralam-palli village, was gang-raped by SPOs and the police in May 2006. She was obviously refused when she initially tried to file a complaint at the police station; after much pleading, her complaint was filed on March 27, 2009. A petition regarding the same was filed with the NHRC on March 30, 2009 but she has not received a response from the Commission as yet.

In another instance, (see case no 3), when a case of sexual assault of a minor Dalit girl was brought to the notice of the NHRC on September 16, 2011, the NHRC transferred the case to the Rajasthan State Human Rights Commission stating that it was a subject within the jurisdiction of the State.

These three cases alone bring out the huge challenge before the NHRC to take a strong and independent stand against perpetrators of sexual violence. This may mean standing up against the dominant castes, or even the State agencies in some contexts. However, according to the sample cases we have collected and judging by the response of the NHRC to those cases, it is questionable how prepared the NHRC is to deal with sensitive and serious issues of sexual violence.

Domestic violence and Dowry

The division of labor by sex seems to be universal throughout human history. This sexual division of labor is hierarchical in nature with men in the dominant position within the hierarchy. Marxist feminists, eco feminists (like Maria Mies) and socialist feminists (like Heidi Hartmann) contend that this hierarchical nature of sexual division of labor is the root cause of women’s subordinate position across societies and cultures. Hartmann32 (1976) and Mies33 (1999) contend that this asymmetrical, unequal sexual stratification of labor occurred because of an increase in productivity, specialization of labor, establishment of private property, settled agriculture and the establishment of the State. As the human society changed from ‘primitive’ to ‘civilized’, the control over women increased. Marxist feminists contend that with the coming of private property, it became imperative to control women, their sexualities and their reproductive capacities. The property owners needed to ensure that their property would be passed on to their progeny and according to Engels34 (2004), this was done through the establishment of the institution of monogamous heterosexual marriage. Engels noted, “The first division of labor is that between man and woman for the propagation of children”. In order to maintain the institution of

monogamous heterosexual marriage and to ensure the purity of the progeny, it became crucial for men to control women, their sexualities, their bodies and their labor. This consequently led to a dichotomy in the spheres of public and private life, with women restricted to the private sphere in order for men to maintain control.

Central to the maintenance of this patriarchal mode of family and marriage is the routine control of women’s bodies and psyche. Women are subjected to both tangible and intangible forms of violence so that they internalize and make appear ‘natural’ patriarchal power relations. Domestic violence is one of the key mechanisms through which women are regularly controlled and regulated within the private sphere, so as to ensure their subservience to men. It is a consequence of patriarchal power and the assertion of “male privilege” within the family. This is articulated in a model developed by Pence and Paymar\(^3\) (1993). Within this model domestic violence is characterized by a pattern of behavior designed to dominate and control one’s partner, and is represented as a “power and control wheel”. The spokes of the wheel represent forms of abuse not involving actual assault. These “tactics” of domination and control include verbal, psychological, financial and social abuse, threats and intimidation and use of “male privilege”. The rim of the wheel, holding it all together, represents tactics of physical and sexual assault. The tactics not involving actual assault are often all that is required in achieving the desired control and domination, because of the potential to use the ever-present threat of actual physical and sexual assault. This is reminiscent of Brownmiller’s\(^3\) (1975) theory of rape as a conscious process of intimidation by whereby all men keep all women under their control.

In India, domestic violence is a routine topic of discussion within discourses on violence against women. Although Indian society is very diverse, patriarchal norms cut across almost all the cultures and the ethnicities of India. With the exception of some matrilineal societies in the North-East and the South, most Indian families are governed by the patriarchal, brahmanical, North-Indian values. According to Nivedita Menon\(^3\) (2012), by the late 20\(^{th}\) century, in the wake of the colonial social reforms, most of the matrilineal clans in Southern India were also diluted and started emulating patriarchal-brahmanical familial norms. Now, most families in India tend to be patriarchal, patrilegal and patrilocal where women have little or no agency and are dependent on the male family members for their economic sustenance. The patriarchal nature of the family naturalizes control of women and often subjects women to regular domestic violence in order to ensure compliance. One may argue the situation has improved in recent times given more and more women are becoming economically independent and are aware of their rights due to an increase in female literacy. But patriarchal norms and diktats are socialized and internalized in the psyches of both men and women and therefore, domestic violence is made to appear a natural and normal facticity. Further, although many women have access to an independent income this does not necessarily translate to having control over the economic resources of their households.

“Domestic violence” was not defined under in Indian legal discourse prior to 2005. It was in 2005 when the Protection of Women from Domestic Violence Act (DVA) came into being, that comprehensive guidelines for the state to draft legislation on domestic violence emerged. The Act has been groundbreaking in many ways. It not only recognized physical abuse but also the verbal, sexual, psychological and financial abuse that can be meted out against a woman within the private sphere. The Act has been formed in such a way that it is able to deal with the ways domestic violence affects women at multiple levels. The Act is also mandated to appoint service providers, counselors, and protection officers includ-

ing providing various forms of services like shelter homes, medical facilities, legal aid etc. The DVA, also, became a milestone in recognizing domestic violence within any relationship in the domestic sphere, thereby challenging the traditional treatment of the abuse on women. Therefore, the Act also recognized women in informal or unmarried relationships. Section 2(f) of the Act reifies this provision through its definition of a domestic relationship as, “a relationship between two persons who live or have, at any point of time, lived together in a shared household...by marriage, or through a relationship in the nature of marriage...” Also, under the Act, women have the right to live in their homes and obtain financial assistance from their family member if they are not economically independent.

Although the Act has mandated certain mechanisms to be put in place in order to protect the rights of women facing violence, in most States, the functionaries under the Act have not been appointed nor have the required services been provided. Several procedural difficulties and delays hinder the implementation of the Act. As a result, aggrieved women are unable to get any reprieve and due to procedural delays cases linger in the courts beyond the statutory limit of 60 days. Also, the patriarchal prejudices of magistrates, police officers, lawyers etc limit the implementation of the Act. They are ill informed about the Act and issues of violence against women and therefore, are apprehensive in providing the complainants with immediate relief. The Act should also incorporate regular gender perspective training for magistrates and police personnel. Moreover, the Act confines domestic violence within a legal framework without taking into cognizance the structural inequalities that perpetuate it. Women are seen as ‘victims’ in need of protection rather than ‘subjects’ capable of making ‘choices’. Domestic violence should be brought out of the narrow confines of the private sphere and the State and public functionaries need to assume a greater role in matters of domestic violence so as to ensure a safe environment for women in ‘private’ as well as in ‘public’.

Another topic that is closely connected to the issue of domestic violence is the problem of dowry. Dowry has been deemed as evil across the board. In the most basic form, according to Nivedita Menon (2012), it can be understood as a form of inheritance of parental property or gifts at the time of the wedding and beyond, for daughters, who otherwise lack inheritance rights. A lot of feminists have linked dowry to the political economy of compulsory heterosexual marriage, women’s unequal access to financial resources, and the widespread physical and structural violence against women (Menon 2012, Basu 2009). While it is felt that dowry can provide women with at least some form of physical property that could stand them in good stead in their marital homes, feminists have argued that the de facto situation within marital homes ultimately translates to the husband and his family having absolute control over the dowry goods. Dowry becomes a transaction between the men of the two families and becomes yet another reason for the oppression of women within their marital homes. Also, as C.S. Lakshmi (1989) pointed out, dowry also becomes the reason for women being alienated from their natal families. Once the parents provide the daughter with dowry at the time of her marriage, they do not consider her as equal inheritors in their properties. Women often get doubly marginalized because they do not have any actual control over their dowries and nor are they considered as inheritors of their parents property.

According to a lot of feminist historians and feminist sociologists, dowry was essentially a North Indian upper-caste practice but has now spread all over India. The reasons for this can be attributed to increasing consumerism and marketization; increase in cash incomes after the economic reforms of the 90’s and ‘sanskritization’ (a sociological term meaning emulation of upper-caste brahmanical norms).

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Nivedita Menon (2012) points out that the spread of dowry should be directly linked to the gradual spread of a particular form of marriage and family, which by the late 20th century, had come to appear natural in India (p. 42). That is, the emergence of the patriarchal, patrilineal, patrilocal marriage as the universal form of marriage. The expansion of dowry, according to Menon (2012), is the direct consequence of the emergence of this one form of marriage – compulsory marriage that sends women away to their husbands’ homes to live where women have limited rights as a wife, and never as a daughter (p. 42). As long as this form of marriage is seen as inevitable and natural, the problem of dowry can hardly be addressed.

What is also missing at the moment in our society is the acknowledgement of this ‘dowry’ giving as a concept. People often encourage ‘gift giving’ and ‘occasion centric gifting’. This would not be a bane had the gifting been a cultural norm from both sides. Rather the norm is for the new bride’s family to host large gatherings and ceremoniously provide gifts to each and every relation. One needs to identify and acknowledge these forms of hegemonic compulsions existing in the society, which if not up to expectations lead to latent forms of domestic ill-treatment that transforms into full fledged violence with time and adjustment.

Srimati Basu (2009) argues that the Dowry Prohibition Act (amended in 1984) is not very effective because it does little to address the social mechanisms through which dowry flourishes and it only comes into play if a complaint is filed. Nivedita Menon (2012) says that complaints are never about demands for dowry as such, but about ‘exorbitant’ or continuing demands of dowry. Also since both the giver and the receiver are held culpable by the Act, there is an inbuilt disincentive to report demands for dowry. Hence, the Dowry Prohibition Act is not used by many women’s organizations and feminist lawyers working on the issue. Preference is given to other legal remedies that address in concrete terms problems within marriage like domestic violence, lack of independence and economic subservience. The primary deficiency of the Dowry Prohibition Act is its lack of understanding about gendered power relations (which also intersect with factors of caste, class, ethnicity and religion) and its inability to deal with structural inequalities. As long as the socio-legal realms fail to work towards the restructuring of the institutions of contemporary marriage and family, dowry as a problem cannot be resolved.

Reproductive Health Rights in India
While reproductive health rights have been recognized as an important aspect of women’s rights all over the world, the mainstream discourse on the reproductive health rights concentrates primarily upon maternal healthcare and maternity benefits. Moreover, in the wake of capitalism, globalization and trade liberalization, the neo-liberal paradigm has become the new bastion of patriarchy to perpetuate its sexism and oppressive structures. And this could not be more evident in the mainstream discourse surrounding reproductive health rights and maternity benefits.

The Cairo International Conference (1994) and Beijing International Conference (1995) on Population and Development (ICPD) conferences managed to put reproductive health care within the purview of human rights. Reproductive and sexual health became a part of fundamental human rights. The ICPD Cairo Conference of 1994 proved to be a breakthrough in a lot of ways. It enshrines an almost feminist vision of reproductive rights and gender equality. It recognized women’s reproductive healthcare and sexual self-determination as basic human rights. The discourse on reproductive healthcare was shifted from a health paradigm to a human rights paradigm. Women’s empowerment was being linked

to their increased decision making capacity and thus transforming power relations at many levels of the society. It talked about the right to satisfying and safe sex. Nonetheless, according to Petchesky (2000), there seems to persist a stubborn kind of fragmentation among not just international organisations and national policy-makers but also among women's movement groups. Petchesky says that it is a fragmentation born of professionalism, donor-driven agendas, and a number of other forces. This has led to a compartmentalisation of women's issues into categories without realising that all these issues intersect at various points. The principle of *indivisibility*\(^{40}\), as Petchesky points out is crucial to operationalize a human rights framework.

According to Petchesky (2000) and Cook (1993), economic justice is very central to reproductive health rights. Petchesky says that health is a cross-sectoral issue. Poverty is an essential factor in understanding reproductive health rights. For example, dalit women's reproductive health issues are closely linked to land issues, privatization of healthcare, indebtedness and caste discrimination.

The neo-liberal trade regimes have strategically peripherised economically deprived women across the globe. Poor women in the third world have been the worst affected by the neo-liberal trade agenda. The intricacies of global trade may seem remote from reproductive and sexual health rights; in fact they stand precisely at the nexus where health, human rights and macro-economics meet. WTO's actions, which have been directed by the powerful, imperialist West have been able to override national laws and international conventions on health. They make it almost impossible for poor countries to manufacture their own generic brand medicences or to purchase such drugs from cheaper, non-patent-holding suppliers.

Cook\(^{41}\) (1993) points out the systematic discrimination and neglect of women's reproductive health issues at the hands of the law. Laws have also obstructed women's access to reproductive healthcare. And very few laws have been able to facilitate women's reproductive health services. Often, paternalistic control of women's sexual health and reproductive behaviour is manifested in the laws and the policies. Cook says that laws and policies stereotype and penalize women because of their role in reproduction, denying them equal opportunities with men. States have forwarded their chosen social, economic, and population agendas by implementing laws and employing practices that control women's reproduction. Petchesky (1995) posits\(^{42}\) community organising for health and human rights as the possible solution. The neo-liberal paradigm seems to have patronized local governments for health and human rights as the possible solution. Globalization in India began roughly in the 1970's eventually leading to the economic reforms of the 1990's. The early 1990s were preceded by a decade and a half of significant political and economic changes made manifest particularly in the policy shift from investment in infrastructure development to an emphasis on consumer durables. Beginning with Indira Gandhi's regime and continuing later with her son Rajiv Gandhi's government, this change in policy combined materially and discursively a discourse of modernity with the middle class in India. Consequently, driven by the dominant global discourse on "Good Governance", the 72\(^{nd}\) and 74\(^{th}\) amendments were also passed which focused on

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decentralization.

Under the Reign of B.J.P, driven by the logic of the newly globalized Indian economy, “India Shining” became the dominant mantra. The then B.J.P. government primarily focused on urban development and expansion. The B.J.P government was voted out of power in 2004 and the U.P.A assumed the reign at the Center. To rectify (or rather to set itself apart from) the earlier B.J.P. urban-centric policies, the UPA launched a rural development mission. Consequently, the tenth and the eleventh five year plans spoke of faster and inclusive growth and the focus was on infrastructural development. Consequently, the UPA launched the National Rural Health Mission (NRHM) in 2005.

The vision of the National Rural Health Mission (2005-12) was to provide effective healthcare to the rural population throughout the country with special focus on 18 states having weak public health indicators and/or weak infrastructure. These 18 states are Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Himachal Pradesh, Jharkhand, Jammu & Kashmir, Manipur, Mizoram, Meghalaya, Madhya Pradesh, Nagaland, Orissa, Rajasthan, Sikkim, Tripura, Uttarakhand and Uttar Pradesh. The Mission was also the articulation of the commitment by the Government to increase public spending on health from 0.9% of GDP to 2-3% of GDP. The mission document of NRHM charted out the following goals:

1. Reduction in Infant Mortality Rate (IMR) and Maternal Mortality Ratio (MMR)
2. Universal access to public health services such as Women’s health, child health, water, sanitation & hygiene, immunization, and nutrition.
3. Prevention and control of communicable and non-communicable diseases, including locally endemic diseases
4. Access to integrated comprehensive primary healthcare
6. Revitalize local health traditions and mainstream AYUSH (Ayurveda, Unani, Siddha and Homeopathy)
7. Promotion of a healthy life style

The core strategies of NRHM to achieve the aforementioned goals were to strengthen primary health centers and put in place community health workers. NRHM aimed to decentralize healthcare by focusing on developing district health plans. It developed the model of Rogi Kalyan Samiti that would be specific to a certain locale and would comprise of the panchayat members, the local NGOs and other local representatives from the community health center or the local hospital. Another very crucial strategy of NRHM was to promote primary-public partnerships in the healthcare sector. Rogi Kalyan Samiti also included membership from leading donors from the private sector.

Janani Suraksha Yojana (JSY)44, the safe motherhood program, was launched under the umbrella of NRHM to modify the already existing maternity benefits schemes. Prior to JSY, there was the National Population Policy of 2000 and the Reproductive Health and Child Care Policy (RCH) of 1997 that addressed the issues of reproductive rights and maternity benefits. Janani Suraksha Yojana (JSY) is basically a conditional cash transfer scheme operating as an incentive for women to give birth in an institutionalized health facility. It is a fully centrally sponsored scheme whose main objective is to reduce overall mortality ratio and infant mortality rate and to increase institutional deliveries. It mainly caters to BPL families. JSY provided women with the following benefits:

1. Ante natal and post natal check ups

44. Programme Directorate, NRHM: Janani Suraksha Yojana (2005-2012), Mission Document
2. Improved facilities for institutional deliveries  
3. A trained community level worker  
4. Complete immunization for the mother and the child  
5. Good hospital care  
6. Provision for toilets in each household  
7. Mobile medical units  
8. Improved provision for health and nutritional services at the Aaganwadi

ASHA (Accredited Social Health Care Activist) was a crucial component to the implementation of JSY. ASHA is a trained community health care worker who is elected from the community on a voluntary basis by the local representatives. She is responsible for identifying the women in the community who can be the beneficiaries of the scheme. She also assists the pregnant woman to obtain certificates wherever necessary and identifies a functional govt., health care institute for referral and pregnancy care. Another very important task of the ASHA is to increase the number of institutional deliveries. In fact, as described in the ASHA manual, each ASHA is incentivized on the basis of the number of institutional deliveries she is able to get done.

NRHM and JSY, as indicated by a number of reports, have been failures. Apart from the exception of Assam, no States have responded in a favorable manner. There are glaring glitches in the mission document itself. The ‘Mission Document’ of National Rural Health Mission (NRHM) is nothing more than a bullet point presentation that does not even attempt to analyse the reasons for the dismal state of health in rural India\(^\text{45}\) (Nagarajan, 2009). There is no understanding of structural inequalities and violence. There is usage of generic categories like poverty, unemployment etc which Naila Kabeer has termed as “linguistic disguise for conceptual inadequacies”. NRHM does not make any mention whatsoever of creating institutional mechanisms to meet the demand of training huge numbers of public health professionals with social, political and epidemiological competence required by such a programme (Simon-Kumar, 2007). The only mention is that of the training of Accredited Social Health Activists (ASHAs) (Government of India, 2005) and that too has now been outsourced to NGOs.

JSY has also been a failure. As pointed out by Gill (2009), JSY suffers from the problems of quantification. An ASHA’s success is ascertained through the number of institutional deliveries. Moreover, JSY and NRHM fail to problematise the dominant model of development and focus on PPPs. NRHM and JSY fail to see maternal health as a cross sectoral issue and tread the very fault lines which Petchesky had pointed out. JSY, rather than giving woman autonomy over her own body, reproductive health care and birthing, forces her to go for an institutional delivery. The agenda of the neo-liberal policies is very evident when JSY makes repeated emphasis on institutional deliveries. Rachel Kumar-Simon (2007) points out that how neo-liberalism has replaced the concept of citizens with consumers or clients. The healthcare sector has become a marketplace wherein people are told how to perceive and enact their health. The rhetoric of consumer freedom and high-quality services belie women’s position as subjects of an economic growth-led society where reproduction is another resource to be harnessed for capitalism. Contrary to feminist intent, the public awareness of the ‘personal’ or the ‘reproductive’ does not necessarily lead to a concomitant enhancement of political aims. JSY is very reflective of this as it has no element of choice and autonomy. There is hardly any room for women as ‘subject’ in the policy and a woman’s reproductive healthcare is seen as instrumental to nation-building rather than a human right. Women’s goals and social goals become aligned as one wherein women’s interest can be

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subsumed within the societal interests. There is no systematic and structural understanding of women's bodies and reproductive health problems. The policy makers continue to work within the framework of neo-liberalism without realizing that it is neo-liberalism in the first place that marginalized women’s reproductive healthcare rights.

JSY has also been ignorant of unequal power structures underlying our society. The election procedure of ASHA is indeed reflective of this. The local panchayat members elect ASHA most of the time. The local panchayat members are often male, upper caste and upper class. They often choose women from their own families or kinship networks who serve as the ASHAs. This form of selection is hardly representative of the overall community that consists of lower caste and lower class women. The policy doesn’t take any cognizance of differentiations and power dynamics within the community.

In India, mass caesarian sections and mass hysterectomies (radical hysterectomy: removal of cervix, upper vagina, lymph nodes, ovaries and fallopian tubes, total hysterectomy: removal of uterus and cervix, sub-total hysterectomy: removal of the uterus leaving the cervix intact) are the known violations of the reproductive rights of women as majority of the time, these procedures are not required, and the rising concern is not only with respect to the high expenditure but also on the complications and long term impact on women’s health. In Kerala, as many as 19 caesarian operations were allegedly conducted in 3 days in April 2011 to suit an anesthetist who had to go on a ten day leave. According to a report by Bharat Bhushan and Venkat Pulla, it is the illiteracy and vulnerability of rural women that exacerbated the pathetic scams around state and private health insurance schemes in this context that women underwent hysterectomies without being adequately informed or consenting to the procedure.

**Human Trafficking and Sex Work in India**

Trafficking of women particularly for sex work has been linked to the 'abolitionist position on sex work', with anti-trafficking programmes running domestically in India and internationally, having somewhere escaped the distinction between voluntary and coerced sex work. Flavia Agnes suggests a conceptual move away from the notion of a vulnerable subject to that of a risk-taking subject. She argues that migrants and trafficked persons, including those in prostitution, exercise agency and demonstrate decision making abilities, which seek to maximize their own survival as well as that of their families. In addition, Agnes points out that the trafficking agenda has come to be increasingly influenced by a conservative sexual morality that casts ‘good’ women as modest, chaste and innocent. Challenges to this understanding are seen as posing a dual threat to women themselves and to the security of society. This produces a ‘protectionist agenda’ within which no distinction is drawn between willed and coerced movement.

Nivedita Menon states that the debate on regulation of sex work falls broadly into three positions: Criminalization, Legalization and Decriminalization. Criminalization considers prostitution to be a social evil. This according to Menon, can produce either an actively abolitionist position, or a more hypocritical one that tolerates it by remaining silent on whether the activity itself is legal or not, while criminalizing the outward manifestations of sex work such as soliciting, brothel-keeping and trafficking. The Immoral Traffic (Prevention) Act of 1986, widely known as ITPA is an example of the latter ap-

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49. Ibid at 23, p.189
50. Ibid at 23, p. 185
proach. Legalization involves the legalizing and state regulation of sex work through zoning and licensing laws. This may result in excessive state control and ghettoization of sex work. This approach is also criticized for its potential to push large sections of the sex trade underground. Decriminalization treats sex work as falling within livelihood issues and as a matter between consenting adults and demands the removal of sex work and all voluntary relationships around it from the scope of criminal law. Under this approach, forced sex work as well as that involving minors could be subjected to the force of general laws on fraud, coercion and forced labour, while voluntarily undertaken sex work would come under the scope of existing labour legislation.

In the context of coerced migration for sex work, it would be pertinent to note the views of some of the stakeholders from the state agencies. P.M Nair, who has been the DIG with CBI for ten years and also been the Nodal officer on anti-human trafficking, notes that if Human Trafficking (HT) is completely prevented, there is no need for rescue, investigation, rehabilitation, restoration and court proceedings. If a trafficker is arrested, convicted and remains behind bars, he is being restrained from indulging in trafficking\textsuperscript{51}. This applies to all those who constitute the demand. Similarly, if the trafficked victim is not rehabilitated and provided the care and attention s/he is entitled to, it exacerbates the vulnerability and therefore, s/he can be re-trafficked into further exploitation. Nair, notes a number of challenges faced in preventing HT: Lack of cooperation among response agencies, lack of rehabilitation, unhealthy competition among stakeholders, lack of initiatives at the source area, lack of effective investigation into traffickers, lack of in-depth probe into the dimensions of harm to the victim, burgeoning demand, non clarity of roles, lack of attention to the transit areas and addressing the root causes in a comprehensive manner being the most pronounced challenges. Nair pitches a few strategies in prevention of HT: Aggressive law enforcement, addressing demand, orientation of adolescents, safe tourism, corporate-NGO partnership, empowering vulnerable persons, involving Panchayati Raj Institutions and empowering the responders.

Veerendra Mishra, Assistant Inspector General (CID) with Madhya Pradesh, brings to attention the question as to why the law enforcement agency, backed by so many laws, armed with the support of the state machinery fails to combat Human Trafficking\textsuperscript{52}. Firstly most law enforcement personnel are not truly informed/ educated about what human trafficking really entails. The cutting edge level of the police organization, which mainly constitutes constabulary, head constables, assistant sub inspector, sub inspector and inspectors hardly have any knowledge about human trafficking. This group makes for more than 90% of the total force. Secondly human trafficking has not been a subject of concern in most of the states of our country. Thirdly, the law enforcement agency is ill equipped to address the issue of trafficking. This is due to limited knowledge on the subject, a total lack of training, specifically designed or developed for human trafficking, the majority of law enforcement agencies failing to set protocols and procedures for dealing with such cases. Law enforcement could benefit greatly from a better understanding of the law enforcement support system and its utility in affecting the lives of trafficked victims and most importantly there is a disconnection and lack of coordination between law enforcement and other service providers.

The National Human Rights Commission in association with UNIFEM and Institute of Social


Sciences conducted a detailed study on trafficking of women and children in the year 2002-03\textsuperscript{53}. The research laid bare the multi-dimensional nature of the problem, loopholes in the law, gaps in the law enforcement, involvement of organized mafia and the agonies of the victims. It also revealed that India serves as a source, transit and destination where thousands of women and children are exploited day in and day out.

MASUM, an NGO in West Bengal filed a petition with the NHRC on December 1, 2011 about Saraswati Kabiraj, a 15 year old trafficked on October 24, 2011, allegedly by Pikul Mondal and taken to Bangladesh. The complaint was filed at the Gighata police station on October 24, 2011. The police personnel did not file a FIR but made a general diary entry vide GDE no. 1338 dated 24 October 2011. NHRC registered the case as Case No. 1283/25/15/2011. The NHRC gave the following response to the said complaint:

“In response to the commission’s directives, the SP, North 24 Parganas reported that the BSF outpost concerned which had got in touch with its BDR counterparts, had been informed that the girl was in Bangladesh, had voluntarily converted to Islam and married Pikul Mondal. She had told a judge that she did not want to return to India. This report from the West Bengal police was sent to the complainant, who, while reiterating his initial allegations claimed that Pikul Mondal was a known criminal and smuggler and Nasir Mastan a known sex trafficker. Faced with these two completely divergent reports, the commission asked the High Commission of India in Bangladesh to make some inquiries. The High Commission has done so and has reported that the Bangladesh Government had given it the following details 1) Laxmi Kabiraj fell in love with Md. Pikul Hossain s/o A. Karim, village Putkhali, PS Benapole, district Jessore 2) She entered Bangladesh without a passport and other documents five years ago. 3) A case was filed against her on January 12, 2012 in Benapole Port police station for illegally entering Bangladesh and based on investigation, a charge sheet was filed. The case is currently under trial. Subsequently, the High Commission had made its own enquiries and had established the following 1) Laxmi Kabiraj has been out on bail for the past 7/8 months. 2) she is married to Pikul Hossain and is living with him. 3) She has given birth to a girl child about 3 months back 4) the family of Lami Kabiraj had visited her and Pikul Hossain after the child’s birth 5) Laxmi Kabiraj has converted to Islam and has adopted the name of Ayesha Khanum. It appears from this that Laxmi Kabiraj had eloped voluntarily with Pikul Hossain whom she has married. She is now a mother and lives with her husband. She has not been trafficked into the sex trade and it appears that her parents have visited her. In the circumstances, the commission will not take this case any further. A copy of these proceedings will be sent to the complainant for his information. The file is closed.”

VICTIM TESTIMONIES

1. A CASE OF PHYSICAL ASSAULT AND ARSON

Dausa district, Rajasthan

I, Smt. Meera Devi Bairwa, Sarpanch of Village Panchayat Palunda under Panchayat Samiti Lalsot Dausa along with my family members was physically assaulted by Mr. Santosh Meena and his associates. The incident took place on 29/8/2011 when Mr. Santosh Meena came to my house around 8 a.m. along with his wife Panchi Devi and his brother Ram Phool’s wife Manda Devi. All of them threatened

me and my family to give up the possession of the land immediately. Santosh Meena started abusing my husband and when he retaliated, he hit my husband with a stick and Pancha Devi pushed me and my daughter-in-law, Laxmi Devi.

Pancha Devi then threw the utensils out of the kitchen and I got unconscious. Later on, she set fire to the shed of the kitchen. Then after that when my son ran out to the village Baijwadi to call out to the people, including Kailash Meena, Ramkhiladi Meena, Rekha Bairwa Lalaram Meena. They came to my house and took me and my family members to the nearby government hospital.

The whole incident took place because of a land dispute. My husband Sh. Kajod Mal and his two brothers owned a land jointly out of which one of the brother sold his one-third share of the land to Mr. Santosh Meena illegally. Mr. Santosh Meena now wants the possession of the entire land. Thus, in this case, Mr. Santosh Meena and his associates have committed the offence of arson along with physically assaulting me and my family.

Considering the gravity and the seriousness of the nature of the alleged offence, the local police should have immediately booked and arrested the offenders, but it is a matter of serious concern that none of them have been arrested yet as Mr. Santosh Meena is stated to be a Sub Inspector in CISF (Central Industrial Security Force) presently posted at Chennai Airport. He is also known to be a close relative of top Meena community leaders, politicians and bureaucrats.

On the contrary, the police and the local authorities have been trying their level best to either hush up or legally weaken the case. They want to ensure that the perpetrators are not booked or arrested as per the law of the land. There seems to be no one to safeguard and protect the interests of helpless and powerless Dalits like us who are subjected to all kinds of harassment, atrocities, discrimination at the hands of all powerful and immune Meena community. My case is a clear example of the apathetic and discriminatory attitude of the local Police and Administration.

The case was filed with the NHRC. on 27.07.2012 and was placed before the NHRC. on 13.09.2012 and the NHRC. gave the order that after the complaint was received, a proper investigation should be conducted by three police officers. The officers finally came to the conclusion that no offences have been made out. NHRC. further ordered that the complainant may approach the court as offences are alleged to have been committed by the accused under the Money Lenders Act. The NHRC. has thus decided to close the case in these circumstances and it gave this order on 09.10.2012.

I, along with my family would just like to request the concerned authorities to arrest the accused immediately and provide us with adequate protection. Monetary help should also be provided to us by the administration. But neither the NHRC. nor the administration look eager to help us.

–Smt. Meera Devi Bairwa

2. A CASE OF ATTEMPT TO RAPE OF A DALIT WOMAN
Dausa district, Rajasthan

The respective incident took place when I, Smt. Phooli Devi was at work. Under the MGNREGA Act, I have to feed water to 25-30 workers of the forest sector. On 22nd June 2013, around 10:30 in the morning, I went to a hand pump which was a kilometer away to fetch some water. While I had just reached half way, the accused held me from behind and tried to rape me. He even tore off my clothes. When I tried to resist, I got hurt on various parts of my body. After that when I cried for help, many workers arrived there to save me. The accused ran away when he saw the workers approaching.

Meanwhile, I came back home and narrated the entire incident to my husband, Motilal who then
filed a case. When my husband went to the police station to file a case, the staff reluctantly lodged the FIR under wrong sections and threatened the victim not to pursue the case. The staff then deliberately inserted the very weak and wrong sections of the SC/ST Act in the FIR. Since this was a case of attempt to rape, it should have been registered under Section 3(1)(XI), and Section 3(1)(XII) of the SC/ST (PoA) Act, 1989, but the local police purposely inserted the FIR under Section 3(1)(X) of the SC/ST Act.

Also, when my family members and I repeatedly requested the police to conduct my medical examination as during the scuffle, I got injured and I had many scratches visible on my body; instead of sending me for medical examination, the police deliberately indicated in the FIR itself that they don’t want me to be medically examined. This took place as the police was already approached by the all powerful perpetrator Vinod Sharma and the police wanted to save the culprit from the clutches of law and at the same time, this is total denial of justice and there should be entitlement of monetary relief to the victim under Rule 12(4) of the SC/ST Act 1989.

Afterwards, when my family members asked the police for a copy of the FIR they refused to give it saying that there was no need as they were going to close the case as it is a false one. When no response was given by the police, my family members and I went to the Dalit Mahila Manch (DMM) office at Jaipur to narrate the sordid tale of police behavior. When my lawyer called the local police officer for the copy of the FIR, he told him that he had refused to provide it as it was of no use for the case. Due to the absence of the medical report, Rs. 60,000/- that should have been received from the administration towards an interim relief under Section 12(4) of the SC/ST Act 1989 could not be claimed by me. Since, the local police officers are in league with perpetrators, they did all these lapses just to deny justice and monetary relief.

Further, the perpetrators have mobilized all upper casts of the area and are planning to organize an attack on the poor Dalits in case we don’t agree to compromise in this case. The local police should have extended me protection along with my family members but alternatively, police is harassing us and is indirectly protecting the perpetrators. There are many more cases like this in Dausa district where the powerful perpetrators have not been arrested and are roaming freely, harassing and threatening the poor and helpless victims with no one to protect them.

Although, it was ordered that the local police investigate the whole case again along with the document in which the victim refused to get her medical examination done but no action was taken by the police as they were in a hurry to close down the case. The complaint for the above case was filed with the NHRC. on 8th August 2013 but still no response has been obtained. The NHRC. seems as disinterested in our case as the local police authorities were. My plight seems to be of no importance to them.

–Phooli Devi

3. THE CASE OF KIDNAPPING, ABDUCTION AND SEXUAL ASSAULT OF DALIT MINOR GIRL
Alwar district, Rajasthan

I, Kamlesh Devi w/o Shri Hari Singh, left our daughter Saroj who is also called Asha by our friends and family, alone at home on 19.05.2011. Both of us are very poor and do manual labor for a living and were not at home when around 9-10 p.m., the accused Manjit Singh, 30, came to my house and enticed my daughter and took her along. He also took Rs. 2 lakhs in cash along with jewellery.

When my husband and I went to the nearest police station to file a report, they didn’t file our
report and told us to get lost. Even after we filed an Istagasa in the court on 27.05.2011, our report was not filed. Then, finally on 22.06.2011 we submitted an application to the court because of which the police finally filed an FIR on 01.07.2011. My daughter was found on 20.07.2011 in police station Kasaul of the village Gadhi of the accused. When my husband and I went to the police station with her marksheet as an evidence of our daughter being a minor, they threw us out and our daughter was sent back to the accused.

This case is a clear case of Dalit atrocity in which the police officials were intentionally careless and tried to evade the accused from the clutches of law. It was quite clear that the police was on the perpetrator’s side as they did not let my daughter have a medical examination. My daughter is a minor and her marksheet in which her date of birth is 07.10.1995 proves that but in order to save the accused, the police officials disregarded the marksheet and considered the fake certificate made by the doctor as the proof that she is not a minor and handed her over to the accused. This is violating the rule that the marksheet is considered of utmost importance and not the doctor’s report.

The police officials have violated the provisions of the law to fold the case in favor of the accused which is punishable under Section 4 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thus, it is requested that the matter be investigated from the start without any bias and the careless police officials be punished under Section 4 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Also, it should be made sure that our Dalit family gets the necessary justice, protection and financial compensation.

Initially, a complaint was filed with the NHRC on 20.08.2011 to which the NHRC replied on 17.09.2011 stating that the matter was the subject of the state and hence the case be transferred to the Rajasthan State Human Rights Commission. A second petition regarding the same matter was filed with the NHRC on 06.10.2011 of which they responded on 22.11.2011 ordering the concerned authority to submit a report within four weeks. A follow-up letter was sent to the NHRC on 30.12.2011. The NHRC ordered the Superintendent of Police, Alwar submit a report by 25.08.2012 and the matter be taken up in Open Hearing in Jaipur on 13.09.2012.

The matter was considered by the NHRC on 13.09.2012 in which it made the direction that the medical expert in the case had opined that the girl could not have been minor at the time and this could not be disregarded. The report also indicated that the girl had previously run away with the same person. The police indicated that this is the second incident. Even the birth certificate of the girl created confusion. While the NGO submitted that the name of the victim is Saroj@ Asha, at a look at the certificate, it was found that the birth certificate and the transfer certificate were with reference to Saroj and not Asha. The complainant has four daughters including Saroj and Asha. He could not produce the birth certificate of Asha stating that she was a minor at the time of the incident.

Thus, when the police officers requested the medical officer to ascertain the age of the girl, it was found that there was no case as she willingly eloped with the boy. Her statement was recorded before the court. There seems to be no substance in the case as the police seems to have done a thorough investigation. Thus, the NHRC feels that the case should be closed. Again, a follow-up letter was submitted to the NHRC on 26.11.2012. NHRC sent its response on 27.02.2013 stating that the allegation leveled by the complainant could not be proved. The NHRC has also received a further communication by the complainant that the police have misguided the Commission at the public hearing by submitting false and tampered documents and has sought high level independent enquiry.

The commission has further considered the material placed on record which reveals that the victim’s father had lodged FIR but the victim did not corroborate his allegations and a final report has
been submitted by the court. Thus, the protest petition of the complainant has been declined by the court. Thus, the Commission feels that no further intervention is required and the case is closed.

4. KAMLESH DEVI, MOTHER OF THE VICTIM SAROJ/ ASHA
A CASE OF GANG RAPE OF A DALIT WOMAN
Dausa, Rajasthan

I, Uganti Devi W/o late Nanhuram Bairwa live with my four children. On the day of the incident i.e. 27 December 2010, I was coming back from my parents’ home around 5. My daughter had not filled water from the hand pump that day so I had to do the same. I went out to fill water in a plastic bucket. Then, suddenly, a tempo came and Ghanshyam Rajput came out and pulled me in. There were four perpetrators who covered my mouth so that I wouldn’t be able to call out for help.

All of them were terrible drunk and in that state, Kishore Singh, Ghanshyam, Vishram and Kaluram took me to an isolated place where first of all Kishore Singh came towards me, took off all my clothes and underwear and raped me. While I was trying to resist his actions, my knees and thighs got bruised very badly. By the time Vishram came, I was unconscious as my head was hurt and when I regained consciousness, the perpetrators had run away after throwing me in front of Ghanshyam Dada’s shop.

It was then that my brother-in-law, sister-in-law, mother-in-law and a few others of the village came and noticed that the tempo had my underwear, money, etc. as I did not have anything to carry my belongings in. After the incident, people kept forcing me to settle the case but I firmly refused to do so. Then on 28th December, there was another meeting for a settlement but I again refused. Then, on the next day, I went to the police station and filed a case against the perpetrators. I had a lot of difficulty in doing so as I am new to the area and don’t know anyone around.

Besides this whole incident, the six year old daughter of my brother-in-law died in a fire a year ago which was filed in the local police station but no action has been taken ever since. My family is still very fearful and continuous social, economic and political pressure is being instilled on us. In the way that the police are treating the present case, it seems that they are under the control of the influential people of the society and thus, they are interested in dismissing the case as soon as possible.

The case was filed before the NHRC. on 07.01.2011 and the NHRC. got rid of the case by transferring it to the Rajasthan State Human Rights Commission on 28.01.2011 on the ground that it is a subject of the state. NHRC. also ordered that in the meantime, a notice should be issued to the SSP, Dausa, Rajasthan requiring him to conduct an enquiry and submit a report as the allegations contained in the complaint appear to be serious in nature. The following report should be positively submitted to the Rajasthan S.H.R.C., State Secretariat, Jaipur within two weeks. There has been no action by the Commission ever since and they don’t seem willing to help the complainant. Such an atrocity against a Dalit woman needs to be punished and the perpetrators need to be put behind bars as soon as possible but it seems quite difficult.

–Uganti Devi

5. A CASE OF ATTEMPT TO RAPE OF A DALIT GIRL
Bharatpur, Rajasthan

I, Priyanka, 19, was taking cow dung to the field on 22.08.2012 at 9 a.m. Suddenly Anil Kumar of my
village held me from behind and I fell into the mud. He started misbehaving with me and he tried to rape me. I started shouting for help because of which my brother Rajesh and some others showed up. Seeing them, Anil ran away.

Afterwards, my brother along with some of the others went to Anil’s house to enquire about the situation when they started abusing and beating them. My brother Rajesh got hit by a lathi by Lakshman and then they threatened my brother that if anyone tried to complain, they would be killed. Even after continuous requests, police did not get a medical examination done and despite the incident happening on 22.08.2012, the medical examination took place six days later on 28.08.2012 by the C.O. Rajesh Chaudhary.

The police officials refused to file a report instantly and said that they would investigate the parameters first but no such investigation was done. Also, on 03.09.2012, the family of the perpetrator came in the Dalit colony to warn them that if anyone complained or stood up against them, they would be killed. According to reports, the perpetrator is a person who is in the wrong books of everybody and he keeps fighting with the Dalits.

The police officials should take an action at the earliest as it is a matter of grave concern and they should ensure my protection along with my family’s protection. They should punish the perpetrator as much as he deserves to be punished. An officer should be appointed who would specifically investigate this case and get to the bottom of it.

The case was filed with the NHRC on 26.10.2012 and was placed before it on 15.11.2012 which issued a notice to the concerned authority calling for a report in the matter within four weeks. Although a year has passed since, no action has been taken by the Commission and it seems that the Commission is not taking my plight seriously.

–Priyanka

6. A CASE OF SEXUAL HARASSMENT OF A WOMAN
Sonbhadra district, Uttar Pradesh

I, Manbasiya, 45, live with my husband and nine children. On a Wednesday in July 2010, Ram Roop came to my house around 4 p.m. saying that the son of his nephew Deepak who was just one year old had passed away. I realized that it was a difficult time for them so I thought that I should go soon. My husband told me to go with him and said that he’ll follow us. As soon as we reached there, every one present started abusing me by calling me a witch and accused me of killing their child. Then, Ram Roop went inside his house, got the kid and threw it over me saying that I will kill all his family members one by one.

All these accusations were really hurtful and I had no idea why I was being accused of the crime I hadn’t even committed. I told them that they could get me checked and they will not find anything to which they had no answer. Then Deepak held me very tightly and all of them started beating me. They kept calling me a witch while hitting me with lathis. I lost consciousness because of all the beating. My lips, face and chest were bleeding because of the injuries. Then these people took off all my clothes. I don’t recall what happened after that. Then, my husband arrived and saw the critical condition that I was in. All the perpetrators ran away. Then, my husband took me to Myorpur Hospital around 10 p.m. I was unconscious for two whole days and then, after I regained consciousness I started crying because I knew that something wrong had been done to me.

I got discharged from the hospital after 10 days. It took me one month of medicine to get better.
Then, on the next day my husband filed an FIR and the police arrested the culprits. But they got out on bail. The case is still going on. The treatment cost me Rs. 20,000/- and this has worsened the financial condition of my family. I cannot even work at this point of time because of the physical weakness. I keep feeling dizzy, nauseous, my eye power has increased and I feel disgusted thinking about the fact that they took off my clothes. What I don’t understand is that if they thought that I was a witch then, why they took off my clothes. They could have just hit me.

When the female doctor in the hospital had asked me if I had been raped, I didn’t know what to answer as my whole body was in pain but I had no idea what the culprits had done to me. I get scared when I think that if I had died then what would have happened to my family. I get really scared thinking about the fact that those people can attack me once again. I even had to spend Rs. 2000/- on court proceedings. I want to work but my body is so weak that I just can’t. These culprits keep telling me that although they have not yet killed the witch they soon will. All I want is for the culprits to be punished. I want to get justice.

The case was placed before the NHRC. on 26.06.2011 but the NHRC. got rid of the case by transferring it to the Uttar Pradesh S.H.R.C. on 28.07.2011 on the ground that it is a subject of the state. There has been no action by the Commission ever since and they don’t seem willing to help the complainant even though two years have passed since then. The Commission has not bothered to even enquire about my condition much less try to help.

–Manbasiya

7. A CASE OF HARASSMENT DUE TO DOWRY
Varanasi district, Uttar Pradesh

I, Shilpa Devi, 21, got married to Manoj Rajbhar on 05.05.2009. As dowry, my father gave Rs. 60000/- for a bike and Rs. 10000/- for a gold chain along with some other gifts. After a few days, my father-in-law got sick and I had to go to my in-laws’ place. Then, one day, my husband took me out to see the Durga Pooja. My husband started abusing me right in the middle of the road. When I told him to stop making a fool of me in front of so many people, he started beating me. He then, dropped me back to my parents’ home. He then spread the news in the entire village that I had run away from his house. When I went back to my husband’s house, my mother-in-law started abusing me saying that I am having an affair with my cousin father-in-law and I should go and live with him only.

I started crying after listening to such abuses and then my mother-in-law pushed me and threatened me that she will not leave me if I complained to anyone. I went inside and then I didn’t eat anything for the next 3-4 days. Suddenly, behavior of all the family members changed towards me and they started beating me on every small thing. They abused my parents for everything and that really hurt me. I just accepted this life as my misfortune and I kept tolerating all the inhuman treatment. I used to think about ending my life but I realized that it wouldn’t be of any help as my in laws would permanently disrupt my image in the society.

Time passed and the only time when I could be relieved was when I was at my parents’ house. Even my husband’s sisters kept taunting me all the time. Whenever I would complain to my husband, he would tell me that I have always been jealous of his family and I can stay if I want to or I can just leave the house and go back to my parents’ house. I would get no money to spend from my husband. The only money I would get is from my mother. Even if I would get sick, they would not give me any money even to buy medicines. The everyday nagging and fighting made me weak and I had no more

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strength to fight.

Now, even my husband wouldn’t come near me. I called my mother and told her everything. The next day, she came and took me back with her. I was at my home for the next 3-4 months but none of my in laws bothered to even enquire about my health. My treatment was quite costly and my parents had to pay the entire amount and rather than helping, my in laws said that I have an illicit relationship with someone in my parents’ house. Even after many days, no one came to take me back. After a few days, my father-in-law came and told me and my husband wanted a divorce. I decided that I am never going to go back to my in laws’ house and the date of the divorce was finalized in April. My parents and I reached the decided destination but none of my in laws showed up.

3-4 months passed and when nothing happened, I decided to approach the Human Rights Commission. Investigation was done and then 2 police officers came and told us to be present in court on June 29th. No one showed up. Then we got another date of 4th July. On that date, I saw all my in laws present there. A female police official threatened me and told me to settle the dispute otherwise she would arrest my parents on the ground that they got me married at a young age. This got me really scared but then, when the officials from my side stood up, it instilled some hope in me that I could get justice.

The case was placed before the NHRC. ON 06.07.2012 and the NHRC. issued a notice to the Senior Superintendent of Police calling for a report within four weeks. Further on 29.06.2013, the status of the case is that the Superintendent of Police has not submitted the report within the stipulated time. They have got a final reminder to do so. But no action has yet been taken by the concerned authority.

–Shilpa Devi

8. A CASE IN WHICH THE WOMAN WAS BEATEN AND THROWN OUT
Sonbhadra, Uttar Pradesh

I, Geeta Devi, 38, got married to Vipin Singh 16-17 years earlier. Everything with my in laws’ was fine until June 2004 when my husband and I got into a fight and he beat me and threw me out of the house. He even kept all my jewellery with him and told me to leave his house. I came back to my parents’ house and recited the whole incident to my father. That incident still shakes me up with fear and I still can’t believe that my husband and his family would treat me in such a cruel manner.

When I filed a case in the court, they made me take it back on the agreement that they will not call me sterile anymore and no one would taunt or beat me. Meanwhile my husband married Gunjan and said that there will be no fights and he will keep both the wives happy. I accepted the agreement under pressure and went back to my in laws place. My husband’s behavior was good for a few days but on 10th January 2010, when I asked my husband and his new wife that why did they not take me to Bheekhampur with them and why do they not give me money for clothes or medicines, his new wife held my hair tightly and pushed me on the floor. She started hitting me with a slipper and even my husband started beating me. I was really injured by all the beating and then they abused me and threw me out of the house.

My clothes were torn off, my body was full of injuries and I was shouting with pain. At that point of time, I felt as if I had no one to call my own in the entire world. Even in that condition, I walked all the way to my parents’ house. Even today, I live with my parents and till date my husband has not bothered to enquire about me even once. I am really sad and totally helpless. Now, after my father’s death, I get insulted even at my parents’ house and I feel like I should just end my life.
My case was filed before the NHRC. On 26.06.2011 and the NHRC. got rid of the case by transferring it to the Uttar Pradesh S.H.R.C. on 28.07.2011 on the ground that it is a subject of the state. There has been no action by the Commission ever since and they don’t seem willing to help me get my rights as a wife. I have faced so many atrocities from my husband and I deserve to get my jewellery back along with my position as the wife in the family.

–Geeta Devi

A CASE OF RAPE OF A DALIT MINOR
Alwar, Rajasthan

I, Manisha Kumari, 16, went to throw the trash on 25th April 2012 around 7:00 p.m. Although I heard Jaipal Khateek say on the phone that the girl is coming, I ignored it and just went on. Then, suddenly two guys came from the back on a motorbike and closed my mouth and took me with them to a river. Vijendra and Abhay tore off my clothes and then both of them raped me one by one. Because of this, my internal parts started bleeding and all my clothes got dirty. They left me there in an unconscious state.

When I regained consciousness, I saw that it was dark all around. I saw that there was light a little far away. I went there and told them about the entire incident. They gave me some clothes to wear and asked me about my home address. They informed the Shahjahanpur police station on the phone. Police came after some time and took me to the police station. They called the Mundavar police station and told them to inform my parents. Then, Mundavar police officials brought me to the Mundavar police station.

Then the police sent the Sarpanch to my house and then around 3 to 4 in the night, my family members reached me and we filed a report in the police station. My medical examination was done in Alwar hospital on 26th May 2012. My treatment is still going on. The perpetrators knew that my family was poor and Dalits and that they will be able to overpower the case very easily. Although according to Section 12(4) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, I should have got the financial compensation after medical examination but I have still not received the same.

The case was filed with the NHRC. on 05.06.2012 who ordered the concerned authority to take appropriate action. But although one and a half years have passed since then, NHRC. doesn’t seem to take the plight of Manisha seriously and provide me with my much deserved justice. It is high time that the Commission take some action against the culprits.

