

India's human rights record under scrutiny as NHRC prepares for renewal of accreditation with GANHRI SCA

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The Universal Periodic Review of India is due in 2022, the run-up to which has already started. This is an event where the National Human Rights Commission is most likely to get exposed.

NATIONAL Human Rights Institutions across the world are assessed by the Global Alliance of National Human Rights Institutions ('GANHRI') Sub-Committee on Accreditation ('SCA') as per their compliance with the '[Paris Principles](#)' periodically [every five years](#). During its 2016 review session, the GANHRI SCA recommended the re-accreditation of the National Human Rights Commission (NHRC) be put on hold and [deferred](#) till November 2017. This implied that until its re-accreditation, NHRC would not be able to represent India either in the United Nations' ('UN') Human Rights Council or the UN General Assembly. In February 2018, the [SCA accredited NHRC with 'A' status](#) – giving India the right to participate fully in the activities of the UN.

In recent years, the NHRC has failed to intervene in vital human rights violations, including the Citizenship (Amendment) Act-National Register of Citizens issue, human rights violations in Kashmir, the deplorable condition of thousands of migrant labourers during the pandemic, the harassment of activists, and the rapid practice of hate politics against minorities. Thus, the deferment in the NHRC's accreditation in 2017 and its subsequent accreditation in 2018 are worth revisiting to understand the workings and shortcomings of the NHRC.

Henri Tiphagne is the founder and executive director of Madurai-based human rights organisation People's Watch, which works to protect human rights through monitoring human rights violations, intervention, and building solidarity with people's struggles for human rights. Having worked closely with the GANHRI SCA, Tiphagne shared his extensive knowledge and views with *The Leaflet* on the NHRC's deferment of the accreditation in 2017, the eventual grant of 'A' status, and the desperate need for changes.

Edited excerpts from the interview:

Q: What is the UN body of the Global Alliance of National Human Rights Institutions (GANHRI)? Why is its accreditation valuable for the NHRC, and what does its deferment signify?

A: The GANHRI, formally known as the International Co-ordinating Committee ('ICC') of National Human Rights Institutions ('NHRIs') is a body that is formed by national human rights institutions themselves for ensuring standards for assisting and supporting

themselves. It aims to ensure that, globally, the movement of national human rights institutions where countries that do not have national human rights institutions could be encouraged to constitute new ones. It is a body created by NHRIs, for NHRIs. India is proudly a founding member of ICC as well.

Globally, GANHRI is the only body that accredits entering and participating in the proceedings of the UN without the involvement of the UN's Committee on Non-Governmental Organizations ('NGO'). For example, if there is an organization like the Lawyer's Collective in India which is accredited to the UN, it obtains its accreditation through the NGO Committee to participate in the activities of the UN, that is, to participate in the General Assembly, the Human Rights Council, other meetings of the treaty bodies, and so on.

Usually, countries that had to come up with legislation had to wait for long periods of time. However, India was allowed an 'A' grade status on the condition that India would come out immediately with a law in place which would incorporate previous SCA recommendations.

In the case of NHRIs, there is a slight change – the NHRIs, which are the members of GANHRI, receive accreditation within GANHRI, by GANHRI, and on standards set by GANHRI. If the NHRI's are accredited 'A' grade by GANHRI, that *ipso* means that the NHRI is accredited to participate in the UN proceedings. If an individual wants to attend a meeting of the UN, they have to go through an accredited NGO at the international level. In the case of NHRIs, it is GANHRI that actually accredits the NHRIs to participate in the meetings of the UN. So, the accreditation of the NHRIs becomes important because it is only through the accreditation that the NHRIs can participate in any meetings of the UN.

The accreditation process is the process to get entry into the UN. If the Indian NHRC, which is a member of the GANHRI, does not get 'A' grade accreditation, then the Indian chairperson, Arun Mishra, will not get to attend any meeting of the Human Rights Council or the General Assembly. This accreditation, therefore, by GANHRI, is carried out by an SCA which GANHRI members themselves constitute – it is their own body that constitutes an accreditation committee – the SCA.