–Manisha Kumari

10. A CASE OF ATTEMPT TO RAPE AND HARASSMENT
Ajmer, Rajasthan

I, Smt. Sanju, 20, w/o Shri Tikam Chand Bhaumbhi got married at the age of 8. I was sent to my husband’s house 15 months ago but only in a matter of days my in laws and my husband started beating me and threw me out of the house. They told me to go back to my parents’ house. I came back and found that my father was the sole earner of the family and he needed help. I started working in a stone mine. Although I had been working there for a year, people from the Ravat Samaaj started molesting me. The contractor of another mine who was a Rajput told my contractor that he had illicit relations with me.

This really infuriated me and I complained to my family. My brother along with me and a few
others went to the mine and told the culprits to apologize but they refused to accept their mistake. But when a lot of people gathered there, they accepted their mistake. This happened on 27.07.2012. The next day at work was fine. But on 26.07.2012, after coming back from work around 7 p.m. when I was in the jungle with my sister for a nature call, all the accused came and started abusing me which I resisted. Then they held my hair and dragged me inside the shop. There, they called me a lower caste and beat me up.

After this incident, when my brother went to the police station to complain, he was told that this was a minor incident which happens every other day. My mother was admitted in the hospital and my father was at work. My brother went to sleep after coming back from the police station. Then the perpetrators came to my house and shouted at us for complaining to the authorities. I tried to close the door but they came in before I could do so. I ran up to the terrace to save myself but they followed me there as well. Seeing no other option available, I jumped from the building to save my dignity. I became unconscious after that. My brother Chetan took me in an ambulance. I am in such a state that I can’t even walk now.

My case was filed with the NHRC. On 03.08.2012 but the NHRC. got rid of the case by transferring it to the Rajasthan S.H.R.C. on 21.08.2012 on the ground that it is a subject of the state. There has been no action by the Commission ever since even though more than a year has passed and they don’t seem willing to help the complainant. Although this is a very serious matter of negligence of the public servant in the serious atrocity cases against Dalits, the Commission seems disinterested to help. –Smt. Sanju

11. A CASE OF RAPE AND DEATH OF A MINOR
Jaipur, Rajasthan

I, Shri Bhanwar Lal Bairwa, 40, am the father of the deceased Sharda who was just 7 years old. My wife and I had gone to work when around 1:30 p.m., Sharda called to tell us that Mahendra Bairwa had come home. It was a Saturday so I went home early around 3 p.m. I did not find Mahendra at home. Sharda was not at home. Even our goat was missing. We thought maybe Sharda went to find it. But when I couldn’t find them, I thought that one and a half hours would have been enough for Mahendra to kill my daughter.

Around 6 p.m. when I opened the door, I saw Sharda lying there, dead. Her internal organs were bleeding and she had been suffocated to death. I was unconsciousness after I saw this horrid sight. Then, our neighbours called the police who came and took all the samples of the blood and the necessary evidence in order to trace the murderers. My daughter was taken to the Jaipur Sawai Mansingh Hospital for post mortem. She was cremated on 22.05.2011. It was only afterwards that I noticed that around 2 carats gold, 1 lakh in cash and 5 kilograms of ghee was missing and Mahendra had stolen that as well.

The case was placed before the NHRC. On 22.06.2011 but the NHRC. got rid of the case by transferring it to the Rajasthan S.H.R.C. on 14.07.2011 on the ground that it is a subject of the state. There has been no action by the Commission ever since and they don’t seem willing to help me and my family get justice for my daughter who was just 7 years old and became the pawn of someone’s uncontrollable urges. Although more than two years have passed since, there has been no sign of any help for my family.

–Shri Bhanwar Lal Bairwa, father of the deceased Sharda

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A CASE OF ALLEGED RAPE ON DALIT MINOR GIRL
Alwar, Rajasthan

I, Gulab Bai, 14, was going to the house along with my sister Maina around 1:30 p.m. on 25.09.2011 when she got ahead of me. Suddenly, Deshraj and Roop Singh who were hiding behind the harvest came out and covered my mouth with his handkerchief. They held both my hands and legs and dragged me. They threatened me that if I shouted or resisted, they would kill me. Then, they raped me one by one. When I resisted they slapped me. After this, my sister turned back and when she realized that I was not there, she ran back and saw me in a very critical position.

She called for help and before my family members could come, both the accused ran away. I told my mother about the entire incident and then we went to the police station that evening and got an FIR filed. Then a Panchayat was called in which we were pressurized to take back our complaint. But the Panchayat took our side and said that just because we are of a lower caste, doesn’t mean that our dignity is of any less value. If injustice has been done, the culprits should be and will be punished. But still some members of the village are taking the side of the two accused who still threaten us every day.

My medical examination was done on 27.10.2011 and the accused were arrested on the very next day.

The case was filed with the NHRC. on 05.12.2011 and was placed before the Commission on 19.12.2011 who issued a notice to the concerned authority calling for a report in four weeks. It also ordered to take any action that may seem appropriate. Besides this, the Commission seems indifferent to our problem and they do not seem eager to help us in getting justice against the perpetrators.

–Gulab Bai

13. A CASE OF CASTE DISCRIMINATION
Hyderabad, A.P.

I, Bala Krishnamma, 45, SC Madiga by caste have been working as a head nurse in ESI Hospital, SR Nagar, Hyderabad and have been staying in the quarters of the same premises. I joined as a nurse in 1988 at RC Puram and have been transferred to ESI, SR Nagar in 1995. I have 25 years of experience. I got promotion as head nurse in 2010 and I am yet to be regularized. Majority of the nurses are from the Scheduled castes and Scheduled tribes. The nurses belonging to these communities come into service on reservations and thereby get promotions on reservations. This has irritated some of the nurses of non dalit communities. The humiliation and the caste abuse by some of the non dalit nurses towards the nurses of dalit communities have become quite common and regular.

On 8th May, 2012, I was going after my duty was finished. One Ms. Ratna Mani Rao, 45, used abusive language in the name of caste saying that they were unable to get promotions because of the SC women and how it is embarrassing to look at the faces of the worst women like us. I questioned her and both of us got into an argument. Having heard the shouting in the corridor, Ms. Anthu Mary, the vice president of the union came out, consoled me and took me to the police station to lodge a complaint.

I have been facing continuous humiliation from Ratna Mani Rao in the form of humiliating words, acts and RTI. She has applied under the RTI thrice to get my SC certificate on 21.04.2009, 02.09.2011 and 10.11.2011. All the three times, I submitted my original certificates. On 14.11.2011, I asked in writing the reason for repeatedly asking for my caste certificate. Even Anthu Mary belonging to ST has faced the same problem from Ratna Mani Rao. She has abused her many times saying filthy language like they are not talkative like us bastards, they can’t roam in front of women like us, spit in front of us...
and she said that she could smash us underneath her foot. Besides the two of us, she has abused many more nurses belonging to scheduled castes and scheduled tribes.

Despite a written complaint being lodged on 9th May, no action has been taken by the Superintendent as of yet. Although caste discrimination is prevailing over in ESI, SR Nagar for the past many years, the higher officials are not taking the necessary steps in curtailing it. Rather than accepting her fault, Ratna Mani Rao is threatening the staff that she is the Secretary for State Government Nurses Association.

I deeply request the authorities to arrest the accused immediately. I also request to take action against the Superintendent of ESI, SR Nagar for not taking the necessary action. It is very necessary to safeguard the rights of the employees belonging to scheduled castes and scheduled tribes. Although the case was filed with the NHRC. on 07.06.2012, no action has been taken as of yet even though one and a half years have passed since then. The Commission doesn’t seem eager to provide us any assistance to help us live our lives with dignity.

-Bala Krishnamma

14. A CASE OF RAPE OF A MINOR
Patancheruvu, A.P.

I, Pothuloth Anjali ST Lambada, 7, was playing outside around 6 p.m. on 17th May. My mother was cooking food inside the house. One Mr. Pintu Yadav, 25, who has migrated from Bihar and is now working in a company at Bollaram on daily wages asked me to come with him into the nearby bushes saying that he will give me chocolates and biscuits. I went along with him into the nearby bushes. He beat me up, caused grievous injuries, bit me on the face and chest and squeezed my neck. When I started weeping loudly, he stuffed a handkerchief into my mouth and raped me. After I fell unconscious, he thought that I was dead and left away.

Around 7:30 p.m. when my mother noticed that I was missing, she started to search for me. When my father came from duty around 9:30 p.m., he also started searching for me. As they could not find me, they informed everyone in the Thanda and they all started searching for me. They searched until midnight but couldn’t trace me out and assumed that somebody might have taken me away. My father came across Pintu Yadav who was in a fully drunken state. When my father asked him about me, he replied that he hadn’t seen me.

On the next day around 6:30 a.m., when my father’s neighbor went for nature call, he found me weeping in the bushes. The neighbor informed my parents and by the time they went, I reached home. The thanda leaders paraded all in front of me and I recognized Pintu Yadav. All of them beat him up and he was handed over to the police. A complaint was then lodged with the police of IDA Bollaram. I was found bleeding from the vagina and anus. It was revealed that I had deep cuts to the both. I was moved to the Government Hospital at Sanga Reddy by the police on 18th May and was then shifted to Gandhi Hospital, Hyderabad on the same day and at present, I am undergoing treatment. I have stitches to both vagina and anus and grievous injuries on the face and chest.

Looking at my critical condition, I would request the concerned authorities to provide me immediate relief, to shift me to a corporate hospital for better treatment and to take necessary measures and ensure that the accused doesn’t get bail. The complaint was filed with the NHRC. on 22.05.2012 but no action has been taken by the Commission and they seem least bothered to help me even in this condition.
15. A CASE OF MASSACRE AND MASS ATTACK
Srikakulam district, A.P.

On 11th June, I, Mr. Chithri Gangaiah, the husband of the former sarpanch went to Rajam to get my tractor repaired. There I noticed the Thurpu Kapu community people mobilizing in large numbers and discussing some matter. Later, while on my way back I saw them going to the house of Botcha Vasudeva Naidu at Vangara. On the same night, they all returned to Lakshimpet in a tractor and few autos. On the day of the incident i.e. on 12th June around 6:30 a.m., I saw them mobilized in more numbers nearer to the dalit colony. I immediately phoned the Sub Inspector of Vangara. The SI told me that they are all in election duty and will send someone by informing their superiors. Around 7:30 a.m. more than 150 members belonging to the Thurpu Kapu community under the leadership of Avu Srinivasa Rao and Kalyani came with deadly weapons and bamboo sticks.

They threw country made bombs and attacked the dalit colony until 11 a.m. approximately. They attacked whomever they came across and brutally murdered 4 men and caused grievous injuries to 20 others. 19 members with broken hands, legs and heads have undergone operations and are undergoing treatment at RIMS, Government Hospital in Srikakulam. As the condition of one of the victims is critical, he has been shifted to the government hospital at Vishakhapatnam. The women belonging to Thurpu Kapu came with chilli powder and threw chilli powder in to the eyes of the dalits whomever they came across. They played a key role in the attack.

Kalyani and others abused a victim, Muttamma, 65, on the name of caste and attacked her. In the same manner many incidents like this took place and many women were beaten with bamboos in their private parts. In between the attack a police constable came, saw the situation and went away frightened. Later the police came in more number around 11 a.m. In view of the situation, a police picket was put in the village on the request of the dalits. The picket was withdrawn on 10th June without the knowledge of dalits.

I would like to request the concerned authorities to arrest the main culprits, ensure that the injured be moved to the corporate hospital immediately and provide compensation, relief and rehabilitation to the whole injured community. The assets of all the culprits should be confiscated immediately and it should be ensured that they are vacated from the village. A public hearing should be held with eminent judges, IAS and IP’s officers about the whole incident. A case should be registered under Section 4 of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 against all the officials and politicians involved.

The case was filed with the NHRC. on 20.06.2012 but they have not bothered to respond to our complaint although one and a half years have passed. The Commission seems to take the whole attack very lightly and they are disregarding the pain faced by the injured community. We request you to take some action soon considering the condition of the people of the community.

–Chithri Gangaiah

16. A CASE OF SEXUAL EXPLOITATION AND ASSAULT OF DALIT GIRL
Nalgonda district, Andhra Pradesh

I, Ankuri Pushpa, 20, SC Madiga by caste have been working as a servant maid in G.N. Agarwal, a
retired Major Colonel’s house since 13th September 2003. For a year everything went on well. At that
time, there were two other girls who were staying in the house. But my harassment started once the
other girls left. G.N. Agarwal harassed me to satisfy his sexual lust. He blackmailed me by showing me
nude photos taken without my knowledge.

As he was old, he forced me to massage his sexual organs and later forced me to satisfy his lust. He
continued his sexual assault on me by threatening me of dire consequences. His brother B.N. Agarwal
resident of Calcutta also forcefully had sex with me in the same manner as he came quite frequently to
his brother’s house. Whenever I refused to do so and said that I will go away, they would blackmail me
with my nude photos and beat me.

Then, on 23.04.2010 morning, B.K. Agarwal came from Calcutta along with another girl and
told me to teach her about the same manner in which I have sex and told me that I will be moved to
Calcutta. As I refused, both G.N. Agarwal and B.K. Agarwal beat me and punched me with fists in
delicate parts causing me bleeding injuries and then kept me in a room. I escaped with the help of the
girl from Calcutta. Later, I called the police over mobile phone and the police rescued me immediately.

Based on my complaint, a case was registered in Kushaiguda police station on 23rd April under
section 376, 324, 506 of Indian Penal Code and 3(1)(12) of Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989. I was then sent to Gandhi hospital for treatment and was dis-
charged on 24th April. ACP Malkajgiri being the IO recorded my statement on 26th April and took me
to Agarwal’s house but failed to search his house.

I filed my complaint with the NHRC. on 26.04.2010 and they responded on 31.05.2010 stating
that the complaint is not entertainable in accordance with the provisions of Section 36 of the Protec-
tion of Human Rights Act 1993 read with Regulation 9 of the National Human Rights Commission
(Procedure) Regulations 1994, as amended. Hence, no action was called for and the file was closed.

I request the authorities that all the rooms are fitted with close circuit cameras, the computer is
loaded with films shooted through the cameras and thus, an immediate raid should be conducted to
procure the evidences and to stop the big sex scandal that is going on. The accused should be arrested
immediately and I should be sanctioned compensation and it should be ensured that necessary protec-
tion is provided to my mother and me.

–Ankuri Pushpa

17. A CASE ABOUT THE INCIDENTS AGAINST DALIT GIRLS
Andhra Pradesh

This complaint is a combined complaint of three dalit girls all of whom succumbed to the pressure of
the society. In the first case, Renuka, 14, was a student of 5th standard who attempted suicide on 7th
April due to the harassment by Dhana Lakshmi, the principal and Lavanya and Nirmala, the teachers.
On 21st February 2010, the girls in the residential school screamed as one of them had a bad dream.
The teachers got disturbed and beat all the students. Renuka was pushed against a wall and this caused
a head injury. She was joined in the hospital and was sent home. When she came back to school, she
was not allowed to attend the classes.

Though the RDO and the DEO intervened, she was not allowed to continue her studies. Having
dejected over the behavior of the teachers and that she was losing her academic year, she ultimately
committed suicide on 7th April 2010 and succumbed to the burn injuries on 22nd April. In this incident,
although her brother Dastagiri brought this to the notice of the higher authorities, they failed to take
necessary action. Likewise, though Renuka has stated very clearly the reasons for her suicide, the police didn’t take any action. The case is currently going on in the court.

Another case is of Triveni, 12, who was Holya Dasari by caste and was sleeping at her house along with her 2 brothers. On the late night, 5 unidentified persons broke open the doors and beat all the three with iron rods and caused grievous injuries. Later, all of them gang raped Triveni and she at last died on 7th April night in Gandhi Hospital due to medical negligence. In this incident, the police have failed to arrest the culprits till day and this incident just proves once again that the dalit girl children have no safety even in their own houses.

In the case of Triveni, the complaint was placed before the Commission on 13.07.2010 which directed the concerned authority to take an appropriate action which has not yet been taken despite three years having passed since then. This case clearly shows how unsafe the Dalit girls are and it highlights the fact that they need extra protection as compared to the others because of the various atrocities being committed on them.

In the last case, the victim B. Anusha, a scheduled caste jumped from the top floor of Villa Marie College on 5th November 2009 and committed suicide as she was unable to bear the caste discrimination by her classmates and the negligence of the college management. She was also made to sit separately in the classroom. In this incident, we find that though the elders of the deceased brought to the notice of the college management, they failed to take the necessary action and therefore we lost Anusha.

These cases show us that the incidents of violence on dalit girl children in the hostels and caste discrimination are on the rise. Thus, we request the concerned departments to take necessary measures to address the root causes and ensure the safety of the dalit girl children. These cases were filed with the NHRC. on 24.04.2010 but the decision in neither of the case has been finalized and their family members are still awaiting justice.

-Renuka, Triveni, Anusha

18. A CASE OF RAPE
Dantewada, Chhattisgarh

I, Madkam Hidme, 19, am a victim of rape. I have been raped by police officials in Dantewada district’s Konta police station for two days. The officials of Salwa Judum still come to search for me so that they can repeat the atrocity. I sleep in different relatives’ houses from time to time in order to save myself from the S.P.O. The incident took place on 6th March 2008 when I was unmarried. As we had Rs. 20000 through the sale of two buffalos and Rs. 5000 through my labor, my father told me to keep it with our relatives in Mailawada village which is outside the control of Salwa Judum.

When I got down from the bus in Konta, three officers of Salwa Judum - Soyam Muka, Bodu Raja and Dinesh got hold of me. They told me that I ran away to Andhra Pradesh to get away from them but now they have got hold of me. They forcefully brought me to Konta police station. While on their way, they snatched my purse which had Rs. 25000 in cash. They told the police officer to keep me in his custody and they would later tell him what has to be done with me. I was put behind bars with some others. Then an S.P.O. Tudka who was a Muslim took me to an adjacent room on gun point and raped me. Then, three other S.P.O.s raped me one by one for two continuous days.

After the first rape, I was blindfolded and thus I don’t recognize the other three accused. Then after numerous requests they agreed to let me stay with my aunt and uncle who lived in the Salwa Judum.
camp itself. One day, I ran away taking advantage of the crowd in the weekly market rush. There I went to my aunt’s house and she got me married to her son Madkam Pandu. When the three officials got the news of my wedding, they came there and told my husband that they were going to earn money by selling me and since that cannot be done now, he should compensate them. Then the three of them forcefully took Rs 3000 cash, three goats and two cocks from my husband.

Then they threatened my husband and went away. The officials still come every day to find me so that they could rape me once again. I request all the concerned authorities to help me attain justice. The case was filed with the NHRC on 30.03.2009 and the case is still pending in the district court. Despite the passing of four years, no one seems to understand my plight and help me in getting out of this situation. The authorities seem least bothered to help us.

–Madkam Hidme

19. A CASE OF RAPE BY THE POLICE AND SPOs
Dantewada, Chhattisgarh

I, Madwi Budri, 19, am a tribal woman. Sometime in May 2006, a group of S.P.O.s came in our village Aralampalli. At that point of time, I was working in my house. Out of the group, four of them came and held me out of which I know three of them by face and name. They were Raju, Hidma and Veko Soma. They took me to a forest nearby. There they abused me, threatened to kill me if I shouted and then raped me one by one.

This shocking incident has left me mentally scarred. I feel ashamed to be woman because of the way that they are treated in this country. I feel like whatever happened with me is the punishment I get for being born as a woman. If the S.P.O.s who have been appointed to protect us from such atrocities will rape us then it seems that we have no one to go to for help. The S.P.O.s who have been appointed for our safety are misusing their power and taking disadvantage of us like this.

As I am uneducated, I went to the police station after a few days to file a complaint and they refused to file my complaint and told me to get lost. Then a report was finally filed on 27.03.2009. This case was filed with the NHRC on 30.03.2009. This case is still pending in the district court. The NHRC seems indifferent to my needs and although four years have passed ever since, they don’t seem eager to take action anytime soon. Such atrocities against woman are on the rise and its time that some action is taken by the Commission but it seems unlikely considering the attitude of the officials and the Commission towards me and my family.

–Madwi Budri

20. A CASE OF RAPE BY THE POLICE AND THE SPOs
Dantewada, Chhattisgarh

I, Emla Sukdi, 20, am a tribal woman residing in Dantewada district. One day when I was sweeping at my home around 3 to 4 p.m. in July 2006, a group of police officials arrived. I got scared and went inside my house. As soon as the S.P.O.s saw me entering the house, they forcefully came after me and closed the door behind them. Then the two accused raped me one by one and then they threatened to kill me if I complained about them to anyone.

As I am an uneducated tribal woman, I had no idea as to what should have been done and thus I didn’t immediately complain against the perpetrators. After a few days, when I took my complaint to
Dornapala police station, they refused to file my complaint and threw me out of the police station. But
my case was finally filed on 27.03.2009. As both of the accused are related to the police then it would
not be a right decision to let the police investigate the matter and take a decision in respect of the same.

I have requested the court to direct a responsible and unbiased authority to investigate the case
and to help me in getting the culprits behind bars. My case was filed with the NHRC. on 30.03.2009
which seems least bothered to even respond to us about the decision of the case. It is still pending in
the district court and no action in the near future seems to take place. It is my humble request that a
proper investigation should be done and then, I be given the required financial compensation and the
accused be put behind bars. Although four years have passed since the complaint was first filed with the
NHRC, their response is still awaited.

–Emla Sukdi
DALIT ISSUES AND THE RESPONSE OF NHRC
Dalit Issues and National Human Rights Commission

“A CRIME COMMITTED AGAINST A DALIT EVERY 18 MINUTE
6 DALITS KIDNAPPED OR ABDUCTED EVERY WEEK
3 DALIT WOMEN RAPED EVERY DAY
13 DALITS MURDERED EVERY WEEK
27 ATROCITIES AGAINST DALITS EVERY DAY”

……National Campaign on Dalit Human Rights.

INTRODUCTION

After almost three years of the Mirchpur carnage\(^1\), victims are still living under constant fear of their lives; conditions have yet not become conducive to go back to their respective homes. And yet, NHRC is sleeping over the complaint filed for protection of these families after such heinous crimes committed against the dalit community, says Mr. Rajat a dalit lawyer activist who has been involved with the case and as a result recieved threat to his life.

“Despite its constitutional abolition in 1950, the practice of “untouchability”-the imposition of social disabilities on persons by reason of birth into a particular caste-remains very much a part of rural India. Representing over one-sixth of India’s population-or some 160 million people-Dalits endure near complete social ostracization. “Untouchables” may not cross the line dividing their part of the village from that occupied by higher castes. They may not use the same wells, visit the same temples, or drink from the same cups in tea stalls. Dalit children are frequently made to sit at the back of classrooms. In what has been called India’s “hidden apartheid,” entire villages in many Indian states remain completely segregated by caste.”

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1. On April 21, 2010, dominant caste persons collected in a mob and attacked the Balmiki’s (Dalits) of Mirchpur village, in Hisar District of Haryana. They set fire to homes after looting them and also set a 70 years old man and her disabled granddaughter ablaze inside their home. More than 50 people sustained injuries and the entire dalit community fled the village and has remained away to this date.
In a state of jurisprudence deluge and a lack of justice the Dalit’s in the country today are knocking every possible doors of a democratic justice delivery system, following the footsteps of Dr. Babasaheb Ambedkar, the great visionary leader and father of the Indian Constitution. The constitution and innumerable Laws equip the concerned institutions with all the means and tools necessary for the “Annihilation of caste” only if they are used in a just manner by unbiased individuals.

Lack of vitality and approach by the commission has today built an antagonistic attitude amongst the people fighting for the rights of the dalits across the country as complaints are followed with a dormancy that is unredeemable. Dalit Human Rights Activist from Maharasthra.

ACCESS TO BASIC RIGHTS AND JUSTICE

What each act of collusion, official negligence or apathy indicates is that it is not only the dominant caste perpetrators who abuse the law, but also the very officials entrusted to uphold the law and maintain order throughout the country.


“It has become a routine affair for dalits to be outraged for the most pettiest of reasons and meted fate even surmounting to murder and rape. Whereas the perpetrators move free in collusion with the administration and police department” thus lamented Mr. Dharmendra Kumar a Dalit rights activist who has been constantly filing complaints to the NHRC pertaining to the violation of Dalit Human Rights in Bihar.

In India, for example, laws are openly flouted while state complicity in attacks on Dalit communities continues to reflect a well-documented pattern. India’s own constitutional and statutory bodies, including the National Human Rights Commission and the National Commission for Scheduled Castes and Scheduled Tribes, have repeatedly confirmed and decried the prevalence of the abuses outlined in this report. Other government authorities, however, have facilitated continued discrimination. Indeed it would be difficult to convince Dalits that, over fifty-four years after independence, the government had done anything to end the violence and discrimination that has ruled their lives. The message sent from the judiciary on caste discrimination is equally disturbing: in July 1998 in the state of Uttar Pradesh, an Allahabad High Court judge reportedly had his chambers “purified with Ganga jal,” water from the River Ganges, because it had earlier been occupied by a Dalit judge.3

2. Dr. B. R. Ambedkar wrote the ‘Annihilation of Caste’ for the 1936 meeting of a group of Hindu-liberal Caste reformers called the Jat-Pat tolok Samiti; however after seeing a draft of the speech, the group revoked their speech.

Under the Protection of Human Rights Act, 1993, human rights court can be set up to provide “speedy trial of offences arising out of violation of human rights”\(^4\). A few states have even come up with the respective courts but it is mostly a defunct body.

In such an Apathetic environment of the Judiciary, the Quasi-Judicial Bodies formed for the enhancement of the Human Rights Conditions of the Scheduled Castes and Scheduled Tribes in this Country needs to have a more humane and unbiased nature of functioning. The NHRC whose orders always reads ‘waiting for further information from concerned authorities’, and these are information’s which seldom see the light of the day. The NHRC’s even where the NHRC recognizes that an abuse has taken place, the Commission usually only awards interim compensation to the victims or their families. Financial compensation without proper prosecutions of offenders or measures to abate future recurrence, or prosecution of the officials guilty of offence, effectively allows the abuses to continue unabated. Given how callously the NHRC treats individual case of abuse, it is hard to take seriously its meagre efforts at systematic reform.

‘UNTUCHABILITY’ A HYDRA HEADED MONSTER

Untouchability is the pedestal on which the whole ‘statute’s of caste system’ rests. Casteism is a growing phenomena taking multiple and newer forms by every passing day. There have been cases where entire villages were burnt and people killed, just for reasons as trivial as a dog barking on the upper caste person, animal of a Dalit household passing by an upper caste house or having the audacity to mate with an animal from the upper caste household, and police and administration have stood silent observers to it. There have been cases where the upper castes have thrown human excreta into the drinking water well, with neither the police nor the judiciary caring to intervene. Temples being constructed by the scheduled caste have been demolished on the pretext that the dust from the construction was polluting the areas where the upper castes live. Children’s have been denied education, mid day meal and have had to face severe forms of discrimination like cleaning the Scholl toilet for belonging to the dalit community.

Manual Scavenging which is the most acute form of untouchability practice in this country though abolished according to law still continues unabated. On the other hand it also has been institutionalized within the government machinery. A Dalit Human Rights Activist, speaking on the government departments hiring (at times contractual) people from the dalit community to do the most menial of jobs.

Even in regions of chronic violation of human rights of Dalits at a daily basis hardly there has been any effort of the Human Rights bodies in taking suo-moto\(^5\) cognizance or any proactive measure to bring comfort to the NHRC has an ethical responsibility of spreading human rights literacy under section 12 (h) of the Protection of Human Rights Act; 1993….however there is a minimal visibility of the institution in this front as there are hardly any instances of such events being organized or promoted as reiterated by

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4. Section 30 of the PHRA; 1993 – For the purpose of providing speedy trial of offences arising out of Violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each District a Court of Session to be a Human Rights Court to try the said offences. Provided that nothing in this section shall apply if (a ) Court of Session is already specified as a special court or (b) a special court is already constituted, for such offences under any other law for the time being in force.

5. Sec 12 (a) of the PHRA, 1993; inquire, suo motu or on a petition presented to it by a victim or any other person on his behalf (or on a direction or order of any court) into complaint of (i) violation of human rights or abetment there of; or (ii) negligence’ in the prevention of such violation, by a public servant.
number of human rights activists across the country.

**ATROCITIES AGAINST DALITS**

“In what has become known as the Khairlanji massacre, a dalit family was lynched by members of a higher caste in the small village of Khairlanji, in Maharashtra’s Bhandara district, on September 29, 2006. Surekha Bhaiyalal Bhotmange, 44, her sons Roshan, 23, Sudhir, 21, and daughter Priyanka, 18, were dragged out of their house, assaulted brutally, paraded naked in the village, and then hacked to death”. One among the many atrocities that sent the country and its cocooned echelons who liked to be in the denial that caste was a passé that they are wrong.

The ‘Report on Prevention of Atrocities against SCs ’prepared by NHRC (2004) presents details of the way in which the civil society presents itself. Here civil society itself becomes a distinct beneficiary of caste based order and helps perpetuate the existing unequal social reactions and frustrates attempts to democratize the society because through the customary arrangements the dominant classes are assured of social control over people who can continue to abide by their commands without any protest.6

…police resort to various machinations to discourage machinations to discourage SC/STs from registering cases. To dilute the seriousness of the violence, to shield the accused persons from arrest and prosecution and, in some cases, the police themselves inflict violence.” (NHRC report, 2002)

How does this hold to the fact that most of the compliances taken by the NHRC of cases is sent back to the same police officials for their investigation report’, asks one lawyer and Activist Mr. Tarachand Verma from Jaipur, Rajasthan.

The ‘Report on Prevention of Atrocities against Scheduled Castes’ (NHRC, 2004, Delhi) which studied the way the law unfolded itself, underlined how the ‘state has failed in this respect’ on ‘several fronts’. These are ‘failure to effectively implement the laws relating to atrocities against SCs and STs’ which is ‘reflected both in respect of preventing violence from taking place’ as well as in the ‘inability to punish perpetrators of violence after the crime is committed’; ‘failure to act against its own agencies involved in the commission of violence;’ failure to strengthen the watchdog institutions’ etc.

‘The increasing instances of violations of dalit rights and the surmounting number of pending cases is something which is to be worried’...Says another complainant from Rajasthan, whose case was dismissed in subject to the clauses of section 36 of the PHRA, 1993. This is redeemed to be quite arbitrary by different quarters of advocates for human rights.

The above discussion on the some of the important areas and the role of NHRC from the view of the oppressed and the most marginal section of the society resounds loud through the words of different

“After dealing with more than 500 cases on an individual level, I have come to a serious doubt if we do need a quasi-judicial institution which is even more lackluster in delivering relief to the aggrieved, an institution which has become a refuge, marked with below par performance and collusion of a ‘casteist’ nature…” A

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- Kamballapalli- wife Ramakka, sons Sriramappa and Anjaneya and daughter Papammas. All of them with four others from their hamlet were burnt alive by the local Reddys. The police termed it revenge killing, supposedly in retaliation against the killing of Krishnappa Reddy, a village functionary belonging to upper castes. However the saddest part is of the witness turning hostile based on inexplicable conditions.

7. Section 14 of the PHRA, 1993. - the section gives the NHRC independence to use any state investigative agency at its disposal for its due process.
dalit Human Rights Activist.

ATROCITIES AGAINST DALITS

PL Mimroth - I am a Dalit social activist advocate, I have been associated with more than a thousand fact findings on Dalit atrocities, very briefly I will try to explain my learning and share my experiences in Rajasthan.

I think the state of Dalit’s is similar across the country but Rajasthan being a feudal state the enormity and intensity is very much visible and evident. Briefly let me tell you the main reason’s which I feel are majorly responsible for this inhuman condition:-

The state is apathetic towards the welfare of this section of the populace. I would particularly point out the land enforcing agencies as most of the Dalit populace is landless laborers and bondages.

The police department is blatantly anti towards the protection of rights and dignity of the Dalit section in the state. Ninety percent of the cases are directly or indirectly related to the justice mechanism.

Most of the position in the bureaucracy and the administration are held by members of the dominant castes. Which also at numerous times forms a nexus of administrators and perpetrators all colluding against the marginalized Dalits.

Though Article 17 of the constitution abolishes untouchability, it is the root cause of all atrocities and discrimination in our society. Dalit people are mostly landless or farm laborers, they have no asset at all they have no dignified source of income for them which puts them at

Their lack of access to justice is aggravated more by the apathy of the State, particularly the law-enforcing agency, especially the Police. A major chunk of the cases on Dalit atrocities remain pending owing to lack of proper investigation and poor case handling. Coming from the upper caste, upper class strata of the society, most police officials are in one way or the other interested parties. This hostility of the police reflects in the poor conviction rate. The conviction rate of accused persons is a meager 1%. Most of the cases are cases of sexual violence against women, where again, the conviction rate is a lowly 6-7%.

As far as education is concerned, it is seen that the condition of the public school are so pathetic that hardly you find any quality education there. There is a widening gap as far as education is concerned as the poor people are hardly able to provide their children’s with quality education.

There is SC/ST act and protection of civil rights act, but hardly those laws are implemented there.

NHRCs report on Dalit atrocities by Saxena committee also came up with a review of the complaint handling procedure and method remarking as not satisfactory. They are sending the complaint to the same authority because of these reasons. Secondly the serious cases should be conducted by the national agency for investigation of NHRC which is not a reality in most of the states across the country.

As a matter of fact In Rajasthan not a single case has been investigated NHRC s national agency. They adopt the same principle.

CASE OF ATROCITY

Victims Name - Ashok Kr. Manjhi and others.
Place of Incident - Village- AmwanThokar, P.S. Bodhgaya, Dist- Gaya, Bihar.
Issue-Victimisation of Dalit youth and community by Upper caste and police nexus. Inaction of
police forces towards the accused and false cases filed in the name of the victims.

**Background of the issue** - On 26/3/2013 was the day when the victim, Mr. Ashok Kumar Manjhi after finishing the ritual that followed his father’s death on 22/3/2013 had come back home and was getting ready to rest, along with other members in the house, his sister, her husband, and other people in the house. Suddenly he received a call from the local police station asking him if he could hear some commotion happening in the village. He replied, “He could hear that but was not in a state to go and look into it and so he asked the police to go ahead with their duty and then went off to sleep”. Suddenly, late at night the police forces came to Ashok Kumar Manjhi’s house and started to harass the people in the house. Faced with this, the victim somehow managed to flee from the scene, so instead the police took illegal custody of his brother-in-Law Mr. Binod Manjhi.

**Framing of False Charges and Targeting of Ashok Kr. Manjhi and the dalit Community** - Police case no. 67/13, 68/13 and 35/13 are the false cases under which the victims have been falsely accused by the Bodhgaya police and harassed and taken into custody.

The reason behind the false implication and harassment of the victims is an outcome of the Victim’s protest against the inhuman exploitation of the Dalit Musahar community by the upper caste Yadavas. The false charges against Mr. Vinod Manjhi are also arbitrary and pretentious, providing us with a clear instance of applying pressure on the Dalit community to give up on their fight against caste-based discrimination and social inequality.

**NHRC complaint** - A complaint was filed with the NHRC dated 22/07/2013 by Dalit Vikas Abhiyan Samiti. The complaint was registered in the NHRC with regards to the following prayer by the complainant on behalf of the victim-

An Independent Investigation to be conducted on the matter of practices of caste-based discrimination on the Dalit Musahar community by the upper caste and the Police Administration, and legal intervention with regards to the offenders of the upper caste community and those persons complicit within the police administration.

**Response of NHRC** - The complaint has been taken into consideration and no further action has been taken on this complaint, to date. Although the matter was taken into consideration on 8/8/2013, two months since there has been no response from the NHRC with regards to their prayer.

Diary No. 1311199.
File Number: 2649/4/39/2013
Dated- 26/07/2013.
Name of Victim- Smt. Minta Devi
Address- Village-Bardiha, PS- Patepur. Vaishali (hajipur), Bihar.

**Issue** - A case of Atrocity amounting to the violation of basic human rights of a Dalit Women Ms. Minta Devi and also violation of the Abolition of Bonded Labour Act, By the Accused in this case.

**Background of the Case** - On 15/09/2010 the victim went to Mr. Ram BilashRai and asked for the labour wage of her Husband, who had been kept as a bonded labourer in his custody. The accused instead of paying her the due wage of bondage abused her with filthy words surmounting to caste based atrocities and also molested and attempted to rape her by locking her in a room. The victim somehow fled from the scene of violence and reported the incidence to the villagers. At this the whole village of the dalits came together and went ahead and registered an FIR NO. 127/10 dated 15.09.2010 in the Local Police station. But somehow no arrests or any further action was taken by the police in the matter.
but instead they informed the matter to the feudal yadava community, who in a fit of revenge and rage came back to further harass the whole community for reporting the matter to the police, and in the process stopped a funeral procession of the Dalit community and also threatened to burn the whole village.

History of Village Bardiha- The Feudal Yadavs are in control of the power and resources in this area and the dalit community resides in the periphery of the caste village and are generally labourers in the landed yadava. And the caste based exploitation and intimidation is a routine procedure in the region. Victimisation of the Dalits has been rampant by the Administration as well. This is one among the numerous violations of basic human rights of the dalit community in the region.

DIARY NO. 1311199
VICTIM- Minta Devi W/o Sri Biswnath Ram
ISSUE- Attempt to Rape and threat to life

BRIEF OF THE CASE- On 15th September 2010, the victim went to Ram Bilash Rai urf Bhulan Rai S/o Shivji Rai for collecting her husband’s wages. Instead of giving her the wages, the accused along with other persons scolded her, molested her, tried to rape her and locked her in a room but fortunately the victim managed to escape. She went to the other Dalit villagers and narrated her story to them. All of them went to the local police station and filed an FIR against the accused persons. Police took no cognizance in the matter. Although someone else did and they were the people of yadav community, who in a fit of revenge and rage harassed the whole Dalit community for reporting the matter to the police and threatened to burn their houses.

FACT FINDING REPORT

Fact Finding Code- Bihar/Vaishali/16th Sept.2010
Date of occurrence- 15th & 16th September 2010
Fact finding date- 15th, 16th & 17th September 2010
Place of occurrence- Village Bardiha, P.S. Patepur, Dist. Vaishali, Patna, Bihar
Names of victim- Minta Devi W/o Sri Biswnath Ram
Names of accused persons- Ram Bilash Rai urf Bhulan Rai S/o Shivji Rai,
Shanker Rai S/o Ram Sawardh Ray and others.

Summary of Fact Finding Report
Village Bardiha is an area where Feudal Yadavs are in power. But poor Dalit families also reside there. Every now and then conflict arises between both the communities due to atrocities made by the so called upper caste Yadavs on the Dalits. Two years back also, the yadavs restricted Dalits for using hotels/saloons owned by them. But as per amicable settlement between them by DVAS, the matter mitigated. Whenever such kind of conditions arises, the local administration becomes silent and society comes forward to solve the matter.

This is a case of atrocity against a Dalit woman, Minta Devi W/o Sri Biswnath Ram, who on 15th Sept. 2010 went to Ram Bilash Rai urf Bhulan Rai S/o Shivji Rai for collecting her husband’s wages.
Instead of giving her the wages, the accused along with other persons scolded her, molested her, tried to rape her and locked her in a room but fortunately the victim managed to escape. She went to the other Dalit villagers and narrated her story to them. All of them went to the local police station and filed an FIR against the accused persons. The Inspector instead of writing down the diary pushed them out with slag & filthy languages. Only after the intervention of social activist Manju Kumari and DVAS that the local police registered an FIR. The very next day, the yadavs blocked the road passage and not allowed anyone to go. They even didn’t allow the funeral procession of an old Dalit lady to happen.

When the matter reached to the Superintendent of police of Vaishali, only then the funeral took place.

These incidents were reported in many local news channels like ETV local news, Sadhana News but the administration didn’t pay heed to them.

**Brief on NHRC and its role in the case**-

The Complaint has been acknowledged.

**Request of the Complainant on the matter to NHRC**-

The accused part must be arrested immediately.

The Action must be Motivated under the SC/ST Prevention of Attrocities Act and Domestic Violence Act.

Security and safety of the victims and her family must be ensured.

The Person Mr.BalliRai and His sons name must be included by the police in the name of the accused and immediately arrested.

Compensation should be given to the victim under the Bonded Labour Abolition Act.

Compensation should be paid to the victim for the violation of her basic rights.

**Role of NHRC:** The NHRC directed the SP Vaishali on 15th Sept.2010 to intervene in the matter and act according to law. As a result of which police instead of providing relief to the victim, charged her of filing a false accusation and gave clean chit to the accused. After that NHRC didn’t go into deep investigation and left the victim to her own fate.

A complaint was again filed in NHRC on 22nd July 2013 by Dalit Vikas Abhiyan Samiti. The complaint was registered in the commission with regards to the following prayer by the complainant on behalf of the victim-

An independent investigation to be conducted on the matter of practices of caste based discrimination on the Dalit Musahar community by the upper caste and the police administration, and legal intervention with regards to the offenders and those who are complicit with the administration.

**Current Status of the case:** The matter was again taken into consideration by NHRC on 8th August 2013 but as of now the complaint hasn’t received any further orders or actions from the part of the NHRC or the concerned authorities

**PRACTICE OF UNTOUCHABILITY AND THE ROLE OF NHRC**

Mr. Bezwada Wilson- (convenor of the Safai Karmachari Andolan)

“Everyone knows about manual Scavenging so there is no urgency to continuously repeat about manual scavenging.” This lament from a person who has dedicated his whole life to the work of upliftment of this section of the community, who are known through different identities forced to follow a common trait of livelihood across the great nation India.

I have been working since last thirty years to abolish manual scavenging. We have seen the judiciary, the parliament and also the other proclaimed pillars of democracy…justice have been chronically denied to these sections of the people.

266 RUGGED ROAD TO JUSTICE
In Supreme Court we filed a case in 2003, there has been not much action that has taken place, and we have approached the NHRC as well. They have transferred the case to the high court. When Justice Venkata challya was the chairperson, we submitted a memorandum. After the memorandum there has been no action. The NHRC themselves claimed in 2000 that manual scavenging is a bloat on the Indian democracy. The two member committee in 2001 was shown the situation of the manual scavenging in Andhra after even seeing that they asked for suggestion asking us what is the alternative. Later after 5 years the NHRC called a convention on eradication of the manual scavenging. They were surprised to see how it is still continuing in India. PC Sharma reattribute’s an article showcasing what has to be done to eradicate NHRC which only materializes as thoughts out of experience but no concrete action to eradicate this systemic prejudice of most inhuman human condition is taken up.

The NHRC says that it has to be moved through a legal format, so in 2006 I again approached the NHRC but after six months I got a notification that NHRC cannot take the case so it will have to be addressed by the safai karmachari commission.

If the NHRC considers the manual scavengers as human beings why they cannot take this fundamental human rights issue on their purview. (They just look upon it as another job!!)

‘I was surprised in 2011, March NHRC organized national convention to discuss the issue they wrote on the background a discussion on the ‘Insanitary Latrines’, friends please try to understand the language of the commission how they are trying to escape the terminology as dry latrines are banned in the country’.

In the supreme courts no judgments’ and in the 23 high courts where there has been no action, so can the condition of the safai karmacharis across the country how they could pursue their issue in this conditions.

We have documented 23800 manual scavengers cases in the country. NHRC has no powers and not even an office functional in it.

Case No. 1028/20/28/2012/OC/M 5
Name of Victims- The Dalit Community of Village Antolli.
Address- Vill- Antolli. PS- Lambaharisingh, Rajasthan.
Issue- Practice of untouchability and violation of basic Human rights of Dalit’s in the village Antoli, under the Lamba Harisingh Police Station, by polluting the community’s drinking water well with human excreta. Inaction of the Police department on the FIR No. 27/12 on the date 18/03/2012.
Background of the case- On 14th December 2011, The only drinking water source of the dalitbairwa community residing there was polluted with human excreta by the upper caste and dominant rajputs of the village.
Caste as History that repeats on an everyday basis- The village Antoli, under the Lamba Harisingh Police Station has been historically repressed under the casteist practices prevalent in the region by the dominant Rajput community. Even today the villagers there cannot lead a respectful life with their dignity intact as many of the violent social sanctions under the castesystem is still intact and practiced forcefully.

“even today in this village the accused Devi Singh Rajput holds the deciding power and domination over the people with force and also has an overarching influence over the local police administration”. Victim’s testimony against the Prime Accused Devi Singh Rajput.

Similarly on 27/2/2009, a bridal procession of the dalits was obstructed by the same group of up-
per caste accused and the bridegroom was thrown off the horse and abused publically.

Institutional Support for caste based violence is what garners further courage in the minds of the perpetrators as on both this occasion whereas the police should have taken cognizance of the complaints filed by the Dalit community and appropriate action taken under the SC/ST Prevention of Atrocities Act, 1989.

The Grievances or Prayers to the Commission
The named Accused of the FIR, be immediately taken under police custody and presented infront of the court.

The Agrieved community be immediately compensated under the section 11 & 12(4) of the SC/ST POA Act, 1989.

An independent investigation to be conducted into the matter by an independent committee and immediate action be taken on its finding.

NHRC and its role in the case
The complaint dated 21/01/2012 was received from Mr. P. L. Mimroth, on behalf of the aggrieved Dalit community to the NHRC.

The Grievances raised in the complaint is a subject matter of the state, and as per section 13(6) of the protection of the Human rights (amendment) Act, 2006 was transferred to the Rajasthan State Human Rights commission for disposal.

**but as per the victims testimony there has been no action taken by any of the commissions.

PRACTICE OF UNTOUCHABILITY

Case No. – NO reply from NHRC.
Victim- Srimati Sushila Devi and Dalit community.
Address- Vill- Bardiha, P.S. Patepur, dist- Vaishali.
Issue- Practice of untouchability. Not allowing the Chamar community to enter the village temple as well as not allowing them access to their defecation land. Verbally abusing and intimidating the community with threats to burn the whole village and people alive.

Background of the case- on 15th august, 2008, sushila devi and her husband Bhaisen Ram and few other families had gone to the Brahma baba mandir. On the occasion of independence however the very basic freedoms were curtailed on the basis of caste identities. The culprits Umashankar Rai, Prahalad Rai and around ten other persons from the upper caste community were present in the temple and they seeing the Dalit families coming to pray in the temple. The dominant caste goons abused the dalit families with filthy language and threatened to burn them alive.

Since that day there has been a sense of fear among the dalit chamar community residing in that area. So the prayer to the NHRC is to immediately take cognizance of the matter and follow the due procedure for the law.

Role of NHRC: A complaint was filed in NHRC on 11th September 2008 by Dharmendra Kumar, human rights activist, Dalit Vikas Abhiyan Samiti regarding the injustice done to the Dalits of village Bardiha. When no action was taken by the commission for four long years, the complainant gave an application on 22nd July 2013 for reconsidering the matter and provide every possible help to the victims. Adding to the victim’s misery, NHRC didn’t even accord them with the information showing what steps have been taken by the commission so far.
**Current Status of the case:** As of now the complaint hasn’t received any further orders or actions from the part of the NHRC or the concerned authorities. NHRC’s response to this particular case has not yet been received by the aggrieved party.

**ACCESS TO BASIC RIGHTS AND JUSTICE**

**DR PRASAD**  
(National campaign on Dalit human rights. Worked as a Convenor for strengthening of Prevention of Atrocities Act.)

When it comes to the NHRC, Dalit organisations have been filing and approaching the NHRC since the last 20 years, analyzing the fate for those representations, we took up a sample of 200 complaints covering 20 states. Within the framework we looked at sec 12, 13, 14, 18 of the Protection of Human rights act, 1993. on the aspects or the due process which the NHRC has to follow after the enquiry. We looked at eight practical aspects some of which are as follows:-

- Time gap between date of representation and response.
- Duration between the representation and the date of placing the complaint before the commission.
- The date of giving the directions and the various reasons for the outcomes.

Out of 224 complaints we saw that 50% of the cases are not even considered. Of the cases which they took cognizance, in 36 they didn’t even respond, 27 cases were forwarded to the SHRC. They replied back to 34 cases were not in their mandate. Out of 50% which are considered they have given direction to the concerned officials in 39 cases, the concerned officials are not monitored whether they have received the cases response from the officials or not, there is no action on the officials for delay, even the investigation officers are least bothered by this issues. By keeping all this reason they got response only in nine cases, out of 100 they have taken only 75 cases to cognizance and also gave directions to the concerned officials of which they got response only in 09 cases and also they have closed all the cases. This was taken in a span of 3 years. This is the fate of Dalit cases in NHRC.

Considering the experience of the numerous efforts I don’t have any hesitation in saying that even this commission is “caste biased”. Like judiciary, like police and other institutions even the commission is biased towards caste. For name sake they had/have a Dalit cell which is defunct.

After 20 years only last year NHRC took up a public hearing exclusively on SC/ST POA act 1989, in six to seven states but sadly there was no follow up, they had these meetings in UP, Bihar, Rajasthan etc..Hundreds of cases deposed in front of the commission hearings, which fell into deaf ears without any farther action. So the NHRC has to go beyond these attitudes of hearing and feeling helpless about issues in their domain but instead build up a working strategy to address those.

*This commission has to be strengthened. But we at least need to take recommendations from the jury, speedy trial has to be followed by the NHRC faster than the court. They have to evaluate mechanism for that.*

The composition of the membership, from the last 20 years where there has been no participation from civil society as intended to bring together different actor. Amend and look at the composition of the membership and the powers of the commission, keeping the Paris principles in view review the NGO committee’s space as it has been shrinking within this commission.

The NHRC should go to the communities and link up with the communities through this measures of reaching out to the NGOs and the civil society. Commission shouldn’t act like a court.
Bonded Labourer- (Deponent- Mr. S.S Mehrda, Advocate).
CASE NO. 1848/20/14/2012
VICTIM- Bhagwan Sahai and others
ISSUE- Denial of basic rights to bonded labourer
ADDRESS- Village Etawah Kanwar Para, Via Baghali, Tehsil Phulera, Dist. Jaipur, Rajasthan

BRIEF OF THE CASE- The case is about the atrocities against the bonded labourers in J.B.R. Brickyard. The owner of this brickyard belongs to the upper caste community. He hired the victim and his brother-in-law as labourers but in a time span of one and a half month never paid them their wages. When the victim protested against such injustice, he was threatened by the accused persons Vinod Kumar Natwadia and others and was restricted from leaving the brickyard area without permission.

This act of savagery reached its height when the accused persons maliciously made the victim’s father sign on a blank stamp paper. Their intention was to grab the land of victim’s father by fraud. Adding to the victim’s adversities, even the administration didn’t provide any kind of help to the victim or his family.

Victim filed a complaint in NHRC on 27th September 2012, asking for help. NHRC directed the ADM and the District Magistrate to take action on the above mentioned matter as per the provisions of law but to victim’s dismay, every official belonging to the administration supported the accused in their report. In fact what the administration presented in their report is a whole different story from what the victim was pleading in his complaint. According to the ADM’s report, Bhagwan Rai took loan from Vinod Kumar Natwadia and when the time came for repaying the loan, the victim threatened the accused that he would file a false case against the accused and would make him suffer for demanding loan repayment.

But there had been just one mistake conducted by the ADM in his report, which was that when he went for field investigation he found 80 labourers working there but there were only 23 labourers in actual whose names were mentioned in the copy of register for the months of December, January and February. Had there been 80 labourers working in the brickyard, then how the attendance of only 23 labourers would have been marked.

Role of NHRC: NHRC didn’t pay heed to the point that the ADM’S report can be false also. When the victim was coming to the commission time and again, NHRC could have itself conducted a field investigation to corroborate with the ADM’s report and DM’s letter of reply.

Current Status of the case: When asked about the action taken by the commission, NHRC gives no reply regarding the procedure followed on this case. As of now, nothing reformatory has been done for the victim, neither from the commission nor from the concerned authorities

NHRCs Response- The Commission has called for further report from the concerned authorities, but the requisite report has not been received within the stipulated period. The Commission takes a very serious view and directs its Registry to issue final reminder to the concerned authority calling for the requisite report within four weeks, failing which the Commission shall be constrained to invoke to provisions of Section-13 of the Protection of Human Rights Act, 1993. A copy of the letter containing relevant directions of the Commission also be sent along with the final reminder.

Access to Basic Rights and Justice.
Case No. 2298/20/14/2010/OC
Victim- Megha Verma and Others.

270 RUGGED ROAD TO JUSTICE
**Issue**- Practice of untouchability and denial to basic rights of Dalit students.  
**Address**- Government Higher Secondary School and Dakshin Mukhi Hanuman Mandir. 
**Village**- Mudiya Ramsar, P.S.- Bagru, dist- Jaipur. 

Brief of the Case- On 18th September, 2010 in a government school in the village Mudiya Ramsar which located just a few kilometers away from Jaipur city, the students had to go through the cruel act of being discriminated on the grounds of belonging to the dalit community. 

This as explained by the victims is not an one off offence but a regular chore which they have to go through, but on 18th September there was a blatant violation of their fundamental rights. On the day of the incident the students of the school belonging to the dalit community who like every year wanted to join the annual procession and to be a part of the religious ceremony in the local hanuman mandir but they were denied on the grounds of being from the dalit communities. 

This Incident was reported in the local daily and also a first information report was filed in the local police station to the victims of dismay of inaction. Thus with the support of the Centre for Dalit Rights, jaipur the victims have filed a complaint to the NHRC in hope of Justice. The prayer for directing and acting on the fact that Dalit issue should not only be seen as a disruption of peace and security issue but a serious crime against one section of the society by the dominant groups. 

Role of NHRC- the complaint dated 09/10/2010 which was filed in the NHRC by Advocate Satish Kumar in respect of Megha Verma and others was placed before the commission on 12/11/2010. Upon consideration the complaint has been transmitted to the concerned authorities for such action as deemed appropriate. 

Current Status- As of now the complaint hasn’t received any further orders or actions from the part of the NHRC or the concerned authorities.
TRIBAL RIGHTS AND
THE RESPONSE OF NHRC
(JAL JUNGLE AUR JAMEEN)
Tribals and continuing human rights violation in perspective to NHRC

Tribals across the country have been subjected to various forms of violence. From central India to North east, various human rights violations takes place and gets unnoticed everyday. In tackling the different types of insurgency movements, in the so called armed conflict areas the attitude of the police and administration towards the Tribals caught in between this battle is non-sympathetic and abusive to say the least. Increase of industrialization and encroachment of land as a result has added to the misery of Tribals.

The United Nations Declaration on the Rights of Indigenous Peoples “prohibits discrimination against indigenous peoples”, and it “promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development”.

India’s constitution gives special rights to the indigenous population in our country under 5th and 6th schedule. Supreme Court talking about the constitutional scheme observed:

“The Fifth and Sixth schedules constitute an integral scheme of the constitution with direction, philosophy and anxiety to protect the Tribals from exploitation and to preserve natural endowment of their land for their economic empowerment to cognate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political Bharat.” Although the constitution gives gram sabha, the local governing body of villages the right to reject any expropriation of land, displacement of the Adivasi people continues.

CONTINUING ABUSE OF POWER:

In states like Chhattisgarh where industrialization and the fight against the Maoists is at peak, human rights abuse has increased blatantly in the past years. Tribal people have been the biggest victims of this war between the Naxalites and the Indian state. Various instances of rampant killings by security forces of alleged Maoists, extra judicial executions, custodial torture, rape, illegal detention, burning of villages, huge displacement of tribals from their lands etc have been reported in last few years. In 2009 the Indian Government announced Integrated action plan, this plan included funding for grass-roots economic development projects in Naxalite affected areas, as well as increased special police funding for better containment and reduction of Naxalite influence in these areas. However, instead of providing any relief to the villagers, the police only added to their miseries. The ongoing and increasing military operations against the Maoists are rather helping the mining companies and police to get rid of Tribals, resulting in huge abuses and displacement of people.3

In areas like north east, the counter insurgency operations have resulted in similar kinds of human rights abuses including extra judicial killing, forced disappearances, ill legal detention, and restrictions on freedom of assembly, expression and movement.

Instances such as killings of innocent tribals in Sarkeguda in 2012 and Edesmetta massacre in May 2013, where innocent people were indiscriminately and ruthlessly murdered, police claims immunity claiming it as an incidental loss in war crimes. Agreeing that in such areas distinction between the Maoists and innocents is difficult at time but in the above massacres in spite of their being clear reasons to believe that none of the present or killed were Naxalites, the security forces indiscriminately fired at the innocent tribals. The international humanitarian principle of distinction and proportionality is never followed, according to which a crime occurs if there is an intentional attack directed against civilians (principle of distinction) or an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage (principle of proportionality).24

Institutionalizing of human rights abuse by enactment of various acts

Various acts have been enacted to tackle the insurgency situation spread across the country like UAPA, CSPSA, and AFSPA. These draconian laws sanction the violation of due process by the state. Senior Advocate Advocate K G Kannabiran, National President of PUCL, India, argues in his letter to the National Human Rights Commission (NHRC) that the CSPSA and UAPA operate by criminalizing the very performance of civil liberties activities, and culpability is decided upon not by direct proof, but through guilt by association. The Chhattisgarh Special Public Security (CSPS) Bill, 2005 seeks to silence “the genuine and legitimate expression of dissent and disaffection”. The Bill appears to be aimed at prohibiting any kind of protests by the Adivasis against industrialization in their areas in violations of the fifth schedule of the Constitution of India

AFSPA: Introduced to deal with the Naga Insurgency, Armed forces special powers act, 1958 is synonymous to human rights abuses. It grants extraordinary powers to the Indian Army and provides a veil of immunity for the violent repression of insurgent groups and the communities that supported them. Countless thousands of extra-judicial killings and disappearances have occurred in Nagaland, Manipur and Assam, not just of militants but political leaders, activists and civilians.5

2. 4 http://en.wikipedia.org/wiki/Distinction_(law)
CSPSA: The draconian Chhattisgarh Special Public Security Act, 2005, passed by the Chhattisgarh assembly in December 2005 and notified in March 2006, is a perfect example of legislation enacted in the garb of security and protection, leading to increased repression and suppression of peoples rights. The CSPSA authorizes the police to detain a person for committing acts, which among other things, show a “tendency to pose an obstacle to the administration of law”. Under the act any person whose actions “encourage(s) the disobedience of the established law” will be considered “unlawful”.

It is clear that this legislation was enacted to suppress all political dissent in the state.

False implications and arrests
Under such circumstances, there are various numbers of false implications against the tribals. Any voice of dissent results in arbitrary arrest. Moreover, “It’s a usual case in Chhattisgarh: Police force tribals to become informers and when they refuse, they are framed under false Naxal charges and tortured in jails.” Says tribal activist Himanshu Kumar. All the people arrested are charged with serious sections under the above mentioned draconian laws which results in difficulty of furnishing any bail. The partiality of the judiciary further adds to the problems. Human rights activists like Binayak Sen, Soni Sori etc all have face the burnt of these draconian laws in place.

Mining, Industrialisation, Forests and Tribals
“W e Adivasis are the original inhabitants of our lands. Jal Jungle Jameen hamara hai! Hamara gaon mein hamara raj! (Water, forests and land are ours! In our villages, Our Rule!)
- Harendranath Murmu, Dissum Pargana of Hos, East Singhbum District, Jharkhand.

Geological survey of India has declared that India is among the richest country in terms of some strategically important minerals like coal, iron ore, bauxite etc...But somehow the tragedy is that most of these reserves are in the tribal regions of the country. And sustainable development which is a euphemism in the context to the reality experienced by millions of tribals residing in this areas.

Three people had been killed in police firing in Maikanch village of Kashipur Block, Rayagada district. The incident took place on 16th December 2000. (This is the site for HINDALCOs Aluminium Plant). A commission was set on Public protest and Pressure but the findings have been not made transparent and no punitive measures against the faulty officials have been taken aswell. (Peoples Union for Civil Liberties)

“Though 12 years have passed since the incident, families of the deceased have not received any government assistance. Also, neither the company nor the government has done anything for the development of the area,” alleged Bhagaban Majhi, president of Prakrutika Sampad Surakhya Parishad (PSS), which had organized the meeting on Sunday. “Our fight is to protect the forest and land. But the government suppressed us with baton and bullets. Though my husband was killed 12 years ago, till date I have not received any government assistance,” said Subarna Jhodia, wife of Abhilash. (TOI, Dec 17, 2012).

14 Adivasis butchered in Kalinganagar site for Tata Steel Plant on 2nd January, 2006 and the struggle still continues for the people to stop the juggernaut of development sacrificing their families at a regular interval at the altar of state and corporate nexus.

These are just a few of the examples that dot the history of Adivasis and their struggle for survival in this country, with goodwill surmounting to epochal heights but with any realistic measures being taken to uphold their condition for a better future.

Although in some of the cases NHRC has taken suo-moto cognizance of the instances, but in reality they haven’t been able to grant any relief to the aggrieved tribals or book the accountable institutions or authorities for their crime.
Abuses and NHRC response to the same
In the situation like present where there is a rampant abuse of power and abuse by the state, a quasi-judicial body like NHRC has a huge role to play. The National Human Rights Commission (NHRC) was constituted under the Protection of Human Rights Act of 1993 to protect and promote human rights. Though not denying, it has taken cognizance of a lot of atrocities but the numbers are negligible and effect of the same on the people at large has been almost useless.

For example, The mandate of NHRC and SHRC excludes atrocities committed by the army and paramilitary forces inspite of the fact that human rights issues in north east are mostly caused by the army and paramilitary forces. The Naga Peoples Movement for Human Rights (NPMHR) said National Human Rights Commission (NHRC) in the north east region is ‘irrelevant’ unless it addresses the military impunity.

After salwa judum* was declared unconstitutional by the Supreme Court, NHRC decided to held a full commission in Chhattisgarh. But even there, breaking all the hopes of the people, it remained silent regarding police atrocities. The team conducting the inquiry was comprised of police officials within the NHRC. Nothing was indicated about the killing of villagers or large scale displacement of Tribals.Though they did acknowledge some amount of human rights violation but did not recommended on how to provide justice to the people. on the other hand there was a sense that they were in a way supporting the idea of existence of Salwa Judum by saying that it was peoples reaction to the Naxal Violence.

Response to the complaints filed regarding abuse
Thousands of complaints are filed every year in NHRC by various individuals, organizations etc, few heard and majority left pending. In the very few decided complaints, were action is taken the process first of is very slow, and even when some relief is granted, NHRC always shys away from any sort of punishment or accountability of the state. Recommendations are generally monetary in cases of custodial death or torture. Most of the complaints response indicates that the state authority takes months and sometimes years to response to the NHRC and thus most of the complaints keep hanging without much follow up from there end.

Human rights commissions across the world have played significant role in reducing people’s trauma by timely intervention, aggressive advocacy against state torture and by pushing the states to act against its will, even outside the respective commission’s mandate. It is time for NHRC to step up and do its duty in the times and places where judiciary and police administration are almost biased towards tribals who are trapped in the ruthless development drive of the state and counter insurgency operations.

Himanshu Kumar- an ardent follower of Gandhi’s path of non violence and persistent struggle for justice and human emancipation. He accompanied by his wife decided to go and live with the indigenous Adivasi population of Bastar in the middle of Dandkaranya and work for their entitlements and rights.

Himanshu Kumar is a Gandhian activist who, together with his wife, ran the Vanvasi Chetana Ashram in Dantewada, Chhattisgarh for 22 years. He learned the local adivasi language (Gondi) and worked through the Ashram to help adivasis access their rights under the law. Starting in 2005, during the murderous Salwa

3. 6 http://www.easternmirrornagaland.com/2013/10/nhrc-irrelevant-unless-afspa-impunity-removed/
• An armed people’s vigilante group which was declared unconstitutional after the Nandini Sunder and others and the State of Chattisgarh case.
Judum campaigns of vigilante groups against the adivasis of Bastar in Chhattisgarh, Himanshu worked to try to get villagers back to their homes, get people falsely accused out of jail, and win justice for the victims of police and vigilante crimes. His Ashram was eventually bulldozed and he was forced to move to Delhi, Justin Podur interviewed him there in February 2013.

However the times didn’t remain same, the region transformed as there soon appeared a scenario where there were changes in interest of different groups in these Mineral rich Adivasi lands. Like most of the other resource rich areas in the world these area too soon turned into a battle field of different stake holders undermining the Panchsheel Promised to them by the late architect of modern India Pt. Jawaharlal Nehru. The discontentment and vested interests brought out a state of civil war between the State and the Naxalite groups which took firm roots in the jungles of this ancient land. The region turned into a battlefield as devastation or engendering of nature and extreme subjectification of the populace there erupted into a scenario of war. With conditions turning more and more hostile towards the Local indigenous Population thousands of people were subjected to violence and also villages and hamlets came under the fury of the raging battle between the State paramilitary forces and naxalite groups.

Gradually the focus also shifted towards the civil society and the mass organisations in the region that were defending the rights of the citizens in the region from the ire of the counter violence that was taking place.

The result of all the above facts gradually shifted onto the day to day narratives of Himanshu Kumar and his group of people who were working under the banner of Vanvashichetna Ashram. So Himanshu Kumar Says, “Due to bad faith the local judge’s sight fell on me and they told me that we have a NALCO scheme where we are concentrating on legal education to the local tribal people. The NALCO formed a local committee and took his organization onto its fold and asked him to conduct meetings with the local people, believing in this they began the free legal aid services amongst the people of the region and from this very instance the bad days began’.

An young girl came to me one day and said that you taught me and now I am an Anganwadi teacher, some days back the CRPF came to my village and asked me about the Naxalites, and on my telling them that I didn’t know about it they tied my hair to one of the soldiers legs and paraded me across the village and dumped me into their truck and put me behind lock up for the night with many other male prisoners.

I made a video of this event and wrote a compliant to NHRC and also to the women commision where I submitted a CD. Based on this the collector intimidated the victim by telling her that your too much leadership will take away your job from you. On this the girl became silent and prayed for forgiveness from the collector and continued on with her life in a silent manner. But the impact of this complaint by us made people come to us as an alternative mechanism to deal with police atrocities. But however in the meantime Salwa Judum was started by the government where 650 villages of the Adivasi’s were burnt down by the state sponsored forces, killing and brutalizing adivasis and their history of life.

“If someone fights someone people go to the police but if police hurts people where do they go?”

Once Nandini Sunder came and in the mean time she said that Supreme Court has ordered the NHRC to conduct an evaluation of the violation of rights of the adivasis in the region. The committee asked us to call the Adivasis who have been violated. In the process the villagers of Nendra whose 40 houses have been burnt for about four times and around ten people have been killed and four girls have been abducted and have gone amiss came and talked about their plight. But on their way back home after the meeting with the NHRC team, police took custody of them and molested and violated the
group of villagers who had gone to see the NHRC team. Hearing this I called up the NHRC team and told them about what happened to the villagers of Nendra village. The NHRC most crudely replied that our work is not to stop the police, our work or duty was only to take statements from this people and so we have done that and now it’s the police who could do anything with them as its under their jurisdiction. The police beat up the villagers for the whole day and in the evening took written complaints from the villagers that they were brought to the meeting promising them baits of money and they have no queries/complaints against the police. I and Nandini Sunder sat in the Superintend of Police (SP) office throughout the day trying to mobilize all support possible from the CM, Ajit Jogi to DIG etc but nothing was fruitful and the villagers were brutalized throughout the day for opening their mouths in front of the NHRC, and on the fourth day their village was again burnt by the police.

This was absolute tyranny and so I said that I will live with these villagers and will rehabilitate them and lived there for two years. After one and half years a very notoriously famous police officer came there who is known for murders and rapes ‘Mr. kalluri’. He picked up sukhnath koyami a worker in the organisation and put him in lockup alleging of finding bombs and naxalite literature with him. After two years during his trial when the judge asked the police that where are the alleged materials found with sukhnath, they replied that they have blasted the bomb and burnt the literature.

Kopa Kunjam (10th December the International Human Rights day) another activist who was trying to resettle a burnt village was picked up by police and hung upside down in police custody and to this when Himanshu phoned the Home minister Mr. Chidambaram he said that I know about it and he has murdered some people, and cut the phone. During the arrest there was a lawyer from HRLN called Almond Toppo who too was tortured and taken a written affidavit that he was in the police station on his own discretion. After two years during the trial the victim testified against the charges and said that Kopa kunjam was trying to help him, and on this testimony he was released from jail.

Linga was locked up in the Thana toilet for forty days and tried to force him to be an informer for the police but he declined. Soni Sori her aunty in the meantime applied for a habeus corpus and released Lingaram Kodopi from jail and on the way back Lingaram Kodopis elder brother was picked up by the police and put into jail and alleged her that she took money from the naxalites and releases convicts from the jail. And the process of targeted incarceration continued as continuously one after the other of her family members began to be picked up by the police and taken into custody under flimsy pretences.

Soni Sori has been my student, and I asked high court how could the petitioner be picked up by the police without any warrant and after she was released her father was arrested in the next instance. And it was said by the government that she had inserted stones in her private part by herself and we are going to give that report, she replied give that itself but give me the report.

Till date NHRC has not taken any action in this case to bring out the real story.

Thousands of Adivasis are in jail and there is no action or trial against any of them. In this desperate situation what is the alternative to violence.

CASE # 541/33/3/2011 + 610/33/3/2011-OC

Name of Victim- Soni Sori
Address- Dantewada, Chattisgarh.
Issue- False Cases, Illegal Detention and custodial torture of an Adivasi School teacher.
Background of the Case- Soni Sori was brutally tortured in the custody of Chhattisgarh Police which resulted in several severe head injuries. It was also reported that her nephew Lingaram Kodopi, aged
25 years, has also been arrested by the Chhattisgarh police on charges of facilitating protection money for Maoists from Essar Steel. The victim Soni Sori has apprehended threat to her life alleging that the State Police had tried to kill her in an encounter on 11.09.2011. Pursuant to the directions of the Commission a report dated 12.10.2011 from Supdt. of Police, District South Bastar Dantewada was received which revealed that two accused B. K. Lala and Linga Kodopi were trapped by the police team on 09.09.2011 who disclosed that they were handing over an amount of Rs. 15 Lakhs to Naxalites, Vinod and Raghu through a lady named Soni Sori at Palnar market on behalf of M/s Essar Company. It is further stated that the accused Linga Kodopi disclosed that he along with Soni Sori had acted as middlemen in the payment of money to Naxalites on earlier many occasions. Accordingly, the cash and vehicle involved in the matter were seized case No. 26/2011 u/s 121/124 A, 120 B IPC, 39 (1), 40 UPA Act and 8 (2, 3) Chhattisgarh Special Public Security Act was registered at Kua Konda Police Station and the accused were arrested. However, Soni Sori was absconding, but was arrested on 04.10.2011 in Delhi with the help of the Delhi Crime Branch Police. The Commission received 37 other complaints regarding the alleged torture of Soni Sori in police custody, and all the cases have been tagged together. It also received a DO letter dated 10.05.2012 from Shri V. Kishore Chandra Deo, Minister of Tribal Affairs and Panchayati Raj, Government of India forwarding a letter given by Dr. T. N. Seema, Member of Parliament regarding the custodial torture of Ms. Soni Sori, a tribal teacher from Dantewada, Chhattisgarh. The letter enclosed a copy of the judgement of the Supreme Court of India dated 02.05.2011 in Criminal Miscellaneous Petition No. 1104, 4981 and 8976 of Year 2012 in the Writ Petition (Criminal) No. 206 of Year 2011 filed by the victim Soni Sori regarding brutality during her custody. In reference to this matter, the Commission obtained the record of proceedings of the Supreme Court of India in Writ Petition No. 206 of 2011 dated 02.12.2011, Criminal Miscellaneous Petition No. 1104 of 2012 dated 19.01.2012, Writ Petition (CRL.) 206 of 2011 dated 30.04.2012 and Criminal Miscellaneous Petition No. 12555 of 2012 in Writ Petition (CRL.) No. 206 of 2011 dated 21.05.2012 from the website ‘courtnic.in/supremecourt/temp/wr 20611p.txt’. The Criminal Miscellaneous Petition No. 12555 of 2012 in Writ Petition (CRL.) No. 206 of 2011 dated 21.05.2012 states that “Mr. Atul Jha, learned counsel for the respondent state submits that the matter has already been sorted out by the parties amicably and the writ petition has become infructuous. Hence, the writ petition stands dismissed as having become infructuous. Accordingly, the Crl. M.P. also stands disposed of.” The Commission has considered the material placed on record and observes that the allegations levelled vide Writ Petition (CRL.) No. 206 of 2011 appear to be disposed of vide Order dated 21.05.2012. Before proceeding further in this matter, let a copy of these proceedings be sent to the victim Ms. Soni Sori w/o Shri Anil Bhutani r/o Village Sameli Police Station Kuan Konda, District Dantewada, Chhattisgarh through registered post for her comments, if any, within six weeks. A copy of these proceedings also be sent to Shri V. Kishore Chandra Deo, Minister of Tribal Affairs and Panchayati Raj, Government of India for information.

Response of NHRC: “The report of the Commission’s team shows that there are grounds to believe that Soni Sori has on several occasions been singled out for harsh and humiliating ill-treatment. Even as a prisoner, she has a right to personal dignity and the right not to be subjected to physical or psychological abuse. It appears that these rights have sometimes been violated. The Commission expects the Government of Chhattisgarh to ensure that the traumatic ordeals and the odious practices to which Soni Sori has been subjected more than once are immediately stopped and do not recur.”

It asked for a report from Chef Secretary, Government of Chhattisgarh by 2nd May 2013. But inspite of the validation regarding the ill-treatment, NHRC failed to suggest any relief for her. They requested the state government to make sure that such incidents doesn’t occur in future but suggested
no punitive action against the authorities or suggest any compensation for the agony caused. The reply by the state is pending till date and yet no follow up has been made by the NHRC.

She has now been acquitted from 6 out of 8 cases and got bail in the other two. In absence of any action or responsibility taken by the State government and NHRC against the people who tortured her, rather the very person who sexually molested her was showered with gallantry award by the Chhattisgarh Government; she is still waiting for justice. Still living a life of fear in her homeland.

ANNEXURE- A LETTER OF THE COMPLAINANTS TO NHRC

To
The Chairperson
Justice K.G.Balakrishnan
National Human Rights Commission
Delhi
1.05.2012

Re: CASE # 541/33/3/2011 + 610/33/3/2011-OC

Sub: DEMAND FOR SPEEDY ENQUIRY INTO CUSTODIAL TORTURE AND SEXUAL ABUSE OF SONI SORI IN CHHATTISGARH, AND TO ARRANGE FOR HER IMMEDIATE MEDICAL RELIEF

Sir,
This is regarding our earlier complaints to NHRC in October and November 2011, regarding the custodial torture and sexual violence against Soni Sori, the reference numbers for which are as given above (copy of acknowledgement from NHRC enclosed). Presently Soni is in Raipur Central Jail in Chhattisgarh, after suffering brutal custodial torture, including sexual violence, by several policemen inside the Dantewada Police Station (copy of 3 letters to NHRC from citizens enclosed).

It may be recalled that Soni Sori is an adivasi school teacher from Dantewada, who had come to Delhi to escape harassment by the Chhattisgarh police and file a legal complaint against them for fabricating false cases against her of being a maoist supporter. She was arrested on October 4th and transferred back to Chhattisgarh before her petition could be filed before the Supreme Court. While in police custody in Dantewada, she was sexually tortured by the Chhattisgarh police on October 8/9th, under the orders of the then-Superintendent of Police, Ankit Garg. She was verbally abused, stripped naked, electric current was applied to her body parts, and stones, pebbles, batons etc. were shoved into her private parts.

Such barbaric behavior by police had been foreseen even before Ms. Sori was taken into custody and had been clearly placed before the Sessions Court and High Court in Delhi, when her custody was sought by the Chhattisgarh police. In consideration of her well-grounded apprehensions about her safety in hands of the Chhattisgarh police, the Delhi High Court issued directions to them to ensure her safety while in their custody and had specifically ordered the Commissioner of Police in Chhattisgarh to file an affidavit in the Delhi High Court outlining steps taken to keep her safe. But, in what can only be termed to be an act of flagrant contempt of court and of all constitutional safeguards, the Chhattisgarh police brutally tortured her for the two days she was in their custody.
A special medical examination at NRS Medical College Hospital Kolkata, ordered by the Supreme Court after senior advocates and human rights activists filed a writ petition on Soni Sori's behalf, has unearthed irrefutable evidence of custodial violence and sexual torture. Yet, Soni Sori has been consistently denied proper medical care. No action has been initiated against the SP; on the contrary he was awarded the President's Gallantry Award in January 2012.

A team of women that had visited Raipur in January to meet her was shunted around by the officials and denied permission to meet her, which is a violation of her rights as a prisoner. Her repeated complaints of ill-health have also not been attended to properly, and she is not receiving proper medical care and treatment, which is yet another violation of prisoners’ rights. Not only are they not being attended to, there is an attempt to dismiss them by saying that she is making them up, that she is a ‘malingering’.

Recent reports from her lawyer who visited her on 26th April are alarming and a cause of great concern to us. She appears to be suffering from several ailments arising from the injuries inflicted upon her in custody, and her health condition has significantly deteriorated. In addition, she has said that she was taunted by the doctors and not given proper treatment when she was taken to the hospital in Raipur (copy of letter from lawyer enclosed).

Such custodial violence and brazen disregard of the constitutional safeguards is of grave concern, especially when meted out by the protectors of the law. If ignored and left unpunished, it sets dangerous precedents for the democratic fabric of the country. We seek your urgent intervention in this regard.

We urge you to take this matter up and intervene to ensure that Soni Sori’s rights as an under-trial prisoner are not violated, that she is given prompt and due medical care and treatment, and moved to a safe place, in consultation with her through her lawyers, where the policemen cannot interfere with the course of justice (copy of letters from Soni Sori enclosed).

We demand the following actions immediately by the NHRC:

i. NHRC must enquire into the allegations by Soni Sori of custodial torture while in police custody on the night of 8th – 9th October 2011.

ii. NHRC must ensure that she immediately gets medical attention in a way that her dignity is not violated and so that her acute medical condition is not trivialized.

iii. NHRC must ensure that her other rights as an under-trial are not violated, and that friends and relatives be permitted to meet her.

iv. Punitive action must be initiated against SP Ankit Garg and other police officials involved in her custodial torture.

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iv. Punitive action must be initiated against SP Ankit Garg and other police officials involved in her custodial torture.

We demand the following actions immediately by the NHRC:

i. NHRC must re-state firmly the guidelines and safeguards instituted to ensure safety of the other under-trials and many innocent tribals currently detained in jails in several parts of the country.

Yours,

Dr Uma Chakravarti, SAHELI
Sudha Sundararaman, AIDWA
Case No. 543/33/3/2011

Name of Victim- Lingaram Kodopi.
Name of Complainant- VIJAYAN MJ & OTHERS
Address- Dantewada, Chhattisgarh.
Issue - Illegal detention and False Cases.
Background- The Commission pertains to alleged arrest of an Adivasi journalist Lingaram Kodopi from Dantewada on 09.09.2011 by police on fabricated charges. Upon perusal of the record in the CMS, it is seen that the Commission had earlier received a complaint and the same was registered as Case No. 485/33/4/2011. The Commission vide proceedings dated 07.10.2011 transferred the said complaint to the Chhattisgarh State Human Rights Commission u/s 13 (6) of the Protection of Human Rights Act, 1993, as amended by the Protection of Human Rights (Amendment) Act, 2006, for disposal in accordance with the provisions of the Act. Hence, this complaint be also transferred to the Chhattisgarh State Human Rights Commission u/s 13 (6) of the Protection of Human Rights Act, 1993, as amended by the Protection of Human Rights (Amendment) Act, 2006, for disposal in accordance with the provisions of the Act.

Response from the NHRC
A complaint has been made to the Chhattisgarh State Human Rights Commission and also to the NHRC, but there has been no farther deliberations from the commissions.

2) Case No. 298/33/16/2011-AFE
Case No. 298/33/16/2011-AFE
Name of Victim- Meena Khalkho
Address- Karcha Village, Balrampur, Chhattisgarh
Issue- Alleged rape and murder of a minor tribal girl Meena Xalxo. And the Delay and Lapses in the judicial inquiry and also Non Compliance of NHRC guidelines in the case pending before them.
Background of the case- On 5th July 2011, Meena Xalxo left her home saying that she was going to meet a friend, only to never return home. The next day her body was found with the police and said to have been killed in an encounter at 3AM of 6th of July 2011.
The Chhattisgarh Bachao Andolan made a report on the killing of Meena Xalxo by the Chhattisgarh Police and the armed forces in July 2011. The events described in the report were as such:
EVENTS OF JULY 5 AND 6, 2011
VILLAGE KARCHA: JULY 5, 4 PM
On the 5th Meena Xalxo had worked with her mother in the fields and came back home at about 4 o’clock of the evening. After a while she dressed up saying she was going to visit her friend Kirti. She wore a skirt and a blouse. She said she would return in a while. She took her bicycle with her. She didn’t return at night, her parents thought it had become late so she might have decided to stay over.
The Sarpanch of Karcha, Janardan Ram, has told the media, and also the team that Meena Xalxo was friendly with truck drivers who drove trucks enroute to the bauxite mines at Samari. The Sarpanch has said that on the 5th as well there is a possibility that she had gone to meet her truck driver friends, since she never went to Kirti’s house, the friend she had said she was going to visit.
LONGRA TOLA, VILLAGE NAWADIH: JULY 5, EVENING
The people of Longra Tola, Nawadih village, where the incident is said to have occurred had seen a truck standing on the opposite
NAWADIH, KARCHA: JULY 6, 3 AM- At around 3 am 6th July, the villagers heard three gun shots. The people were afraid and did not open their doors and all of them categorically stated that they only heard three gunshots. There were no sounds of police vehicles, or running around or firing. In the silence of the night, the people of both Nawadih and Karcha, questioned at random by the team, only heard three gunshots, and no sounds of any kind of chaos or an encounter, or several rounds of firing.

LONGRA TOLA, VILLAGE NAWADIH: JULY 6, EARLY MORNING- The people of the Tola were all very afraid in the morning. The police did not allow the people to come out of their houses. The police threatened the people and were heard shouting “jisko surrender karna hai wo apane ghar se bahar nikale” (come out of your house if you want to surrender). The police had cordoned off the entire area, and was not allowing anybody to go to the Chedra Nala, or to go the forest to pick fruits as per their daily routine.

Navel Bhagat’s house is by the kaccha road from Chando to the Chedra Nala, in Longra Tola. His house is the closest to where the police claims to have found Meena Xalxo’s body after the supposed encounter. At about 5 AM, a policeman came to Navel’s house and asked for water. Navel’s wife gave water in a lota. The water was perhaps for the police officers or the dying Meena Xalxo.

The police did not let people out of their houses, probably till they took the girl to the Chando Police Station. Navel’s children wanted to go to the toilet but they were so threatened that Vimla Bhagat, wife of Navel Bhagat made her children relieve themselves in household utensils.

The people saw that the truck that they had seen on the other side of the Chedra Nala the previous evening was now on this side, they saw that a bicycle was lying at the back of truck. A few people claimed that the truck and conductor of the truck were taken by the police to the police station.

CHANDO PRIMARY HEALTH CENTRE, CHANDO: JULY 6th, 6AM- At about 6'o'clock in the morning R.P. Khushwaha the Compounder of the Chando Primary Health Centre received a call from the Chando police that a girl had been injured in an encounter and needed treatment. The Compounder on receiving the call went and opened the PHC. As per the compounder, the girl had two bullet wounds and was in a very critical condition, she was unconscious, and her breathing was very slow. He covered the bullet wounds with cotton and referred her to the “Higher Centre”. The girl was treated in the Chando Primary Health Centre for about 10 minutes. The Compounder stated that he could not recollect what outfit the girl was wearing when she was brought in to the PHC.

Early in the morning a person from Meena Xalxo’s village came to her house and told her father Buddheshwar Xalxo “Mama, let’s go to Chando hospital, Meena has got hurt.” At that time the family did not know, she was dead. The parents left for the hospital. Before they reached the hospital the Thandeedar met them on the road and asked “Kanha ja rahe ho”. They told him, they were going to the hospital to see their daughter Meena, who was hurt. He took them to the Thana and asked them to sit for a while. They asked if they had eaten and when they said no, they brought biscuits for them. The police then took them to the Balrampur hospital in their vehicle. There they found out that Meena was dead.

She was wearing the same two piece dress that she was wearing when she left home. She had two gun shots, one on her chest and the second in her abdomen, both shots had crossed through leaving four wounds, two on the back side and two on the front side. The police handed over her body at 4 o’clock in the evening by their vehicle. They also gave them 10,000 rupees for her funeral. Meena was buried that evening itself.

The family could not find Meena’s bicycle, despite looking everywhere for it. They asked the police, but the police did not tell them anything. People told them they had seen the bicycle loaded on the
The parents also discovered that Meena had not gone to Kirti’s house, the friend she said she was going to visit while leaving the house.

**NO CRIMINAL PROCEEDINGS INITIATED**

The family of Meena Xalxo and the people of her village Karcha and also people of Nawadih village have categorically stated that Meena Xalxo was not a naxalite. A representation dated 7.7.2011 to that effect has been made to the Superintendent of Police, Balrampur. In the said representation the father of Meena Xalxo has said that his daughter was not a naxalite. She had spent the entire day in the forest with the cattle and in the evening had gone to visit her friend Kriti. In the morning when he found out that his daughter had been shot by the police, he questioned them why they had killed her, the police told him that she was killed because she was a naxalite. In the representation the father has said that the entire village can vouch for the fact that his daughter was not a naxalite. The father alleges that the police in order to cover up their crimes are claiming that she was a naxalite and was killed in the encounter. The representation was also accompanied by a panchanama signed by several people of Karcha village, also containing the sarpanch’s signature and seal affirming the statements of the father. The representation was also copied to the Collector, IG, DIG, State Human Rights Commission.

**POLICE FABRICATED EVIDENCE, TRIED TO INFLUENCE WITNESSES, THREATENED WITNESSES**

On 6th July itself the police took Navel Bhagat and Shridhan Kerketta who belong to the Longra Tola where the alleged encounter had taken place, to the Chando Police Station and forced them to sign papers. They refused to sign the papers, they were offered money, and induced by saying they would be given government jobs.

On 7th July the police party including presumably the SDOP of the area (whom Vimla Bhagat referred to as “SDOP jo Daroga se bada bota hai”) came to Navel Bhagat and Shridhan Kerketta’s house and threatened them to sign on certain papers. Navel said he wants to read the paper and only then he would sign. In reply, the Police said, “abe padkar kya karega sign kar”. Navel couldn't see what was written on the paper as it was written in English. There is clear apprehension that the papers must be related to seizure of articles viz- khokhas (gunpowder cover of bullets), naxal literature etc. which as per police version were found with Meena Xalxo. The papers must also be related to statements supporting and suitable to the police version of the encounter. Under pressure Navel signed a few papers.

Navel Bhagat and Shridhan Kerketta along with other villagers have made a complaint with the Collector, Ambikapur and stated that the police personnel from Chando frequently visit their house and threaten them and force them to sign on false statements without allowing them to read the papers. They further complained to the Collector that because the government had already ordered for a magisterial inquiry by the Sub-Divisional Magistrate, police should not come to their house unnecessarily and threaten them.

The day before when the President of the State Congress Committee, Nand Kumar Patel and other Congress member came to visit Navadih village to ascertain actual fact, the Chando police had come to Navel's house and threatened and tried to tutor them that when the Congress Party people ask you about the incident, you say there was an encounter between Maoist and Police Party and around 50-60 shots were fired from both sides.
POST MORTEM

Dr. R.S. Markam who conducted the post mortem, has told the newspapers that Meena Xalxo was shot twice from a very close range. The doctor has also revealed that sperms were found on her body, which makes the possibility of sexual intercourse with more than one person highly probable, further Forensic Science Laboratory tests to confirm the fact of sexual intercourse were to be conducted in Raipur.

MAGISTERIAL INQUIRY

The Chhattisgarh Government has ordered a magisterial inquiry of the killing. The present Thana in Charge of the Chando Police Station, Rupesh Ekka told the team that a notice calling for recording of evidence has been issued by the SDM conducting the Inquiry. The Thana in Charge said that the notice to the people of Karcha and Nawadih had been issued through the police station. He said that the Kotwar of the village had assured he would affix the notice in the panachayat bhawan, he would also inform the people by munadi (beating of drum). However the team has found that the people of the village and even the Sarpanch of Karcha village, is unaware of such a notice.

RESPONSE OF NHRC-

Several applications were sent to the commission by the Advocate Rajni Soren and Chhattisgarh Bachao Andolan for taking immediate action against the killing of Meena Xalxo. NHRC did issue a reminder to Secretary, Govt. of Home Department, Chhattisgarh on 22.02.2013 to submit the reply. The Home Department said that the investigation is pending before the CBCID and will be communicated to the commission as soon as possible. But nothing has been done so far.

Current status of the case- A commission has been set up to look into the case but there has been no action.

Case No. 531/33/17/2013- AFE
Name of Victim- Karam Pandu and 11 others
Address- Village Edesmeta, P.S. Gangalur, Dist. Bijapur, Chhattisgarh
Issue- Killing of 8 Tribals and injuring 4 others in the Village of Edesmeta.

Background of the case- Edesmeta is a small hamlet located 12 km from Gangalur in Bijapur district. There are around 70 houses scattered across the village, which is accessible only by foot. According to sources, the tribals in Edesmeta traditionally celebrate Beej Pondum (seed festival) before sowing paddy every year. The paddy seeds are blessed by the village priest first and then the tribals dance around the local deity.

Little did the tribals know that death awaited them at the village temple? On the night of 17 May 2013, they had gathered at Edesmeta village in Chhattisgarh’s Bijapur district to celebrate a local festival when the firing started. Eight villagers, including three children, were shot dead. The CRPF, which was conducting a combing operation in the area, claims that its personnel retaliated after coming under Naxal fire, but the villagers dispute those claims.

On 18 May, the CRPF told the media in Bijapur that a Naxal and a CRPF jawan had been killed in an encounter in Edesmeta.

When reporters visited Gangalur to cover the incident, the women from Edesmeta reached there carrying seven bodies on their shoulders. The angry women demonstrated and pelted stones at the police station and demanded that the guilty must be hanged.
Villagers claim that a new CRPF unit set up a camp in Edesmeta the day after the firing. Sources say the jawans privately acknowledged to the villagers that a mistake had been made the previous night. After this, the jawans asked the women to carry the bodies to the Gangalur police station. During all this commotion, the terrified men stayed away from the village.

Budhram, the brother of Karam Masa, 19, who was killed in the firing, says the tribals were dancing around the deity at 10 pm when around 300 CRPF personnel surrounded them from three sides. They got hold of Masa, but shot him when he tried to run away. Later, they took his body to the Gangalur police station.

Karam Joga, 28, the priest who conducted the ritual of Beej Pondum, and his 10-year-old son Badru, were among those killed in the firing. Joga is survived by his wife, a son and an old mother who are all inconsolable.

Karam Bhanu, 12, and Punem Lakhkhu, 14, were also killed in cold blood, while Lakhkhu’s brother Punem Somlu was injured. Karam Somlu, 40, Karam Pandu, 45, and Punem Sonu, 25, were the others killed in the firing.

Doctors in Gangalur conducted a postmortem of the bodies but the report has not been released as yet. In all, four villagers were injured in the firing. Karam Somlu, Karam Mangu, Punem Somlu and 10-year-old Karam Chotu have been admitted in Jagdalpur for treatment.

Besides firing indiscriminately, the jawans also beat up the villagers. Karam Aaytu says he was hit with a rifle and taken to the police station where he was again beaten up. He was finally let off in the evening on 18 May. Thirty-five-year-old Soman was beaten up and then shot; he saved himself by lying motionless with the other corpses. Forty-year-old Karam Mangu’s ribs were fractured as a result of the beating he got from the police. On 18 May, villagers who sustained bullet wounds lay in agonising pain in the village but were too afraid to go to the hospital for treatment. The police took them to the hospital only when the media highlighted the carnage.

CRPF DIG S Llingo claims that the jawans were crossing Edesmeta to carry out an operation in Pidiya when they came under fire. “When they approached the place, the Naxals opened fire in which one CoBRA jawan was killed and another was injured,” he says. “It was a genuine encounter. A CoBRA unit cannot commit such a mistake because they are trained for such situations. The villagers are making false allegations.”

But the villagers vehemently deny that any such encounter took place. They say that the security forces surrounded them from three sides and started firing and the CRPF jawan was killed accidentally in the firing.

It is the Human Rights Forum’s view that contrary to the police version of an encounter with Maoists, there was no exchange of fire at Edesmeta on the night of May 17. Eight adivasis, including four minors, all of them male, and the CRPF constable died as a result of indiscriminate and unilateral firing by the CRPF. None of the deceased eight adivasis are Maoists as the police initially claimed. The eight did not die because the Maoists used them as human shields as an improvised police version put out a day later stated. They were killed in gunfire unleashed by a specialized anti-naxalite unit of the CRPF. There was no provocation whatsoever for the firing. Four more adivasis including a minor were injured. This callous brutality is chillingly similar to the slaughter of 17 adivasi civilians (including six minors) at Sarkeguda, also in Bijapur district, on the night of June 28, 2012.

Response of NHRC- NHRC asked the concerned authority for the requisite report within four weeks, failing which the Commission shall be constrained to invoke the provisions of Section 13 of the Protection of Human Rights Act, 1993. Had there been any punitive action taken by the Commission,
justice would have been delivered to the poor tribals.

Current Status of the case- Stung by the outrage, the government has announced a compensation of 5 lakh to each victim’s family and ordered a judicial inquiry headed by high court judge VK Agarwal to probe the incident. However, no representative of the government has taken the trouble to visit Ground Zero.

A writ petition has been filed by HRLN in Supreme Court praying for an order to set up a Special Investigation Team of police officers from outside the state of Chhattisgarh to investigate and prosecute the persons of the combined security force and for compensation and other reliefs with particular emphasis on directions to be issued so that such an incident is not repeated in the future. In this matter the Supreme Court has issued notice to the state of Chhattisgarh & Union of others.

FOREST, MINING AND TRIBALS AND NHRC.

R Sreedhar (Environics trust & Mines Minerals and People)

Particularly speaking about the violation of Human rights of the people in Lanjigarh in Orissa by the Vedanta Aluminum Ltd.

Mining out Tribals- Forest Rights and Tribal's -

In the last 20 years the extension of mining and the procedures followed from economic to political. This is an experience based on being a part of Mines Minerals and People( MM&P an alliance of more than 160 mining affected communities).

Source: Rule of thumb by Arunima Mishra. **http://businesstoday.intoday.in/story/orissa-nyiam-giri-rejects-vedanta-entry-impact-reasons/1/197972.html&safe=on
A peek into the mining syndrome and the cycle of human rights violation in mining areas. Today Human Rights is more comprehensively understood as economic, social and cultural rights all of which is being blatantly violated by state and non state parties at peril. Right from the cradle to the grave the mining areas are fraught with blatant and inhuman tendencies of the corporations to violate the rights of the tribal’s. ** The incidence of Jindal and the Ramesh Agarwal case five of the persons of the security company has been arrested for being amongst the assailants of the activist but no top officials have been charged f any crime in this case. From exploration i.e the legal issuance of prospecting license to other procedures of land acquisition and takes place to the post mining regions like. Eg. Kolar gold fields, Mosabani Mayurbhanj. Niyamgiri where I was a co-petitioner in the issue on forest and mining.

Vedanta has already set up a refinery and is trying to mine the Niyamgiri hills.

When the Supreme Court judgment said that it will allow the local community to graze their cattle but in the mean time the company had already build a wall around the company curtailing the rights of the villagers to their grazing land. The villagers vehemently protested against this company proceedings and one fine morning thirty two young youth of the village were randomly picked up by the police and when they were asked to be released the youths were taken in a bus to Puri to be purified as they become untouchables by entering the jail. When women resisted to the company walls construction they were brutally beaten up and in the meanwhile the youth who were in custody were made to bathe in the sea and get sanctified by the temple and brought back to the village only after the walls were constructed an extreme form of repression seen for the first time in the annals of history of different facets of punitive measures being enforced on the protesting villagers for their rights. This is a peculiar incident where the tribal’s are being taken away from their area in confinement. The company was violating not only environmental laws but also the human rights.

There was a case of dacoity filed against five women who were working with a contractor of the Vedanta. The complaint said that of the five women two had infants with them and the charges were that they have stolen away 65 tons of steel from the contractors work area. These five women were put in the lock up the women’s kids were put away from them for more than 48 hours and for almost 29 days the women were behind the bars.

When this issue came up in the NHRC and people raised the question, the NHRC in its investigation sent its special rapporteur and the investigation took its own tedious path. The finding was that on that particular day some other dacoity took place in the region and on the instruction of the Vedanta official the police had picked up the five women by implicating them in that particular dacoity which happened several kilometers away from the site of work of the five women. The main reason behind this false implication was that the women were asking for their legitimate wage and in order to avoid that there was a false and fabricated case filed against them. The NHRC asked for a departmental investigation and action against the police against the police and when we later on met with the NHRC what had happened with the incident. Informally we were informed that the government had played a trick that the officer who had punished was a young dalit IPS officer. The local police who had committed the atrocity was let free by targeting a SC women officer.

The third incident was that in the village of Rengapalli in its expanded scale of operation it is planning to do it will require at least 5000 hectares it is not revealing that but taking the excuse of additional red mud pond. The village is already cut off from the main geographical area like the school, and way to the market. The villagers today themselves feel that they need to be displaced from the area. The environment has turned into such a situation is that they themselves feel that they have to be shifted from their village. The collusion of the industry and the local bureaucracy and the police administration
people are constantly kept under threat. Fortunately for the Supreme Court and the gram sabha resolution the mining is not taking place. But the refinery area will need more land which will be a priority in the list of the cabinet committee of investment.

In the Mining areas violation of Human Rights is an increasing trend. The pattern is the GOI allows the big projects to come up and rest of the machinery enables and assists the industries to come up violating all forms of rights. Since it is a typical case of how every industry is performing.

Vedanta from 1979 is a compendium of violation of rights whether it is SEBI violations, Sales Tax violations, etc. in which ultimately there are a large number of violations on board of Vedanta.

The present finance minister and the late home minister Mr. P. Chidambaram of the country was a board of director of this company. Vedanta is controlled by Anil Agarwal who is the key figure along with his family. VEDANTA PLC is owned by the same company owning Sterlite, SESA Goa, VAL, Cairn Oil Company. So the controlling of this Vedanta PLC is through Volcan which is registered in British virgin islands. So the real owner of this companies situated in tax havens and the real owner of it. The history of this company is that when the first telephone cable scam took place it grew from a very small PVC cable making company and a scrap company into an optical fibre company and when the Harshad Mehta Scam came it was involved there also and it bought the MAICo, again it was involved in the ketan Pareekh scam it still expanded itself to buying the BALCo. It was against the Samata judgment but it got a favourable judgment in the Supreme Court saying that the words of the land laws in Andhra and Chhattisgarh were not similar and therefore there was alienation possible in Chhattisgarh, in the recent coal scam also they have acquired blocks and the Hindustan zinc has been sold to them.

The NHRCs response in the above mentioned cases is that they have sent a special rapporteur and on the report it has asked the state government to take action and again when the state government and the police are themselves a party to this crime which has been seen as one of the major shortcomings of not implementing their clause of posting an independent enquiry with their own team of central investigators and taking pro active measures.

The special rapporteur damodar Sarangi has come up with suggestions to have a fair compensation for the villages. NHRC has a new culture, when they started the process of appointing special rapporteur these were people of repute from outside, Mr. Chavanlal Who had nothing to do with NHRC, former DGP Nagaland for his creditabity of honesty, MR K. R. Venugopal, PMs secretary this were the types of people today all their Special Rapporteurs are former director general of investigation of NHRC or joint secretary, Damodar sarangi he was former director general of BSF. It is a strong club of once again retired IAS, IPS and business and human rights. This is another type of scam which we demand to the NHRC. (Henri)

Deposition- 46 people were sent into jail for protesting against the red mud pond and company wall. They have taken up all the farming land and are also.

They did a agreement with in the gram sabha and pali sabhas saying that they will take on the process of R&R but this has not been done till date.

Finally the victims cry rings out ‘we are demanding to be displaced.

VICTIMS/COMPLAINANTS NAME- MANOJ KR. MAHAPATRA AND OTHERS.

Case NO. 589/18/6/2010 linked with 5 other cases.
600/18/6/2010
601/18/6/2010
611/18/6/2010

NHRC: SOCIAL AUDIT REPORT 291


Background of the Case- The Vedanta Aluminium Corporation since its day of inception into the region has been creating discontentment and gross violation of Human Rights in the Vicinity of NIYAMGIRI the lord of Law of the Primitive Dongriya Kondh who resides in this rich natural habitat. There has been a long standing protest against the Proposed Bauxite mines in the Niyamgiri forest universe of the Dongriya Kondh Primitive Tribal group. There has been a worldwide campaign to protect the Tribal group from their land and innocence being taken away. Regards to this there has been battles in many front and one of this has been also to pray to the NHRC for the protection of their Human Rights.

The Complaints reads as follows:

<table>
<thead>
<tr>
<th>SN</th>
<th>Name Of Complainants</th>
<th>Gist Of The Complaint</th>
<th>Commissions Case File No.</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>ParamanandaNaik &amp; 20 Others</td>
<td>It has been alleged by them in their petition that- Land belonging to the ST (PTG) and SC has been forcibly Acquired by the VAL, without following the due process of law. The police has been illegally detaining and torturing the project affected persons to suppress dissent. Banshadhara the river of the region has been polluted by the Aluminium refinery and there has been instances of Death as well due to the toxic waste dumped into the river. 209 Acres of land has been rendered barren due to pollution and the air also has been polluted. Jobs and other promises has not been kept by the company.</td>
<td>589/18/6/2010</td>
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<td>2</td>
<td>Jaysing Nag and others</td>
<td>The complainant and his family and village members who were promised jobs by the company with respect to the land acquisition. The promises were not kept so they had gone to the district magistrate to file a grievance, and form there Jaysing Nag, Baldeo Nag and Narayan Nag were arrested and put behind bars for 1year and 7 months before they were discharged by the court. They Pray for the compensation to be fulfilled by the company.</td>
<td>600/18/6/2010</td>
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<td>3</td>
<td>Satyabadi Nayak</td>
<td>It has been alleged in the petition that 5 women (two with babies with them) of chat-tarpur village under lanjigarh police station. They were falsely charged under section 395 IPC and were brutally tortured.</td>
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<td></td>
<td>601/18/6/2010</td>
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<td>4</td>
<td>Subhash Dandasena and &amp; others of Village Bandhuguda.</td>
<td>The village is located within 100 metres of the aluminium plant chimneys and due to this there has been severe pollution and health effects in the region.</td>
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<td></td>
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<td>611/18/6/2010</td>
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<td>5</td>
<td>Lingaraj Majhi and 10 Others of Rengapalli.</td>
<td>The red mud pond adjacent to their village is going to cut off their means of communication and also create problem for the childrens going to school as they would be cut off from the school, besides there has been tremendous pollution issues in the area because of the plant.</td>
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<td>613/18/6/2010</td>
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<td>6</td>
<td>Sridhar Pesnia on behalf of the people of lanjigarh.</td>
<td>Against the Atrocities by the Local Administration and VAL.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>536/18/6/2010</td>
<td></td>
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**NHRC response:** A special rapporteur was formed to look into the case. For which the NHRC has issued special notice to the chief secretary to the government of Orissa, Bhubaneswar.

The Commission while considering the matter on 8.4.2013, inter alia observed and directed as under:- “The Commission would like to have a copy of the Writ Petition No. 180/2011 filed in the Supreme Court by Odisha Mining Corporation Ltd. The Government of Orissa may inform the Commission what disciplinary action has been recommended against the police officers who were instrumental in filing false cases against the accused. Government of Orissa may also report whether any compensation has been paid to the victim under the Scheduled Castes & Scheduled Tribes (PASS) Act. The relevant reports/information be submitted to the Commission within eight weeks.” In response, Sr. Manager (Legal), The Odisha Mining Corporation Ltd, Bhubaneswar vide communication dated 22.6.2013 has forwarded to the Commission a copy of the Writ Petition (Civil) No. 180/2011 filed in the Hon’ble Supreme Court of India by Odisha Mining Corporation Limited along with its annexures. As regards the allegations raised about the mining, await directions, if any, by the authorities. As per the order dated 12th April, 2012, the Commission had directed to launch prosecution u/s 3 (viii) & (ix) of the SC & ST (POA) Act against Shri Das and Shri Bharat Bhusan both employees of Vedanta Aluminum Ltd. who made false complaints of dacoity against the employees and also the identification of the officials responsible and to initiate action against these persons. Detailed report be submitted by the Government of Orissa on all these issues within eight weeks and also to clarify whether any compensation had been paid to the persons under the provisions of the SC/ST Act who were affected by the action of the police.

Current Status- No follow up has been done on the commissions special rapporteurs report and recommendations.
Issue- Mining and tribals.

Complainant- Littu Minz and Others.
Add- Lanji Berna, Sundergarh, Orissa.
Mining-affected families seek NHRC probe
By Express News Service - RAJGANGPUR (SUNDARGARH)
Published: 15th December 2012 09:41 AM
Last Updated: 15th December 2012 09:41 AM

The villagers affected by mining activities in Lanjiberna and its vicinity in Raigangpur Assembly constituency have urged the National Human Rights Commission (NHRC) to depute an independent team to assess the environmental hazards and the resultant problems faced by them.

Chepo Ekka, Litu Minz and others in their petition on November 26 also submitted photographs and video clippings as proof to the commission’s law division.

The move came after NHRC asked the petitioners to file their reply on having perused the replies of the Sundargarh district administration and cement major OCL India Ltd. Continuing mining operations at the Lanjiberna dolomite and limestone mines of OCL has been a bone of contention among the villagers and OCL. Sources said the petitioners in 2007 had sought the intervention of NHRC to protect the people of Lanjiberna, Rangia Dippa, Tanatoli, Bihabandh, Kheramuta, Pelkatoli, Tongritoli and Ramabahal from miseries. They accused the administration and OCL of working hand in glove and misleading the NRHC. The groundwater table receded to unprecedented levels and in summer people faced water crisis.

They alleged that with scant regard to the norms, the crusher is located at a stone’s throw from Lanjiberna and frequent blasts lead to sound pollution and mud houses developed cracks. The 15-km overhead conveyor belt meant for uninterrupted supply of raw materials from the mines to OCL Plant at Raignagpur results in dust pollution in at least eight thickly populated villages.

Talking about the sufferings imposed on them, the villagers said Lanjiberna-Bihabandh-Kheramuta and Kukuda and Saliemeta were cut off from each other as panchayat roads are being used for mining operations.

Puncturing the claims of a hospital for the villagers, they said it does not even have a blood test facility. They accused the administration of resorting to dubious means to favour the company as families of Duckatoli village were displaced citing Gram Sabha resolution by the Lanjiberna gram panchayat. They claimed that the village falls under Kukuda GP and Lanjiberna is not at all a GP.

The company had earlier replied that it was doing everything in strict adherence to norms.

Complainant deposition- Littu Minz
Sundergarh, Orissa.
Oraon Communities.

“We can’t even breathe properly we choke to wake up at night this is what we have lived our lives through, but I am worried about the future of our children…”

Mining, Jungle, Environment, village all are related to put it shortly because of mining everything is being annihilated. The OCL India Ltd. Lime Stone and Dolomite was mined since 1956 to manufacture cement and build the Hirakud Dam. In Lanjiberna the mines are and in Rajnandgaon where there are other mines in our areas and in our childhood we use to be happy about the industrialization and during our student life we dreamt of fighting against the bad effects of mining but now we have found ourself in an endless struggle. This is a matter of our right to life.
In 2007 we filed a complaint in NHRC in which the problems cited were about the depletion of the water table in the region. And the other was a sponge iron factory was siphoning away water from an abandoned mined water body due to which the whole water table is depleting in the area.

Because of mining the whole connectivity of the village to their cultivation areas have been cut off and the people are facing a lot of problem due to this. Due to this very reason on 8th December 2008 Sushil Lakra was shot and killed and our struggle which was going on against the conveyor belt in which 30 people were falsely implicated and Ganesh Minz the Sardar of the traditional system was also implicated whereas he was in Rourkela during the event of protest.

There is also the effect of blasting which forms cracks and tectonic shifts in the villages and also the dust pollution which is very severe. the sponge iron dust was dumped in an abandoned mine from 12 kilometres distance. The burial ground and saran sthal and dukatoli the gram sabha in 2004 where the rti resolution was asked it was seen that that gram sabha was shown in some other panchayat. This is a violaion to the legal process of conducting gram sabha.

1 june 2011. A report was sought from the collector and the state pollution department. It is written there that there is no violation of human rights and also no pollution in the region.

Here the mining lease which 28 feb 2010 expires is still running, 62.39m hectares the RTI shows that the company has no forest clearance.

The collector also writes that the welfare services are provided by the company. But the company acts otherwise they stop water supply when we want water for the crops and releases it when the villagers don’t need it which in turn destroys the Dal and rice crops.

CSR is a means of cheating us. There is mining within a 100 Mts periphery which is violating the mining laws and also about the alternative road which the collector says it’s not present it’s a false report. We have sent a Video CD and also photographs to the commission and also the collector and the state pollution control board.
ENVIRONMENT, HOUSING AND DISPLACEMENT AND THE RESPONSE OF NHRC
Environment, Housing and Displacement and the Response of NHRC

“Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.”

- John Rawls

“If you are to suffer, you should suffer in the interest of the country.”

- Jawaharlal Nehru

Throughout the history of mankind, societies have tried to balance between individual rights and the power, often a coercive power, of the State. With the increasing pressures on land due to urbanization, rapid economic development, increasing infrastructure requirements etc., especially in a fast growing economy like India, the acquisition of land by the Government and the private sector has increased. In a world with limited resources, securing a group’s interest may come at the cost of another group’s interest. The question then is, to what extent can we let go of someone’s interest in order to serve someone else’s interest? Can someone’s home be taken away for serving interests of a greater population or the future generations? If one’s interests are served at the cost of another’s, how should the government make good for the losses?

It is such questions which underlie debates concerning development-induced displacement. Development induced displacement can be defined as the forcing of communities and individuals out of their homes, often also their homelands for the purpose of economic development. Use of coercion or force of any nature by the state is central to the idea of development induced displacement. At the international level, it is viewed as violation of human rights.\[1\] The effects of displacement spill over to generations in many ways, such as loss of traditional means of employment, change of environment, disrupted community life and relationships, marginalization, a pro-

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found psychological trauma and more.

For the purpose of the conduct of the Independent Peoples Tribunal on the functioning of NHRC, violations have been sub divided into four sections, namely, land grab and displacement, urban housing and displacement, coastal area encroachment, development and environmental destruction.

**LAND GRAB AND DISPLACEMENT**

The triad of terms displacement, resettlement and rehabilitation needs to be examined with the understanding that displacement may not always be followed by resettlement, and resettlement does not necessarily imply the full rehabilitation of displaced persons.

While, resettlement is the physical implantation in a new colony, rehabilitation is total re-establishment of lost livelihood, i.e., recreation of physical, social and cultural environment required for a new life with dignity. Thus defined, resettlement is primarily an economic initiative. Rehabilitation on the other hand, involves replacing the lost economic assets, rebuilding the community systems that have been weakened by displacement, attended to the psychological trauma of forced alienation from livelihood, transition to a new economy which is alien to those from a predominantly informal society and preparing them to encounter the new society as equals and not just suppliers of cheap raw materials and labor that they are in today’s system of displacement without any transition.\(^2\)

Land has become the prime target of national and international forces in today’s age of liberalization, privatization and globalization. The demand for land on part of the new incoming projects has triggered off number of so-called ‘resettlement policies’ by various agencies of government and semi-government outfits. The state is also trying to create an atmosphere of consultation with the movements and NGOs so as to get certain measure of legitimacy.\(^3\)

People have now started questioning displacement itself. Why displacement? For whom? What is the public purpose? Who decides the public purpose, the propriety of displacement? Whether the evaluation of resources of the affected people, which includes their social, cultural and other aspects of life, could re-compensate them adequately? The consent of the people becomes an important factor. Right to information, right to participation and host of other rights are being asserted.

The paradigm of development that has found favor with planners makes displacement of large numbers of people, even whole communities, an unavoidable event. The utilitarian principle of maximum happiness for the maximum number has been invoked to lend respectability to making the lives of communities into a cost, in the public interest. The law is ill-equipped to counter this attitude and in fact abets it by lending the force of state power.\(^4\)

The basic principle that lies behind land acquisition is that of ‘eminent domain’, described as “the inherent power of the state to seize a citizen’s private property or to seize a citizen’s rights in property, with due monetary compensation, but without the owner’s consent”. In this framework, the enactment of the doctrine of ‘eminent domain’ automatically brings into question two further sets of issues. First,

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\(^2\) Why Displaced Persons reject project resettlement colonies, Mohammed Asif, EPW, Vol 35, No.24

\(^3\) The People’s Policy on Development, Displacement and Resettlement: Need to Link


land acquisitions should be approved only for ‘public purpose’.\(^5\) Secondly, the acquisition of each portion of land should be followed by fair compensation. These two elements should act as a balance for protecting the population against the indiscriminate application of the eminent domain doctrine. So, legislation on land acquisition and rehabilitation should demarcate the limit between lawful acquisition and unjust expropriation. However, when it comes to providing compensation in cases of development-induced displacement the rules and regulations on land acquisition fail to address the most urgent cases of those most affected. The main legislative reference in this regard is the Land Acquisition Act, promulgated in 1894 and corrected with only a few amendments nearly a century later, in 1984.\(^6\)

Two more regulations were introduced in 2007: the Rehabilitation and Resettlement Bill and the Land Acquisition (Amendment) Bill, both with the aim of providing comprehensive guidelines for the rehabilitation policy.\(^7\) Land has become the central battleground, where the tensions generated by the on-going dynamics of economic development emerge clearly. For example, central and state administrations usually estimate the value of acquired land only in monetary terms without considering its importance as a social and cultural asset for farmers. Even more important is the failure to recognize the customary rights of tribal populations over common lands and forestry. From this perspective, it appears that development projects always bring about the impoverishment of large sectors of rural society, while the benefits accrue to faraway people.

Land acquisition acts in most south Asian countries, including India, are based on modifications of and supplements to a colonial era (1894) legal instrument that enable the state to acquire property for the ‘public purpose’, which has not been generally defined. An anthropologist practitioner working for the Asian Development Bank, Jayewardene, contends that, under the guise of compensating for lost assets, these laws externalize much of the costs on those displaced while limiting the legal responsibility of the state to cash compensation for a limited set of assets. ‘Cash alone cannot provide or compensate for the inherent limitations of finite resources, the loss of productive assets in perpetuity, the dislocated social networks, the lack of skills and abilities, and the increased social vulnerability’ he says.\(^8\) Cash compensation, calculated at generally less than asset-replacement rates, can easily be spent or used to repay debts and replacement land may not be available for purchase. In addition, in most cases the land acquisition acts do not recognize the losses of those displaced without formal title to the land they occupy. The acts do not define social losses or recognize any form of social disarticulation that may arise from the acquisition. They do not require an understanding of the social and cultural dimensions of loss and disruption or the temporal and the structural context in which people are forced to give up their lands and assets. Thus, the legal provision ‘dehumanizes the responsibility of the state to a set of principles for valuing assets but takes no responsibility for the consequences.’\(^9\)

On a detailed study of the annual reports until the year 2009-2010 available online on the official website of NHRC and other official documents of the commission, it has been a disappointing find that the commission does not explicitly address the concern of land grab and displacement as a severe human rights violation. It has no specific guidelines or reports regarding the question of displacement and the

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6. Ibid 5  
7. Ibid 5  
9. Ibid 8
apathy of the body towards this grave concern remains a bottle neck in the path to attain justice for the scores of victims of development induced displacement. Following are the details of a case of land grab that went to the NHRC.

**CASE OF LAND GRAB IN ANGUL, ODISHA BY JINDAL STEEL PLANT**

**SHRI MANOJ JENA**

On 25th January 2012, on the eve of the Republic Day, 4000 unarmed displaced villagers including a large number of women went to the Jindal Company gate in Angul to demand their right to livelihood and dignity which was under threat since the Government of Odisha acquired 4000 acres of village land for the Jindals to establish a mega steel plant in Angul, alluring the villagers of large amount of compensation and employment. 5000 acres of forest land and 4 lakh saal trees had been destroyed without even acquiring a proper clearance, in addition to the 15000 displaced people.

On demanding their justified promised compensation, the villagers including women, were mercilessly beaten up by the security guards of the Jindal Steel Plant, in the presence of local police, severely injuring more than 200 persons who had been languishing in the district hospital without any assistance from the government.

An FIR was lodged in the local police station against the CEO of the company, but only the security officer was arrested. The following appeals were made to the NHRC in a letter dated 3rd February 2012, addressed to the Chairperson, by the representatives of the National Alliance of Peoples Movements.

1. To inquire in to the incident and take appropriate actions against the police and Jindal officials and ensure justice to the displaced and victims in Angul district which is primarily a Dalit dominated area and protect their democratic rights.
2. Given the repeated instances of violence by Jindal Steel, why their factory be not closed and why is Odisha government not taking appropriate action on this.
3. Given the large number of incidents of gross violations of human rights of communities displaced or losing their life and livelihood by public and private corporations, it is high time that the NHRC came out with guidelines for protection of their democratic rights and ensured state governments gave a regular report to the NHRC on its implementation.

In a following letter dated 4th June 2013 from the Additional District Magistrate of Angul to the Joint Secretary to Government, Home Department, Odisha, Bhubaneswar, it was stated that the up to date status report regarding the relief and rehabilitation implementation for displaced villagers was attached. Medical assistance of rupees 20,000 each was given to 79 persons with major injuries and 6000 rupees each was given to 402 persons sustaining minor injuries.

In a series of following letters of communication, a letter dated 15th July 2013, from ShriPradhan, Additional Secretary to Government, to the Collector, and DM of Angul, stated that the report produced by the authorities regarding the compensation was silent on the relief and rehabilitation of displaced villagers and directed the Chief Secretary of Government of Odisha to submit a further report on the same to the NHRC.

In the following letter of communication addressed to representatives of NAPM by the Assistant Registrar of Law, NHRC, dated 3rd October 2013, indicated that the Commission received a report dated 22nd June 2013 from the Additional Secretary, Home Department, Government of Odisha enclosing a report dated 4th June 2013 from the Additional District Magistrate, Angul which encloses up
to date status report regarding relief and rehabilitation for the displaced villagers and the details of the medical assistance to affected persons which were settled by the Core Committee.

**URBAN HOUSING, COASTAL AREA ENCROACHMENT AND DISPLACEMENT**

Mass displacement, without infusing meaning into rehabilitation, is a prescription for impoverishment. The compulsory exaction of land, and the limited commitments of compensation which do not account for the problems that displacement brings to the displaced population, lead to the regressive road to poverty. Displacement is not on the wane. In fact, the planning process presumes that displacement is inevitable. There is an attempt to justify it as a cost of development, and to project it as an opportunity to improve the living conditions of the displaced. The creation of internal refugees, the impoverishment of the displaced, the incapacity of the state to rehabilitate them and avoid making them the sacrificial lambs of the development process - these are explained away as unfortunate side-effects of the process of economic growth.

But the process of displacement and marginalization has also engendered resistances in different parts of India. Nandigram where the Left Front government of West Bengal had proposed to set up a chemical hub under the Salim group has been the site of a brave resistance of villagers to the seizure of their lands. Following the recurrence of violence in the wake of the state backed attempts to reoccupy the lands, Nandigram has become a symbol of the extent to which state power is committed to the repressive defence of this neo-liberal developmental model. But it is equally a manifestation of the irrepressible groundswell of opposition to the relentless logic of the neoliberal juggernaut. ¹⁰

The widespread anger and outrage that the Nandigram violence inspired is not a symptom of a revolt against politics. It is in fact a reflection of the coalescing of political opposition to the collusion of state and capital that lies at the heart of the politics of accumulation by dispossession, of a search for forms of struggle and organization that could effectively challenge the neoliberal hegemony. It is not an accident that the diverse social movements engendered by displacement are becoming increasingly important in the politics of people's resistance in India. The question of humane and developmental resettlement comes only after the detailed examination of the project, its cost-benefit aspects, the values of justice, equality, protection of rights and natural resources and politics that may emerge from the project and all the efforts to minimize the displacement. Even such displacement should be just from all the viewpoints. Only after such a process is undertaken can we think of resettlement of the displaced people. The people's struggles all over the country too have provided framework for such a resettlement. ¹¹

It must be noted that there is a vast gulf between policies/packages, however good these may be, and what actually happens in practice. Taking the Narmada case for instance, the “land for land” principle ran into difficulty because land was not available readily. The offer of a choice to choose from three sites became a fiction. The land offered was poor in quality and not irrigable, irrigation facilities were non-existent. The project authorities were essentially interested in pushing construction ahead and tended to regard the conditions relating to environmental and rehabilitation matters as inconvenient external impositions that hindered the implementation of the project. A few cases of “good” resettlement were carefully maintained as showpieces for visitors, but there were large numbers of dissatisfied and aggrieved Project affected Persons. Many decided to return from the bleak and inhospitable resettlement.

¹⁰ Accumulation by Dispossession in India, Rama Vasudevan, Economic and Political Weekly, Vol. 43, No. 11 (Mar. 15 - 21, 2008), pp. 41-43
¹¹ Ibid 2
tlement sites to their original villages. There were protests and demonstrations and the state responded in the only way it knew, namely, through the use of force.12

The current development paradigm that emphasizes privatization and state entitlements over people’s rights raises the question who is considered a citizen within this paradigm and who is typically targeted for displacement and portrayed as an agent-less victim. This also forces the question: if development is really for the public interest, how do we define the public interest? For example, RenuModi’s paper (Director of Center for African Studies, Kalina, Mumbai) focused on resettlement issues in the World Bank-funded Mumbai Urban Transport Project, which displaced an estimated 120,000 people. This project played largely to the private interests of some developers who obtained valuable transfer development rights in exchange for land at the resettlement and rehabilitation sites, where they constructed high-rise buildings for the people displaced by the project. These buildings developed cracks and seepages with the first monsoon showers, becoming difficult for those displaced to inhabit and too expensive to maintain. In the same project, a large group of middle-class merchants located along main highways and station roads were in the project’s right-of-way. The resettlement package offered to them elsewhere implied that they would be unable to restore their incomes to pre-project standards. The merchants filed a complaint to the World Bank’s Board and its Inspection Panel, which led to investigations and resulted in the temporary suspension of the project’s credit by the Bank. The Inspection Panel found that ‘the Bank over-looked the middle-income shopkeepers in planning for the resettlement and failed to notice the differences in their situation from that of others to be resettled’, which could lead to the shopkeepers being put ‘in significantly worse conditions as a result of the relocation’. This led the implementing agency to reassess its R&R policy, subsequently offering an improved package to the merchants.13

Similar to the case of land grab and displacement, the stand of NHRC regarding these violations remain blurred and are not addressed in any report or guide lines explicitly.

Following are the case details of an illegal slum demolition case, and cases of forced eviction due to the Commonwealth Games, which went to the NHRC.

CASE OF ILLEGAL SLUM DEMOLITION AND WRONGFUL ARREST OF SLUM DWELLERS, GOLIBAR, KHAR, GHATKOPAR, SION KOLIWAD, MULUND-MUMBAI

SUMIT WAJALE

On 20th December 2012, police in huge numbers headed by Senior Police Inspector ShriKhakale from Nirmal Nagar Police Station along with ShriKiranJadhav, builder of Shivalik Ventures came to illegally demolish the houses at Pragati Co-operative Housing Society, Golibar without any demolition notice. Two days later, the local police came to arrest the slum dwellers opposing the wrong, illegal acts of the builder and police. The petition filed by the residents at the Bombay High Court was responded to by the court stating that the Slum Rehabilitation Authority (SRA) should prepare a report on the averments of the petitioners. The Developer had encroached over the land owned by Defence and Railways.

In a letter dated 7th January 2013, addressed to the Chairman of NHRC by MedhaPatkar, SandeepYele, Imtiaz, Nazma, Jamil, Nanda, PrernaGaikwad, PoonamKannojiya, it was demanded that


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the NHRC immediately intervene to protect the constitutional and human rights of women, dalits, adivasis, minorities and others that get threatened when there is impeachment to housing rights of the people by the builders in various slum rehabilitation projects.

In a subsequent letter to the Chairman of NHRC by MedhaPatkar, SandeepYeole, MadhuriShivkar dated 31st January 2013, requested the Honorable Chairman to take the following actions. A strong view of the unbearable atrocities mentioned in the letter and direct the State government to stop using police force in any rehabilitation. NHRC may make state government promote self – reliant housing on Rajiv AwasYojana, without builders with right to property granted in the scheme. All complaints must be received and FIRs filed as per Supreme Court judgements and enquiries completed with a month’s limit. NHRC to take up a serious enquiry into the Housing Scams resulting in violation of fundamental rights, through an eminent impartial team at the earliest.

In the subsequent letter dated 9th March 2013, addressed to the Secretary of the Maharashtra State Human Rights Commission by the Assistant Registrar of NHRC transferred the case to the Maharashtra State Human Rights Commission.

CASE OF FORCED EVICTIONS IN DELHI
FOR THE 2010 COMMONWEALTH GAMES

SHIVANI CHAUDHRY, HOUSING AND LAND RIGHTS NETWORK

The 2010 Commonwealth Games in New Delhi resulted in forced eviction across nineteen sites. The Housing and Land Rights Network produced an exhaustive report “Planned Dispossession: Forced Evictions and the 2010 Commonwealth Games.”

In a letter dated 3rd March 2011, addressed to the Chairperson of National Human Rights Commission by Miloon Kothari, Executive Director, HLRN, urged NHRC to consider the following prayers:

1. Initiate a fast track investigation to ascertain the human rights issues surrounding the evictors and examine the condition in which the displaced are currently living.
2. Identify the authorities responsible for human rights violation, in this case, and determine rehab for all those affected.
3. Request the Government of India and the governments of the National Capital Territory of Delhi, Gurgaon and Haryana to respond to the findings in the HLRN report.
4. Consider developing national standard on resettlement and rehabilitation that would ensure that incidents such as eviction do not occur in future.
5. In this context, encourage through out the Indian government structure the use of the UN basic principles and guidelines on development-based eviction and displacement.

In a series of corresponding letters between the NHRC and the organization, in the latest communication between the two in a letter dated 9th December 2013, addressed to Shri Sunil Arora, Deputy Registrar, NHRC, HLRN continues to urge the body to request an update from the NHRC on the status of investigation into the human rights violations related to forced evictions for the 2010 Commonwealth Games in Delhi.

DEVELOPMENT AND ENVIRONMENTAL DESTRUCTION

The success story of the two-digit growth has masked the several digit realities of loss of livelihood,
land acquisition, displacement and permanent loss of natural resources, which are treated as free goods in this process. The investment figure, without the figures for displacement and depletion of natural resources and the employment figure without loss of livelihood does not make sense. No wise person would talk about the income without talking about the cost of acquiring that income or wealth.

After independence, when India launched the task of nation building, it chose the path of planned development. This was flagged off with the launching of Five-Year Plans. Since economic development was conspicuously poor, planners focused more on economic development defined mainly as the growth of GNP, which was symbolized by new factories, dams, mega projects, mining etc. Dams were even referred to as the ‘temples of modern India’ and as symbols of progress and prosperity. Though these mega projects have provided power to growing industries, irrigation to thirsty lands and above all, have brought economic prosperity to the nation, they have nevertheless, led to forced displacement of tens of thousands of people from their ancestral lands. The temples of modern India have become temples of doom for the uprooted people. Such projects have changed the patterns of the use of land, water and other natural resources that prevailed in the areas. People dependent upon the land, forest and other natural resources for their livelihood have been dispossessed of their subsistence through land acquisition and displacement.  

The balance of scientific evidence now shows that anthropogenic emissions of greenhouse gases are having a discernible effect on the Earth’s climate. Anticipated climate changes such as rising sea levels will have important consequences for the human population given current settlement patterns. As temperatures increase and sea level rises at faster rates than previously observed, a substantial number of people currently living in coastal areas will become increasingly vulnerable to thirsty lands and above all, have brought economic prosperity to the nation, they have nevertheless, led to forced displacement of tens of thousands of people from their ancestral lands. The temples of modern India have become temples of doom for the uprooted people. Such projects have changed the patterns of the use of land, water and other natural resources that prevailed in the areas. People dependent upon the land, forest and other natural resources for their livelihood have been dispossessed of their subsistence through land acquisition and displacement to the impacts of sea-level rise, flooding, and storm surges. Recent studies show that more than 10% of the world’s population live in the world’s low-elevation coastal zones (a contiguous zone along the coast less than 10 m above sea level), with a larger share of the population (14%) in developing countries living in this area compared to more developed regions (10%).

The imperialist countries are unwilling to take real measures to curb pollution, since, indeed, such measures cannot be taken within the existing system which is approaching the contradiction between people and nature in an antagonistic manner, and can be basically resolved only after the dismantling of the imperialist system. This is not to say that the democratic demands for changes in environment policies of various countries all over the world are useless. Rather, we must note that imperialism is unwilling to give any importance to resolving serious environmental issues in its quest for greater profits and more avenues for investment. It is this unwillingness of the imperialist countries that has resulted in the failure of the Kyoto Protocol and of the decisions of the later Bali meeting on global warming. Instead, the system of buying the right to pollute, in the form of carbon credits, has helped to open another investment avenue for imperialism.

Environmental movements have emerged from the Himalayan regions of Uttar Pradesh to the tropical forests of Kerala and from Gujarat to Tripura in response to projects that threaten to dislocate

14. Displacement and Rehabilitation of Tribals, EPW, March 26, 2005
15. Understanding the Demographic Implications of Climate Change, Population and Environment, 2011
people and to affect their basic human rights to land, water, and ecological stability of life-support systems. These environmental movements are an expression of the socio-ecological effects of narrowly conceived development based on short-term criteria of exploitation. The movements are revealing how the resource-intensive demands of development have built-in ecological destruction and economic deprivation.  

The latest happenings in Himalayan ranges, especially in Uttarakhand should open the eyes of all those who are concerned with the safety of the people and environment. First, the mercury shot up in whole of central and north India above 45 degrees celsius scorching the planes. Then from 15th June 2013, torrential rain devastated the Himalayan ranges especially Uttarakhand. This man-made calamity has brought to light the dangerous consequences of the neo-liberal policies creating ecological destruction like global warming clearer, making more sections conscious of the necessity of the struggle against ecological catastrophe. It is becoming evident day by day that it is nothing but a by-product of the ‘development paradigm’ pursued by the ruling system that causes devastation in all fields. But still the central and state governments, the bureaucracy and almost the whole political spectrum which supports the neo-liberal raj refuse to take a holistic approach towards a sustainable development paradigm. The role of present development paradigm in causing ecological consequences which is increasing miseries faced by the masses is concealed. Spreading false stories about GDP growth, more production, more employment etc, they attack all those who oppose wanton destruction of ecology through plunder of natural resources as ‘ecological fundamentalists’.

A case in hand, of the Gadgil Committee recommendations, can help in further explaining the situation. The Gadgil Committee, comprising of many scientists, ecologists, economists and other experts, was constituted by the central government when the people in these states were waging a number of struggles against the mining-forest-plantation-real estate mafias and against the politician-bureaucrat-contractor nexus to protect the Western Ghats and the many crores of people who depend on it. It is not just a question of protecting the flora and fauna endangered alone, as some argue, in order to malign the movement. The future of major rivers like Godavari, Krishna and Kaveri and hundreds of smaller rivers emanating from these ghats and flowing west, the tens of millions of peasantry and people who depend on these rivers, future of the forests, plantations and traditional industries depending on these, the life of millions of fisher people depending nearby Arabian sea and many backwaters which are receiving fresh water from these ghats, and people of this vast region as a whole, depend on the protection of these ecologically fragile ghats. That is why millions of people struggled against the mining mafia in Goa and Karnataka and succeeded in stopping this loot at least for the time being. That is why people’s movements could succeed in blocking the Jaitapur nuclear project. Similarly, in all these states numerous people’s movements are active against the mafias who are devastating these ghat regions.

The fast depleting Western Ghats, a unique ecosystem in the world that stretches across six Indian states, Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu encompassing 1.60 sq km is in dire need of protection and preservation. The Madhav Gadgil Committee or the Western Ghats Ecology Expert Panel (WGEEP) Report that is made available on the website of Ministry of Environment and Forests (MoEF) on May 23, 2012 after much pressure from concerned sections, had brought back into focus several critical aspects concerning the Western Ghats, one of the most fragile ecological systems in India. Over the last half a century of unbridled encroachment and plunder by forest mafia, mine-

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17. http://www.cpiml.in/home/files/Book/Save_Western_Ghat_PDF.pdf
18. Ibid 17
quarry mafia, land and real estate mafias and corporate thugs with the connivance of central and state governments and ruling class parties, more than 40 percent of the forests including very rare flora and fauna of this region which is accorded World Heritage Status by IUCN has been destroyed beyond redemption, even as the Constitutional rights (rights over the forest) of the Scheduled Tribes and Other Traditional Forest-Dwellers are systematically violated.19

The panel’s recommendations are definitely against corporate grab of land and forests in the Western Ghats region in the name of so called development led by corporate forces. In spite of a series of central acts such as the Wildlife Protection Act of 1972, Water Act of 1974, Forest Protection Act of 1980, Environment Protection Act of 1986, etc., according to the Panel, laxity on the part of authorities ranging from central and state governments to local bodies have led to irreparable damage to this eco-region and the ‘development’ of the region was socially inequitable and ecologically unsustainable.20

The Committee has also pointed out “severe violations of human liberty and rights” by vested interests and has even questioned the “systematic suppression” of what it calls “civil right expression” of people engaging in ecologically sustainable development through the nurturing of natural resources and heritage of the region. The report also alleges that the Environmental Impact Assessments (EIAs) for various projects in the Western Ghats that stretches more than 1500 km from Gujarat to the southern-most tip of India conducted by the central and state governments over the years were flawed due to several manipulations.21 Quite naturally, all the parties who have ruled or shared power at the centre and states ranging from the Congress and BJP to regional parties and CPI (M) over the years and who are under the pay-rolls, say, of land and real estate mafia in Kerala, mine and forest mafia in Goa, quarry mafia in Karnataka and corporate houses in Maharashtra, etc., have come up united against the Gadgil Report.

In view of this opposition from state governments and various ministers in the UPA government itself coupled with acute pressure exerted by corporatemia, the central government had set up another expert panel headed by K. Kasturirangan, a technocrat to review the Gadgil report.

In brief, while the Gadgil initiatives are oriented towards the conservation of flora and fauna and restoring the natural environment of Western Ghats coupled with a sustainable pro-people development strategy, the Kasturirangan Committee has, in effect, counterpoised environment against development.22

The Gadgil Committee has unequivocally stated that conservation of nature and development can go hand in hand, that conservation does not imply excluding people, and that people at the grassroots or local level should guide the course of development. However, the UPA government, as is obvious, had little interest even to publish the Gadgil Report and make its contents known to the people. It was only after the Delhi High Court directions that the Report appeared in the website of MoEF in May, 2012 that too with a disclaimer that the government has not yet accepted the report. Here it is apt to quote Gadgil himself: “The government should have had immediately made the report public on August 31 itself. However, it was presented in a perverse manner which is a tragedy in itself and shameful for democracy.”23

The health hazards of the cotton textile mill workers, due to the environmental damage caused by the textile mills is another citation of environmental violation. Dust, heat, noise, contact with dangerous chemicals, and high frequency of accidents are the most common occupational hazards. In the blow

19. Ibid 17
20. Ibid 17
21. Ibid 17
22. Ibid 17
room where the cotton bales are opened and cleaned, the dust level is very high. Here the cotton is vigorously beaten several times to separate impurities. Then in the carding section, the laps of cotton are drawn on a machine so that dust, leaves, twigs, etc can be separated. In the process, a lot of cotton dust is released in the carding room. The next stage of work is the spinning shed. Here also dust levels are high. The high dust levels give rise to respiratory problems and diseases. Byssinosis, is a disabling lung disease caused by inhaling cotton, flax, or hemp dust for several years and characterized by tightness in the chest and breathlessness, and in a later stage this disease is difficult to distinguish from chronic occupational lung diseases. Most cotton textile workers themselves have not heard about this, even though they might be suffering from the same. Another serious health hazard is thermal stress. According to expert opinion, with sustained temperature beyond 100 degrees F and relative humidity of 80-90 percent, a worker may experience heat stroke, vomiting, giddiness, and may even become unconscious. In Maharashtra, mass thermal stress among textile mill workers has been reported.

On a detailed study of the National Human Rights Commission’s reports and guidelines, a disappointing conclusion can be made that the body discredits the vast range of environmental violations in the country. There is no mention of the Gadgil Committee recommendations, or the occurrence of a disease like Byssinosis, or the vast number of other such occupational hazards caused due to the environmental violations. The only detailed report is concerning the environmental hazardous disease of silicosis. In the Special Report to Parliament of India on silicosis, the NHRC attempted to draw the attention of the parliamentarians towards the inhuman conditions faced by all those ailing from silicosis including their immediate family members. Silicosis is an incurable lung disease caused by inhaling of dust containing free crystalline silica. A host of recommendations came out of the National Conference on Silicosis.

Apart from this, the body heavily discounts the myriad range of environmental violations faced by the citizens of the country.

The inadequacies of NHRC in tackling with the violations of development, displacement and environmental destruction can further be highlighted with the way the body has dealt with the complaints received by it. Some testimonies of select few cases are as follows.

**CASE OF OCCUPATIONAL HEALTH ISSUE, GODHRA, GUJARAT**

**JAGDISH PATEL**

National Human Rights Commission has passed order on November 12, 2010 in petition pending before it since 2007. The petition was made by Juwan Singh, himself a victim of silicosis and member of KhedutMazdoorChetanaSangathan of Alirajpur in Madhya Pradesh. Sri Singh pleaded that he and many others from that area migrated to work in stone crushing units in Godhra. They were exposed to highly toxic dust of silica and in process contracted Silicosis-an oldest known occupational disease.

In a letter dated 7th December 2010, to the Chief Secretary, Government of Gujarat, Gandhinagar, indicated that the NHRC order regarding compensation to victims of silicosis should be honored and victim families should be paid the suggested amount as soon as possible as a mark of State responsibility

24. Health Hazards of Cotton Textile Workers, Bharat Dogra, EPW, Feb 16, 1985
25. Health Hazards of Cotton Textile Workers, Bharat Dogra, EPW, Feb 16, 1985
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CASE OF ENVIRONMENTAL DESTRUCTION, RANJITNAGAR VILLAGE, PANCHAMAHAL DISTRICT, GUJARAT

MAHESH PANDYA

An accident took place on 29th November 2005, near Gujarat Fluorochemicals Ltd at village Ranjitnagar in Panchmahal district. The report in respect of complain from Smt. Subhalakshmi before NHRC about the accident which took place stated the technical details of the Unit, and concluded that some more specific information was being sought from the District Collector of Godhra and the Gujarat Pollution Control Board.

A letter dated 8th June 2006, addressed to the Assistant Registrar(Law) of the NHRC from Nandkishore Patel, Deputy Secretary to Government(Env), Forest and Environment Department, stated that he was directed to send the inspection report to in respect of complain from Smt. Subhalakshmi about accident to the NHRC.

EXPERT TESTIMONIES

Medha Patkar on the Over-all situation of Housing and Displacement in India, and the Role played by the NHRC:

Displacement is unjustifiable. It can't be justified on the grounds of development and modernization. It is one issue which has led to maximum number of struggles, both violent and non-violent in all areas, be it rural, urban or adivasi inhabited. It questions the basis of the domain of justice and injustice. Questions concern the socio-economic impacts of displacement. People are taking up these issues in the context of fundamental rights and directive principles of state policy.

The issues and grievances are not just to be heard but to be resolved. It is the responsibility of the legal and constitutional authorities to look into the cases. It is important to see if the NHRC has been successful in solving these issues, and mostly the answer is no. Whether it be Chhattisgarh, Orissa, Mumbai, or any part of the country, whenever we put our point forward to NHRC, it is in a crisp form, supported with concrete documents and proposal. In-depth investigations need to be done looking into the cases, which even though the NHRC could have done, but they never did.

Whenever there is an issue of displacement, its justifiability must be looked into, which the NHRC and all the commissions refuse to do. NHRC doesn’t even invoke the authorities which it should, interlinking all the laws, acts and commission reports, which is essential for any case, is rarely done. When a slum in Mumbai belonging to Dalits, is demolished, no action is taken, and the investigation supposed to be taking place on the site takes place without understanding the site. Even issuing notices to the chief secretaries of the state takes place without making a visit to the site and without a complete understanding of the concept of justice.

We go for people’s tribunals because official tribunals are not up to the mark and it is the people’s tribunals that try to investigate the matter deeply but these reports are not given enough consideration by the official bodies. The NHRC, more often than not, sends IPS personals to the field and we are aware of their strengths and weaknesses very well. Why aren’t social scientists and activists sent to do the job? We have suggested this many times to the NHRC, that let there be a broad forum of the civil
society and citizens who would make a contribution. Hence, I think related to the particular case and the issues at hand, there should be a new set of motivated individuals, that can be taken from the civil society and from various disciplines, and make it an interdisciplinary investigation.

I know that a human rights issue is related not only to laws but also with UN covenants. Every time while talking to the UN officials and the related bodies we realize that those covenants are just a piece of paper and it is up to the NHRC whether those covenants are ratified or not. For example, the ILO convention 107 relating to the adivasis was ratified in 1958 by India which states that similar land should be given to the adivasis that has been acquired. In Canada, land is given in similar length and breadth but in the new act in India, some kind of compensation is given, in the form of cash amount 2 or 4 times the amount of the land, which is not only an insult to the adivasi community, but also a violation of their right to life and violation of the UN covenants. So, there should be fresh nominations into such tribunals or commissions to represent the victims, preferably belonging to the victim’s society.

Human rights in the NHRC preamble are defined as related to some laws, or international laws or UN covenants, which is not acceptable. Human rights are above legal rights and thus can’t be limited to laws as they keep changing mostly favoring the corporate and the state, which itself is privatized and can use them against the defenders and the social right activists working for the protection of human rights. We are very thankful to Justice Verma for taking up the Gujarat post riots case which had a huge impact, that is just an example like the riots of Muzaffarnagar, the large scale destruction in the Narmada valley, causing displacement of lakhs and lakhs of people in each dam, and we have a case with NHRC regarding each of it but no with no progress.

When Justice Verma was the Chief Justice of India, a question came before the courts that if a matter is sub-judice before the Supreme Court, can the NHRC intervene. And to our displeasure, the Supreme Court through an interim order of the Narmada BachaoAndolan, told us to withdraw one of our cases either with the SC or the NHRC. We had to withdraw from the NHRC.

But even the positive side should be discussed where the intervention has gone a long way. In KoraputBalangirKalahandi region, we know what the place is going through. Even after the intervention and the work done by NHRC, the dam project affected people are under the hold of the highly influential people. The intervention though was not up to the mark.

When we file a case with the NHRC, people should have a satisfaction that they won’t have to go anywhere else with the case and for this it is very important that the NHRC intervenes and takes its role seriously. It should not take ten years to act after a case has been filed.

As far as displacement is concerned, there was a convention by RajendraBabu, on which a report came, which was satisfactory but these are not at all reflected in the ultimate result of all the process of interaction over the last many decades in India. But still, ultimately the British legacy and the 1894 Acquisition Act are abolished. But the provisions in the new bill do not include the recommendations of the NHRC at all. It is important that NHRC comes up with certain alternatives and does not lead to compensation only in cash but compensation in livelihood, shelter etc and also making the state pay for corruption, pollution, eviction and all their other vices.

The situation of the urban poor, which faces globalization, urbanization and global centralization, is worse unfortunately because of bypassing Gandhi and taking up the Nehruvian model. They need to be looked at from a fresh point of view. They have to face the mighty land-grabbing builders while NHRC doesn’t look into the land distribution or re-distribution which it ought to. It is NHRC’s role to support the policy defenders and people’s movement supporters as it is included in their objectives and powers, the NHRC should realize its powers. This Act has a lot of scope for activists like us or members
of this jury to intervene. Displacement is increasing with not only communal riots but is also leading to degradation of natural resources.

Lastly, I would like to bring to notice that not only the riots but degradation of natural ecosystems and climate change is discussed at international levels and it is worse than what we can call laughable. It is these indelible disastrous displacement issues where there is immediate necessity that the NHRC must widen the scope of displacement related options. If it is development induced displacement, then they must investigate into the bottom most issues and ideas, like what is development and if it is violating the human rights of even one individual, the NHRC must have the strength to intervene and they must intervene.

Art 243 of the Constitution, all DPSPs especially 38 and 39, make it mandatory for the citizens to participate in the economic planning, which should be equitable, sustainable, just and democratic. In the recent Land Acquisition Act, the consent and participation of the local community is minimalistic. There is a democratic right granted to the entities that have place and space within the constitution, it certainly gives mandate to the communities to participate in the development plans which should be equitable and democratic but the state is just evicting people and demolishing, not just the forest and crops, but also the institutions.

Everything is annexed with alternative cash compensation twice or thrice the price of the thing. So farmers are lured into selling their land or are cornered and compelled to lose their land. The public use of the projects should be looked into, equity principle be applied to decide whether that project is public purpose project or not. All dams, mines, roads are termed as public purpose, which is completely non-sensible.

This Jury and HRLN can compel the NHRC with the ministries to hold a special hearing where the recommendations are looked into and be given due priorities to make not only a new Act, but a broader development planning Act where displacement would be mitigated through a democratic process of planning, and the same should be made enforceable.

Shivani Chaudhary on the Over-all situation of Housing and Displacement in India and the Role played by the NHRC:

I have been working with the Housing and Land Rights Network for the last 9 years and I will share our experience of working with the NHRC on these issues. Like many of you, our experience with the NHRC has been mixed. There have been positive experiences thanks to positive individuals, even though this should not be the case, but it depends on who is there in the body.

In the year 2005, they started a very ambitious goal of writing human rights dossiers and our experience was very positive. At that time the joint secretary was Ms. Aruna Sharma. The NHRC recognized Right to Land as a human right, which was a big step forward. We were asked to write a dossier on Human Rights to adequate housing and land along with the 11 other dossiers to be published. It was published in 2006, there was a very good event on the Human Rights day where all these were launched and the NHRC convinced the UGC to use them as part of their basic human rights curriculum. Since then the role of NHRC in promoting Human Rights education has tragically not been so pro-active. The dossiers are also no longer in print.

The second engagement was the national action plan on Human Rights which is a mandate of the Vienna declaration, but 20 years later, when nations are having their 3rd edition of the action plan, India is still to develop its first national plan.

In 2007, we (Housing and Land Rights Network) were approached by the NHRC to draft a
national action plan on housing. So meetings with several ministries were arranged and someone from the ministry of housing actually said that the right to adequate housing is not a human right in India, so why should NHRC prepare a plan for it and at that point Ms. Sharma actually stood up and argued that India has ratified international covenants like the one on social culture and thus has an obligation which makes this right applicable in India. Since her departure from NHRC we have not seen this kind of statement from the NHRC. We drafted a plan and roadmap of the National Action Plan in 2007, but then suddenly there was no talk of a national action plan and it has gone completely into cold storage. So I urge the jury to pressurize the NHRC to deliver on it.

The NHRC published a report on the conference that was held in March 2008 for “rehabilitation for displaced persons”, some of the recommendations of which are really good and in total agreement with the views of social activists. It included that displacement has to be viewed as violation of human rights and it is not a charity but basic right of all people. But all these never made way to the ministry and law and later when we approached the NHRC asking for a copy of this publication, they told us that it was never published by the NHRC and we actually had to print the recommendations to prove it to them. I don’t know if this is institutional amnesia or what, but how could they deny such important progressive steps taken by themselves.

Some of our complaints against the NHRC are that in 90% of our complaints we do receive a reply, that the case has been submitted but the biggest problem is that there is no follow up and action taken. We understand that NHRC receives a huge number of complaints, around 100,000 cases per year, and that there are institutional limitations but because human rights violations are increasing across the country at such an alarming rate, the institution will have to develop a mechanism to deal with it.

I would also like to talk about the positive experiences with NHRC. We had written to them about the alarming situation about the cold in Delhi in December 2005 when the temperature dropped to 0.4 degrees and there were no proper living facilities and the NHRC initiated its own case against the Delhi government asking for information about the homelessness. The other one was about evictions in Bangalore, a case was initiated by HLRN where 1200 people were evicted without any due process or notice, HLRN didn’t personally write to the NHRC but we received a letter from the NHRC saying that it had initiated a case in response to the urgent reaction by HLRN, asking the Chief Secretary of Karnataka for information. Unfortunately there has been no follow-up after the good initial work. In 2010 the Delhi HC took suo-moto action on the issue of homelessness, so NHRC disposed the matter. With regard to the Commonwealth Games in 2010, it took details which led to a fact finding that 20,000 people were displaced and we were assured that a case would be filed but nothing happened and we were told that the Delhi government had stopped replying. Recently the NHRC told us that the Delhi government is notorious. That’s precisely why we have the NHRC, they have the power to summon officials and call for their arrests. They did force certain officials to appear, the NHRC did a good field visit but the report was never filed despite several requests.

We also applaud Mr. Satyabrata Pal, because of whom we have found some space to actually talk about issues of displacement and housing. India was recently examined by the United Nations Human Rights Council in May 2012 and I must commend the NHRC for a very good report on it. The NHRC for the first time has been very vocal in criticizing the government. There are members of the NHRC who have been very supportive but it should not be dependent on just a few members.

For the way forward, NHRC must follow up on cases and take stronger action, make its stances more public and spread awareness of human rights in India.
Prafulla Samantarai on the Issue of Land Grab and Displacement in India:

At present, the law itself is exploiting the tribals and farmers, forcing them to evict from their own land. The Land Acquisition Act is also responsible for violating human rights. People today have hopes that the NHRC can do some justice which can at least expose the violations of human rights and bring it to the notice of the state and the judiciary. As in most of the cases, the victims are not able to reach the courts. The first thing NHRC should do is to make itself a stronger institution. As the NHRC can recommend but not implement its views in many cases, it needs to be empowered so that it can implement its decisions. A law must be brought to make the body an implementing authority.

The process of conventional inquiry process must change. The state itself is violating human rights by using the police. There must be an effective and quick inquiry process by the NHRC. Sometimes the laws are anti-people which gives the power to the state to do its will, even the laws which are there for the people, like the Forest Act, aren’t paid any respect by the officials. The fundamental rights are violated and repression continues.

There have been instances of police attacking the people during peaceful demonstrations, who were fighting for their legal rights. In May 2013, I filed a complaint when women were beaten up, who just went to sit before the police as a protest against illegal construction. And when we complained to the NHRC, it transferred the case to the SHRC which is sitting on the case and my experience tells me that SHRC doesn’t function at all. In the Jindal case, in January 2012, the 1000 displaced people went to JINDAL’s gate and asked for employment as their land was taken away and even in the presence of the police, they were beaten by the security force of Jindal. Around 200 people were severely injured and even a few people died after a month but nothing has happened, no action has taken place, while the NHRC is inquiring till now.

The human right commission is seen as a very weak institution. Because the national human rights commission recommends something but it cannot implement its own recommendations, the NHRC must be compelled to implement its own decisions and it must be binding. NHRC must be made an implementing authority and secondly, the functioning of the NHRC is not effective as any complaint against the state or police atrocities gets sent to the police and it takes years for the report to come. So, the NHRC only communicates what the police say but in very limited cases, is action actually taken in the process of inquiry.

I would like to talk about a historical movement from Koraput district in Odisha. In Narayanpatna, the tribal bonded laborers liberated themselves and fought against illegal liquor and land acquisition. Under the leadership of NachikaLinga, a historical movement to liberate land from the land grabbers took place from 2006-2009, and the CM of Odisha himself stated in the state assembly that there has been injustice to the tribals and also amended the 1956 Act, to return the land in tribal region to tribals from non-tribals or land grabbers but that didn’t happen. Not a single acre of land was transferred. So, the tribal people continued with their peaceful movement. But when the “ChasiMuliyaAdivasiSangh” declared that they won’t allow bauxite mining in Devmali hills, because after mining, the water will be polluted, the tribals will lose their source of livelihood, their identity and cultural rights. So, then and there the police, the state and the land grabbing companies all came together and declared this movement as a Maoist movement. Maoists are there in the forest, but the people in the movement were peaceful, they were in a democratic movement. This was done just to repress the movement. Because of this in November 2009, when the people went against the repression of the coming operation to the police station, the police without any provocation fired and 2 tribal leaders were shot dead. For the last 4 years, the NHRC has been inquiring into the matter, asking for reports from the police and the
collector. I requested the NHRC to have an independent inquiry agency but nothing has been done.

**Simpreet Singh on the issue of Urban Housing and Displacement in India:**
I'll talk about how the nation is changing from a nation of villages to a nation of cities with the quick undergoing urbanization process. This urbanization takes place at the cost of displacement of rural people. According to the 2011 census, around 45% of total city population is staying in slums in Mumbai and so there is no acknowledgement of their living. It is illegal according to the government and such slums can be demolished anytime. Mumbai has a great history of displacement right from the colonial era when Mumbai was being established.

In the Golibar slum in Mumbai where 2500 families live, a private builder at the name of giving housing facilities is destroying their houses. Medha Patkar did a fast for this and at that time around 10 complaints of the people living in these areas was sent to the NHRC in 2012. The NHRC did absolutely nothing till 1 year and after one year it forwarded these to the SHRC. In some slums basic amenities like water are not provided, which is considered as part of the right to life as per the UN, but there has been no intervention by NHRC. There is no single month when slums have not been demolished, burnt or destroyed in Mumbai, but from the last 6-7 years we don't have even one instance when NHRC has intervened in it.

In Jharkhand in 2011, large scale displacement took place, around 1 lakh people were displaced and around 12 people were killed in the firing which happened during the displacement process. A lot of complaints were made to the NHRC by individuals and organizations and the only work NHRC did was to transfer the cases to the SHRC. But in one case of Islam nagar slum in Ranchi, there was an exception. The case was pursued by NHRC itself and the Chairperson of NHRC visited Ranchi for this case. The NHRC in its report said that *prima facie* the state government has violated article 21 and also the directives of the SC. This case was only followed by the NHRC as it was made by the member of Rajya Sabha, which shows the discrimination done by the NHRC towards common people.

Recently, I filed an RTI seeking three replies from the NHRC. Firstly, how many complaints from all over India have been received by the NHRC related to demolition of slums and urban eviction in the last 5 years? Secondly, to provide the xerox copies of the orders passed by NHRC in the above cases. Thirdly, to make public the *suo motu* cases taken up by NHRC related to slum demolitions and urban evictions. The NHRC gave very vague replies, stating that it was not possible to classify all the cases, so this information can't be provided but 45 complaints were registered from 2008 to 2013 with slum dwellers as victims.

According to Section 12 of the Protection of Human Rights Act 1993, one duty of NHRC is encouraging people to work for defending human rights and for this certain core groups have been formed, to look into the interaction between NHRC and the social groups and institutions working in different fields. The current core groups include, bonded labor, disability, health, elderly person and right to food, but nowhere in these groups urban poor or their housing has been included which shows that NHRC is not concerned about urban eviction. Another function of NHRC is to study treaties and instruments on human rights and make recommendations for its implementation. But when it comes to urban housing there are a number of international treaties and conventions like international convention on protection of rights of migration workers, convention on elimination of all types of discrimination against women, and the UN declaration of human rights itself. All these treaties and conventions say that housing is a fundamental right but till date NHRC has never worked in the regard that urban housing can be an agenda of governance.
NHRC has not even looked into proper implementation of already existent schemes like the Rajiv Awas Yojana. There is no acknowledgement of it from their side. NHRC has been clearly very insensitive to these issues.

Rohit Prajapati on Development and Environmental Destruction in India:
We often forget that NHRC has a proactive role to play. The SC in its order said that a postcard can be considered as a PIL, and also directed the same to the NHRC but the NHRC just can't digest it, which is an unfortunate part. On environment, there is a problem with their orientation. They understand environment in a very narrow sense and not as natural resources or right to life. They only see it as a part of the violation of human rights in the sense of right to expression. When it comes to the whole aspect of environment you always find that they are not a forwarding agency. They have to understand that the complainant is in crisis and he expects from the NHRC that they should understand the issue proactively, investigate it and take up major issues suomoto when the problem is in front of them.

This is on documents that the Narmada control authority sub-committee’s prominent member Shekhar Singh, said on record on 24th March 2013 that the issue of environmental clearance of the new dam never came before them. The government of Gujarat never came before them for the clearance and so the construction should be stopped immediately. The Statue of Unity is a part of this Sarovar project. There are a lot of environment related issues like construction is going to be on the river bed, next to sanctuary, on the fault line area of the river, and no environmental authority has been approached, and no clearance has been sought. The people are raising issues on right to life, right to livelihood and culture, most of the complaints are being made by the tribals and so they were put on house arrest on 31st October, the whole area being in curfew. People were terrorized, a complaint was lodged with the NHRC, and what has happened is that the complaint was forwarded to the Chief Secretary of Gujarat and the DGP. Our Mr. PM-in-waiting has been violating people’s rights, organizing marathons to show his public support and threaten the complainants. They always look at the complaint in a very narrow sense; it’s not just about the right to expression of man. The NHRC does not want to listen, does not want to read and I think they are living in a different world.

The social activists have been receiving threatening calls. Tell me how the NHRC will be able to take up the issue of the intimidation of our activists. The state is also doing a different thing. When I raised questions on Mr. Modi’s books on climate change, pointing out the environment issues in Gujarat and that Gujarat is number 1 state in pollution, which is the data of the Gujarat’s own Pollution board and CPCB, but what they did was file a defamation case against me of 25 crore and for the same issue, a criminal defamation of 2 years imprisonment was filed. I gave 2 examples in my article, firstly that the Gujarat government gave official orders to the 52 village panchayats stating that please give your consent to the development authority issues otherwise you’ll be facing consequences. Secondly,
when to set up a nuclear power plant 81 hectares of land was required and the consent needed to be shifted from the village panchayats to the NPCIL, the government of Gujarat sent a draft copy of the resolution in English, asking the Panchayats to just pass it. The resolution says that the Panchayats agree to transfer 81 hectares of forest land to the companies, and these are the documents lying with NHRC but no action has been taken.

CONCLUSION

The consequence of the present pattern of development is the continuing powerlessness of the weaker sections due to displacement and without any benefits from these development projects. Since independence, development projects of the five year plans have displaced about 5 lakh persons each year primarily as a consequence of land acquisition. Changes in land use, acquisition for urban growth and loss of livelihood have also caused environmental degradation and pollution. Hydro-electrical and irrigation projects are the largest cause of displacement and destruction of habitat. The other major sources are mines, military installations, industrial complexes, parks and sanctuaries.

Tribal regions are more particularly affected in this process of development. A significant number of displaced tribals have historically been dependent on natural and common resources for their subsistence. Their displacement on a massive scale adds a serious dimension to the problem. These tribal communities have an ethos and a way of life based significantly upon their natural resource base.

Thus development projects have done little to alleviate existing social inequalities. On the contrary, they have further aggravated the social structure in favor of the already socially, economically and politically powerful, thus throwing to the winds the socialist pretensions in the Constitution.

Forced population displacement, whether from development, conflict or environmental disasters, is more than just physical relocation from one area to another; it destroys people’s lives physically, economically, socially and culturally. Displacement shatters communities’ social structure and leaves those displaced increasingly vulnerable to impoverishment for generations to come. In particular, an estimated 15 million people every year are left destitute by development-caused displacement, which occurs every time a project’s ‘right-of-way’ is prioritized over the local population’s ‘right-to-stay.’

In the context of all this, and in fact ironically, what the representatives of the NHRC have opined on the ‘right to development’ on a few occasions are:

The Chairperson of the NHRC on 27th June, 2006, in Geneva said: “Human dignity is, by its nature, indivisible and, therefore, violation of one human right cannot be compensated by enhancement of another. The aim of human rights is empowerment of people through human development. Human rights are inter-dependent and inter-related and have a direct relationship with human development. Universality of human rights demand eradication of global inequities and to achieve this end the importance of “Right to Development” cannot, but, be emphasized. It is important to appreciate that development, which has to be equitable, cannot brook any discrimination in the sharing of the benefits and in the activities producing the benefits between different people irrespective of gender or caste, religion or geographical boundaries. The wide global disparities in different parts of the world are shown to be linked with varying level of human development. Global disparities must be minimized to ensure that the minimum needs of everyone throughout the world are met. Strategies must be developed to

28. Ibid 7
achieve this result. It is only when the potential of all human beings is fully realized that we can talk of true human development. Empowerment of the people through human development is the aim of human rights.”

In another International Conference on “Right to Health and Development”, the then Chairperson of the NHRC, Dr. Justice J.S. Anand, on 15th September 2006, said:

“The Right to health has been enshrined in the Universal Declaration of Human Rights under Article 25 stating – Everyone has a right to standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and the right to security in the event of sickness and disability. Healthcare is hence not merely a goal towards which a nation aspires but rather it is an obligation of the State to the individual. It is a human right that needs to be protected and assured.”

Hence, the Chairpersons of the NHRC in International Conferences in the past have proclaimed that right to development lies with all, without any discriminations and infringements on another’s right to development. Also, that health care is an obligation of the State to the individual. But the realities on the ground stand starkly in opposition to these claims.

The victims find themselves summarily removed (with insufficient compensation) to make way for projects that are imposed ostensibly in the wider ‘public purpose’ for a state to which they may have little prior knowledge or allegiance. The loss of farming land, forests, grazing lands, fishing grounds or water sources undermined or destroyed livelihoods and the means of subsistence, and the sociocultural features of rural communities. In urban areas, the urban poor seem more vulnerable to displacement than better-off urban communities because high population densities magnify the impacts of acquiring even small parcels of urban land for development. Loss of income bases and social networks lead to impoverishment and lost identity. Perhaps most invasive have been the intensive areal projects, such as mines and reservoirs, which displaced entire communities.

It is essential for each of us to understand that it is not only that unequal distribution of wealth is one of the reasons for displacement, but also that one of the major lacunae of development discourse is that development itself often leads to displacement, and the NHRC needs to widen its ambit with respect to these issues.

HEALTH RIGHTS AND
THE RESPONSE OF NHRC
“Health is fundamental human rights and that the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.”

(Alma Ata Conference 1978)

INTRODUCTION

Traditionally, ‘health’ is viewed within the individualistic perspective and has focused on aspects such as access to medical treatment, medicines and procedures. In such a context, healthcare at the collective level was largely identified with statistical determinants such as life-expectancy, mortality rates and access to modern pharmaceuticals and procedures. It is evident that such a conception does not convey a wholesome picture of all aspects of the protection and promotion of health in society. It was in 19th and 20th Century that health is included in right discourse. It recognised the legal system that bears the responsibility of aiding the medical profession in advancing the ‘right to health’. It also includes policy-choices pertaining to education, housing, environmental protection, labour laws, social security provisions and the protection of intellectual property among others. Health as a right perspective also reflected in Article 12 “The right to the highest attainable standard of health” of the International Covenant on Economic, Social and Cultural Rights to which India has acceded. Even Article 25 of the Universal Declaration of Human Rights, 1948 (UDHR) encapsulated the ‘right to health’ in the following words:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Specific reference can be made to provisions in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD).

Apart from the international laws, we can also find references of health as rights perspective in Indian Constitution. They are outlined the Directive Principles of State Policy- Articles 42 and 47, outlined in Chapter IV, and are therefore non-justiciable. Article 42 directs the state to provide just and humane conditions of work and maternity relief and Article 47 to raise the level of nutrition and the standard of living and to improve public health. The above articles act as guidelines that the State must pursue towards achieving certain standards of living for its citizens.

The Fundamental Right to Life, as stated in Article 21 of the Indian Constitution, guaranties to the individual her/his life which or personal liberty except by a procedure established by law. The Supreme Court has widely interpreted this fundamental right and has included in Article 21 the right to live with dignity and “all the necessities of life such as adequate nutrition, clothing”. It has also held that act which affects the dignity of an individual will also violate her/his right to life. Similarly in Bandhua Mukti Morcha Vs Union of India, the Supreme Court has held that the Right to life includes the right to live with dignity.

ACCESS OF HEALTH CARE SERVICES TO RURAL POOR

The word ‘health care’ does not cover only medical care but it should include the preventive measures to every individual. The state should provide a platform where every individual gets equal health care services. Heath care at its essential core is widely recognized to be a public good. Its demand and supply cannot therefore, be left to be regulated solely by the invisible hand of the market. Nor can it be established on considerations of utility maximizing conduct alone.

In the early 1990s we saw a different picture to the health care services in India. With the rise of Liberalisation and Privatisation we saw tax and other incentives being given for setting up private hospitals and clinics, which resulted in a rapid growth of the private health sector which affected the rural populations. We all can agree that the rise of globalisation has created the gap between the poor and rich within and between the countries. The privatisation of health and hospital services also makes the poor suffer as services become more oriented towards those who can pay. In addition, essential drug policies, which aim to make necessary pharmaceuticals available to all at an affordable price, are threatened by increasingly liberal policies towards pharmaceutical companies. Finally, increasing unemployment and poverty add to the nation’s health problems by creating extra demands on reduced government services.

We can witness that since 1990s, the public health system has been collapsing and the private health sector has flourished at the cost of the public health sector. Health policy in India has shifted its focus from being a comprehensive universal healthcare system as defined by the Bhore Committee (1946) to a selective and targeted programme based healthcare policy with the public domain being confined to family planning, immunization, selected disease surveillance and medical education and research.

According to a study on health care facilities shows that rural areas remain significantly underdeveloped in terms of health infrastructure: about half the people in India and over three-fifths of those who live in rural areas have to travel beyond 5 km to reach a healthcare centre. Availability of healthcare services is skewed towards urban centers with these residents, who make up only 28% of the country’s population, enjoying access to 66% of India’s available hospital beds, while the remaining 72%, who live in rural areas, have access to just one-third of the beds. Insufficiencies in public healthcare services have driven people across socio-economic strata to private healthcare facilities leading to issues of af-

3. Review of Health Care in India, Leena V. Gangolli, Ravi Duggal and Abhya Shukla
affordability challenges. In 2012, 61% of rural patients and 69% of urban patients chose private inpatient service providers, up from 40% reported in a 1986-87 government survey. Quality of health care services varies considerably in both the public and private sector. Many practitioners in the private sector are actually not qualified Doctors. Regulatory standards for public and private hospitals are not adequately defined and, in any case, are ineffectively enforced. The lack of extensive and adequately funded public health services pushes large numbers to incur heavy out-of-pocket expenditures on services availed in public and private sector hospitals. The total expenditure on health care in India, taking public, private and household out-of-pocket (OoP) expenditure was about 4.1 per cent of GDP in 2008-2009. However, the public expenditure on health was only about 27 per cent of the total in 2008-2009, which is very low by any standard. Public expenditure on Core Health (both plan and non-plan and taking the Centre and States together) was about 0.93 per cent of GDP in 2007-2008. India’s Economic Survey, 2013 points to the fact that even though the country’s spending on health has increased by 13 per cent, it nonetheless has the lowest public health spending as a proportion of its GDP. According to a report by the IMS Institute for Healthcare Informatics titled “Understanding Healthcare Access in India”, rural areas remain significantly underdeveloped in terms of health infrastructure, with about half the people in India and over three-fifths of those who live in rural areas forced to travel beyond 5 kms to reach the nearest healthcare centre. It clearly shows that physical accessibility of public and private healthcare facilities is a major challenge in rural areas. The report also shows that availability of healthcare services is skewed towards urban centres with these residents, who make up only 28 per cent of the country’s population, enjoying access to 66 per cent of India’s available hospital beds, while the remaining 72 per cent, who live in rural areas, have access to just one-third of the beds. Similarly, the distribution of healthcare workers, including doctors, nurses and pharmacists, is highly concentrated in urban areas and the private sector.

In order to take stock of the existing health situation in the country and to make a meaningful intervention for an improvement in the same, the National Human Rights Commission has now decided to organize a two-day ‘National Conference on Health Care as a Human Right’ on 5th - 6th November 2013 at India International Centre, New Delhi. The main objectives of the Conference will be to -

(i) discuss ways in which the public health system could be strengthened from the perspective of human rights, especially with regard to accessibility, affordability and quality of health care,
(ii) discuss ways in which the problems of health relating to women and children could be addressed,
(iii) discuss issues relating to occupational health like silicosis etc. and ways to ensure the rights of workers involved, and
(iv) discuss measures for improving health care in terms of clean drinking water, hygiene and sanitation.

After the inaugural, the Conference focused on four substantive sessions, which would be followed by working group discussions. These sessions are -

(i) Availability, Accessibility, Quality and Affordability of Health Care Services in India - Need for Universal Health Care


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MATERNA LHEALTH IN INDIA AND ROLE OF NHRC

Women access to health care services is much less in comparison to men. The underlying reason being their lower status in the family and lack of decision making power regarding ill health, expenditure of health care, and non availability of health care facilities prevent them from seeking medical help. High mortality rates of women are reflection of unequal gender relations, inequalities in resource distribution, lack of access and availability of drugs and health services in our country.

A large number of global maternal and neonatal deaths are from India. According to the recent State of World’s mothers report released in May 2013, by Save the Children, India ranked 142 out of 176 countries. The index for this ranking was developed on the basis of five indicators -- maternal health, children’s well-being, educational status, economic and political status of women in the country. According to the World Bank out of the of 536,000 maternal deaths occurring globally each year, 136,000 take place in India.\(^7\)

After independence in 1947, rural health services were established over time with primary health units (PHUs) serving a population of 30,000. Trained nurse-midwives were posted in hospitals or PHUs to provide maternal health services. Temporary workers—local women with a primary education—were recruited and trained for a short period to man the SCs. They were called ANMs. According to the World Health Organization (WHO), auxiliary workers are technical workers in a particular field with less than full qualifications.

The mushrooming of the maternal death in India became a serious concern among the policy makers and government. The Government of India has adopted the policies and programs to address delays of decision making, transport and access to services. National Rural Health Mission, Janani Suraksha Yojana, a safe motherhood cash assistance scheme, and now the Janani Shishu Suraksha Karyakarm (JSSK) have facilitated the shift of births from homes to health facilities. Births in clinics and hospitals have increased 10 times in the last 7 years. But the question arises: Are the health facilities equipped with the desired quality to handle the onset of numbers? Is the poorest woman being able to reach services? Is it inclusive and equitable? We shouldn’t bring deaths from the home to the health facilities. The government started ambulance services like the Janani Express and 1098 services to address the challenges of transportation and reaching health facilities on time, but the implementation varies across the country. To address quality of care issues, quality protocols are being developed -- for the labor room, ANC and PNC by the government and there is an attempt to standardize.

Although, there are policies and programs with the objective of reducing maternal death and providing standard medical services to the poor women, still we can witness increasing number of maternal death. The challenges remain -- vast country, diversity, problems of supplies (drugs, medicines), malfunctioning of equipment, inadequate human resources, inaccessible terrain, religious and socio-cultural factors.\(^8\) India still has a way to go to reach the Millennium development Goal 5 for India of reducing maternal deaths to 109 by 2015.

The recommendations were mainly focused on availability, accessibility, quality and affordability of

\(^8\) Ibid
healthcare services through better regulation, integration and convergence of State and Central child and maternal health schemes, providing potable water and promoting hygiene and sanitation through policy and awareness, removal of distinction between APL and BPL for access to healthcare, medical care facility to the rescued bonded labourers and those exposed to occupational health hazards, appointment of Health Ombudsperson in every district to ensure accountability of health services, augmentation and production of generic drugs, OPD/IPD access to all common diagnostic tests, removal of two child norm as an incentive/disincentive for all policies, action against unauthorized tapping of water and protection of existing water bodies.

**CLINICAL TRIALS IN INDIA AND ROLE OF NHRC**

There is dramatic increase in the number of clinical trials in India. In October, 2008, the Drugs Controller General of India (DCGI) stated that there were 582 (registered) clinical trials being conducted in India, of which 72% were carried out by the pharmaceutical industry. While public clinical trials registries give conflicting statistics.

For more than a decade, government policy has been to reduce public support for healthcare services, and these services are under-resourced. Health economists have pointed out that only 15% of the Rs 1,500 billion spent in the health sector in India comes from the government. About 4% comes from social insurance and 1% from private insurance companies. The remaining 80% is spent by individuals using private services and without insurance. Two-thirds of healthcare users bear 100% of their healthcare expenses. Seventy per cent of these healthcare users are poor. More than half of the poorest 20% of Indians sold assets or borrowed to pay for healthcare (Duggal 2005).

Patients in both government hospitals and private hospitals are desperate for better quality and affordable care. Patients choose public hospitals because they cannot afford treatment in private hospitals but even here they pay for some drugs, tests and procedures, and this constitutes a burden that many cannot afford. Patients who go to private hospitals may be more able to afford treatment but catastrophic medical expenses can force them to sell assets, go into debt, or stop essential treatment. Various surveys have found that medical expenses are a major factor forcing many Indians below the poverty line (Iyer 2005).

In this situation, government moves to encourage clinical trials in India must be viewed with concern. Changes have been made in the law to permit international trials. Various staff and infrastructure improvements and regulatory changes have been announced, and some have been implemented, to speed up processing of applications. Public hospitals are being promoted as clinical trial sites. Monitoring systems are being set up to ensure high data quality and meet the requirements of drug regulatory authorities abroad. Training institutes are being set up, with the encouragement of the government, to provide the human power to run clinical trials.

The 72nd Parliamentary Standing Committee on Health and Family Welfare’s report on the “Al-

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9. Press Release, Making right to health a fundamental right will be a way forward in improving healthcare services, says NHRC Chairperson, New Delhi, 6 November, 2013
10. The Clinical Trials Scenario in India, Sandhya Srinivasan, Economic and Political Weekly, Vol 44 No 35, (August 29- September 2, 2009), pg 29-33
11. The Clinical Trials Scenario in India, Sandhya Srinivasan, Economic and Political Weekly, Vol 44 No 35, (August 29- September 2, 2009), pg 29-33
12. Ibid
A report titled “Alleged Irregularities in the Conduct of Studies Using Human Papillomavirus (HPV) Vaccine by PATH in India” was presented in the Rajya Sabha and laid on the table in the Lok Sabha on 30 August 2013. We welcome the report and commend its candid, transparent contents, which reflect the committee’s acknowledgement of the unethical nature of the HPV trials by PATH (a global nongovernmental organisation that claims to be “a catalyst for global health”) and recommendation for remedial action.

According to this 72nd report, the committee has been looking into the issue of HPV trials on children in Andhra Pradesh (Khammam district) and Gujarat (Vadodara district) since April 2010 following reports of deaths of some of the children. The report states that PATH, by carrying out the clinical trial on the pretext of observation/demonstration, has violated all laws and regulations laid down for clinical trials by the Government of India.

The committee report also found that the ministry appointed a senior official (described as Resource Person) of ICMR (Indian Council of Medical Research) to assist the inquiry committee. The concerned individual was the main link between ICMR and PATH, and had participated actively in all discussions and meetings, and helped PATH to carry out the project proactively in every respect right from the beginning in October 2006. As such he had a clear conflict of interest and could not be relied upon to give correct information and unbiased opinion. Indeed, he should have been summoned as a witness to answer questions and not as an official “Resource Person attached to the Enquiry Committee”.

The report also reprimands the government for gross irregularities in the HPV trial, and raises serious concerns over the lapses in monitoring the trial process. The Ministry of Health and Family Welfare (MoHFW) has also been asked to report about the violations by PATH to international bodies such as the World Health Organisation (WHO) and the United Nations Children’s Fund (UNICEF) so as to ensure that appropriate remedial action is initiated by the latter worldwide. The report also observes that the ICMR representative “instead of ensuring highest levels of ethical standards in research studies, apparently acted at the behest of PATH in promoting the interest of the manufacturers of the HPV vaccine”.

The Parliamentary Committee recommends action by the government against PATH. The committee also “desires that the National Human Rights Commission and National Commission for Protection of Child Rights may take up this matter further from the point of view of violation of human rights and child abuse”.

In 2012 it was reported 438 deaths are due to clinical trials.

According to information provided by the Union ministry of health, more than 50 per cent clinical trials are conducted by the foreign pharma companies and the rest are carried out by clinical research organizations and domestic pharma companies.

Poor patients are lured into these trials by offering free drugs, food and travel expenses. They sign the consent form without understanding the consequences of the drugs tested on them. Housewives with lifestyle diseases, like diabetes, hypertension and cardiovascular problems, are opting for trials too. “When the patient has been put on different drugs and yet the severity of the disease does not subside, a fed-up patient asks the doctor for options. The drug under clinical trial is offered to the patient and most of them readily agree because it is free,” said a senior doctor at a private hospital in the city.

13. Unethical Clinical Trial, Economic and Political Weekly, October 5, 2013, Sama – Resource Group for Women and Health
Viewing the growing incidents of clinical trials on vulnerable people NHRC formed an Expert Committee on Reforms in drug regulation and clinical trials of India under the chairmanship of Dr. Ranjit Roy Chaudhary. The Committee also noted that notifications, rules and regulations, additions, deletions to the Drugs and Cosmetics Act and Rules are being issued from time to time including the recent ones on:

a) compensation in case of injury or death during clinical trial, rule 122 DAA of 30.1.2013,
b) registration of Ethics committee rule 122 DD of 8.2.2013 and
c) permission to conduct clinical trial 122 DAC of 1.2.2013.

The Committee has suggested that:

a. Ethics committees should be set up in all institutions undertaking studies on human subjects and should be registered as per the Act.
b. Standard Operating Procedure (SOP) should be written down and followed in all clinical trials/clinical studies, based on prevailing good clinical practices (GCP) guidelines issued by CDSCO, ICMR ethical guidelines for biomedical research on human participants, Act and Rules.

ILLEGAL ORGAN TRADE IN INDIA

India’s illegal organ trade is driven in part by the incredible imbalance between supply and demand for legal organs. From the daily newspaper we came across the fact that black market organ transplant ring had been harvesting kidneys from poor Indian laborers, sometimes against their wishes, and using them in foreigners desperate for transplants. Since the 1994 Transplantation of Human Organ Act (THO), illegal kidney trade has increased and caused a great shortage of donated kidney transplants in India. The THO Act was made to implement strict regulations of removal, storage, and transplantation of human organs for both commercial dealings and therapeutic purposes. Although such regulations are in place, for years and in many cases even today, India has been known as the “great organ bazaar. The development on anesthetics drugs in the 1970’s paved way for the transplant industry in India.

Deeply concerned about the illegal trade in human organs especially that in kidneys, Chairperson of the National Human Rights Commission, Dr. Justice A.S. Anand has written to the Prime Minister Dr. Anand said that illegal trade in human organs often involves exploitation of poor people and violation of their human rights. He said that there have been reports of organ trafficking involving clinicians, managers of clinical centers, middlemen and others. The practice of ‘organ purchase’ has acquired the dubious dimensions of ‘organ trade’ with touts operating as middlemen, and creation of allegedly false records of a compassionate donation.  

On witnessing the gross violations of human rights NHRC has issued some recommendation.

RECOMMENDATION FROM NHRC:

State Medical Councils should screen the records of hospitals performing organ transplants (especially kidney transplants) and estimate the proportion of transplants which have been made through a ‘compassionate donor’ mechanism. In cases of kidney transplants, wherever the proportion has exceeded 5% of the cases performed in any of the past 5 years, the State Medical Council should initiate a full fledged

enquiry into the background of the donors and the recipients, as well as a careful documentation of the follow-up health status of the donor and the nature of after care provided by the concerned hospital. Wherever police enquiries are needed for such background checks, the help of the State Human Rights Commission may be sought for providing appropriate directions to the State agencies.

b)  Cadaver Transplant programmes should be promoted to reduce the demand for ‘live donors’.
c)  Facilities for chronic renal dialysis should be increased and improved in hospitals, to provide alternatives to kidney transplantation.
d)  Better facilities should be provided for transparent and effective counseling of prospective donors.
e)  Wherever possible, a mechanism should be established for independent verification of the veracity of ‘compassionate donation’ by a group of experts which is external to the hospital wherein the transplant procedure is proposed to be performed.

One of the limitations for the implementations of such recommendations was that such recommendations are not binding upon the state authorities.

**NHRC RECORD IN PROTECTING AND PROMOTING THE HEALTH RIGHTS**

Since its establishment, Commission is making an effort to play a proactive role on the health issues of India. The commission has organized various workshops, training programs to sensitized people and also help to formulate policies on right based approach. Apart from these, the Commission also formed Advisory Groups with the aim of providing equal health delivery system in India. Also, commission also made some recommendations to improve the health sector in India. In its annual report, the commission highlighted some of the activities and recommendations adopted by the commission on the issues of health rights.

2000-2001

Following are some of the efforts adopted by the commission on health issues.17

**Formations of Core Group**

In 2000- 2001, the Commission constituted a Core Advisory Group on Health, headed by its Chairperson and comprising Professor VRamalingaswamy, Dr Shanti Ghosh, Dr Prema Ramachandran, Professor Pravin Visaria, Professor N. Kochupillai, Professor K. Srinath Reddy and Professor L.M. Nath, to widen and deepen its own understanding of the issues involved in matters relating to health as a human right. The Group was specifically requested to prepare a plan of action for systemic improvements in the health delivery systems of the country. In addition, the Group has been advising and assisting the Commission on a considerable range of health related issues and programmes.

**Organizing Workshops/ Training Programmes**

(a) Public Health and Human Rights

In the year 2000-2001, the Commission organized two major gatherings on issues relating to ‘Health and Human Rights’. The first was a Workshop on Maternal Anaemia, which was organised on 26-27
On 10-11 April 2001, the Commission organised the third of its major gatherings on Public Health and Human Rights. A Regional Consultation was organized in collaboration with the Ministry of Health and Family Welfare and the World Health Organisation (WHO). Representatives of NGOs, public health experts and human rights activists attended the Consultation, policy makers, scientists and other interested members of civil society. The Consultation focused on three vital issues concerning public health i.e. Access to Health Care, Tobacco Control and Nutrition. The recommendations generated at the Consultation were considered and adopted by the Commission and forwarded to the Ministry of Health and Family Welfare for further action. The major recommendations are listed below:

General Recommendations

- A State Public Health Regulatory Authority should be established in each of the States as well as a National Public Health Advisory Body to regulate public health practices and monitor the implementation of public health programmes.
- Capacity should be enhanced, at national and regional levels for interdisciplinary learning and research on linkages between public health and human rights to promote policy development and public health action. To this end, partnerships should be promoted between academic/research institutions of law, public health and social sciences as well as health NGOs and relevant government agencies. Such networks may be established and supported in countries of the South East Asia Region to serve national and regional public health needs.

Recommendations on Access to Health Care

- Decentralisation of authority in health care systems of the country, through Panchayati Raj and other local institutions, by devolution of appropriate financial, administrative and supervisory powers and implementation of all relevant national programmes of Ministries/Departments of Health, Family Welfare, Women and Child Development, Social Justice and Empowerment;
- Standardisation and quality-assurance in the training of the various cadres of health care personnel;
- Effective linkage of the primary, secondary and tertiary systems for dependable delivery of essential health care (acute as well as chronic);
- Regulation of irrational or unethical medical practice in the public and private health care sectors of the country, through the development of guidelines for use of drugs, diagnostics and therapeutic procedures, with a regulatory framework for monitoring and enforcement;
- Availability of quality life saving drugs to the population. There should be a price control policy for essential drugs, including all patented drugs, with the prices linked to purchasing capacity of the population.

Recommendations on Tobacco Control

- All States should be addressed to take steps for passing resolutions for adopting provisions relating to control of all other tobacco products (other than cigarettes) which are presently in the State list. As of now, only four States have passed such resolutions;
- A comprehensive national tobacco policy should be evolved at the highest level in consultation with all the stakeholders in Public Health;
• A multi-sectoral national level nodal agency should be established for tobacco control with strong representation from legal, medical and scientific communities;
• The right of the people to access correct information related to the effects of tobacco consumption must be promoted through programmes of information, education and communication. Such programmes should be adequately supported;
• Assistance for smoking cessation should be integrated into health care services;
• There was a need to review the provision of various incentives for tobacco industry under different Acts including the Tobacco Board Act, 1975, and for doing away with all subsidies (direct and indirect) being provided to the industry.

Recommendations on Nutrition
• Access to iodised salt should be made available to all sections of population, on a sustained and affordable basis;
• The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production Supply and Distribution) Act, 1992 should be reviewed with specific reference to violations;
• The Food Corporation of India should be asked to provide a Report of losses of significant portions of food grains procured/stored by it over the last three years and the steps taken to monitor and reduce such losses;
• Media guidelines should be prepared to promote best practices of nutrition;
• The implementation of the recommendations of the NHRC sponsored workshop on Maternal Anaemia (April 2000) should be reviewed to evaluate the progress made and the barriers in effective implementation should be identified;
• The proposed Public Health Regulatory Authorities should monitor the effective implementation of the National Nutrition Policy and the National Policies of Action on Nutrition;
• An overview should be initiated by the Ministry of Law and Justice, of the level of compliance with the following international instruments to which India is signatory:
  - Convention on the Rights of the Child (CRC)
  - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
  - SAARC Declaration on the Girl Child.

The recommendations of the Commission are, at present, under the consideration of the Central and State Governments. The Commission hopes and trusts that they will be acceptable to the Government and that it will be advised in detail of the response of the Government and of the action taken on the recommendations.

(b) HIV/AIDS and Human Rights:
The Commission finalised its recommendations on a range of issues relating to

Human Rights and HIV/AIDS in follow-up of the National Consultation on this subject which it organised in New Delhi on 24 - 25 November 2000, in collaboration with the National AIDS Control Organisation, Lawyers Collective, UNICEF and UNAIDS. They have adopted some recommendations on this issues.

The recommendations emerging from the group discussions are presented below as a series of action points that seek to feed into the response to HIV/AIDS both on national and State levels, and in reference to all partners, including the international and domestic non-governmental organisations, foreign governments and multilateral agencies, credit institutions, the business community/ private sec-
tor, employers’ and workers’ associations, religious associations and communities.

1. Consent and Testing
   • All staff of testing centres and hospitals, both in public and private sector should be trained and sensitised, on the added value of the right of any person or patient to make an informed decision about consenting to test for HIV. Further the staff should be sensitized on universal precautions and provided with an appropriate infrastructure and a conducive environment which can enable them to respect the right of any person or patient to decide whether to test for HIV or not;
   • This right to self-autonomy must be combined with the provision of the best possible services of pre-test and post-test counseling;
   • Persons detected at routine HIV screening at blood banks, should be referred to counselling centres at nearby health care facilities, for further evaluation and advice;
   • The physical environment in which counselling and testing is carried out needs to be conducive to prepare HIV positive people physically, mentally and with accurate information on how to 'live positively'. An important component of the enabling environment is sufficient time to internalise and consider the counselling a information provided and to make an informed decision on consent to testing;
   • Official ethical guidelines and a comprehensive protocol should be developed on how to counsel and best protect the rights of the people who according to current legislation or the practice of diminished authority may not have legal or social autonomy to provide or withhold their consent. This would include children, mentally disadvantaged persons, prisoners, refugees, and special ethnic groups;
   • A comprehensive protocol on informed consent and counseling should be developed and be applicable in all medical interventions including HIV/AIDS. It needs to include testing facilities and processes in normal hospital setting, emergency setting and voluntary testing that take into consideration the window period;
   • Although the counselling offered aims to advise testing for those who might feel that they have been engaging in unsafe practices, yet the right to refuse testing must be respected;
   • The availability of and/or access to voluntary testing and counseling facilities needs to be increased throughout India, including rural/remote areas, in an immediate or phased manner within previously defined and agreed timelines;
   • Guidelines for the written consent procedures in the case of HIV/AIDS research need to be explored and developed.

2. Confidentiality
   • Train and sensitise all staff in testing settings, blood banks, and care and support settings, both in public and private sector; on the right of any person or patient to enjoy privacy and decide with whom medical records are to be shared
   • Explore innovative and practical ways to implement respect for confidentiality in different settings: location for disclosure of diagnosis, specific procedures for the handling of medical journals and correspondence, reporting procedures, and confidential disclosure of status without the presence and pressure of family members, which is particularly relevant to infected women
   • The legal framework, administrative procedures, and professional norms should be revised to
ensure enabling environments, which foster and respect confidentiality.

3. Discrimination in Health Care

- Train and sensitise care providers and patients on their respective rights in the context of HIV/AIDS, and combine it with training on universal precautions and with the supply of means of protection including Post Exposure Prophylaxis (PEP) and essential drugs for all health care settings. Include to a greater extent trained and sensitised health care workers as trainers and role models to other health care workers. Information on HIV/AIDS should be available at all health care institutions for the public as well as for the staff, and should be most user-friendly.
- Implement stigma reduction programmes and campaigns among health care professionals that prohibit isolation of HIV positive patients, provide appropriately prescribed treatment of opportunistic infections, and offer standard procedure for the protection of confidentiality. Include to a greater extent people living with HIV/AIDS in the design of stigma reducing campaigns, awareness programmes and care and support services.
- Develop anti-discrimination legislation that practically enables protection of the rights of health care workers and patients, and that makes both the public and the private sectors accountable.
- Establish a multi-sectoral consultative body on HIV/AIDS to provide advice and dissemination of information to health care workers.
- Develop guidelines/regulations for beneficial disclosure of testing results. Disclosure without consent should only be permitted in exceptional circumstances defined by law.

4. Discrimination in Employment

- Adoption of national and State anti-discrimination legislation that should apply equally to both the public and private sectors and should prohibit discrimination in relation to work. This should include prohibition of pre-employment HIV testing, routine health checkups with mandatory HIV testing, reasonable accommodation, HIV friendly sickness schemes, entitlements, regulation on subsidized treatment costs, and compassionate employment.
- Train and sensitise law enforcement authorities and other authorities/sections of the community those might be closely connected with the workplace, employers/corporate leaders and employees/workers at formal and informal work places, and expand the awareness programmes to the surrounding communities on the issues of HIV/AIDS, stigma and discrimination, leading to adoption of private and public corporate regulations on HIV/AIDS.
- Raise awareness about the existing CII policy on HIV/AIDS and training in legal literacy related to both HIV/AIDS in the workplace as well as other workplace regulations in force. Media could be of great use to such a campaign.

5. Women in Vulnerable Environments

- Effectively share accurate information on HIV (including transmission modes, sexually transmitted diseases (STD), preventive and curable aspects, treatment, drugs and counselling) with different categories of women in varied innovative, culturally adapted ways all over India.
- Adopt legal changes to empower women for equality in areas such as property rights, domestic violence and marital rape, and protect the right to association for any groups of women working for collective interests.
The rights of women to provide or withhold informed consent, for HIV testing, must be protected. Social barriers that limit the free exercise of such a right by women must be overcome through appropriate educational and administrative measures.

All pregnant women should be provided an opportunity to have an HIV test, since vertical transmission of HIV can be effectively stopped by the use of low cost drugs in pregnant women who test positive. Women, who test positive for HIV, during pregnancy, should be offered such treatment.

Start alternate media communication programmes to reach out to as many groups of women as possible on the issue of empowerment of girls and women and elimination of misconceptions, myths and stereotyping related to male and female sexuality. Remove silence about sexuality in the development of policies, guidelines, project management and programming as well as within prevention messages.

Increase programmes directed at informing and involving men in the response to HIV/AIDS by opening up discussion on sexuality and gender differences and challenging cultures of shame and blame.

6. Children and Young People

Ensure that the response to children and young people is shaped and driven by their rights guaranteed under the Child Rights Convention, their overall health needs as well as health education requirements.

Train government officials, policy-makers, and healthcare providers to fully familiarise them with the contents of the CRC.

Create innovative mechanisms to inform children and youth on safe sex and other sexual health issues and ensure that such information is related to their cultural context and age groups.

Extensively use mass media and the education system to disseminate relevant information. The information and advocacy campaign should be subsidised by the Government.

Redesign the health care services, including contact points/counselling services, to become more child and youth friendly, and accessible.

The limitations of the legislation related to children and young people need to be addressed. For instance, the Juvenile Justice Act (JJA) should be revised to facilitate the shift to alternate methods of providing non-custodial care. A law covering sexual abuse of boys and girls should be adopted. Legal remedies need to be made accessible to children and youth.

Develop a clear policy on how young people wishing to go through an HIV test can do so voluntarily and without breach of confidentiality vis-à-vis legal guardians or others.

7. People Living with or Affected by HIV/AIDS (PLWHA)

Formulate institutional guidelines with standards placing the issues of PLWHA in a larger framework.

Commission a study on the WTO regime post 2004. Lobby with the UN agencies, including the OHCHR to work for affordable drugs, and lobby towards Indian capacity building and opportunities for domestic drug manufacturing. Organise a workshop on WTO and TRIPS with reference to the issue of future access to drugs and anti-retrovirals.

Increase legal literacy among the PLWHA and communities by community training programmes and integration of legal literacy messages in prevention messages. Ensure access to
legal remedy in case of violations of the rights guaranteed.

- Review information, education and communication (IEC) strategies with the aim of reducing stigma while preventing HIV/AIDS. For this purpose, explore the role of public broadcasting companies, and introduce tax relief for private broadcasting channels to allow public broadcasting on issues related to HIV/AIDS. Train and sensitise the media through workshops. Lobby for the inclusion of HIV/AIDS issues in the Right to Information Bill.

- Immediately review legislation that impedes interventions (such as Section 377 of the Indian Penal Code), as well as feasible antidiscrimination legislation, health legislation and disability legislation to be more supportive to people living with HIV/AIDS, prevention, care and support initiatives. Include HIV/AIDS issues in the Right to Information Bill. Introduce affirmative action for HIV positive people in the employment sector.

8. Marginalised Populations

- Revise and reformulate laws and processes (such as Section 377 of the Indian Penal Code and the NDPS Act) to enable the empowerment of marginalised populations and reach them with HIV/AIDS prevention messages as well as care and support mechanisms.

- The revision of the legislation must seek to mitigate the socioeconomic factors that cause people’s marginalisation as well as unsafe practices.

- Legalise any sexual activities undertaken with consent between adults, and in connection with this adopt a clearly defined age for sexual consent.

- Legitimise and expand innovative harm reduction programmes to reduce harmful practices including needle exchange and unsafe sexual activities, and expand condom distribution among all marginalised populations.

9. General

- A comprehensive strategy to prevent and control HIV-AIDS should combine a population based approach of education and awareness enhancement with strategies for early detection and effective protection of persons at high risk.

- An Action Plan for implementation of these recommendations should be developed with focus on specific areas of action and prioritised sequencing of recommendations for early implementation within each of them. This may be done through a working group comprising representatives from the NHRC, Ministry of Health and Family Welfare, Government of India and UNAIDS who will identify the pathways of action and the agencies for implementation.

10. Recommendations Sent by NHRC to all States / UTs

- Public health action should focus on preventing mother to child transmission of the virus and measures to achieve this objective should receive prioritized attention from health policy makers at both central and state levels

- A wider programme for the prevention of HIV/AIDS should conform to the recommendations made by NHRC as a follow-up of the National Consultation jointly organized by the NHRC and UNAIDS in November 2000.

- Enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from attending schools

- Address school fees and related costs that keep children, especially girls, from going to school
• Provide all children, both in and out of school, with comprehensive, accurate and age-appropriate information about HIV/AIDS
• Provide care and protection to HIV/AIDS afflicted children whose parents are unable to care for them. Institutional arrangements must be made for extending medical aid to such children. [Hospitals and medical professionals should not be allowed to turn away people who are HIV +ve from being treated.

NHRC has organized Regional consultation on health rights in different states. But the question is even if the commission has organized different workshops for the awareness of the health rights but still in India we witness that health rights is not an fundamental rights in India and rural people access to public health services. A two-day Regional Consultation on Public Health and Human Rights was held in New Delhi on 10 & 11 April 2001. It was organized by the National Human Rights Commission in partnership with the Ministry of Health and Family Welfare and the World Health Organisation (SEARO).

RECOMMENDATIONS OF THE CONSULTATION

General Recommendations
A State Public Health Regulatory Authority should be established in each of the States as well as a National Public Health Advisory Body to regulate public health practices and monitor the implementation of public health programmes. Capacity should be enhanced, at national and regional levels for inter-disciplinary learning and research on linkages between public health and human rights to promote policy development and public health action. To this end, partnerships should be promoted between academic/research institutions of law, public health and social sciences as well as health NGOs and relevant government agencies. Such networks may be established and supported in countries of the South East Asia Region to serve national and regional public health needs.

Recommendations on Access to Health Care
• Decentralization of authority in health care systems of the country, through Panchayati Raj and other local institutions, by devolution of appropriate financial, administrative and supervisory powers and implementation of all relevant national programmes of Ministries/Departments of Health, Family Welfare, Women and Child Development, Social Justice and Empowerment.
• Standardization and quality-assurance in the training of the various cadres of health care personnel.
• Effective linkage of the primary, secondary and tertiary systems for dependable delivery of essential health care (acute as well as chronic).
• Regulation of irrational or unethical medical practice in the public and private health care sectors of the country, through the development of guidelines for use of drugs, diagnostics and therapeutic procedures, with a regulatory framework for monitoring and enforcement.

Availability of quality life saving drugs to the population. There should be a price control policy for essential drugs, including all patented drugs, with the prices linked to purchasing capacity of the population.

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• All States should be addressed to take steps for passing resolutions for adopting provisions relating to control of all other tobacco products (other than cigarettes) which are presently in
the State list. As of now, only four States have passed such resolutions.

- A comprehensive national tobacco policy should be evolved at the highest level in consultation with all the stakeholders in Public Health.
- A multi-sectoral national level nodal agency should be established for tobacco control with strong representation from legal, medical and scientific communities.
- The right of the people to access correct information related to the effects of tobacco consumption must be promoted through programmes of information, education and communication. Such programmes should be adequately supported.
- Assistance for smoking cessation should be integrated into health care services. There was a need to review the provision of various incentives for tobacco industry under different Acts including the Tobacco Board Act, 1975, and for doing away with all subsidies (direct and indirect) being provided to the industry.

**Recommendations on Nutrition:**

- Access to iodised salt should be made available to all sections of population, on a sustained and affordable basis. The Infant Milk Substitutes Act should be reviewed with specific reference to violations.
- The Food Corporation of India should be asked to provide a report of losses of significant portions of food grains procured/stored by it over the last three years and the steps taken to monitor and reduce such losses. Media guidelines should be prepared to promote best practices of nutrition. The implementation of the recommendations of the NHRC sponsored workshop on Maternal Anaemia (April 2000) should be reviewed to evaluate the progress made and the barriers in effective implementation should be identified.
- The proposed Public Health Regulatory Authorities should monitor the effective implementation of the National Nutrition Policy and the National Policies of Action on Nutrition.
- An overview should be initiated by the Ministry of Law and Justice, of the level of compliance with the following international instruments to which India is signatory:
  - Convention on the Rights of the Child (CRC)
  - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
  - SAARC Declaration on the Girl Child.

These recommendations of the Consultation are now under consideration of the Commission. The final recommendations will soon be sent to the concerned authorities for effective implementation.

**2002-2007**

**Re-constitution of the Core Advisory Group on Health:**

The Commission has consistently taken the view that the right to a life with human dignity, enshrined in the Constitution, must result in the strengthening of measures to ensure that the people of this country, and particularly those belonging to economically disadvantaged sections of society, have access to better and more comprehensive health facilities. It was to strengthen its own understanding of the issues involved and to promote the view that the right to an adequate level of health-care was essential to a life with dignity, that the Commission in 1998 constituted a Core Advisory Group on Health, headed by its
Chairperson and comprising Professor V. Ramalingaswamy, Dr. Shanti Ghosh, Dr. Prema Ramachandran, Professor Pravin Visaria, Professor N. Kochupillai, Professor K. Srinath Reddy (Convenor) and Professor L.M. Nath. The Group was specifically requested to prepare a plan of action for systemic improvements in the health delivery systems of the country and to advise and assist the Commission on issues relating to health as a human right.

Upon the passing away of Prof. V. Ramalingaswamy, the Commission reconstituted the Core Group on Health, with Dr. N.H. Antia, Director, the Foundation for Research in Community Health, Pune kindly agreeing to join the Group. In addition to the above Members of the Group, Ms. Rekha Sharma, Chief Dietician, AIIMS and Dr. H.K. Sudarshan, Chairman, Task Force on Health and Family Welfare, Government of Karnataka, were co-opted as Members of the Group.

Public Health and Human Rights

**Implementation of the recommendations of the Regional Consultation on Public Health and Human Rights**

On 4 July 2002, the Commission convened a meeting to review the progress of implementation of the recommendations of the “Regional Consultation on Public Health and Human Rights” which it had organized on 10-11 April 2001 in collaboration with the Ministry of Health and Family Welfare and the WHO. It was attended, among others, by Dr. R.V. Ayyar, Secretary, Department of Women and Child Development, Shri S.K. Naik, Secretary, Department of Health, and Dr. S.P. Agarwal, Director General of Health Services.

In the course of that meeting, the view was expressed that the empowerment of people was essential to ensuring accountability in the health sector and that, as far as the Commission was concerned, its primary focus should be on efforts to improve the design and delivery of primary health care in the country. It was, accordingly, decided that the Commission and the Ministry of Health and Family Welfare would jointly convene a National Consultation to review strategies for strengthening primary health care. The Consultation would involve all stakeholders from the central and state levels. It was also decided that the Commission would subsequently monitor the adoption of those strategies and the progress of their implementation, so as to ensure that the citizen’s right to essential primary health care is appropriately protected. The suggestion was made that the base provided by the National Law Schools may be strengthened and expanded to provide platforms for partnerships to promote Public Health laws in their development and application. For its part, WHO would take follow-up action at the national and regional levels to strengthen and expand networks for promoting capacity building in the domain of Public Health Law.

The meeting reviewed in detail the recommendations relating to ‘Access to Health Care’ and ‘Emergency Medical Care’. The Commission requested the Ministry of Health and Family Welfare and the Department of Women and Child Development to provide their written comments and status reports on each of the recommendations made during the April 2001 Regional Consultation. The two key action points which emerged from the meeting were:

- the joint organization, by the Commission and Ministry of Health and Family Welfare, of a National Consultation on Strengthening Primary Health Care, and
- the Constitution of an Expert Committee by the Commission, with the participation of Ministry of Health and Family Welfare, to review and reform Emergency Medical Care Services in urban and rural settings.
Maternal Anaemia and Human Rights

Central to the Commission’s concerns in respect of the right to health has been its anxiety about the deleterious effects of maternal anaemia both on the mother and on the child. The Commission has, thus, taken-up the issue of the widespread prevalence of iron deficiency among expectant mothers, which has resulted not only in high infant and maternal mortality but also in low birth-weight related developmental disabilities, particularly among economically disadvantaged sections of society.

It was in order to evolve a plan of action for systemic improvements in the health care delivery system, that a two-day Workshop on Health and Human Rights, with special reference to maternal anaemia was organized by the Commission on 26-27 April 2000 in partnership with the Department of Women & Child Development and UNICEF. The recommendations of that Workshop were transmitted to the concerned Ministries of the Central Government for appropriate action.

The Workshop had laid particular stress on the need for a literacy campaign to bring about awareness amongst women concerning maternal anaemia. Four recommendations pertaining to education and awareness in respect of maternal anaemia, were thus sent to the Department of Elementary Education & Literacy, Ministry of Human Resource Development, Government of India for the taking of appropriate action. The report of that Department was awaited.

The reconstituted Core Group on Health headed by Dr. N.H. Antia continued to assist the Commission on matters pertaining to public health and human rights.

Public Health and Human Rights

National Consultation on Strengthening Primary Health Care

In the annual report for the year 2002-2003 it was reported that the Commission continued to monitor the progress of implementation of the recommendations of the Regional Consultation on Public Health which it had organised in the year 2001 in collaboration with the Ministry of Health and Family Welfare and the WHO. On the suggestions that emerged after discussions with the concerned Ministries of Government of India and others concerned on strengthening the Primary Health Care in the country, the Commission held further consultations with the Secretaries of the Department of Family Welfare, Health, Women and Child Development and others on the issue in August 2003 and in October 2003. Pursuant to these discussions, the National Institute of Health & Family Welfare has offered to host the three-day National Consultation on Primary Health Care and Human Rights in India. A small Sub-Group has worked out the themes, sub-themes and list of experts who could be invited to this Consultation. It is proposed to organize this event in 2005 and also integrate it with Regional/National Public Hearings on access to health care planned by the Commission during the year 2004-2005.

Public Hearings on Access to Health Care

In November 2003, the Commission approved a proposal received from Jan Swasthya Abhiyan, an NGO working on public health issues, to hold public hearings on Right to Health and Human Rights in five regions of the country (North, South, East, West and North East) followed by one at the national level at New Delhi. The Commission also decided to extend financial assistance to the NGO for organizing these public hearing.

Emergency Medical Care:

Concerned by the prevailing unsatisfactory system of Emergency Medical Care, which resulted in the loss of many lives in the country, the Commission in April 2003 constituted an Expert Group headed by Dr. P.K. Dav. The first meeting of the NHRC’s Expert Group on Emergency Medical Care,
was held in the office of the Commission on 4 September 2003 under the Chairmanship of Dr. Justice A.S.Anand, Chairperson of the Commission.

Sub-standard Drugs and Medical Devices
The Commission has been deeply concerned about the issue of unsafe drugs and medical devices. Over the past few years, the Commission took up a number of specific aspects like contamination of intravenous fluids etc. and made recommendations to the concerned authorities. The Commission held a meeting with senior representatives of the Central Government, a number of State Governments and voluntary organizations working in the field in November 2003 followed by another consultation in March 2004.

Illegal Trade in Human Organs
The Commission took up the issue of illegal trade in human organs and referred it to its Core Group on Health. The Core Group of experts on Health deliberated on the issue and have collectively expressed the view that the clause relating to ‘compassionate donation’ in the Organ Transplantation Act has been frequently exploited in an unethical manner, which is violate of human rights.

- The National Public Hearing was held in New Delhi on 16th – 17th December, 2004, in which the civil society representatives presented structural deficiencies noted in various regional public hearings, followed by delineation of state-wise systemic and policy issues related to denial of health care. Special presentations were made on issues such as women’s right to healthcare, children’s right to healthcare, mental health rights, right to essential drugs, health rights in the context of the private medical sector, health rights in situations of conflict and displacement, health rights in the context of the HIV/AIDS, and occupational and environmental human rights. In addition, the National Action Plan to operationalize the ‘Right to Health Care’ was proposed.

- During 2004-2005, the year under report, the issue of female foeticide and infanticide was again taken up during the course of the Regional and National Public Hearings on Right to Health Care was organized by the Commission in collaboration with Jan Swasthya Abhiyan at Bhopal, Chennai, Lucknow, Ranchi, Gwalior and New Delhi.

- With a view to preparing a plan of action for improving conditions in mental hospitals in the country and enhancing awareness of the rights of those with mental disabilities, the Commission entrusted a research project on “Quality assurance in Mental Health” to the National Institute of Mental Health & Neuro Sciences (NIMHANS) at Bangalore.

- NHRC team has visited Mental Hospital in Agra, Indore, Amritsar and Tezpur.

- In order to review the status of the implementation of the recommendations made by NHRC on different issues relating to health, the Commission convened a review meeting on the Recommendation of the Core Group on Health and Public Hearing on Health on March 4, 2006 at Vigyan Bhawan, New Delhi.

- National Review Meeting on Health was organized by the Commission on 6 March 2007. In the meeting it was stated that although there are sufficient number of doctors and paramedical staff all over the country, there are still innumerable pockets, in the rural and remote areas, where their shortage is felt. As a result, majority of the population is at the mercy of quacks. The Commission has repeatedly expressed its apprehension concerning the existing inadequacies in the public health system in the country as a whole, particularly in rural areas.
It therefore made several recommendations to resolve this problem.

- At the National Review Meeting on Health convened on 6 March 2007, the Commission had pointed out that silicosis is an occupational hazard that needs necessary intervention and convergence of the Ministries of Industry, Labour and Health; the National Institute of Occupational Health (NIOH); and the National Institute of Miner’s Health (NIMH). It therefore recommended comprehensive legislation and an effective operational mechanism to ensure both care for all affected persons and prevention of further cases. Following-up its recommendations for convergence, the Commission organized a meeting of various stakeholders on 24 April 2007

- The Commission has been concerned about the discrimination faced by persons infected/affected by HIV/AIDS. In this regard, detailed recommendations made by the Commission have already been reported in its earlier Annual Reports. The Commission considers it regrettable that the Government has still not enacted legislation that prohibits discrimination against those infected/affected by HIV/AIDS with regard to their access to medical care and education.

- During the year under review, the Commission made a film and a video spot on the rights of persons infected/affected by HIV/AIDS, which were telecast by Doordarshan and some private channels and also shown during various awareness programmes. Several NGOs have appreciated this endeavour of the Commission towards creating awareness among the masses about HIV/AIDS and human rights.

- As part of the mandate given to it by the Supreme Court, the Commission is currently monitoring the functioning of three Mental Health Hospitals at Agra, Gwalior and Ranchi. The Special Rapporteur of the Commission visited these three hospitals. In addition, he visited the Institute of Mental Health at Cuttack, the Institute of Mental Health at Dharwar and NIMHANS at Bangalore. A Member of the Commission also visited Varanasi Mental Health Hospital during the period under review.

- On the basis of visits undertaken, the Special Rapporteur presented a background paper during the first meeting of the reconstituted Core Group on Mental Health convened on 21 August, 2007 at NHRC.

2008-2010

- The Commission has recommended to the Ministry of Health & Family Welfare that one year rural posting should be made mandatory irrespective of the fact whether MBBS students want to pursue their post-graduation or not.

- During 2008-2009, the NHRC received individual complaints on the problem of silicosis. In a meeting held on 1 May 2008, the Commission reiterated that silicosis is an occupational hazard and it could be prevented if the working conditions of workers are properly regulated and proper warnings are adhered to by the employers, both in the organized and unorganized sector.

- A National Conference on Mental Health and Human Rights was organized at the National Institute of Human Rights, National Law School of India University in collaboration with NIMHANS at Bangalore from 29 to 30 April 2008.

- It also organized a meeting of the Health Secretaries and State Mental Health authorities
at NIMHANS, Bangalore on 8 and 9 May 2008. The main objective of the meeting was to review the status of implementation of Commission’s recommendations on ‘quality assurance in mental health’ and simultaneously update the publication on “Quality Assurance in Mental Health”. The suggestions received during the meeting were subsequently incorporated in the NHRC publication entitled “Mental Health Care and Human Rights”.

- On 20 January 2009, another meeting was convened under the chairmanship of Justice Shri G.P. Mathur, Member, NHRC at NIMHANS in Bangalore. In this meeting the issue of shortage of psychiatrists was discussed in detail. It was recognized that there is a need for MCI to relax its standards from the present 1 : 1 (one Professor : one student) to 1 : 2 (one Professor two students) for a 10 year period. Based on the discussions held in the meeting, the MCI was urged to inform the NHRC about their views concerning the issue of relaxation of norms to overcome the shortage of psychiatrists in the country at the earliest. At the time of writing of this Annual Report, the response of MCI was still awaited.

- The NHRC has adopted a pro-active role with regard to the issue of right to health and consistently taken the view that the State must ensure that the people of the country, in particular the vulnerable sections, have access to better and more comprehensive health care facilities.

- During 2009-2010, the NHRC drew its attention towards illegal medical practices of doctors having fake certificates/degrees, presence of quacks in the medical profession, inadequate health care facilities in the tribal areas, and the production and distribution of spurious medicines/drugs in the country.

- In order to ensure that people in the country have access to quality health care, the NHRC organized a one-day Meeting of the Health Secretaries of all the States/Union Territories on “Illegal Medical Practices and Health Care Facilities in the Tribal Areas” at the National Institute of Health and Family Welfare, New Delhi, on 29 January 2010.

- Silicosis is an occupational disease caused by inhalation, retention, and pulmonary reaction to crystalline silica during mining, stone stone crushing, quarrying and such other activities.

- It profoundly affects the work productivity, economic and social well-being of workers, their crushing, quarrying and such other activities. It profoundly affects the work productivity, economic and social well-being of workers, their families and dependents. The NHRC has adopted a two-pronged approach to tackle the issue of silicosis. On the one hand, it is considering individual cases, and on the other hand, it is devising preventive, rehabilitative, and remedial measures to deal with the issue of silicosis.

**CRITICAL ASSESSMENT OF NHRC ROLE:**

From the above record we have a picture that the NHRC made an effort to protect and promote the health rights but reality is that the dream of protecting the right of the people in health sector is at far distance. NHRC has Health is considered to be a constitutional rights and NHRC is a constitutional body established to protect and promote the rights of the individual. Here I would like to highlight that NHRC considered ‘health’ issue in 2000 i.e. seven years after its establishment. With the concern of delivery systematic health system in India, NHRC constituted formation of a Core Group consisting of academicians, medical practitioner, policy makers, etc with the hope of assisting Commission in dealing with the issues of health. But, there is no clarity about the functioning of its Core Group. The member of the core groups involve themselves in filed visit and participating in the workshops and seminars.
Now here the question is how the core group functions without any clarity of their function.

Secondly, with the objective of sensitizing and making the people aware of their health rights, Commission in collaboration of NGO and CSO organized many workshops and seminar since 2000. In such workshops, the commission managed to cover the issues like HIV, maternal health, access to health system, tobacco control, nutrition, etc. The commission also made some recommendations in such meetings and seminars. Such recommendations were also sent to all the states and Union Territories. Now, here the question does the Commission ever follow up with the implementations of such recommendations in the states. The recommendations passed by NHRC are not mandatory on the state government. So, there is possibility of not implementing such recommendations by the state government in the absence of follow up mechanism.

Apart from formations of Core Group and organizing workshops and seminars, NHRC also made visit to mental hospitals in few states to assess the conditions of mental hospitals in India and submitted a report to the government and made some recommendations for improving the conditions of mental hospitals in India. Apart from conducting research project in few states like Agra, Amritsar and Tezpur, Gwalior, Indore, it should also extend its research project in other states also.

Though, the Commission made an effort to play a proactive role in improving the health system in India but it failed in its mandate. The Commission made some recommendation for on health delivery system in India. According to a study on health care facilities shows that rural areas remain significantly underdeveloped in terms of health infrastructure: about half the people in India and over three-fifths of those who live in rural areas have to travel beyond 5 km to reach a healthcare centre. Availability of healthcare services is skewed towards urban centers. Apart from these, the commission also seen making recommendations for HIV affected individuals, increasing the level of nutrition, tobacco control and illegal organ trade. Inspite of such efforts and recommendations of NHRC we can witness the discrimination against HIV affected individuals, increasing rate of organ trade, etc.

We can also witness the fact that the Commission failed to make provide the relief to the victims who have filed their complaint at the Comission. Most of such case are either pending or forward the case to different commission like National Commission for Women, etc or to the State Commission. Few such cases are highlighted in our public hearing which was organised 15-17 December, 2013 in New Delhi. The details of the cases are mentioned in the next chapter (Testimonies).

TESTIMONIES

Cases of Unethical Clinical Trial

Anil Saude (on behalf of his mother Shrimati Chandra kala Bai)
Indore

In the month of September, 2008, my mother Shrimati Chandra kala Bai, w/o Late Suresh Saude was brought to MY Hospital for treatment of Heat alment, and she was admitted under Dr Anil Bharani, and in the Disguise of the Treatment, the Drug Trial of the Intravenous Tonopofylline (BG 9928) was done on my mother. On 16 June, 2009, the condition of my mother was critical and she was admitted to ICU, due to the direct adverse effect of the Drug Trial. On 22 June, 2009, she died. The information about the Drug Trial has been done on my mother came to knowledge through the list of replies given to the Question No 1112 raised in the Legislative Assembly of Madhya Pradesh on March 2012. In that list my mother name is written.

I filed a complaint at NHRC on 8 September, 2012 at NHRC. The case was registered with the
case no-1942/12/21/2012/OC. The commission closed the case stating that, “complaint relates to the matter which is Barred under Section 36(2) of the Act, hence the complaint is not entertained by the Commission, as per Regulation 9(v) of the NHRC (Procedure) Regulation, 1997. The complaint is filed and the case is closed.

Dhananjay Sirvastav
Tilak Nagar, Indore
During April-May 2009, I visited M.Y. Hospital Indore, for treatment of chest pain and breathing problem. From there I was recommended to the Govt. Manorama Raje T.B. Hospital for treatment. I was referred to Gyan Pushpa Center for chest and allergy disease for my personal check up. I was told that I would be given important medicines free of cost and free checkup. The doctor made me sign some documents and on asking them, the doctor told me that they are just some formalities for the medicines. I was facilitated by amount of Rs 200 for transport conveyance and sometimes I was made to sign blank vouchers also.

In July 2009, I was given some medicines for free, and these medicines were not available for sales on medical stores. Suddenly, after taking medicine I felt low and I went unconscious. Immediately I was admitted to Noble Hospital, Indore.

The medicine which I was taking, gave me no improvement and cataracts was developed in my eyes. I used to have continuous headache, felt uneasy while walking went weak. On 1st March, 2012, in the Assembly of M.P., list of clinical trails victims was given as an answer to number 1112. And in the list my name was there.

Haji Abdul Rashid
Indore
My husband Haji Abdul Rashid was suffering from Chronic Obstructive Pulmonary disease. We took him to Indore Chest Centre (ManoramaRaje TB Hospital) related to the Mahatma Gandhi Memorial Medical College, Indore (M.P) for treatment when a junior doctor sent us to Dr. Salil Bhargava, Professor for Chest and T.B. Then, Dr. Bhargava took my husband to his private Gyanpushpa Research Center where a clinical trial for an unknown drug was done on my husband without the written permission of either me or my husband. Husband finally died on 21.04.2010.

In the M.P VidhanSabha, when the medical college was enquired about the participants list for the drug, Dr. Bhargava showed the list on 29.10.2010 according to which a clinical trial was done in Lambda which is a contract research organisation. According to the list, my husband was treated on 23rd. The trial was approved by the Ethics Committee on 12th September 2005 and the medicine was called Salbutamol+Ipratropium Inhaler. Clinical trial was done on 60 people and Dr. Bhargava was paid for this by the drug company in two installments of Rs. 1, 38,000 and Rs. 3, 12,000. We were not made to sign any document that would confirm our willingness for the trial.

We were kept in the dark about the whole trial. My husband was neither provided with a Clinical Trial Liability Insurance nor a Life Insurance Policy. Even the Ethics Committee didn’t care for the protection of our rights. In the meeting of the Ethics Committee where the trial was approved by eight people, there was no representative for the common man. I request that a responsible Ethics Committee is appointed and Dr. Bhargava is fired from his job. The case was filed with the N.H.R.C. on 10 December, 2012 but still no response has been received.
Jitendra Sargaiya (Father of the victim Tanisha)
Indore
I, Jitendra Sargaiya, 36, live in Indore with my wife and my 11 day old daughter Tanisha. My wife and I are handicapped Dalits. When I took my daughter to Chacha Nehru Child Hospital, Indore for vaccination, the professor Dr. Hemant Jain of Child Sickness Department performed a clinical trial of an undeveloped vaccine on her. He did not take the written permission from either my wife or me. We were not even given a copy of the patient information sheet. I was informed about the clinical trials only on 28.05.2011 by respectable legislators. After the trial, my daughter got really sick and got Anal Stinosis. She started growing in an unnatural way. After the help of a member Dr. Anand Rai of Clinical Trial Victims Association, I am now fully aware about clinical trials.

After the trial, my daughter was kept in the I.C.U. for a month and she had trouble breathing. Her sugar level was quite high. They had to take blood samples a lot of times because of which her hands were swollen. We wanted to take our daughter to some other hospital for better treatment but she was not discharged by Dr. Hemant. According to the report of M.P. State Economic Crime Records Bureau, Dr. Hemant has conducted trials of 25 protocols on 2500 children between 2005 and 2010. He had charged Rs. 1, 70, 00,000 from the drug companies for it. Also, it was found that the trials had drastic effects on 15 children and even resulted in the death of 4. None of the parents in these cases had the knowledge of a clinical trial.

None of the victims got compensation. This act is a clear violation of Protection of Child Rights Act, 2005. It is requested that compensation should be provided for the drastic effects of the drug on my daughter and Dr. Hemant Jain should pay the entire amount for my daughter’s treatment. As he conducted a clinical trial on my daughter with an intention to cheat us, he should be fired from his job and should face dire consequences for it.

Case of forced Sterilization
Salimuni, Chitrakoot
I, Salimuni, had been having pain in my stomach for 3 months so I was taken to the hospital on 24 May, 2012. I was suffering from fever and my periodical cycle had stopped for 3 months. I went for a check up with the consultation of my husband. On 24 May, 2012, I went to Karvi District Hospital with my husband where Dr. Ranjana Sharma started operating on me without asking me anything. I was fully aware as to what was happening as I was in a lot of pain. I was injected once. While I was screaming with pain, my saree was put in my mouth to muffle my screams. I don’t remember the duration of the operation as I was not in full senses. I was bleeding so much that the white bed sheet turned red.

When they asked me whether I wanted to abort or continue my pregnancy, I told them that I wanted to continue with my pregnancy. This decision couldn’t be taken without the consultation of my husband. After sometime, I was told to go home. I was still bleeding and when my condition deteriorated, I was taken to the same District Hospital at 8 p.m. But I did not get any medical care there. When my husband informed the media, then the authorities took me to Zila Mahila Hospital from where I was referred to Allahabad Swaroop Rani Hospital on 25 May, 2012 where I was treated properly. I had to purchase all my medicines as the hospital did not provide any.

On 26 May, 2012, an FIR was lodged against the hospital authorities. I was discharged on 3.5.2012 but I had to go again for follow-up treatment every week. This has been very expensive for my family. My husband has already mortgaged the land for a sum of Rs. 2 lakh. Dr. Ranjana Sharma was not available but Dr. Ashok Kumar Gupta told the fact finding team that she created problems for
everyone and performed sterilization on any woman who had more than two children and I have 10 children. Although it is illegal but even he agreed that if they cannot raise so many children then they shouldn’t produce them in the first place.

This case was filed with the N.H.R.C. on 21 December, 2012 who got rid of the case by transferring it to the Uttar Pradesh State Human Rights Commission u/s 13(6) of the Protection of Human Rights Act, 1993 as amended by the Protection of Human Rights (Amendment) Act, 2006, for disposal in accordance with the provisions of the Act. But even though one year has passed, N.H.R.C. has not bothered to take any action in order to help the complainant.

EXPERT TESTIMONIES

Healthcare as a Right and Access for the Rural Poor and the Response of NHRC by Dr. Binayak Sen

In a broad discussion for the access of good health and healthcare, the nutrition state of the people cannot be left out. An adequate and good nutrition is the key to good health. The present statistics of the nutrition present a very grim image of the current status of the nutrition of the people in the country. The recent Family Health Survey on the nutritional status of children of 5 year and below shows that around 47% of the children in the country are under nourished which is approximately around half of the total children population. This is the sad picture of the children in our country. Even after an intense revolutionary campaign to diminish this state of under nourishment and various other governmental plans like ICDS and other which are existing for very long, this state has not much improved.

The nutritional status of the children is still a much known fact and has been widely discussed, but the lesser known fact is about the nutritional status of the adults in the country. The situation is very ominous and deplorable. The internationally accepted standard for a healthy person is a Body Mass Index (BMI) of 18.5 and below which the adult is considered as undernourished. As per latest report around 36% of the total adult population is going through a state of malnourishment & undernourishment i.e approx 1/3 of the total adult population. In cases of more underprivileged section like minorities of SC & ST, the situation is much worse and the proportions are very high. According to the latest surveys on the Integrated Tribal Development areas carried out by the National Institute of Nutrition & National Nutrition Monitoring Bureau around 40% and 49% of men & women in the Integrated Tribal Development Area has a BMI of less than 18.5. In another report of World Health Organization (WHO), it was reported that if in any community or population there are more than 40% of the population who all have a BMI of less than 18.5, then that state is considered as a state existing in a “state of famine”. After considering the data provided by the National Institute of Nutrition and applying the formula provided by the WHO, it can very well inferred that there are large section of the population which are in a constant state of famine. This state does not long for a periodic basis rather these sections are living in a permanent state of famine. The situation is further worsening and getting more pathetic. In one of the recent paper of leading economist, Utsha Patnaik shows that the consumption of food by an individual is decreasing over the years.

As discussed above, it can be concluded that a good nutritional diet is a pre-requisite to a good health. The need of good nutritional food regime is also essential in times when an individual is ailing from a disease. The perfect illustration of this assumption can be backed by the state of the patients who are suffering from tuberculosis in India. It is a very well known medical fact that the tuberculosis is a deadly communicable disease and its needs a properly well nourished and a long course of medicines for
its effective treatment. The disease gets worse due to an under nourished diet regime. According to the latest reports, it is now a established fact that the population of India is 1/6 of the total population of the world. In another report on the total Tuberculosis patients globally, it was noticed that India shares a proportion of 1/3 of total global tuberculosis patients of the world. Taking mathematical calculations in consideration India should have contributed only 1/6 of the total worldwide TB patients, but it is 1/3 which is twice than what was supposed to be its legitimate share. Along with these, the figures are still increasing, and no preventive measure is being taken by the govt. for the good nutrition of the patients. Also the cases of drug resistant TB are also mounting up and their graphical curve is increasing at a rapid pace due to non accessibility of adequate quality nutrition. They are only being fed by the medicine and not with the supplementary nutrition which these strong medicines need. The drug regime and the food regime both used by the govt. are outdated and need new reformations. Similarly many other cases of different other diseases like drug resistant Malaria and many other non communicable diseases are also increasing at a breathtaking pace in which the role of under nourishment has a fair share to play. The tide of these diseases is coming like a wave of Tsunami and the govt. needs to tighten their belt for this oncoming storm. This situation completely needs NHRC to get into an action an requires a more proactive role than its earlier attempt.

Clinical Trial Cases and Response of NHRC

Dr. Anand Rai

Today, I have come here to discuss about the violations of the human rights of the subjects during clinical trials and will also present some cases before you all. I am a govt. doctor who was fired from his job by its govt. while I was working in the Medical Education Dept. and I tried to raise an issue on the clinical trials before the govt. Currently I am working in the health dept. of Madhya Pradesh state govt.

Firstly I would like to discuss on the issues of the procedure of the recruitment of the subjects for the clinic trials. According to the current rules and the guidelines for the recruitments of a person for a subject for a clinical trials are as follows:-

The recruitment should be voluntarily and an absolute consent must be taken from the subject before his/her clinical trial. But in almost 99% of the cases, the poor patient when reach to a junior doctor for their treatment, they are being shortlisted according to the inclusion criteria from a inclusion eligibility list which these doctors generally have with them. On finding the proper match as per the inclusion list, these subjects are being sent to a special place where the trials take place.

According to the human rights rules and other guidelines, the consent of the subject must be an informed consent and he must have signed an informed consent application form which in actual is a very complicated form for even a literate person up to the standard 12th pass to understand. Till 2007-08 this form was only available in English and then later it was translated to Hindi in 2007-08. Even after its Hindi translation, the consent form was still very complex for a layman to understand. It is very common scene to trace many cases in which the subjects were clueless about the nature of the trial before they have given consent for the trial and signed this document.

It is also mandatory to provide a subject with a patient information sheet and an informed consent application form and a copy of the clinical trial liability insurance policy. But in almost all cases these subjects are never been given these three forms. It is also one of the biggest contributing factors for the state of cluelessness of the subjects about the fact that they are being subjected for a clinical trial. They always think that they died due to their own critical state of diseases. Around 1 to 1.25 lakhs of patients were subjected to clinical trials in the past years and according to the reports of DGCI, around 2700
people died during or due to these trials. DGCI has no autonomous mechanism of its own to collect these data and these data are being provided by the doctors and the pharmaceutical companies who undertake all these trials. So, I have strong feeling that these data are not totally correct and have been manipulated and bought down by the concerned bodies and I am also very sure that the death tolls of clinical trial must be certainly many times higher than the provided data. More than 12,000 people are suffering from the adversities due to this drug & clinical trials and you will be shocked to know that no compensation has been provided to even a single victim of these adversities.

Only 40 dead victims were compensated among the list of 2700 deceased who died due to these trials. These were the figures until January 2012 when we filed a PIL in the Supreme Court and till now this figure of people who got compensation has risen up to 80 only. The average compensation in cases of deaths is around 2 lakhs whereas on the other hand these pharmaceutical companies involved earned in billions of dollar and also they are still very reluctant in giving out the compensations to the rest of the victims left. Also you will be surprised to know that earlier there were no laws to compensate these victims of clinical trials but later a new law came up only after when we filed a PIL in the Supreme Court. Even today, if a subject is being recruited unethically or fraudulently by any doctor or a pharmaceutical company and the subject dies due to their negligence in the due course of trial, still then there are no penal provisions to punish the offenders for this heinous crime.

It is a very sensible issue and I would like to share out some incidents where I interacted with NHRC on this issue. The case here which I would like to mention here is of the days when I used to work in MGM Medical College. From last 4-5 years, even the mentally ill patients of that hospital were subjected for the clinical trials. I was surprised to know from some of my sources that these mentally challenged people were being recruited for any sexual drug. A drug called Dapoxetine used during depressions has a side effect which delays the ejaculation period of a human being. It is shocking to note about the cunningness and shrewdness of the doctors and the pharmaceutical companies who used this side effect for commercial purposes. So they recruited around 45 mentally ill patients for this purpose of the trial of this sexual drug and all of them were completely unaware of their purpose of recruitment. It is also disheartening to know that this drug actually came into the market and also many people with the problems of premature ejaculations are getting treated with this medicine. This matter was being reported to NHRC by me on 10th January 2011, and they referred my case to State Human Rights Commission on 24th February 2011. The State Human Rights Commission has not contacted me till now regarding this issue. Almost after a year later, a report came to us through an assembly about the names of the drugs and subjects which were clinically trialed and in later stages this information was published on the front page of the Times of India. This report of TOI acted as a wakeup alarm for the NHRC which sprang into an action at the moment they read about this issue on a national newspaper. The NHRC took a suo motu standing on this case and issued a notice to the Chief Secretary of the Madhya Pradesh govt. asking for a reply on this front. Till date we have no idea about the reply of the Chief Secretary or about the actions taken by him against the doctors which were named in the reports. Later on 24th January 2012, the joint secretary of the Govt. of India Sujaya Krishnan issued a letter to the State Mental Health Secretary of the Madhya Pradesh govt. R N Sahu ordering for a enquiry into this case and till date no report in any form has ever came to the public domain.

The next case which I want to mention is of a Dalit woman named Chandrakalaa Bai, who was subjected to an intravenous (no idea what he said) trial in the year 2009. Her family members were completely unaware of this fact and about the experiment conducted on their mother. They have gone to the hospital for a treatment of a heart and chest ailment of this woman. Later on her family members
were told that she will be given a injection brought down from foreign entity of worth Rs. 1.25 lakh and she will get totally cured from this disease. The family members instantly agreed to this proposal and went ahead for this injection to be injected to their mother. This injection was injected to her on 18th May 2009 and just after 4 days i.e. on 22nd May 2009 she died. And till 2012 her family members were absolutely unaware of this fact that their mother was subjected to a clinical trial without taking their consent on actual matter because they were not having the Informed consent application form which a subject is usually provided with in a general practice before a clinical trial. After that we probed onto the issues of clinical trials through an assembly and tried to make out a list of patients who died during the clinical trials in particular hospitals of Madhya Pradesh. Her name came up in one of the list and later when we approached her family members on this case, they were completely clueless about this clinical trial thing. It was really stunning to note that her family members were still clueless i.e. for 3 long years that their mother was actually made a victim of a clinical trial without her consent and she never died due to her illness. This incident was stunning and after noticing these mishaps, we directly complained about this to the NHRC. The response was equally shocking as the NHRC disposed off this case because this matter was a year old. In their statement of reason they wrote:

“Complaints led to the matter which is barred under section 36(2) of the Act. Hence the complaint is not entertainable by the Commission as per the regulation 9B of the NHRC Procedure Regulations of 1997.”

Eventually this matter was reported and highlighted by the media and also at the same time we approached the Supreme Court on this matter. This incident shook NHRC completely and they woke them up from there deep slumber and it started intervening in this matter. It was very dissatisfying to note that the NHRC was completely unaffected about these complaints for three long years but instantly sprung into the action when it was highlighted by the media and the Supreme Court hearing. It is also disheartening to note that there is no single instance in the past where the NHRC interactively met these victims of clinical trials and asked about the issue of their consent or raised questions on the issues of procedures of the recruitment for these trials. Even after having a hustle on this issue on a nationwide level, the NHRC merely acted as an intervener in the Supreme Court. After becoming an intervener in the Supreme Court, the NHRC issued 6-7 guidelines for this field. They introduced nothing special and just rhetorically repeated the same provision which already existed.

In these guidelines they introduced an ethics committee which was existing already and they did nothing new in introducing that. They wrote that ‘there should be some protocol’. There were already many existing protocols which NHRC never paid heed to.

They speak about the training of the members of the ethics committee. No such training ever took place till now and also a monitoring body for such a training is missing from these guidelines.

So it can be said that NHRC seriously failed in pursuit of their duty and acted as a blind insensate machine to the grievances of the victims and the complaints made to them. The compensation is the right of the victims and they cannot be denied from this and there are still thousand of the people suffering from the atrocities due to these clinical trials and they are still struggling in a life and death situation and are constantly denied from any medicines. The patients are being used as an object or more like a shaving razor who are being thrown after being used. After the trial there is no concern for the patients either from the doctor or from the pharmaceutical companies and they don’t even think of having a look on the conditions of the patients after the trials and these patients are still hanging between their life and death. It has been 2 years since the case has been filed in the Supreme Court and one year since an interim prayer has been made in the same court. Till now we have not seen any interim orders from
the court for the relief of these victims and their condition is still then same, even after a nationwide revolution.

So somewhere down the line the beliefs of the people is withering away from the NHRC and also from the present judicial system as they proved ineffective in curbing out these problems related to clinical trials. So, this was my personal experience with the NHRC in terms of the clinical trials.

Public Health and Role of NHRC
Satya Sagar
I would like to start my speech with a very small prayer. This prayer is dedicated to acknowledge the very existence of something called National Human Rights Commission (NHRC) in a country like India. It is a very big thing to have such an institution in our country. I have travelled in many parts of the world and was quite amazed to notice that no such thing exists in many of them. Even if it is a lip service then also hypocrisy is also a lip service to the virtue. Atleast we have somebody to blame upon and can reprimand for its irresponsible behavior. In many parts of the world a body like ‘Human Rights Commission’ didn’t even exists and such a redressal body for its people. I am also very thankful that we have a constitution. The point which I am trying to make is not to dramatize the issue rather want to say that one has to look at the role of NHRC in a perspective. As pointed by the earlier speakers that this body is poorly mandated by the law and it’s a toothless body which cannot take any action. The definition of the human rights in the article 2 of the Right to Protection of Human Rights of 1993 is quite stringent and confines it to only civil and political rights. So the NHRC is not mandated to implement anything and also is denied with the right to actually take up the issues by itself. Also as pointed out by many, that most of the complaints or issues taken up here fall within the domains of social & economic rights. In some cases it seems that the NHRC has taken the case by its own although it is not mandated and health is one of them. It is obvious that though NHRC has not done any specific work in any specific case. But in over the years the NHRC had actually intervened in the issues of health and largely in a conceptual basis. They have promoted the idea about the right to health as a fundamental right and even called for the protection of the Right to Health act to be passed by the Indian Parliament. The objection of the govt. to the Right to Health is obvious because of the huge amount of expenditure required. If Right to Health will become a Fundamental Right then the govt. will have to implant a huge amount of cost application and probably it will be a call for the onset of a virtual economic revolution in country in terms of the redistribution of the resources and there is a very feeble chances of it. On this juncture, I would like to point out that though the mandate of NHRC is confined only to civil & political rights and it is very necessary to point out that civil and political rights are the key to Right to Health.

I work in the areas of Jharkhand where one can find a population largely dominated by Muslim and Adivasis and we can witness there that in these areas there are several govt. schemes going on like starting from the subsidies for energy, transport, Scholarship for girl child, employment guarantee scheme including right to health insurance scheme like Rajiv Gandhi Swasthya Bima Yojana. These all schemes are announced in Delhi and later come to Ranchi but these schemes never reach villages and other ground level settlements. It is almost like that you see clouds forming, the thunders striking and even the rain actually falls but the ground never gets wet because it is a well known fact that 30 ft. above the ground, the water gets disappears. Now the real critical issues in this country are the democratic rights that are the key for the implementation of social and economic rights. It is almost impossible to have social and economical rights even if they are implemented by the law without the ability of the people to organize themselves and to be able to exercise their basic rights which are being denied on
a massive scale. In those areas basically, trajectory of the money of the govt. is like this, that it comes
to Ranchi and at best it can come to the District Headquarter, where then it will be re-allocated for
completely different purposes and to all the usual suspects like the govt. officials, the local politicians
local powerful business personals etc. and nobody cares about the actual agenda and expenditure of
the money and unless the problem of civil and political rights will be addressed seriously, the right to health
cannot be a reality even if the act gets passed in the Parliament. It will be very appropriate to take the
example of Employment Guarantee Scheme. In many parts of India, the people who are supposed to
be the actual recipients of the money for their work are completely denied from this monetary benefit.
On the other hand, the people who are channelizing these money of others for their own purpose like
the Gram Panchayat’s who all are becoming richer everyday and are buying expensive cars and building
their houses and these malpractices are rampant in places like Bihar & Jharkhand and many media re-
ports are a reliable evidence of these accusations. It is also interesting to note that in parts of India where
there is a political voice and people can organize themselves are actually able to challenge the authorities
effectively. It is also stunning to note that the same govt. schemes are working efficiently there. If you
take an example of Tamil Nadu, a state which has comparatively one of the best health systems in India
in terms of the state run subsidized health system. The reason for this efficiency is very simple because
it has a very high level of political & social awareness among its people. Even in the people who all
are living in fishing communities in the coastal areas regularly update themselves of the govt. schemes
through the internet. They scrounge for all the provision of schemes like amount of money allocated,
officers to contact and how to get that money in into their communities. There is a high level of literacy
even among the ordinary peoples like fishermen who is also able to access internet. This is the level of
pro-activeness required on the part of the communities which will ensure Right to Health in the long
run and I think if the NHRC focuses on its mandated task then protecting civil and political rights go
a long way.

As Dr. Sen has right now pointed out about the malnutrition, as one of the major causes of
diseases in this country. Around 2.5 million children of below the age of 5 years die every year due
to malnutrition related diseases. Lots of these are due to lowering of immune system which results in
pneumonia, diarrhea and other malnutrition related diseases. These all are avoidable deaths. Recent
estimates of avoidable deaths in this country runs into something like close to 5 to 6 million people
who die every year due to this avoidable deaths. The statistics are very depressing and for an example if
we take only the road accidents in this country, then we will come to know that around 200 thousand
people die every year due to the road accidents happening in the country. These stats are very much
higher than any war anywhere in the world. So, in a sense the violation of human rights i.e. Right to
life in more particular is taking place in a silent way. Nobody is killing these people.

The babies are dying before they reach at the age of 1. These people are not killed intently by any-
one but are being victimized and are killed by the overall system on a constant basis. All these problems
cannot be solved without the right to democratic organization.

Now I would like to discuss about the role of displacement. The mega project that were being
carried out since Independence and the mining project of the recent years in the central Indian plains
and in the indigenous population like adivasi areas have resulted in massive displacements. One of the
things in which these people were affected apart from different other things is the ability of an ordinary
person to access its food. It is very amazing to note that very large number of people in this country
and particularly the poor’s in the rural areas still don’t have to buy food. The indigenous peoples in the
forest can access a very wide variety of sources of nutrition. In the rural areas, they have access to land
and they can grow their own food but if they are forced to move from their settlement to an urban setting then they will become completely helpless. So it is not irrelevant to conclude that there is a lot of malnutrition linked with the displacements and also these people cannot negotiate with the state or company to stop their displacement process which is very harmful to them. It immediately impacts their health. So, I mean one can say that the displacement and these rights are inseparable.

During Cold War period, there was a huge debate internationally on the actual definition of human rights and the west which was led by the USA had a view that the human rights are only confined to civil and political rights whereas Soviet Union and the Govt. of India at that time emphasized on social and economic rights. The mentality which governed these social and economic rights for this group of countries was that before a certain level of economic developments of their country, they cannot afford to talk about civil and political rights. But in post Cold War period, there was a global consensus on these issues and as its evident from many UN documents on Human Rights that they typically merged civil & political rights which is also called as Right to Development. But in practice we have seen, particularly in India that we have neither civil and political rights nor the right to development and there is a constant excuse making about the need of a proper economic growth before we talk about civil and political rights. But the fact is that before the serious and sincere implementations of basic provisions of the constitution there is no hope of actual right to development. The truth is that even though having a beautiful constitution which enshrined many noble principles in it and many other institutions for its implementation, we still lack many a things. The situation is just like putting a cart before the horse. The Indian society as a whole and the way it is structured and its hierarchy, the whole politics and the dynamics of the society is arranged in such a way that it is not ready to accept its own constitution. The constitution of India is way ahead of the present state of its society. In a sense civil and political rights are necessary for people to implement the written provisions of the constitution otherwise everyone will wonder that such a beautiful constitution was written precisely because no one was interested in implementing it. It is same like that if you want to break a promise then you can also promise the moon. I think one thing that I would like to emphasize that apart from other things if the govt. could only focus on the schemes that has been announced by them in the variety of the sectors and if we can get the state agency to implement at least 50% of them, then there will be a tremendous transformation in the status of health of the people. Also, I think that the role of NHRC is as a watchdog to point out these needs and enable them and also propagate the idea of the rights and to raise the awareness in these issues.

Maternal Health
Jashodhra Dasgupta
India as a country is one of the most populous countries of the world and also contributes to a larger share of total global female population. Even though the women in India are regarded with a very discriminatory view and their status is very depressing in the country. One of the saddest parts of this prejudiced treatment is very lowly status of the recognition of the maternal rights of the women in the country. India has the highest maternal mortality ratio and the increasing population and high birth rate are contributing in exacerbating the present scenario. Every year around lakhs of women are dying in India owing to the preventable causes and around millions of women are suffering from preventable ill health and complications and sometimes very serious morbidities owing to the lack of health care during their pregnancy and after child birth.

Although India has placed fairly strong policies and program framework in order to improve health of the women and maternal health in the country but it is disheartening to note that the all
the efforts have been very narrow and inadequate and is embedded with the weaknesses of the Public Health Services (from here on PHS) in general. From time to time basis, a high level group of experts on Universal Health Coverage had put recommendations for enhancing the budgetary allocations and for strengthening the health system of the country as a whole. Along the same lines they also made several other recommendations which would have ensured the adequate safeguard of the health its people in country. Unfortunately again the physical considerations have compelled the govt. to trash the recommendations of the report. It will also be very important to note that maternal mortality has been recognized as a violation of the women health rights and right to life. Several judgments from high courts of Delhi, Madhya Pradesh and Parna have recognized this right and called for the state accountability to provide more attention regarding women's life. Sadly govt. of India still continues to be ignorant about the accountability status of the states and has not provided the data about the status and whereabouts of the deaths of the women in India. They also were unconcerned about the formation of mechanism for the grievance redressal system or listening to the complaints of women whose lives has been damaged irreparably owing to some kind of illness or morbidity. There are many evidences to this claim and some of them can be very well illustrated with the following instances:-

In one of the special cases of the UN special report on Right to Health undertaken by Dr. Paul Hunt in India who came on a mission to India in December 2007. These reports were a curtain raiser of the prevailing health status in the country and published a extremely strong report mentioning the actual reasons for the high risk of the maternal health of the women in India and the trends and practices in India which were violating its International obligations to the right to the health of the women in India. Even after the public display of these reports, the institutions concerned were reckless and casual regarding its response and the basis of this attitude can be inferred from the fact that there was no further mention from the National Human Rights Commission (from here on NHRC). On noticing this reckless attitude of the national institutions, a civil organization named as the National Alliance for Maternal Health and Human Rights, undertook the responsibility to probe this issue by their own. The organization held a nationwide dialogue on this issue in order to promote the report of Dr. Paul Hunt. The list of invitees also included NHRC and happily a member of NHRC did attend that discussion. Even then to the utter dismay, no further action was taken by the NHRC regarding this issue and no cognizance was taken by them and also no account by the govt.

The position of member In charge of the health department in NHRC at that was being held by a person who had his earlier life experiences in the police department. It was very obvious that this appointment can raise question in the minds of every rational man about the relevance and ratiocination of a person with the experience in a police department handling the affairs of health and healthcare on a nationwide platform. It is no wonder that for a person with totally different background will have least interest in pursuing these issues and the same happened and the matter died there only. On this juncture, it will be very appropriate to mention the two cases which is a clear evidence of this carelessness.

The first case deals with the issue of maternal mortality rate in the Barwani district of Madhya Pradesh. In this district, twenty five women died within a time span of 6 months in the district hospital. The district hospital which is regarded as one of the safest place of health and health care breached their duty of care and displayed a sheer negligence in handling the cases of women. This large scale deaths resulted in a widespread public protest undertaken by the local tribal organization because most of the women who died were tribal's. The last case of the death of the women was an act of complete recklessness and negligence caused due to denial & delays by the hospital. Furthermore the local tribal organization took up this issue and reported to the Shayog. We took up this case to the NHRC and
also mentioned the reports of Dr. Paul Hunt in and it was very heartening to know that NHRC did take the cognizance of this issue and eventually sent a letter to both the District Collector and the Chief Medical Officer of the District asking for their response within four weeks. This issue was raised in the year 2011 and two years have elapsed and still there is a not even a single hint of the response for which the concerned officers were responsible.

In another case of extremely high rate of maternal mortality which was going on in the Godda district of Jharkhand where the maternal mortality was going on in an extremely rapid pace. This mishap was taking place in one of the tribal blocks of the area known as ‘Sundar Pahadi’ block. This issue was also reported in one of the articles named “Stairway to Death: Maternal Mortality beyond Number” in the magazine of Economic & Political Weekly of August 2013 edition.19 This case also received a positive reception from the NHRC, which took up the cognizance of this offence and consequentially issued letters to the state govt. for its response on this issue within four weeks. This process started in October 2013 and again the given time has been elapsed and again till now the NHRC is ignorant about this.

The two cases mentioned above are a clear indicator of the fact that although the NHRC may be very proactive and prompt in taking up the issues but it is equally failing in order to keep a track on the development of the issue and in making govt. responsible for a prompt answer and accountability for the grievance redressal and effective investigation of this case.

The UN has a provision of Universal Periodic Review of India’s Human Right Record that has to be submitted to the UN Human Rights Council at a periodic interval of every four years by the NHRC. The last Universal Periodic Review took place in May 2012. After coming back from this review, the NHRC decided that it will intensively monitor on the issue that whether India is actually taking a note of the comments made during the review and the organization will try to better itself in the next 4 years. In this pursuit, the NHRC took an active assistance from the civil society organization like The Health Watch Forum of Uttar Pradesh and the National Alliance for Maternal Health and Human Rights and others and also consulted with the experts in order to create a monitoring framework to track the works of the government. This work started in early 2013 this year and till December 2013, the framework was in place but due to some internal bureaucratic processes and lack of co-ordination between its members prevented NHRC from actually presenting that framework to the govt. and asking the govt. to report back about their progress in following the Universal Periodic Review recommendations. There is an internal kind of delay within the NHRC and NHRC is reacting very slowly. The process of getting the consent of each and every member on every issue is getting onerous and time consuming. The work started in 2013 and now that we have entered the 2014 and taking these all things in consideration, one can easily concludes that only 2 years are left and it will be very difficult in the coming future.
CHILD RIGHTS AND
THE RESPONSE OF NHRC
Child Rights and the Role of National Human Rights Commission

INTRODUCTION

It is estimated that every year 26 millions of children are born in India. Out of the total one billion population, there are about 43 crore children in the age group of 0-18 years. Though India is home to largest number of children, 40 percent of children are in vulnerable section of the society. Most of the children are victims of forced labour, child trafficking, child prostitution, illiteracy, etc. Over the years protection and development of child became priority focus and attention. The Government of India adopted inclusive approach for development and protection of children and introduce various policies and programs on education, health care, nutrition, etc. According to the Constitution of India, “all people, including those below the age of 18 years, are entitled to certain inherent and inalienable rights.” Apart from the domestic law, India is also ratified to United Nation Convention on the Right of Children.

Over the years the laws, policies and practice of child has undergone significant changes. It was only during 20th the concept “child right” was introduced and there was a paradigm shift from the welfare approach to right based approach. The right-based approach includes children as right-holders and state as primary duty bearer. The right based approach is primarily concerned with issues of social justice, non-discrimination, equity and empowerment. Inspite of such approaches and practices for integrated child development and absence of system and standards coupled with gaps in policies, programmes and regulations pose and act as a major hindrance. The importance of equal access to early child care, education, nutrition, health, employment, juvenile justice is a key to positive development of the adolescents. If we analyse the situation in India, we come to the conclusion that children are victims of various forms of violations. It is estimated that India contributes to more that 20 percent of the child death in the world. In India it is estimated that 28 million children in the age group 5-14 are engaged in work. According to 2001 census, 5
percent of children were estimated to be working. In India, we still witness the traditional or customary practices of early and forced marriages. It is estimated that 43 percent of women are victims of early marriage. There is urgent need of more inclusive approach of child-centred and child-sensitive policies, legislation, schemes.

**CHILD LABOUR- ECONOMIC EXPLOITATION OF CHILDREN**

The right of the children to be protected from economic exploitation, from performing any work that is hazardous, interferes with their education, or is harmful to their health or physical, mental, spiritual, moral or social development (Article 32, UN Convention on the Rights of Children).

In India it is estimated that 28 million children in the age group 5-14 are engaged in work. According to the Census 2001, only five percent children were estimated to be working. Government of India adopted National Child Labour Policy, 1987, an endeavour to progressively eliminate child labour in India.

The commission has been receiving reports about the employment of children as domestic servants and subjected to long and laborious hours of work. The commission also receive complaints against government servants engaging children below the age of 14 years as domestic servants. The commission feels that employing children (below and upto the age of 14 years) for work by anyone is reprehensible more so by any Government servant. The commission recommend that “No Government servant shall employ to work any child below the age of 14 years”.

**ROLE OF NHRC FOR PROTECTING CHILD LABOUR**

It is found that children all over the country, especially those belonging to weaker sections of the society, were found to be vulnerable and their dignity and human rights were often trampled. According to the report published by NHRC on child rights, it is mentioned that the commission concentrated on ending the problem of child labour, especially those employed in hazardous industries. It is estimated that some 50,000 children were reported to be working in glass work industry in the district of Ferozabad, Uttar Pradesh. For this the commission adopted an integrated programme in collaboration with number of ministries, Government of Uttar Pradesh, non-governmental organisations, and other stakeholders. This programme was based on three inter-related concepts: income-support for the families from where children went to work in the glass work industry; schooling, including the creation of new facilities, for children weaned away from employment; and rigorous implementation of the Child Labour (Prohibition and Regulation) Act 1986, under which there have been conspicuously few prosecutions and lamentably fewer convictions.

Apart from these the commission also adopted the approach of generating greater awareness and sensitivity in the District Administration and Labour Departments of concerned States. In order to create awareness among the masses, it has come out with a ‘Know Your Rights’ series, in which one of the booklets deals with the issue of child labour. Besides, it has issued specific directions to the concerned State Governments in respect of the detection and withdrawal of children employed in hazardous occupations/processes, the admission of such children into the formal and non-formal system of schooling, particularly the schools established under the National Child Labour Project, the economic rehabilitation of the affected families, and the prosecution of offending employers.[14]
Though the Commission has adopted programmes for the eradication of child labour in India still we can witness that majority of the complaint handle by commission since its inception have been on the issue of child labour. In 2006, out of 2,885 cases registered 489 cases are pertained to child labour. In 2005, Government of India adopted universalition of education for all the children upto the age of 14 years. The reality is that the RTE act is silent on child labour. The polices and programmed adopted by the NHRC are properly implemented on the state. One of the reasons for the non implementation of guidelines or programmes adopted by NHRC is because the recommendations of NHRC are not binding on the state government or any authority.

CHILD TRAFFICKING

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or of receiving of payments or benefits to achieve the consent of a person having control over another persons, for the purpose of exploitation- Article 3 of UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

The NHRC has aside from cases of Trafficking, issued an Integrated Plan of Prevention and Combating Human Trafficking with special focus on Women and Children as well as an Action Plan, detailing how to stop and prevent trafficking. In view of the existing trafficking scenario and at the request of the UN High Commissioner for Human Rights as well as on the recommendations of the Asia Pacific Forum of National Human Rights Institutions, the National Human Rights Commission nominated one of its Members to serve as a Focal Point on Human Rights of Women, including Trafficking in 2001. Among the activities initiated by the Focal Point was an Action Research on Trafficking in Women and Children in India in the year 2002 in collaboration with UNIFEM and the Institute of Social Sciences, a research institute in New Delhi. The main focus of the Action Research was to find out the trends, dimensions, factors and responses related to trafficking in women and children in India. Besides, it looked into various other facets of trafficking, viz., the routes of trafficking, transit points, the role of law enforcement agencies, NGOs and other stakeholders in detecting and curbing trafficking. It also reviewed the existent laws at the national, regional and international level. The Action Research was completed in July 2004 and its Report was released to the public in August 2004. The recommendations and suggestions that emerged out of the Action Research were forwarded to all concerned in the Central Government, States/Union Territories for effective implementation. They were also requested to send an action taken report on the steps taken by them. In order that the recommendations and suggestions of the Action Research were implemented in true spirit, the Commission subsequently devised a comprehensive Plan of Action to Prevent and End Trafficking in Women and Children in India and disseminated the same to all concerned.

Aside from this, Article 23 of the constitution prohibits trafficking in human beings, article 39 of the constitution, a directive principle of state policy, directs the state to ensure that children are not abused or forced due to economic burden to vocations unsuited to their age and strength, and are given opportunities to develop in a healthy manner and that childhood and youth are protected against exploitation and against moral and material abandonment. Despite this, there is only one national law in the country framed specifically to deal with trafficking, that is the The ImmoralTraffic (Prevention) Act, 1956 (amended in 1986).
CHILD MARRIAGE

The first ever step to curb child marriage was the Child Marriage Restrain Act of 1929 which defined a male child as 21 years or younger, a female child as 18 years or younger, and a minor as a child of either sex 18 years or younger. The punishment for a male between 18 and 21 years marrying a child became imprisonment of up to 15 days, a fine of 1,000 rupees, or both. The punishment for a male above 21 years of age became imprisonment of up to three months and a possible fine. The punishment for anyone who performed or directed a child marriage ceremony became imprisonment of up to three months and a possible fine, unless he could prove the marriage he performed was not a child marriage. The punishment for a parent or guardian of a child taking place in the marriage became imprisonment of up to three months or a possible fine. This Act, although a good legislation, did not take into account the diverse personal laws and customary practices which permit child marriages. The punishment prescribed under the Act was also very minimal which did not even have a deterrent effect on anyone.

Thus, the Government of India brought the Prohibition of Child Marriage Act (PCMA) in 2006, and it came into effect on 1 November 2007 to address and fix the shortcomings of the Child Marriage Restraint Act. The change in name was meant to reflect the prevention and prohibition of child marriage, rather than restraining it. The previous Act also made it difficult and time consuming to act against child marriages and did not focus on authorities as possible figures for preventing the marriages. This Act kept the ages of adult males and females the same but made some significant changes to further protect the children. Boys and girls forced into child marriages as minors have the option of voiding their marriage up to two years after reaching adulthood, and in certain circumstances, marriages of minors can be null and void before they reach adulthood. All valuables, money, and gifts must be returned if the marriage is nullified, and the girl must be provided with a place of residency until she marries or becomes an adult. Children born from child marriages are considered legitimate, and the courts are expected to give parental custody with the children’s best interests in mind. Any male over 18 years of age who enters into a marriage with a minor or anyone who directs or conducts a child marriage ceremony can be punished with up to two years of imprisonment or a fine.

The effect of child marriage is multifarious. It is a direct violation of children’s right to personal freedom and growth and specifically their right to decide their own marriage. This practice takes a heavy toll on the physical, intellectual, psychological and emotional aspects of the children involved, with young girls suffering the most.

The NHRC has on a number of occasions intervened in child marriage cases when it has come into their notice via media reports. They have taken suo motu cognizance of the matter in many cases. The NHRC also issued notice to the U.P. and Rajasthan government demanding explanation over a high rate of child marriages in the state, especially in certain districts. Yet, there is long ways to go as child marriages are very much rampant in our country today, destroying the lives of thousands of children.

CHILDREN IN ARMED CONFLICT STATES

Children in armed conflict situations face tremendous problems including risks to the security of their lives. They are subjected to arrest, detention, torture, rape, disappearances and extrajudicial executions by the law enforcement personnel of the government of India. The armed opposition groups and government-sponsored vigilantes are also responsible for serious abuses against children including execution, rape, and forcible marriage. There have been an alarming rise in cases over the years pertaining
to children being killed in fake encounters by BSF jawans and nothing could be done. The NHRC takes
Sou motu cognizance of these cases of it is brought into their light by different organisations working
in the conflict states. But one of the limitation of NHRC functioning is that the commission cannot
take any action against the armed forces.

Procedure with respect to armed forces

(1) Notwithstanding anything contained in Protection of Human Rights Act(PHRA), 1993, while
dealing with complaints of violation of human rights by members of the armed forces, the commission
shall adopt the following procedure, namely :-

(a) It may, either on its own motion or on receipt of a petition, seek a report from the central gov-
ernment;

(b) After the receipt of the report, it may, either not proceed with the complaint or, as the case may
be, make its recommendations to that Government.

(2) The central government shall inform the commission of the action taken on the recommenda-
tions within three months or such further time as the commission may allow.

(3) The commission shall publish its report together with its recommendations made to the central
government and the action taken by that Government on such recommendations.

(4) The commission shall provide a copy of the report published under sub-section (3) to the pe-
titioner or his representative.

In such a limitation it is clear that the commission cannot take any action against the violation by
armed the forces.

Thus the NHRC needs to continue doing the work along with building the pressure on the govern-
ment for the proper implementation of the laws for the rights of children.

TESTIMONIES

BSF Killing

Peparul Sheikh

Chakmathura Village, Murshidabad

Jalangi PS,

On 19 February, 2009, Peparul Sheikh, age 26 years, and his cousin Aminul Islam went to their
farming land for looking after their crops. The said farming land was situated at Dag no-2529 Chak-
mathura under Jalangi PS. Then at about 9 p, they noticed that some smugglers along with three BSF
hailing from Singpara SF Camp trespassed into their farming land. Both Peparul and Aminul soon
apprehended that the crops would be seriously damaged due to the movement of cattle, so that they
tried to resist the BSF constables and the smugglers. The BSF constables then chased Aminul and
Peparul inorder to kill them. Aminul managed to escape from the place but Peparul was caught by BSF
constables. He was then tortured by BSF constables. The victim became senseless due to the barbaric
assault upon him. The one of the BSF constables fired bullet from his rifle.

On 20 February, 2009, Mr Atahar Rahman filed a complaint at Jalangi PS. But the Officer-in
Charge of Jalangi PS did not register the complaint as a First Information Report. On the other hand
the one criminal case was registered by Jalangi PS against the deceased victim vide Jalangi PS with case
no. 46/2009 dated 20/2/2009 under section 147/148/149/186/353/307 IPC. The said criminal case
was registered against the victim up on the complaint of BSF.

NHRC: SOCIAL AUDIT REPORT 361
Fake Encounter by BSF
Kalidas Ghosh
Angrail, Dakshinpara, Gaighata PS,
On 28 December, 2007, Kalidas Ghosh, age 17 years, S/o Kartik Ghosh was shot dead by Mr Ram
Dhan Rathore, a constable in Battalion Number 126 of ‘E’ Company, Border Out Post Number 6 of
Border Security Force (BSF).

The fact of the gruesome incident was that the victim, Kalidash Ghosh went to school at 3.30 pm
for Annual Sports day of Angrail Bidyamandir High School with some of his schoolmate. He was play-
ing with his friends and suddenly the ball reached near the Out Post. When those schoolboys went to
find the ball some officers of BSF chase them and those boys ran away from the school in fear. Kalidas
Ghosh was hiding at the school compound. The perpetator constable followed the boy and had misfired
few occasions, the boy had escaped for few shots, but finally the BSF constable got him into close range
after he followed the boy and shot him dead by firing.

At 7pm in the evening Mr Shubhendu Ghosh, Sub Divisional Officer and MR Subhas Sen, Sub
Divisional Police Officer of Bangaon, reached the place of incident and the body was sent to J.N. Dhar
Hospital, Bongaon, North 24 Parganas for conducting Post Mortem.

On 28 December, 2007, a complaint was filed at Gaighata PS, by the maternal uncle of victim, Mr
Krishnapada Ghosh. The case was registered with case number 454 under Section 302 of IPC. In retali-
ation, BSF also lodge a complaint of victim’s family at Gaighata PS with case no 455 dated 28/12/07
under section 186/353/307 IPC for attempting to murder and assaulting the public servant.

On 18 December, 2008 one official of BSF visited the house of the victim and handed over one
Relinace Life Insurance Policy under the Receipt NO- WC0000139325, Policy/Application No-
73104060 to the victim family in the name of Aparna Ghosh, mother of victim amounting Rs 30,000
and they alos gave her cash money amounting Rs 30,000 to silence the voice of the victim.

A complaint was filed by Krity Roy, at NHRC on behalf of the victim’s family on 5 January, 2008.
The case was registered at the commission with case no-907/25/15/07-08-PF. Till date the commission
did not took nay action.

Case of Chid Trafficking
Gokulpur, Swarup Nagar PS, District North 24 Parganas
Amrita Sur (Name Changed)
Amrita Sur (disguised name), a girl aged about 13 years, Scheduled Caste, of the village Gokulpur,
North 21 Paraganas, West Bengal, was abducted and trafficked.

Kirity Roy (Secretary of NGO ‘MASUM’ and National Convenor ‘PACTT’) made some fact find-
ings on this case after perusing the police report-

For many reasons the police report was biased, concocted and the enquiring officer tried to shield
the perpetrator police officers in this case and did not address the issues in question through proper en-
quiry. It was clear from the report that the accused were not charged under the relevant penal provisions
of Immoral Trafficking (Prevention) Act. The omission on the part of the police by not implicating the
accused persons under the proper penal charges is inaction on the part of the police. The police, instead
of taking lawful action, demanded money from the victim’s family to rescue her.

The statements contained in the police report say that the I.O. collected information about the
missing girl and ascertained that the accused persons took the victim girl to Uttar Pradesh. Here, the
enquiring officers did not mention the date and time when the I.O. came to such ascertainment. The father of the girl in his complaint had specifically mentioned the names of the accused persons with their address located in Uttar Pradesh. But it took about three months for the police to move to Uttar Pradesh and recover the victim girl. The report is absolutely silent as to why there was such inordinate delay in recovering the girl when the father had already in his written complaint alleged that the accused persons took the victim girl and the accused persons are residents in Uttar Pradesh.

The police have not submitted the report under section 173 of Criminal Procedure Code in connection with Swarupnagar Police Station Case no. 258/2011 dated 29/09/2011 under sections 363/365/366 of IPC till date. The enquiring officers also failed to appreciate that lingering the process investigation for indefinite period is another form of inaction on the part of the erring police personnel which causes disappearance of valuable evidences and gives smooth passage for the criminals to evade justice.

The police report also mentioned that only one accused person could be arrested so far. The other accused are still at large. It is not mentioned in the report as to what actions have been taken so far to apprehend the others.

The father of the victim girl had lodged the complaint of missing his daughter at Swarupnagar Police Station GDE No. 337 dated 7/01/2011. But from the police report it is clear that the enquiring officers did not make any enquiry as to what action had been taken by the police of Swarupnagar Police Station upon recording the said GDE. The father of the girl had filed the complaint which was treated as an FIR. The police registered a criminal case u/s 363/365/366 IPC.

Kirity Roy, filed this complaint with NHRC on 1 November, 2011, requesting an impartial investigation of the matter and legal action against the accused as well as the errant police officers. The case was registered at Commission with the case number 1160/25/15/2011/UC.

Kirity Roy tried to draw the Commission’s attention towards the performance of the erring police personnel of Swarupnagar Police Station shown so far in connection with Case no. 258/2011, and that it still isn’t compact and also unsatisfactory.

Kirity Roy demanded of the Commission that the police report placed by the enquiring police officers must be set aside and the matter be investigated into afresh by the Commission's own investigating wing considering the fact that the officers holding higher post in the police department in District- North 24 Parganaas submitted a biased, concocted and fabricated report in order to protect the perpetrator police personnel of Swarupnagar Police Station. He also demanded that the enquiring police officers must be booked under the law following proper recommendations of the Commission for intentionally misleading the Commission to get a favourable decision and by trying to shield the kingpins of the trafficking.

The Commission issued a notice to the concerned Superintendent of the police, dated 8 December, 2011, to submit the police report within four weeks. But the Commission received the report in the month of March, 2012. There is no explanation in the report for causing this delay.

The complaint in the matter of the victim was lodged on 1 November, 2011, the Commission called for the report from the Superintendent on 8 November, 2011, and the victim girl was recovered on 11 January, 2012 as per the police report. Therefore the report itself is an admission of the fact that the police only acted to recover the victim girl after the Commission asked for the report.

The Commission has called for further report from the concerned authorities, but the requisite report has not been received within the stipulated period. The Commission takes a very serious view and directs its Registry to issue final reminder to the concerned authority calling for the requisite report
within four weeks, failing which the Commission shall be constrained to invoke to provisions of Section-13 of the Protection of Human Rights Act, 1993. The additional information was called upon on 28 October, 2008 and the response from the concerned authority is awaited.

**Case of Child Rape**

**Santo Bai,**

**Alwar, Lathki PS**

On 13 April, 2012, Santo Bai, age 13 years was sleeping outside the house along with her sister in law. At about 12-12.30 am she realised that Deendayal son Latumal and one person hold my mouth and took me. They tied my hands and took me away from the house. Then Deendyal and other two raped me and escaped from the incident place. An FIR was lodge with the FIR No. 132/2012

On 15 April, 2012 the case was registered at the Commission with the case no 1355/20/2/2012. The commission issued notice to the SP, alwar calling for report within four weeks. In response to notice, SP has forwarded the report to SP, Alwar. According to the police report, the matter has been invistigated and supervised thoroughly by the senior officer and after investigation, final report was submitted on 27 September, 2012. The allegations of the petitioner have been denied in the police report. In the aforesaid case, the report received from the State authorities was transmitted to the petitioner for comments, if any, within two weeks. The comments have not been received. It is presumed that the complainant does not want to urge further in the matter. The report is taken on record and the case is closed.

**Child Rape**

**Geeta**

**Bharatpur, Roopbas PS**

On 1 February, 2010, Geeta D/o Shri Shayma Babu, along with her brother Lalu went to field to collect some food for the animal. On her way she met Shivya Singh, age 22 years. He then threatened her and raped her. She shouted for help and then some boys who were playing in the nearby filed came for help. Seeing this accused escaped. The victims’ family lodge an FIR at Roopbas PS. But till date police did not took any action against the accused.

A complaint was filed by Satisk Kumar, on behalf of the victim at NHRC. The case was registered with the case no- 275/20/5/2010-WC/OC/SB-2. The complaint be transmitted to the concerned authority for such action as deemed appropriate and the complaint was disposed off.

**Case of Child Trafficking**

**Sabita Mallik (Name withheld)**

**Sharaful Village, Durgapur PS**

On 24 March, 2013, evening Sabita Mallik went to fetch water from roadside, she was allegedly kidnapped by Mr. Nittyananda Misrtri. When the victim girl did not return back to her house for a long, her mother and uncle went to Swarupnagar PS and lodge a complaint, which was entered vide GDE No01486/2013 dared 24 March, 2013.

In the meantime Sabita called her uncle and inform him that she was kidnapped by Mr. Nittyananda Misrtri and took her to Nadia distirct. On 27 March, 2013 after repeated pressure upon the local police, they registered an FIR vide FIR no 183 of 2013 dated 27.03.2013 under section 363/366 IPC.

The family member having no other option lodged a written complaints before the Superintendent
of Police, 24 Parganas (North) on 2 April, 2013 and the Sub-Divisional Police Officer, Basirhat, 24 Parganas(North) on 30 March, 2012 and sought for adequate and help, but till date no appropriate action has been taken.

A complaint was filed at NHRC on 25 April, 2013 by Kirty Roy on behalf of the victims family.

Case of Child Trafficking
Dipti Sheikh (Name Changed)
Duhari Village, Bangladesh

The victim is reportedly minor girl and has been smuggled from Bangladesh to India for the purpose of immoral trafficking by inducing her to get a suitable job in India. She was kept in a house at Hakimpur that night. People of that village came to know that another girl was going to be trafficked. While travelling near the border area in a motor-cycle with the two men, namely Mr Anup Roy and Mr Laltu Sardar, the victim was apprehended by BSF and handed over to Swarupnagar PS. The police charge the victim for illegally entering into Indian Territory.

A complaint was filed at NHRC on 3 June, 2011 requesting for proper investigation. The complaint was registered with the case no 607/25/15/2011/0C. The complaint be transmitted to the concerned authority for such action as deemed appropriate and the case was disposed of.

Child Trafficking
Sajida Khatun (Name Changed)
Pilkahan Village, Haroa PS

On 25 March, 2011 Sajida Khatun was trafficked. She was only 16 years at the time of the incident. The victim’s father came to know that three persons namely Ms. Hafi Khatun, Chakia Bii and Raju Molla, took the village girl with them by alluring her to provide job. The victim’s father went Haroa PS to lodge a complaint. But instead of filing an FIR, the police issued one GDE (General Diary Entry). But till date no action is taken.

Till date the victim girl has not been recovered by the police and the accused person are roaming freely. Moreover the officer in charge of Haroa PS threatened the victim’s father saying that there will be no action in the matter of his daughter as he dared to complaint against the Office-in-charge of Haroa PS before the SP.

A complaint was filed at NHRC on 14 June, 2012 by Kirty Roy. The complaint was registered with the case no-961/25/15/2012/UC/M-1. The complaint was then transferred to the West Bengal Human Rights Commission. The grievance raised in this complaint relates to a matter, which is a subject of the State. Let the complaint be transferred to the West Bengal State Human Rights Commission u/s 13(6) of the Protection of Human Rights Act, 1993, as amended by the Protection of Human Rights (Amendment) Act, 2006, for disposal in accordance with the provisions of the Act.

Case of Child Trafficking
Maya Sarkar (Name Changed)
Tangra Village, Gaighata PS, West Bengal
And
Kamala Kha (Name Change)
Gadadhapur Village, Gaighata PS, West Bengal

Deepali Biswas, D/o Mr Ajit Biswas induced the victim’s mother to arrange a suitable job as a maid
servant for the victim in Pune. Thereafter on 18 November, 2009 Deepali Biswas took the victim to Pune. But suddenly on 23 December, 2012 informed to Maya family that the whereabouts of the victim was unknown to her. On the same day Deepali Biswas through telephone informed Gaighata PS that the victim was missing and the police promptly lodged one GDE no 1400 dared 23.12.2009. The police thereafter did not took any action.

The victim family then went to Gaighata PS to lodge a FIR against Deepali Biswas for immorally trafficking and abducting the victim. But the police refused to record any complaint against Ms Deepa Biswas.

In an another incident the Kamala mother stated that Gopal Debnath offered the victim’s mother to provide a job of maid servant to Kamala in his house. He also assured to give Rs 1000 per month to the victim on account of the job. Thereafter, after three months when her mother went to the house of Gopal DEbanath, she could not find her daughter. He informed that he don’t know about the whereabouts of the victim. He even threatened the victim’s mother of dire consequences if she again dared to ask the whereabouts of the victim. The victim mother realised that her daughter has been immorally trafficked by the said Gopal.

The victim mother went to Gaighat PS to lodge an FIR. But he police refused to take the complaint. On being refused by the police, the victim’s mother filed an application before several authorities and ultimately the police started one criminal case under section 363/365 of IPC. But the police did not complete the investigation till date and girl is also not recovered.

A complaint was filed at NHRC on 25 June, 2011. The case was registered with the case no-587/25/15/2011. Later the commission closed the case stating that “the complaint relate to matter which is barred under Section 36(2) of the Act, hence the complaint is not entertained by the commission, as per Regulation 9(v) of NHRC (Procedure) Regulation, 1997. The complaint was filed and case is closed.”

**Violation of Right to Education**

**Mukesh Balmiki (On behalf of his three children)**

**Alwar District, Rajasthan**

On July, 2010, Mukesh Blamiki got his children, Chandan, Rahul and Vinay, admitted to City Public School, Alwar. The school Administration came to know that the children belonged to Balmiki community, and asked him to withdraw his children from the school. On 27 August, 2010, Mukesh field a complaint to the District Collector, but no action was taken.

A complaint was filed at NHRC by Satish Kumar, on behalf of Mukesh on 28 September, 2010. The complaint was registered with the case number-2041/20/2/2010. Upon perusing the complaint, the commission has asked for a report from DM and SP, Alwar, Rajasthan. As per the report date 20 December, 2010 and 10 February, 2011, receive form SP and DM of Alwar, the allegation made in the complaint are incorrect. The three children were admitted provisionally as transfer certificate were not filed, the name of the children were taken off the rolls of the school. The report further say that Mukesh wanted the school to remove the surname of Balmiki, which school refused to do. Hence, Mukesh himself stopped sending the children to school and got them admitted to one Mamta School. These reports were sent to the complainant for his comments which he has submitted vide his letter dated 26.03.2011. He has stated as under: (i) An inquiry in the matter was conducted by the District Education Officer-I, Alwar, which found discrimination with complainant’s children. (ii) The Deputy Education Director (Secondary) has in his letter dated 08.12.2010 has accepted the fact that
complainant’s children were discriminated against on the basis of Caste. (iii) In the District Public Grievances Redressal Committee meeting held on 28.01.2011, the matter was discussed in which the report of the District Education Officer dated 06.01.2011 was considered. The report said that the school had been directed to refund the admission fee and uniform charges received from the complainant and had been warned not to deprive any student of Balmiki Caste or any other Scheduled Caste for admission in the school. The Commission has carefully considered the material on record. In this case, three inquiries were conducted. One was conducted by the Circle Police Officer of Alwar, on which is based the report dated 20.12.2010 of the SP. Another inquiry was conducted by the Additional District Magistrate (City), Alwar, vide his report dated 02.02.2011. Report of the District Magistrate is based on this inquiry. Third inquiry was conducted by the Principal of Government Higher Secondary School, Desula, Alwar. During the inquiry by the Principal, Government Higher Secondary School, Desula, the complainant denied the allegations that he had asked the school to delete the surname «Balmiki» from the name of her daughter. Rather, he said that he was advised to get his children admitted to some other school, because other students were talking of leaving the school if the complainant’s children remained in the school. He further said that seeing the attitude of the management of the school, he got his children admitted to another school. At the time of the inquiry by the Principal, not a single student belonging to the Balmiki community was found studying in the school, despite the fact that the area in which the school is situated is dominated by Balmiki community. The Inquiry Officer has recommended that the school in question should be warned that students of lower strata of the society and especially those belonging to the Balmiki community should not be discriminated against in the matter of admission in the school and in case of default the recognition of the school should be reconsidered. On consideration of the material on record in its totality, it comes out clearly that even if the names of the complainant’s children were not taken off the rolls by the school initially, the complainant was forced to withdraw them and get them admitted to another school because they belonged to the Balmiki community. On the basis of the inquiry report of the Principal, the Deputy Director of Education (Secondary), Jaipur, concluded that discrimination by the school in question against the student of Balmiki community was apparent out and this he conveyed to the District Education Officer vide his letter dated 08.12.2010. The District Education Officer (Secondary)-I, Alwar, vide his letter dated 16.12.2010 conveyed to the Principal of Balika City Public Higher Secondary School, Alwar, that in future no student of Balmiki community should be deprived of admission by the school and in case of default, the recognition of the school would be withdrawn. This issue was also considered by the District Public Grievance Committee in its sitting on 28.01.2011 and in view of the warning issued to the school in question, the matter was dropped. It is unfortunate that even after 64 years of independence, the practice of discrimination against the people belonging to scheduled castes is in the vogue even in the educational institutions. This cannot be tolerated. The District Magistrate, Alwar, and the District Education Officer (Secondary)-I, Alwar, are directed to see that no school in the District, and especially the school in question, indulges in the practice of discrimination against the weaker sections of the society and the people belonging to scheduled castes and Balmiki community. If such an incident recurs, strong action should be taken against the defaulting educational institution. With these remarks, the case is closed. Copies of these proceedings be sent to the District Magistrate, Alwar as well as to the District Education Officer, Alwar, for information and necessary action. The case was closed.
Case of Corporal Punishment
Kalpana
The deceased Kalpana was a student of Public Girls Kasturba Gandhi Boarding School studying in Class 7th. Like every other day, the teacher Komal Sharma asked her questions on 9th March 2013. She was unable to answer the questions. The teacher got angry and punished her. She then told girls of the class to sit on her back. Afterwards, the teacher herself sat on her back because of which Kalpana got sick fainted and fell down. Her family members took her to Rajgarh Referral Hospital for treatment. But when her condition deteriorated, they referred her to Alwar. Kalpana had been hit by the teacher a lot of time before as well. Even today, children are beaten and threatened at school. During treatment, she died on 19 March, 2013.

The case was placed before the N.H.R.C. on 27 July, 2013 who transferred it to Rajasthan State Human Rights Commission on the ground that it is subject of the state. Thus, they transferred it u/s 13(6) of the Protection of Human Rights Act, 1993, for disposal in accordance with the provisions of the Act. Although 6 months have passed since then, we have received any response. Such a cruel act of the teacher which resulted in the death of a girl deserves to be punished and should be definitely punished.

Case of Sexual Harassment
Shri Baghirath (Father of the victims)
I, Shri Baghirath, 45, was sleeping with my family around 10 p.m. on 11 April, 2008. At that time, Tejpal Gujjar came to my house and started harassing my daughters Mamtta and Guddi. When they started shouting, we reached there and Tejpal ran away. We filed an FIR against him and he was arrested on 22 May, 2008. The case was said to have its decision by 25 August, 2010. Afterwards, on 16 November, 2010, my son was called by Chhoturam while he was going to school and he started abusing my daughter. When my daughter went to talk to Chhoturam, he tried to sway my daughter by giving her Rs. 100-200 and when she started fighting, he beat her. When she came back and told us about the entire incident, we went to their parents to talk about it.

Instead of talking, they started abusing us by using caste related slurs. Afterwards, these people came to our house and started abusing us again. They threatened to kill our entire family. Then on the next morning around 8:15 a.m. they abused our family, beat them and my daughter Mamtta was injured badly, her leg was broken and then the perpetrators ran away. Then the SI came and a thorough investigation of the scene was done along with the medical examination of my daughter. Mamtta was told to get her X-ray done but she refused to do so. As two of the perpetrators are of the same caste, the atrocity cannot come under the SC/ST Act. The perpetrators got a fine of Rs. 200 each and were released. The case is still going on.

Earlier on 15 December, 2010, N.H.R.C. told to transfer the case to Rajasthan S.H.R.C. as the matter is a subject of the state. But then, a public hearing was ordered in the matter on 13 September, 2012 in which the perpetrators were to be punished but no response has been received ever since. My family and I are still waiting to get justice but still no sign of help seems to be there.
DISABILITY RIGHTS AND
THE RESPONSE OF NHRC
The NHRC’s Record on Protecting the Rights of People with Disabilities

If you deny disabled people education opportunities, then it is the lack of education and not their disabilities that limit their opportunities.

– Judy Heumann,
World Bank Advisor on Disability and Development

INTRODUCTION

Prejudices and misconceptions surrounding individuals with disabilities are deeply entrenched in Indian society. Many believe that a person’s disability is the result of karma: a physical or mental impairment is punishment for misdeeds in a past life or the immorality of a person’s parents. Indeed, many Indians believe that at “a profoundly serious and spiritual level, disability represents divine justice.” Even when such spiritual considerations are not an issue, individuals with disabilities are seen as lacking basic capabilities and are generally considered dependent and unproductive. The stigmatization of disability, and the people who have them, is pervasive and affects every facet of life; individuals with disabilities are often denied education, employment, healthcare access, and a meaningful ability to participate in community life.

No one is sure of exactly how many individuals with disabilities reside in India. Lack of awareness regarding what counts as a disability, as well as the stigmatization associated with admitting that a family member faces a disability, has resulted in a significant undercounting of disabled individuals in official statistics. For example, according to the 2011 Census, India had 2.68 crore people with disabilities, consti-

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tuting about 2.21% of the total population. In contrast, the World Health Organization has found that approximately 10% of the world population has a disability, with the number being as high as 20% in countries with higher levels of poverty. The inability to effectively determine the number of people with disabilities has complicated efforts to bring help to those who need it most.

Poverty has an insidious relationship with disability. Poverty, including poor living conditions, health endangering employment, malnutrition, and poor access to health care, causes many disabilities and also leads to secondary disabilities for those individuals who are already disabled, through lack of education, gainful employment, and exposure to higher levels of violence. Together, poverty and disability become part of a vicious circle.

Children with disabilities are often abandoned by their relatives. Some of these children end up living on the streets, while others are trafficked. Many individuals must resort to begging to survive, which makes them vulnerable to laws such as the Bombay Prevention of Begging Act, 1959, which makes soliciting money or food in public places a crime and a punishable offence. The law effectively gives carte blanche powers to enforcement agencies to arrest poor individuals and detain them in certified institutions for a period of not less than one year, and detention for a period of up to ten years for second-time offenders. Arbitrary and discriminatory enforcement mechanisms are used to target individuals with disabilities. In 1990, a shoe-polisher was arrested for presumed criminality based on having “only one hand” while sleeping on the streets. On another occasion, an anti-begging squad accused a boy in New Delhi for looking “lost and bewildered.”

Though legal mechanisms have been introduced to address the concerns of individuals with disabilities, poor implementation and a lack of resources limit their efficacy. Acts of discrimination against persons with disabilities are widespread and in many cases go unchecked. Moreover, persons with disabilities are less likely to obtain police intervention, legal protection or preventive care. Many police stations remain inaccessible to individuals with mobility or communication difficulties, and most individuals in authority are not trained to work with individuals with differing needs. Sadly, many individuals with disabilities are taught that they deserve the violence and discrimination that may face. For these reasons, it is imperative that human rights institutions not wait to hear about problems faced by this community, but instead act proactively to create systematic change.

The NHRC has taken some steps in addressing the needs of people with disabilities. The NHRC established a core group on disability with representatives of several disability NGOs. Unfortunately, according to advocates, the core group on disability rarely meets. The NHRC also has had two special rapporteurs on disability: Anuradha Mohit (from 2006-09) and Prasanna Kumar Pincha (during 2011). Advocates agree that the special rapporteurs, especially Anuradha Mohit, did much to assist individuals with disabilities. From 2006 to 2011, the Commission published several handbooks on the laws that

7. Id.
effect people with disabilities, and made some modest attempts in monitoring the implementation of these laws. The Commission also organized five Regional Review Meetings on Disability during 2008-09 in various parts of the country. Unfortunately, many of these efforts stopped after the departure of the last rapporteur.

A major complaint against the NHRC by advocates for disability rights is the Commission’s view of persons with disabilities as objects of charity, medical treatment and social protection, instead of people with rights. As such, efforts are often limited to piecemeal reviews of individual complaints, or reviews of abuses in hospital care centres, instead of proactive measures to create conditions of equality.

The need for further work to ensure the rights of this community is great, and there is still much more the NHRC can do. Attitudes need to be changed, and the NHRC should continue working with NGOs to foster greater awareness to counter misconceptions about people with disabilities, and work more with government ministries to ensure laws are complied with. Teachers, law enforcement officials, and healthcare workers need training on how to identify and deal with various disabilities.

LEGISLATION

Article 41 of the Constitution ensures that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of disablement. In addition to this constitutional guarantee, there are four significant legislative acts specifically directed towards the protection, welfare, rehabilitation and development of people with disabilities: the 1987 Mental Health Act, which replaced the badly outdated, colonial Indian Lunacy Act of 1912; the 1992 Rehabilitation Council of India Act establishing a council for regulating the training of rehabilitation professionals; the 1995 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, which is the most comprehensive of the Acts and which has a number of provisions to increase the employment and educational opportunities of people with disabilities; and the 1999 National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, which created a national body to enable and empower individuals with certain enumerated disabilities. All four of these laws have had the effect of increasing the rights of resources of people with disabilities. Unfortunately, the definitions of disability given in the various Acts have been criticized for being overly restrictive, and excluding many individuals who are in need of protection.

Importantly, under the Persons with Disabilities Act, there are provisions for the appointment of a Chief Commissioner of Disabilities at the National level and State Commissioners at the State level to take steps to safeguard the rights and facilities listed in the Act. Most advocates agree that the Commission for Persons with Disabilities has not been sufficiently effective; the Commissioners have limited power and their offices are poorly resourced. They have also not been able to counter the overall lack
of political will in the country that prevents the meaningful implementation of existing laws.\textsuperscript{11}

India signed the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on the very first day it was opened for signature, the 30th of March, 2007, and ratified it on the 1st of October, 2007. One of the major developments, post ratification, has been the decision of the Ministry of Social Justice and Empowerment to draft a new law on disability on the basis of CRPD. This was a direct result of advocacy by the disability sector as well as the NHRC. Other disability laws, like Mental Health Act, Rehabilitation Council of India Act and National Trust Act are also being reviewed.\textsuperscript{12}

Unfortunately, data on disability is mostly unavailable or inaccurate and hence, resource allocation and facilities are highly inadequate. Laws meant to protect individuals with disabilities are frequently disregarded. Government agencies have failed to hire the requisite number of individuals with disabilities and have been lax in upgrading facilities to make them more accessible. People with disabilities are often marginalised, discriminated against and abused, and regularly suffer from undue hardships. Systemic abuse and atrocities against people with disabilities continue to be rampant in the society at large.\textsuperscript{13}

The NHRC has the ability to monitor the implementation of these laws and to redress some grievances. It is disquieting, then, that – despite strong evidence from NGOs and various world bodies suggesting that many of the laws meant to protect individuals with disabilities are being openly flouted – the NHRC feels the need to protect the reputation of government entities at the expense of people with disabilities. Despite overwhelming evidence to the contrary, in a report to the United Nations Office of the High Commissioner for Human Rights, the NHRC stated, “[a]ll these [disability laws] are being implemented. As a result, quite a number of persons with disabilities are working on equal basis with others in different positions including as civil servants, in statutory posts in senior positions.”\textsuperscript{14}

The NHRC fully blames the high unemployment of individuals with disabilities entirely on the private sector, without addressing the fact that, for example, quotas for hiring have not been met by the public sector.

EDUCATION

A 2007 World Bank report notes that the illiteracy rate for people with disabilities in India is 52% as compared to 35% for the general population.\textsuperscript{15} The problem is compounded for persons with disabilities living in rural areas who, according to the 2001 census, are more than twice as likely as their urban counterparts to be illiterate.\textsuperscript{16} Children with disabilities are five-and-a-half times more likely to be out of school than the general population, and around four times more likely to be out of school than children from Scheduled Tribes. Importantly, children with disabilities very rarely progress beyond pri-

\textsuperscript{11} Id.


\textsuperscript{15} The World Bank, People with Disabilities in India: from Commitments to Outcomes, May 2007, pp. xii- xv, xviii-xix.

mary school. Indeed, about 95.5% of children with disabilities dropout after primary school (98.5%
of children with a severe disability, 95% of children with a moderate disability, and 93% of children
with a mild disability). Part of the problems is a lack of resources geared towards the specialized learning needs of young
people with disabilities. There are hardly any books for visually impaired students, and often the
books are delivered late in the school year. Students are not provided with assistive devices or teaching
aides. The majority of children with high support needs, particularly children with intellectual impair-
ments, multiple impairments, and autism are unable to access education of any kind. The government
is currently planning to provide children with high support needs with a “home-based education”
alternative, though advocates in the disability sector feel strongly that this proposed move goes against
the idea of inclusion and is in direct violation of Article 24 of CRPD.

A survey by National Centre for Promotion of Employment for Disabled People of 89 schools
across the country found that a mere 0.5% of the total number of students were those with disabilities,
though the Persons with Disabilities Act recommends a reservation of 3% of seats in institutions funded
by the government. Eighteen of the schools surveyed acknowledged that they did not admit students
with disabilities. Twenty percent of the schools polled were not aware of the 1995 Disability Act at all.
While girls comprised 42% of the total student population, among children with disabilities, the
percentage of girls was only 33%.

The NHRC is making some efforts to deal with this gap in education. The Commission has started
a sign language project, which sets up a number of workshops with government ministries and experts
to standardize and use of sign language to educate children fourteen and under. The Commission
has taken suomoto cognizance of a few cases where disabled students had trouble accessing their classes,
though many of these cases are still under consideration. In 2002, the All India Confederation of the
Blind, upon learning that thousands of blind children were not given books in braille in the classroom,
petitioned the NHRC to require that blind children receive their textbooks in braille at the same time as
their sighted classmates get their books in print, and requested a definitive policy outline to ensure the
availability of braille books for the visually impaired children. The NHRC failed to respond. Only
after a Delhi High Court order requiring the distribution of braille books, did the NHRC come on
board, and there have now been modest efforts by the Commission to ensure that braille textbooks are
delivered in a timely fashion. These efforts are laudable; however, they do not systematically address the
causes for the gap in education.

A key issue, where the NHRC can play a role if it so chooses, is in coordinating teacher trainings.

17. The World Bank, People with Disabilities in India: from Commitments to Outcomes, May 2007, pp. xii- xi,
xviii-xix.
19. Universal Periodic Review – India: KEY ISSUES OF 120 MILLION PERSONS WITH DISABILITIES IN
20. “Role of National Human Rights Institutions in Promoting and Protecting the Rights of People with
net/about/annual-meetings/12th-australia-2007/downloads/disability-issues/Presentation%20-%20NHRC%20
of%20India.pdf.
Initiatives%20for%20the%20Visually%20Impaired.pdf.
22. Id.
There is a great need for government entities and NGOs to work together to help teachers understand how to identify, understand, and handle children with special needs. There is also a greater need for monitoring the implementation of government schemes that support young people with disabilities, and for penalizing state-supported educational institutions that discriminate against differently-abled children.

EMPLOYMENT

According to the World Bank, the employment rate for working age people with disabilities was only 37.6%, despite the fact that most people with disabilities are capable of productive work. A perception, that people with disabilities are incapable of working, leads to high levels of discrimination among employers. To counter this the government has set up a scheme to increase employment opportunities for people with disabilities. Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides for a reservation of 3% in the vacancies in identified posts (1% each for persons with blindness or low vision, hearing impairment and locomotor disability or cerebral palsy) in Government establishments including the Public Sector Undertakings. Moreover, Section 41 of the Act provides for incentives to employers to ensure that at least 5% of their workforce is composed of persons with disabilities. The National Policy for Persons with Disabilities, which was adopted in 2006, also lays down pro-active measures to be taken to provide incentives, awards, and tax exemptions to encourage employment of persons with disabilities in the private sector.

While lakhs of disabled people remain on the active registers of employment exchanges, the Government manages to place only about 4,000 disabled people every year. There are thousands more individuals who are either under-employed, do not have information about these employment exchanges, or feel they are unattainable due to barriers such as accessibility or prejudice.

To support employment of people with disabilities, the NHRC worked with HRLN to published Employment of Persons with Disabilities in Government of India. The handbook was aimed at administrators, legal practitioners and persons with disabilities, and was helpful in spreading awareness about the laws regarding the rights of people with disabilities. However, the NHRC can do more to spread awareness about the capabilities of people with disabilities. Importantly, the NHRC can have a greater role in monitoring compliance for hiring within government agencies and for ensuring that employment exchanges better serve the needs of individuals with disabilities.

ACCESSIBILITY

Accessibility is key for the inclusion of people with disabilities in public life. An accessible, barrier-free environment is essential for fulfilling the rights of people with disabilities. Accessibility is a very broad term and includes: access to transportation, voting/elections, clean water and sanitation, technology, communication and media, and the removal of physical barriers, which prevent equality in everyday life. Too many people with disabilities are confined to their homes because they are unable to access any of the public places, transportation or services.

Importantly, people with mobility and communication challenges find it extremely difficult to exercise not only their socio-economic rights but also their civil and political rights. The existing infrastructure for redress, including courts and police stations, are often inaccessible for persons with disabilities. For example, it is very difficult to register cases of violence against persons with disabilities. Indeed, many female victims of domestic violence are often unable to go to a police station, and when they are, their complaints are not taken seriously by police officials.25

The 1995 Persons with Disabilities Act mandates that the state create a barrier free environment for the integration of people with disabilities into the social mainstream. Governments and local authorities are tasked with providing ramps in public buildings, adapting toilets for wheelchair users, adding braille symbols and auditory signals in elevators or lifts, and making sure that all hospitals and medical facilities are accessible to people with disabilities.

Unfortunately, many public facilities remain unavailable to people with different impairments. Access audits by NGOs, which are appraisals of whether certain buildings have met certain pre-determined standards of accessibility, have become a powerful tool in promoting accessibility. The NHRC can have an important role to play, if it chooses, in monitoring compliance with the Persons with Disabilities Act through such audits and through court interventions. As of now, the NHRC does little to participate in such activities.

Access to information is also a major concern for people with disabilities. There are no voice announcements, audio descriptions, information in Braille, or otherwise accessible format for people with visual impairments to access public places and services. Most websites cannot be accessed by people with disabilities, particularly by people with visual impairments.26 There rarely are sign language interpreters in public spaces. Indeed, there are only about 250 Sign Language interpreters in the entire country for as many as 18 million deaf Indians. There are no captions in television programmes. The NHRC can take greater steps to ensure basic access to information.

Disaster preparedness measures for persons with disabilities are highly inadequate. The Disaster Management Act does not reference the specialized needs of individuals with disabilities in the event of a calamity. Access to emergency services, such as ambulances, fire engines, or police for persons with disabilities have not been given due priority. Most of these services have to be accessed telephonically (by dialling 100, 101, and 102, for example) and there are no alternative methods for persons with speech, hearing, and communication disabilities.27

Sadly, people with disabilities are more likely to be left behind or abandoned during evacuation in disasters and conflicts. They may be separated from their family members and caregivers, as well as their assistive devices (e.g. wheelchairs, prosthetics) or may be unable to operate them in a disaster (e.g. aids that run on electricity or batteries). Shelters and relief camps are frequently inaccessible to persons with disabilities, and food and water distribution centres are usually not very accessible. Resources may become scarce in a disaster situation, and there is a potential for discrimination on the basis of disability in such scarcity.28 The NHRC can also play a role here by developing policies on helping individuals with

25. Id.
disabilities in disaster situations, and by providing training to disaster professionals on how to handle the special needs of individuals in this community.

INADEQUATE CARE IN INSTITUTIONS

Harassment and torture of people with disabilities in healthcare institutions is endemic. The problem is particularly acute in institutions housing persons with psycho-social disabilities. There is evidence of a pervasive culture of dehumanization, lack of privacy, inactivity, inadequate food and heating, poorly trained and supervised staff and isolation from community activities. Furthermore, violations in such settings have the tendency to go unnoticed due to a lack of scrutiny by authorities.

There are frequent cases of wrongful or fraudulent confinement, sexual exploitation, forced sterilisation, hysterectomies, abortions and denial of treatment. Many Psychiatric Units continue to use direct Electro-Convulsive Therapy (ECT) (commonly known as shock treatment) on persons with mental impairment. ECT is used in many hospitals across India in unmodified forms, which means that people are being restrained and electrocuted without any anaesthesia or muscle relaxants.

In 2010, newspapers in Maharashtra reported several independent suicide and homicide deaths in a public mental asylum. Later that winter, two people froze to death in another asylum. In Chennai, the police sent three hundred homeless people from the streets and directly sent them to a Kilpauk asylum for treatment. In Karnataka, forty individuals, believed to suffer from mental illness, died within a beggars' home. In early January, 2011, headline news in Mumbai Mirror described the atrocities happening in Masina Hospital, a private asylum in Mumbai, where people were fraudulently committed, and there were many instances of forced admissions and “overuse” of shock treatment and medication.

The attached petition to the NHRC is a good example of the type of abuse frequently seen in state-run institutions. In 2008, women confined at the Kolkata Pavlov Mental Health Hospital were stark naked. Officials as the hospital claimed that keeping female patients naked was not a violation of their rights to dignity or privacy, because these women did not care if they were clothed or not. The officials were similarly unconcerned about the fact that keeping patients unclothed created an atmosphere that could permit sexual assaults and rapes, a problem already pervasive in many mental health facilities. In this case, the NHRC did not look at the case, but instead referred the issue to the Chief Secretary of West Bengal. The NHRC did not follow-up to see if the Chief Secretary dealt with the case.

People with disabilities are subjected both to physical and mental abuse through beatings, sexual abuse, wilful neglect and inhuman and degrading living conditions. Institutions often display inade-
equate management practices, an unacceptable staff to patient ratio, over-crowding, appalling health and hygiene conditions, and a disproportionate and indiscriminate use of restraints, such as chains. The staff in these institutions often feel that it is acceptable to treat people with psycho-social disabilities in this manner because their disability renders them less than human.

In 1997, the Supreme Court, in *Rakesh Chandra Narainetc v. State of Bihar*, requested that the NHRC monitor three mental hospitals in Ranchi, Agra, and Gwalior. The case involved the “the abysmal living conditions, the inadequate diet, the budgetary limits on medicine and the absence of staff,” at these institutions. Once the NHRC intervened, there was a noticeable improvement in conditions at these particular hospitals.34

Conditions again became part of the national consciousness following the 2001 Erwadi fire incident, in which 28 mentally disabled individuals were burned alive while bound by chains at the MoideenBadusha Mental Home in Erwadi Village in Tamil Nadu. People believed that the holy waters from a nearby dargah would cure mental illnesses, and would consequently leave their relatives in institutions that catered to this belief. In addition to the holy water, the “treatment” for curing a person’s mental impairment included frequent caning and beatings meant to drive away any evil in the person. During the day, patients were tied to trees with thick ropes. At night, they were tied to their beds with iron chains. On 6 August 2001, 28 patients died in an accidentally fire; they were chained to their beds and were unable to escape.35

Following the Erwadi fire, the NHRC increased its surveillance of public institutions that house the mentally disabled. The Commission’s involvement produced noticeable improvements in food and hygiene, and many of the most problematic abuses were curtailed at these institutions. However, the NHRC’s involvement was limited and many advocates believe that the NHRC should have done more. The NHRC’s efforts at monitoring were often limited to correcting the worst abuses, but there were rarely any systematic efforts to improve conditions or provide training to health professionals.

Importantly, the NHRC’s efforts have concentrated on public institutions. However, people with disabilities are also confined in private hospitals, beggars’ homes, and religious institutions. These institutions, which are performing a state function, are not sufficiently monitored.

Additionally, unlicensed and fake institutions are rampant, and there appears to be either wilful blindness or negligence in adequately regulating healthcare institutions to make sure unlicensed institutions are closed. Recently, a fake NGO by the name of ApnaParivar, in Dholpur, was found housing over twenty people with psycho-social disabilities. Men and women were held unsegregated, under unhygienic conditions. There was no segregation by gender and the food being provided was meagre. Occupants stated that they had been tortured.36 The NHRC needs to make greater efforts in making sure unlicensed institutions are unable to operate.

**UNDERTRIALS AND PRISONERS**

Further, problematic are the conditions of mentally ill undertrials and prisoners whose medical and legal

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needs are not being met. Here too, the NHRC has a role to play in training medical practitioners and prison officials who work at these facilities. The NHRC has been involved in monitoring the conditions of undertrials, and have regularly talked about this problem in its annual reports. Still greater advocacy by the NHRC is needed.

Undertrial prisoners, unable to face trial because they have been deemed incapacitated for such purposes, often languish in mental hospitals for years longer than the maximum period of sentence for the offences they were originally charged with. According to Advocate J. Sandhya, who is with HRLN, “a mentally challenged person can be tried by courts only if it is certified that he is fit to stand trial. Due to this, in most of the cases the mentally ill persons have to undergo imprisonment for many years. In some cases inmates suffering from mental ailments have remained in prison for 19 to 24 years.”

Even for those individuals who have been properly convicted, needed medical services for people with disabilities in prisons are limited. According to the latest Prison Statistics prepared by the National Crime Records Bureau (NCRB), 296 inmates across the jails in the state are suffering from mental illness. Out of them 224 have been convicted and the rest are undertrials. As per the report, inmates with mental illness account for 4.26 per cent of the total 6,947 prisoners lodged in the jails in the state. However, these figures potentially underestimate the true number of individuals in need of mental health services. Recent studies by psychiatrists suggest that approximately 20% of India’s prison population may be suffering from “severe” mental illness.

In almost every annual report on its website, from the 1993-1994 report to the 2008-2009 report, the NHRC has made reference to the specialized needs to mentally ill individuals in the criminal justice system. This effort has been a helpful one. The NHRC should expand on these efforts by helping prison officials standardize methodology used to identify and assist special needs inmates.

**GENDER-BASED VIOLENCE**

According to USAID, women and girls with disabilities are particularly vulnerable to abuse. For example, a small 2004 survey in Orissa, India found that virtually all of the women and girls with disabilities were beaten at home, 25% of women with intellectual disabilities had been raped and 6% of women with disabilities had been forcibly sterilized. A recent World Bank study states that women with disabilities are at a higher risk of obtaining HIV/AIDS due to lack of awareness and lack of access to traditional HIV/AIDS programs. Such problems are compounded by the fact that many women with disabilities are denied reproductive health services because they are considered to have no marriage prospects.

When women with disabilities work, they often experience unequal hiring and promotion stand-

ards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation, and they rarely participate in economic decision-making.\textsuperscript{42} While the NHRC has looked at issues of individuals with special needs, as well as discrimination against women, it would be helpful if the NHRC also examined the special problems, which arise when people belong to more than one marginalised group.

**HUMAN TRAFFICKING**

Persons with disabilities remain one of the groups most at risk of being trafficked. Persons with developmental disabilities are often bought and forced to work as peddlers on the streets of India. Girls with disabilities are frequently used in the sex trade. Despite the high incidence of trafficking of persons with disability, governments often ignore this risk factor, or fail to make provisions for persons with disabilities as part of their anti-trafficking efforts.\textsuperscript{43}

The stigma and marginalization of a person with disabilities creates a particular vulnerability. For example, parents who see no hope of jobs or marriage for their disabled children may place those children in exploitative situations with the intent of shedding a “burden” or seeking income. Where schools fail to accommodate students with disabilities, high dropout rates leave them on the streets and at much higher risk of being trafficked in forced begging or other criminal activities. The commonly held view that persons with disabilities are not sexually active increases the risk of sex trafficking for persons with disabilities, especially disabled women and girls. For example, a Global HIV/AIDS survey conducted by the World Bank and Yale University showed that women and girls with disabilities were assumed to be virgins and thus targeted for forced sex, including by HIV-positive individuals who believed that having sex with a virgin would cure them.\textsuperscript{44}

Societal barriers limit the access of persons with disabilities to systems of justice. Lack of training of police, prosecutors, and judges on how to accommodate persons with disabilities (through, for example, sign language interpreters, can leave victims with disabilities unable to provide effective statements and report the abuse they have endured. Unwillingness to credit the testimony of witnesses, especially those who are blind, deaf, or have mental or developmental disabilities, leave such victims excluded from processes that should provide them with redress. This exclusion of persons with disabilities from the justice system in turn contributes to their being targeted by traffickers, who might assume that such victims will be less likely to raise an alarm or seek help.

Even in instances in which victims of trafficking do not have disabilities, the experience of being trafficked substantially increases the risk of victims acquiring disabilities as a result of physical and psychological trauma. It is thus essential that victim service programs include resources for those with a wide range of physical, sensory, learning, mental, and developmental disabilities.

The NHRC can play a very real role in helping this community, which is rather vulnerable to traffickers, by helping raise awareness on this issue and by training police officers on how to help victims who may have special needs.


\textsuperscript{43} US Department of State, Topics of Special Interest, Trafficking in Persons Report 2012.

\textsuperscript{44} Id.
Conflict Areas
Javed Ahmad Tak grew up in the Ananttag district of Jammu and Kashmir. His cousin was affiliated with the National Conference Party, which was then being actively targeted by certain militant groups. On 21 March 1997, strangers broke into his house in an attempt to kidnap Javed’s cousin. In the ensuing melee, Javed was shot. A bullet hit his spine, and rendered him unable to use his legs. He also lost his right kidney, spleen, and parts of his liver and intestine. The police and paramilitary did little to help Javed, and his case file was promptly closed. At the time of his injury there were no rehabilitation centres in Kashmir that could handle his spinal injuries. If he had access to such a facility, his impairment may have been less severe, but he was unable to receive such help for another ten years, at which point the damage was done.45

Armed conflict, and the extensive use of non-lethal weapons in civilian areas, creates a variety of physical traumas, health problems and severe disabilities for the people living in a conflict area. According to the New York Times, the extensive use of landmines has also left its mark.46 One hamlet, where many individuals have lost limbs, has become known as the “village of the handicapped.”47 Mines continue to cover the countryside, and the army refuses to do anything about it. According to Tehelka, “Official statistics for mined areas or casualties don’t exist, while the army doesn’t disclose them citing “security reasons.” Around 16,000 acres in Jammu and 1.73 lakh acres in Kashmir were reportedly mined to prepare for a war that never took place. Although some areas were demined, a large portion remains rigged.” Mines also shift because of earthquakes, rains, and flash floods, making it even harder to avoid them. Hope Disability Centre, a non-governmental organisation which works in collaboration with the Paris-based Handicap International in Kashmir, estimates that more than 2000 people have been affected by landmines during the past two decades of conflict. The government offers “militancy victims” 750 rupees per month, or less than $12 a month, and those who are unable to prove that their injuries were related to the conflict are given monthly allowance of 400 rupees, or approximately $6.38. The money is insufficient to deal with either medical costs or basic living expenditures, and is often slow to arrive even for those who can prove their eligibility.

Armed conflicts also cause great psychological traumas. According to psychiatrists, Kashmiris are currently facing an epidemic of post-traumatic stress disorder (PTSD). Moreover, the trauma of living in a region torn by violent conflict will leave many children with learning disabilities.48 In 2006, Mushtaq Margoob published a research paper in the JK Practitioner in which he found that the nature of Kashmir conflict - sustained, unpredictable violence over a long period – had left similar mental health problems such as those seen in area of prolonged conflict, such as Bosnia, Northern Ireland and Rwanda.49

47. Id.
48.

382 RUGGED ROAD TO JUSTICE
According to Dr. Rita Pal

The number of patients visiting the Government Psychiatric Hospital in the year 2008 reached approximately one lakh, in comparison to 1989 when only 1700 patients attended. By October 2011, a study conducted at Sher-e-Kashmir Institute of Medical Sciences demonstrated that 55% of Kashmir’s population suffered from various psychiatric disorders. About 58% of the population has been through mental trauma, leading to about 800,000 individuals suffering from PTSD.50

Women are particularly vulnerable to mental health disorders, given the prevalence of conflict-related rapes, as well as the inability of many “half-widows,” of wives of men who were disappeared during the conflict, to remarry, inherit, or otherwise move on with their lives.51

Individuals with pre-existing disabilities are susceptible to added violence in areas of conflict. Advocates note situations where police open fired on deaf boys who did not stop when told to, because they did not hear the officers. Police and army officials are already on high alert in places where conflict or militancy is expected, so when confronted with individuals with developmental or mental disabilities, security officers often overreact. Moreover, in areas with already high incidence of rape, women with disabilities are usually at even greater threat of being targeted.

Kashmir, like many conflict areas, has limited medical facilities to help people with disabilities. According to the Humanity Welfare Organisation, “there is a huge underestimation of persons with disabilities in the State. There is only one centre for rehabilitation and one psychiatric hospital in the entire State.”

JavedTuk, who founded the Humanity Welfare Organisation, has repeatedly approached the NHRC regarding the rehabilitation of individuals who have been injured by the conflict. Sadly, the NHRC has had little to contribute. Individual cases have been delayed for years, and the Commission has been unwilling to make significant contributions in police discussions around this issue.52

A significant hurdle in helping people with disabilities in conflict regions is a proper assessment of the number of people who have been, for example, hurt by mines or unexploded ordinances, or have suffered psychological trauma as a result of the conflict. Given its extra-ordinary fact-finding authority, the NHRC can make a very real contribution towards helping people with disabilities if it contributed towards the effort to gather credible information that can then be used by towards the formulation of health policies in these areas.

CONCLUSION

The NHRC has made many laudable steps to work on issues related to the rights of people with disabilities. The Commission has established a Core Group on Disability in 2001, and invited a number of well-respected NGOs to participate on the Commission’s work on this issue. Two additional core groups, that specifically address issues related to mental health, were established shortly thereafter. Unfortunately, these groups do not meet frequently. The Commission also has had special rapporteurs on disability. AnuradhaMohit, the rapporteur from 2006 to 2009, was particularly well regarded, and she worked with NGOs and others to spread awareness on a variety of important issues related to the rights of people with disabilities. Unfortunately, since her departure, the NHRC’s commitment to the needs

50. Id.
52. Interview with JavedTuk on 20 Nov 2013.
of people with disabilities seems to have decreased. The NHRC would benefit from another rapporteur who is as committed to the rights of people with disabilities.

ANIL ANEJA
Vice President, All India Confederation of the Blind

The Constitution of India guarantees rights for people with disabilities. However, these entitlements are not explicit or straightforward but derived from other constitutional rights. They are constantly challenged by societal prejudices. Barriers to their realisation are,

1. Social impediments and prejudices against people with disabilities. The implications of societal attitudes objectify people, who are no longer treated as human beings. People with disabilities have been historically ostracized and victimized by their communities. While this view could be perceived as harsh, these realities have been prevalent historically and continue in India.

2. Due to disability, accessing rights is onerous and difficult. A disabled person may be limited in community participation. A disabled person cannot gain the benefits of life he would otherwise have enjoyed. Legal provisions and external support become important for a disabled person. This viewpoint is not an attempt to undermine the rights of other categories of people in society. It explains people with disabilities may need protection to enjoy the benefits ordinarily accessible to others.

Disabled people face limitations, they are not incapable. Let me share with you some examples of prejudices against people with disabilities. The present Secretary General of All India Confederation of the Blind (who is visually impaired) acquired his job in the late 1960s. On his first day of work, when he was having lunch, he realized that a hand was taking food from his lunch box to feed him. The experience shocked him and prompted him to consider the perceptions of disability within society.

My second example shows clear evidence of discriminatory attitudes towards disabled people. A man who graduated from Agra University with a first class PhD in English was denied a job as a teacher. The administration believed he could study but doubted whether a visually impaired person could teach. Even when he could obtain a job as Lecturer, he was observed for a month through skills assessments. The policy was not applied to other teachers and was discriminatory. These disheartening events are examples of humiliations and social prejudices, encountered prior to the 1980s.

The decade after 1980 witnessed a revolutionary campaign for the rights of disabled people. However, discrimination persists. Although, it is noble to provide everyone with the right to enjoy their rights on an equal basis, the problems faced by disabled persons are different and graver, due to external obstacles. These can be physical and legislative and are not confined to social prejudices, which can be overcome by educating and sensitizing society. The role of socio-legal and legislative institutions like the National Human Rights Commission (NHRC) is essential and important.

The Persons with Disabilities Act was passed two years after the formation of NHRC. Given the rights-based environment in India during the 1990s, the NHRC was expected to be a strong tool and a platform to promote disability rights. Unfortunately, the NHRC failed to live up to expectations.

The duty of the NHRC was not to provide some elixir to the dying rights of the disabled people, on the contrary, its duty was to promote and preserve the rights promised under the PWD Act. The task of the organization was not to provide these people with new rights. Rather as mentioned in the PWD Act, it was to provide equal opportunities and protections. Hence, it was natural to hope NHRC would act as a catalyst in promoting the rights of people with disabilities. This view stemmed from its status as a national platform to ensure equality and protection. Initial activities were a ray of hope but
later the organization lost energy and focus with respect to disability rights.

Where there is institutional will, the NHRC acts effectively. Clear examples of activist potential are,

- Thirty three cases were heard in the NHRC ‘Open Hearing’ in New Delhi on atrocities against SC in Meerut Division of UP.
- NHRC issued a statement appealing to the Government for suitable modification of Section 377 of the IPC to protect the rights of gay individuals.
- NHRC inputs to Justice V arma Committee.

However, the NHRC has done little to promote disability rights. After reviewing the records, one can conclude disability rights are not a priority. Attention is missing, a serious issue which needs to be addressed and remedied. This careless behavior gives rise to essential questions,

1. **Do mechanisms and systems exist in the NHRC to act decisively?**

The answer is ‘yes.” The NHRC has the power to act decisively. It fails to do so, because of ignorance surrounding the rights of the disabled. The basis of this assumption can be inferred from the website. The opening page is a gateway to the introduction of the splendid work and motives of the organization. It is the organization’s preamble and embodies the basic principles.

In one corner of the page, there is a list of human rights for which this organization is sentinel. The sight leaves a person who supports the rights of disabled in dismay. Disability rights are absent. It would be unjust to condemn other rights for displacing disability rights as all rights are equally important. However, it is shameful not to include disability rights as ‘Human Rights’. This indicates the ignorant attitude of the NHRC towards a section of society with a need for access to rights. Deprioritisation of disability rights is a clear indication of the disregard and lack of concern of the organization towards disabled people. Despite NHRC’s core group dealing with disability rights, the priority is absent and the condition lamentable.

2. **Statement on disability rights section of the NHRC website:**

“The NHRC is deeply concerned about the fact that people with disabilities face various forms of discrimination, social exclusion and marginalization. The Commission has therefore taken several initiatives to protect the rights of the disabled. Notably, the NHRC has been redressing individual complaints from NGOs and others; the Commission reviewed relevant legislations and made recommendations for improvements thereon; it has successfully championed the need to enumerate the disabled in Census 2001. It has made recommendations to both Union Ministers and Chief Ministers of all States and Union territories requesting them to evolve a State Disability Policy and Plan of Action, to provide social security, employment opportunities, rehabilitation, and barrier-free infrastructure to benefit the disabled. In addition, the Commission has been taking steps to spread awareness of the rights of the disabled through publications, besides undertaking research studies. 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.”

At first glance, this statement seems really wonderful. Until one realizes that the statement was written prior to passing of United Nations Convention on the Rights of Persons with Disabilities (CRPD), and prior to India’s ratification of the Convention in 2007. In other words, it has been more than seven years since the NHRC’s statement regarding disability rights has been modified or updated.

To demonstrate the ground situation with regard to NHRC’s engagement with disability rights, it is pertinent to mention that our organization, the All India Confederation of the Blind took up two
issues with NHRC seeking their interventions and on both occasions it was disappointed. The first of these issues related to the non-availability of Braille books to visually impaired children, which we believe, is their basic human right to realize the fundamental right to Education as enshrined in the Constitution of India and in Chapter 5 of the Persons with Disabilities Act. So in October, 2002, we sent a representation to NHRC requesting them to ensure this right for the visually impaired. After some reminders from us, all NHRC did was to forward our representation to the Ministry of Social Justice & Empowerment without any further action. Eventually, we had to approach the courts to realize this right of visually impaired children.

The second issue related to the death of a blind child in the National Institute for the Visually Handicapped, a body under the Central Government. We believed that the child died due to non-observance of accessibility norms. Again, the NHRC took no action on this issue. Thus, these two examples clearly demonstrate the total indifference of NHRC towards issues concerning persons with disabilities.

3. Recommendations

It is easy to be sympathetic about situations, but to affect change one must establish solutions. My recommendations are,

1. Formation of a Core Committee for grievance redressal of persons with disabilities. There is an urgent need for the establishment of a Core Committee dedicated to the grievances of the disabled persons and protection of their rights. As is well known, laws and issues relating to disabled persons are specific. Therefore, there should be a specific structure for grievance redressal.

2. Networking with NGOs and others who understand disability-specific issues. It is a common perception that “disability” is a single entity or criteria, including all people who are physically or mentally challenged. This is an erroneous perception. In a sense it may be true, but there are also specific disabilities, completely different from each other. Similarly, there are many specific organizations working at the ground level to address relevant issues. Organizations at the roots are the best bodies to explain the situation and help the NHRC to understand the needs and desires of particular sections. There is a pressing need for cooperation between these organizations, working intensively on different disabilities and the NHRC.

3. Ensure strong follow up actions. The NHRC must produce a constructive output of the issues they undertake. It is a common instance that an issue loses its rhythm. NHRC actively submits a notice or may write a letter, but eventually falls short in follow up. This fails to provide the desired results and recommended actions. There is an immediate need for the NHRC to strengthen its follow up mechanisms, not only for disability sector but also in general. This would fill a huge void.

4. Ensure appropriate modifications in legislations and policies. NHRC should act like an advisory body in terms of disability rights. Proactive participation leads to fruitful results. It is one of the bodies who should be more aware of the relevant needs, problems and solutions. In recent years, there is no evidence of a proactive role. An instance supporting this statement is the failure of the organization to ensure the nomination of any of their members on the drafting committee to formulate new bill on the rights of persons with disabilities. NHRC claims to provide inputs, however, its own members are missing from the committee. There is an urgent need for changes in various legislations due to ratification of UNCRPD. NHRC can play a huge role in this change.

5. Undertake intense community sensitization through media and other agencies. Major barriers
are social prejudices, attitudes and behaviors of society. It is mentioned in Section One of UN-CRPD. NHRC should start an intense campaign to adequately sensitize people. The people are required to be adequately and appropriately sensitized about the needs and problems of the disabled persons. There is a need for strengthening and empowering persons with disabilities through strong statutes and laws.

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The NHRC Protection to the Rights of Persons with Psychosocial Disabilities: An Evaluation

INTRODUCTION

Human Rights can be described as the shield of the powerless against the acts and assignations of powerful persons in authority. Feminist thought has brought home the futility of the public–private divide. How the divide has only functioned to reinforce patriarchal ideology and the male stranglehold. It is necessary to make this assertion at the start of this testimony because when it comes to persons with psychosocial disabilities, the state through legislation authorizes medical professionals generally and mental health professionals more particularly, to make care and treatment decisions for the person with psychosocial disabilities, with the consent or on the request of the family of the person living with mental illness. In other arenas, the State empowers the family or heads of State institutions to decide for person with psychosocial disabilities. The consequence of this law endorsed substituted decision-making is that once a person is diagnosed or labelled as a person with psychosocial disabilities, such person no longer retains autonomy over his or her life.

The traditional legal approach to the human rights of persons with psychosocial disabilities only requires that such labelling is made with requisite care and caution. Hence a person who is not so impaired should not be so labelled. The traditional approach also requires, that once such diagnosis has been authoritatively made, then the survival needs of persons so labelled or diagnosed, as determined by the non-disabled world, be provided for. The issues of agency and choice are not viewed as issues of concern, in the human rights discourse of persons with psychosocial disabilities. These are viewed as the rights of the non disabled alone; and this is the case, even when power is being wielded on persons with psychosocial disabilities by the police, judges, mental health professionals and pharmaceutical companies -- who can be counted amongst the most powerful seats of authority. The assertion for voice and agency, even along with a diagnosis of psychiatric impairment has only arisen in the disability rights discourse. This discourse points to the social and legal barriers to the full participation of persons with psychosocial disabilities. This approach questions the best interests’ perspective of the traditional discourse; and requires the legal capacity of all persons with psychosocial disabilities be recognized in all areas of life. Disability human rights countervail the power of the State, professionals, and the family. The traditional legal approach only seeks the fair process requirements of the law; whether it advances the human rights of persons with psychosocial disabilities remains debatable. My testimony on the contribution of the NHRC towards the human rights of persons with psychosocial disabilities addresses this primary question: if there is an asymmetry of power between persons with psychosocial disabilities
and the rest, then how does the NHRC address this asymmetry? Does it acknowledge the imbalance of power and attempt to remedy it; or does it advertently or otherwise only reinforce the asymmetry? I attempt to answer this question by recounting and evaluating the NHRC’s interventions for persons with psychosocial disabilities.

### Quality Assurance in Mental Health Care

Amongst the early forays of the NHRC in the field of psychosocial disability was to commission a comprehensive evaluation of public mental health services in the country. This study undertaken by a team of Psychiatrists from NIMHANS, Bangalore evaluated the services on therapeutic and non therapeutic parameters to find the level at which the service was being provided and what would need to change to assure quality. With this research the NHRC armed itself with facts and figures on what was missing in the mental health services; and thereby enabled governments and policy makers to take appropriate remedial steps. Both the study, and the NHRC’s reception of it, proceeds with this evaluation in the calm assurance that the bio-medical psychiatric route was the only way of providing for mental health care. That there are objections raised by people with psychosocial disabilities and others, on the side effects of these interventions, do not concern the researchers of the study, and more significantly the NHRC. The person with psychosocial disability, who questions the bio-medical model, is challenging the most potent concentration of economic power—the pharmaceuticals. The protection of human rights was required if this David-Goliath joust could happen on a level playing field; however the NHRC did not deem it suitable to provide any space for these counter opinions. If instead of providing for opportunity to dissent, such opportunity is squeezed away, then the situation cannot be described in harmony with human rights.

The mental health legislation and its implementation did not provide voice to the person who was being provided treatment. However at no point was this denial perceived as even problematic, let alone unacceptable. Article 21 of the Indian Constitution requires that no person shall be denied of life and liberty except according to procedure established by law. After Maneka Gandhi it has been accepted that such the procedure by which such deprivation is imposed should be just fair and reasonable. The Mental Health Act of 1987 provides for compulsory institutionalization of persons with mental illness because they are danger to self or others. Insofar as such institutionalisation would deprive liberty, fair process would require that such institutionalization should be a last resort option, however no such provision exists in the Mental Health Act and the NHRC in seeking quality assurance in mental health did not feel impelled to seek alternatives.

Similarly, when the NHRC on the direction of the Supreme Court of India undertook the monitoring of mental hospitals, it primarily confined itself to upgrading the facilities available to the inmates. A human rights sensitive approach would have required that an exit process and not just a discharge procedure should be incorporated in the Act. However except for supporting some programmatic interventions the NHRC did not seek legal recognition of the liberty rights of hospital inmates. Interestingly, the NHRC supported the cause of persons with epilepsy and advocated that the disqualification to marry subsisting in matrimonial laws should be repealed. This may be because in that case the medical establishment also supported the repeal.

### The Supervision of Mental Hospitals and the ouster of Faith Healing

In the heyday of social action litigation for disempowered groups, the Supreme Court of India took upon itself, the unenviable task of upgrading mental hospitals. The court tried to obtain enforcement of
its directions by keeping the cases on board and seeking continuous reports from the hospital. At some point, the Supreme Court, in fatigue, handed over this duty of oversight to the NHRC. The Commission did try to oversee the task by deputing its responsibilities to other civil society organizations. These organizations attempted to make the conditions bearable by themselves undertaking the duties of the hospital; or at least to provide hope to the inmates of the hospital. Thus in Gwalior, a halfway house was established on the premises of the hospital. The effort did not yield the desired fruits as there were constant jurisdictional battles between the hospital and the halfway house, which required the NHRC to play arbitrator.

The NHRC has been established as an independent statutory authority, which is mandated to protect the human rights of the citizens, from all State entities including the court. The intervention that the Commission filed in the apex Court asking it to review its decision of awarding death sentence to a juvenile on an incorrect interpretation of the Act is a case in point. Yet in the aforesaid case the Court virtually directed the Commission to do its bidding. The unquestioned receipt of this direction prevented the NHRC from forming an independent view in the matter, which is necessarily problematic for a human rights institution.

In similar vein, the Supreme Court obtained the involvement of the Commission in the Erwadi controversy. Erwadi was a so called faith healing place where 27 inmates were burned alive in a makeshift living facility because they were kept in chains. The Supreme Court peremptorily prohibited the use of chains; but more problematically asked all faith healing places to be closed and inmates shifted to the nearest mental hospital. The Court directed the NHRC to oversee the implementation of the orders. Whilst the ban on chaining can in the main be acceded to; the blanket closure of faith healing places definitely required reconsideration. The Court had proceeded on the presumption that all faith healing places were per se harmful, whereas a number of studies, even by psychiatrists, have found otherwise. Moreover, what kind of treatment an individual wishes to obtain, and from whom, is an integral part of autonomy and choice. The Supreme Court by intervening without seeking or considering the will and preferences of the users of these services robbed them of their choices. The NHRC, by agreeing to monitor the implementation of the order, became complicit to the decision.

The decision of the Supreme Court, and the NHRC’s acquiescence in it, demonstrates that persons with psychosocial disabilities are being perceived as objects, and not subjects of the service. As subjects of a service their preference would count as an integral part of their human rights. Insofar as the NHRC has been established to protect and further the human rights of the people of India; it had a primary responsibility to respect these choices. Such an expectation was particularly legitimate considering that the Commission had adopted a line independent from the government, on the matter of caste discrimination, and how in the view of the Commission, such discrimination was covered within the Convention against Elimination of Racial Discrimination.

### Long Term Detentions in Prisons

Another issue, which has engaged the NHRC relates to the long term detention of persons living with mental illness; either because their trials could not commence due to unsoundness of mind; or because they were acquitted on grounds of insanity. Herein again, the NHRC, like the Courts, has involved itself in providing symptomatic relief. Thus the Commission has taken the lead to provide rehabilitation to individual persons who were being detained under the law but have not attempted to scrutinize from a human rights perspective, statutory provisions which allow such detention to happen.

The Code of Criminal Procedure 1973 allowed for persons acquitted on grounds of unsound mind
to be kept in detention for an indeterminate period of time or postpone the trial of an accused if such accused could due to unsoundness of mind not understand the nature of the trial and its consequences. During the period of postponement, the accused could be discharged into the safe custody of a friend or family, if they sought such direction. However if no family support was available the accused could be indefinitely detained. Thus, other than familial goodwill, there were no other alternatives available to protect the life and liberty of persons with psychosocial disabilities. The NHRC has addressed loss of liberty in individual cases but has not pressed for any structural resolution of the problem.

CONCLUSION

It is a legitimate expectation from a Human Rights Commission that it would lead the crusade against beliefs and practices which deny humanness to any body of people. Insofar as persons with intellectual and psychosocial disabilities are denied the right to live their lives in accordance with their preferences on the specious ground that they lack the mental capacity to make that choice, the persons and groups who are being so deprived, are being denied their human rights. The protection of human rights is all the more required because the particular choices of these individual persons are being ranged against existing structures of economic and political power. The NHRC has in its engagement with persons with psychosocial disabilities provided help and succour; it has also attempted to upgrade the mental health services; but when it came to the autonomy, will and preference, voice and participation of persons living with mental illness, the NHRC failed. It has only tried to improve the mental health care establishment it found; it has at no point tried to ask: whether the establishments it had found and the practices they followed were in accord with human rights? There is need for such an inquiry, which needs to be then followed by human rights informed action on the ground. This is what persons with psychosocial disabilities require from the NHRC. The Commission needs to turn to the fulfilment of this mandate; if the NHRC is to be viewed as an institution, which shields the powerless against the powerful and aids all individuals to live a ful life without the blight of prejudice and discrimination.

Treatment of Female Patients at the Kolkata Pavlov Mental College

On 8 March 2008, the daughter of one of the patients of Pavlov Mental Hospital went to visit her mother, who had come down with a serious health condition. She was accompanied by Dr.Ashish Acharya, who brought her into the ward. To their shock and dismay, they found that all the female patients were lying stark naked. When they sought out an explanation for the undignified treatment of the patients in the ward, the hospital authorities explained that it was washing day. According to one of the nurses, it was the washermen’s responsibility to provide the ward’s patients with a second set of clothes. It appears that the rest of the staff responsible for the patients felt unable to provide any oversight for this simple, necessary task.

After the conditions in the ward were brought to light by Dr. Acharya, hospital officials became immediately outraged. However, the focus of their anger was not on the conditions of the patients in their care, but the fact that those conditions had been exposed to a relative of the patient. Following the doctor’s complaint, officials became extremely agitated and attempted to bully Dr. Acharya into apologizing and retracting the complaint. He refused, yet eventually the Hospital Superintendent apologized on his behalf. The hospital authorities did not even make a pretense of rectifying the situation and have made it brutally clear that their job security is more important than the conditions of the patients they are responsible for.
Comments made by staff members of the ward and hospital officials evidenced a shared lack of compassion among the hospital workers. A nurse explained to Dr. Acharya that, “keeping mentally ill patients naked is not a serious issue.” Officials at the hospital echoed this statement, claiming that keeping female patients naked in no way constituted disrespect to the right to dignity and privacy of the women. It is extremely disconcerting to hear mental health professionals imply that ill-treatment of patients is acceptable because their mental illness renders them less worthy of humane and dignified care. One is forced to wonder if the rife disregard at the Pavlov hospital for mentally ill patients’ right to dignity and privacy is the result of a terrifying level of ignorance as to the appropriate healthcare methods or a manifestation much greater levels of abuse in the ward that have not yet come to light.

The complainants took immediate action, reaching out to the local media to put pressure on the hospital. Within days, a powerful expose ran in the local Bengali-language paper excoriating the failure of the hospital officials to adequately care for their patients. Their report was followed up by a number of articles from national and international media outlets which highlighted the continued failure of the hospital to make any changes despite the media attention. One article noted that four days after the story made headlines, the patients were still all naked. “Everything, apparently, is always at the washerman’s” noted the writer. An article published on March 18th by the Telegraph expressed the failure of the media to alter the conditions in West Bengal’s mental hospitals. It noted that despite the fact that the conditions in the mental wards were repeatedly exposed, women in mental hospitals continued to be deprived of clothes, beaten, tied up and underfed.

Although their media campaign was unsuccessful, the complainants continued to press for action by writing a letter to the West Bengal Health Minister. The letter expressed outrage at the conditions in the ward and followed with a reasonable list of demands: provide spare clothing for the ward, take proper disciplinary actions against those responsible and regularly inspect the living conditions of other state-run mental hospitals. Shockingly, the health minister found no fault in the actions of the hospital staff. According to her it was in fact the visitors who entered the ward who were at fault, and that what happens inside a mental hospital is of no concern to the general public. As a matter of course, the health minister asked for an enquiry. However, given her open disrespect for the rights of people within institutions, the complainants have little hope that this will lead to effective action.

It is not a coincidence that the callous attitudes of low-level hospital workers at Pavlov were echoed by the State Health Minister. An attitude of contempt and apathy towards the rights of people with disabilities pervades the entire State administration. The West Bengal Mental Health Authority has rendered itself irrelevant, unable to provide basic services and oversight. The state of West Bengal does not even have a state mental health policy. Unsurprisingly, this has resulted in the breakdown of health services in mental health hospitals across the state. Local NGOs report that a lack of resources and apathetic, undertrained caregivers are the norm. Whenever human rights violations are exposed, the administration concerns itself more with covering up the abuses than with reform.

Thus, the complainants were forced to go beyond the state to find help. With the director of the S. Ruti Disability Rights Center, they filed a complaint to the NHRC against the Ministry of Health, the State of West Bengal and the Pavlov hospital. The complaint sought to establish an independent enquiry commission, pass an order to the respondents to formulate standard and best practices for proper treatment and care, compensate the inpatients, initiate disciplinary actions against the guilty health personnel and pass an order for periodic inspection of the living conditions of this mental hospital and other state run MH hospitals.

The Commission should have been well situated to forcefully respond to the complaint, as the
conditions in the Pavlov hospital were in direct violation of a number of Indian laws. The Convention of the Rights of People with Disabilities, which is currently the binding disability law in India, recognizes the protection of every person’s right to dignity as a primary objective. Article 22 of the CRPD mandates that State parties be responsible for the protection of all people’s right to privacy. The Persons with Disability Act (1995) provides for the maintenance of the “safety and dignity of the disabled person”. The Mental Health Act of 1987 mandates that no mentally ill person shall be subject to any indignity or cruelty. Under section 11 of the MHA, the Pavlov Hospital should be facing the possibility of a revoked license since its acts were clearly detrimental to the mental and physical well being of the patients. Furthermore, the case was in direct violation of the NHRC’s own mandates: on August 21, 2007 the Commission categorically stated, “basic needs of mentally ill persons should be satisfied including hygiene and sanitation. Furthermore, that mentally ill persons need special care and attention is a matter of constitutional right and not a matter of charity.”

The complaint was placed before the commission on the 10 June, 2008. The Commission referred the case to the Chief Secretary of West Bengal, and then closed the case.
JURY REPORT
OBSERVATIONS &
RECOMMENDATIONS
An Independent Peoples’ Tribunal (IPT) was jointly organised Human Rights Law Network, All India Network of NGOs and Individuals working with National / State Human Rights Institutions [AiN-NI], Human Rights Alert, Vanvasi Chetna Ashram, Paryavaran Suraksha Samiti, South India Cell for Human Rights Education and Monitoring, BanglarManabadhikarSurakshaMancha, 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 Chattisgarh 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 Chenooy, [Professor, Jawaharlal Nehru University, New Delhi], Prof. Anuradha Chenooy, [Professor, Jawaharlal Nehru University, New Delhi], Prof. Vimal Thorat, [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 ‘Violations 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 ‘Dis-
ability and the response of NHRC'. We patiently listed 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 section on Police abuse and torture in Uttar Pradesh, Ms. Sudha Bhardwaj spoke on the overall situation of Armed killings and torture, Adv. Navkiran Singh spoke on the Punjab Cremation Case and Babloo Loitongbam addressed the session on Armed Forces Special Powers Act and the situation of Manipur. Mr. Kirity Roy addressed the session BSF killings and torture in West Bengal while Parveena Aihangar spoke about the very significant issue of disappearances in Kashmir.

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’.

In the first session on ‘Attack on Human Rights Defenders’, Venkatesh spoke on the attack on RTI activists. Shamim Modi spoke on the torture and false cases against human rights defenders citing her own case as well. B.V Sitaram spoke on the police torture and registration of false cases against defenders, citing his own case to corroborate the issue. Anil Chowdhury addressed the section on the attack on NGOs.

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. Afroze Alam 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.

The third session on Violation of Women’s Rights and the Response of NHRC was addressed by Ms. Annie Raja.

The fourth session on dalit issues and the reponse 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. PL Mimroth spoke about the atrocities against Dalits.

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. Ningreichen Tungshang spoke about the tribal issues in North-east India. Mr. Mayank Sinha spoke on Nomadic and De-notified tribes in India.

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’.

In the first session, on ‘Environment, Housing and Displacement and the response of NHRC’, Ms. Medha Patekar 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.

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.

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.

In the final session on Disability and response of NHRC, Mr. Santosh Rungta spoke on the overall situation of disability vis-a-vis NHRC and Mr. Anil Aneja spoke on Physical disability and their rights.

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

1. 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 good people in the NHRC that the trust of the civil society is still kept alive. 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 the past 20 years – some of them to indicate examples were references to:
  1. The NC Saxena report on the SC ST POA – no action thereafter on the same by the NHRC except the recent ‘public hearings’;
  2. 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.
  3. 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 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.

- A progressive NHRC recommendations on relief and rehabilitation of displaced persons of 22nd August 2008;
- 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 important 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 Jan Swasthiya Abhiyan 6 regional conferences on the right to health and a concluding national conferences with excellent recommendations, including a new law on the right to health. However, many of the recommendations are not 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.

6. 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.]

7. 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.

8. 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.

[Therefore, Parliament needs to ensure, that if the NHRC needs to be effective, there needs a complete and urgent overhaul of the procedures relating to selection and appointment which as of now is a completely non-transparent exercise with the members of the public not having an opportunity to make any nominations whatsoever.]

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. It is pertinent therefore to look at what these essential requirements point out to.

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 division 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 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 ‘sarkari’ not only in its composition but also in its culture and functioning – the main irritant that was complained of by victims after victims and experts who deposed before us in the past three days.

14). 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 culture further.

15). 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. who later was also the Deputy Chair of the UGC. This practice has completely stopped now.

DEEMED MEMBERS

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 NHRIIs 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’ 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 fit to 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.

[Section 3 of the PHRA 1993 needs to be amended, since newer NHRIs have been created in the country, namely, NCPCR, the CIC, National Commission for Safai Karamcharis and the Central Commissioner for Persons with Disabilities so that they are also include as ‘deemed members’. ]

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[1]. 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.

• [The Jury is shocked to know that the NHRC has taken 20 years to make a formal visit to the State of Manipur very recently and further that this visit was made after the Supreme Court in a recent case before it of extra judicial killings in Manipur with the NHRC as a party in the case. We are equally shocked that the NHRC has met Irom Sharmila, a woman human rights defender who has been on a fast for the past 13 years demanding the withdrawal of the AFSPA. The jury after hearing the deposition of the expert testimony and the depositions of witnesses [ widows of those killed in extra judicial killings ] endorses the view of the NHRC that the Armed Forces Special Powers Act (AFSPA) should be repealed. In the light of the recommendations by various official commissions and committees as well as the UN human rights bodies, the NHRC should clearly articulate its opinion on the issues.

NHRC: SOCIAL AUDIT REPORT 401
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.

Main 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 organizations 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 a suo moto 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. 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

• Inspite 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 suo motu 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, suo motu, 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 in spite 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 complaints 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 are now after the 2006 amendment of the PHRA are also being transferred to ill equipped SHRCs in the country and neither 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.

- 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 inquires were overturned and the victims turn out to be innocent people killed in “fake-encounters”.

- 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 renowned 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.

- 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 com-
plaints with no intimation to the victims or the complainants. [STF cases]

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 Government and Parliament needs to know that the NHRC has been granted ‘A’ grade status at the time of its accreditation before the ICC in May 2011 and made very serious recommendations that need to be strictly adhered to urgently.
- 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 Safai Karmacharis.
- 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 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 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 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.

- 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 scrapped 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 judgment 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 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 Article 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.
CONCLUSION
As the social audit report reveals, the national human rights commissions is not functioning the way they were envisioned. Though much of this is due to a weak Protection of Human Rights Act, the lack of political will and a clearly absent zeal to promote and protect human rights are also contributing towards the failure of the NHRC. The comprehensive analysis of all the dimensions driving the functioning of the NHRC and the testimonies of the victims who have engaged with these institutions are a clear reflection on the current state of affairs. While one might argue that the representation of just a few people and their tales of injustice are not sufficient to ascertain the functioning of a constitutional body, it has to be noted that the background research has looked into all the other aspects related to the functioning of the NHRC. Reports by retired high court judges, leading academicians and eminent members of civil society are clearly indicative of a desire for amendments in the PHRA and for the smooth and effective functioning of the NHRC.

To conclude this volume, it is pertinent to highlight major findings coming out of this social audit comprising background research, Independent People's Tribunals and jury reports.

COMPOSITION AND APPOINTMENTS

The composition of a NHRC and the appointment process followed to select members is the key indicator that determines its effective functioning. The appointment process should be more transparent and democratic and needs to include the representation of a wider civil society. At present, although the appointments are being done by a group of parliamentarians and assembly members, we shouldn’t forget that at the end of the day a majority of them are members of the ruling political party. Even the inclusion of a few members from the opposition party is not going to change things, as they are in the minority even in the appointment committee. The appointment should be made
through an open announcement, asking for nominations from civil society, as recommended by experts. It should be validated by a special committee comprising both executive and civil society having equal power. People who form part of the appointment committee should also have a proven record of and experience on human rights issues.

There is a need to restructure the composition of the commission members. Though there is no denying that the representation of retired judiciary members adds value to the commissions, it has to be noted that the appointment of recently retired judges has always served the purpose of the State. Therefore, the retired members of the judiciary may be appointed only after a minimum of two years after they have finished serving the courts. This will help in upholding the independence of the commissions and in keeping any favouritism at bay.

As observed in the appointments pertaining to members of the commissions, they are mostly from the judiciary, bureaucracy and police. Many of them lack any practical knowledge and experience of human rights. There is a need for human rights activists to be part of the commissions. This will not only make the commissions more sensitive and responsive, but also their diverse experience and expertise in the arena of human rights will make the commissions more accessible to the people.

One of the prime factors missing in the appointments in all the state commissions is the representation of members from the marginalised communities. Most of the victims/complainants that deposed in front of various juries in all six states are poor and from marginalised groups -- dalits, tribals, women and members of minority communities. The representation of members from these communities in the commission will make it more sensitive towards the distinct problems faced by the victims/complainants who approach the commissions in the hope of getting justice. The commissions, in many instances, as repeatedly observed throughout the IPTs, lack sensitivity and empathy with and towards these members of society. These are progressive suggestions that should be incorporated into the PHRA.

**ACCESSIBILITY**

The commission is located in the national capital. It is highly inaccessible for common people. Though the cost of petitioning the commissions is not much, apart from printing and copying, the travel and postage costs incurred are high. For a poor person from a far-off district, approaching the commission incurs a lot of travel costs, and is time-consuming, which also makes the complainant lose out on several days’ earnings. Many of them get discouraged after sometime and this has been very evident in the various oral and written depositions presented during the IPTs.

The commission need to move out of the sphere of the state capitals, and they need to be present, at the very least, in each district in the state. This could be done through appointing district officers with specific powers, who in turn are approachable to the people. Local NGOs and CSOs need to be capacitated to further the reach of the commissions. The commission is not currently working closely with these people, and their functioning is suffering as a result.

Moving out from the state capitals will not only make the commission more accessible for people and ensure faster remedies, but it will also increase visibility and trust among them.

**INVESTIGATION**

Investigation remains one of the major flaws in the functioning of the commission. It is one of the prime reasons for the poor complaint handling mechanism. As observed, the commission have repeat-
edly asked the same department, more often the police which is accused of the violation, to investigate the matter. In almost all the instances, the response of the concerned department to the violation amounts to a vehement denial, that no violation ever took place. And the commissions appear to be too willing to believe their response and dispose of the matter. Even matters of custodial deaths and police torture are treated in the same way. It has also been made clear that the commissions often have to give several reminders to the concerned department to furnish the report, and the complainant is treated according to the whims and fancies of the commissions.

The commission doesn’t have their own investigation wings. Even if they have, they seriously lack manpower, other resources and willingness. Ironically, the commission which have been established to protect and promote human rights have the investigation wing made up of the police, who in most cases are accused of the violations. Not all human rights violations are of a criminal nature and even those which are can be investigated without the police. Human rights violations can be investigated by any eminent persons, outside police, or others who have a profound knowledge and experience in the field of human rights. Such investigations can be comprehensively conducted by a team of human rights activists, doctors, academicians, psychiatrists etc.

More importantly, the human rights investigation team should be present at district levels. This will considerably increase the pace of complaint disposal and local presence, with a set of diverse members who will raise the quality of the commissions’ functioning too. Investigation should also include the testimonies of the victims/complainants, rather than just depending on one side of the story, and only later asking for comments from the victims which are seldom considered seriously.

In matters of grave human rights violations, the members of the commission should investigate the matter themselves along with the investigation wing. Regular and surprise visits to police stations, jails and child protection homes will help in improving the human rights situation. It is also important to have a diverse set of members on board for the investigation, which should include women, dalits, tribals etc., pertaining to the nature of the human rights violation in question. Investigation remains the most crucial link for obtaining justice and indeed it is important to ensure that it is impartial, factious and correct. Proper investigation will diminish the arrogance of the violators and the impunity with which they are currently able to act.

INFORMATION

Seldom have the victims/complainants received communication or information from the commissions concerning their cases, as reflected in these reports. Most of the victims/complainants don’t know about the status of their complaint. It is revealed to them only after they make several visits to the commissions, more often from far off places. A mechanism needs to be developed whereby the victims/complainants can access information readily and easily. It can be either visiting the district office or checking for this information online. In reality, checking online about the status of the complaint is not a viable solution for all those who approach the commission, and in such cases the district office can bridge this gap. This will also ensure the safety of the victims/complainants, as in many instances people have suffered harassment after filing a complaint.

The commissions have denied applicants information on many grounds, even when applied for through the RTI. One of the main reasons mentioned was the volume of the information. Information has also been denied on the grounds that the name of the information-seeker is not mentioned in the complaint, even when the status of the complaint was asked for. The commissions appear to be operat-
ing in a closed and somewhat clandestine manner, and are not willing to share much information with civil society, media, and researchers.

**EDUCATION**

One of the mandates of the commissions is to engage in human rights education and trainings. However, the commissions have seldom shown a sense of willingness towards this. It was surprising to observe that in many instances even the human rights activists and lawyers were not aware of the locations and even the existence of the commission in the states. The commissions need to network with local NGOs and CSOs, and hold various awareness and educational programmes. Such activities and networking has been initiated in the state of Rajasthan by the human rights commission there. There should be an adequate fund reserved to undertake such activities. As part of fostering a culture sensitive to rights, students should be encouraged to intern with these bodies.

Human rights education should not be restricted to common people only. Police, security forces and different government departments should also be included in the human rights trainings that need to be imparted. A model needs to be evolved in order to inform people about rights through training programmes.

**POWERS**

Though the PHRA is not a perfect law from human rights perspective in the Indian context, there is still enough in the law that remains non-implemented. Commissions are not completely toothless, as generally described by many civil society groups and activists. They have been enshrined with certain powers which they don't exercise. The commissions, despite several provisions lacking and desired, can ensure that some sort of justice is delivered and adhered to by the State, if the commission members have the political will.

The commissions have the power to take *suo moto* cognisance of certain instances of human rights violations and take adequate actions. Seldom have the commissions taken *suo moto* cognisance, if recent years are any indication to go by. Despite grave human rights violations like encounter killings and custodial deaths, tortures and enforced disappearances, the commissions have by and large been a mere spectator. Even if *suo moto* cognisance was taken, in most cases such exercise has proved to be a mere eye wash.

The commissions have the power to move the courts when their orders are not complied with. However, the commissions have not used this power in most instances. It has been very rare that the commissions have dared to go against the State. Even though they have the power to enquire into *sub-judice* matters with the permission of the court, the commissions seldom exercise this power, and most complaints of this nature just get disposed of as matters *sub-judice*.

Although the commissions have no jurisdiction over the central security forces, apart from the NHRC which has, the commissions should assist the courts and take matters up with the concerned authorities where allegations of killings and torture by security forces are rampant. The PHRA should give the powers to the commissions to investigate matters of human rights violations by the security forces and to move courts if these allegations are confirmed.

The PHRA clearly provides for the establishment of human rights courts in all districts. A sessions
court in each district has been notified, in most cases, to function as human rights court. However, this is an exercise which remains only on paper and human rights courts are yet to see the light of the day. The commissions should ensure that the state governments make sure that the human rights courts are operational and effective. A mechanism needs to be established to ensure that the commissions and the human rights courts are functional and aid each other.

Thus, this volume is an attempt to analyse the functioning of the national human rights commission of India with a view to strengthen the mechanisms in the law towards protection and promotion of human rights. The idea is not to flay the human rights institutions, but to look at the provisions in the law and the practices on the ground critically. It is also to ensure that civil society groups and people in general that have a cynical view of these institutions, try to engage and work in close coordination with commissions. It is hoped that the findings of this exercise will help in bringing about progressive changes in these institutions, in the law, and in the attitudes of members of these commissions in particular, and civil society and people in general, thus strengthening us as a peace loving people, a just society and a vibrant democracy that is often cited as the largest in the world.