Q: The GANHRI SCA granted NHRC 'A' status, despite its concerns – including non-representation of women, Dalits, and other religious or ethnic minorities, non-transparency in the selection process of the NHRC's Chairperson and other members, and government interference – not addressed at the time of accreditation. What are your views on it?

A: The GANHRI earlier had a lax system of accreditation, where the process was not very structured and the civil society had no role to play. Between the years 2008 and 2012, one

of GANHRI's own chairpersons suggested implementing different procedures for the granting procedure to be qualitatively high. This was because the world community started recognising these NHRIs to participate in the UN activities based on the granting of the accreditation.

It was observed that the Paris Principles were too general in nature. After a resolution of the General Assembly, [General Observations](#) of the GANHRI to the Paris Principles were formed. It was announced that in the process of accreditation, the Committee would look into those General Observations that amplified the meaning of the terms contained in the Paris Principles. Such General Observations were put in place for subsequent accreditation processes.

The change came in the case of India. When India was accredited in the year 2011 and granted an 'A' grade status, the Committee generously asked India to get back with an Interim Report on the progress of certain questions or observations. India was, thus, granted, what in common parlance is called, a conditional accreditation. The Indian NHRC, which was then headed by K.G. Balakrishnan, challenged this and claimed that the SCA can accredit or refuse to accredit but cannot accredit with conditions. Subsequently, the GANHRI in turn modified its General Observations to have two parts to the Paris Principles, the first part being that the Principles have to be compulsorily followed; the second part being that they are encouraged to follow – which was a way of finding a settlement for 'common minimum standards' to be followed by NHRIs.

The appointment team has to select from a list of members who are suggested. Was there any list of members that were suggested? Except for Arun Mishra, was the name of any other judges of the Supreme Court mentioned? The choice should be made on the basis of the indicators, and that is what GANHRI requires through its General Observations.

During NHRC's next accreditation in 2016, it was abundantly clear from all the reports that were presented that it was far from adhering to any of the traditions that had been imposed. Therefore, in 2016, it was deferred by a year. In 2017, when India approached for its re-accreditation, things were not as straightforward or transparent as would be expected from a global body. Although the recommendations of 2011 and 2016 were not followed, in 2017, NHRC was granted an 'A' grade accreditation upon a promise and assurance to the global body that India would amend the [Protection of Human Rights Act, 1993](#).

Interestingly, no other country is given such accreditation on the assurance of taking an action in the future. Usually, countries that had to come up with legislation had to wait for long periods of time. However, India was allowed an 'A' grade status on the condition that

India would come out immediately with a law in place which would incorporate the recommendations of [2011](#), [2016](#), and [2017](#).

In 2017, India was entering the 25th Anniversary of its own NHRC, and wished to enter its anniversary with an 'A' grade accreditation. The pressure was through different means, including an increase in India's contribution to GANHRI and to the Asian regional affiliation of NHRIs, known as the Asia Pacific Forum, which lobbied for India's accreditation. Thus, in January 2018, India was accredited with an 'A' grade with the trust and hope that the Act of 1993 would be amended. The Act, however, came to be [amended only in 2019](#), almost a year later. The amendments that were passed in 2019 had no relevance to the recommendations of 2011, 2016, and 2017.

Accepting that there was no woman member for a long time, they hurried and persuaded lawyer and academic Jyotika Kalra, who was actually appointed and [resigned](#). Kalra, who was politically and ideologically close to the establishment, was asked to withdraw her resignation so that NHRC could pass through the accreditation process.

There are civil society members who are more than capable of being members of the commission, and there are women who have held important positions in the National Commission for Women, National Commission for Child Rights, and the Advisory Committee under the chairmanship of the then Prime Minister Dr. Manmohan Singh and so on. The civil society seat within the NHRC has not been realised so far.

During the period of former Chief Justice of India A.S. Anand, after Justice J.S. Verma had completed his term, there were a series of amendments proposed to the Act. It was due to Justice Verma raising the concern that the Parliament [accepted and allowed all other amendments](#), except one where it was upheld that the chairperson should continue to be a Chief Justice of India or a former Chief Justice of India.

Q: Arun Mishra, a former Supreme Court judge, was [appointed as the chairperson](#) of the NHRC last year. What are your views on his suitability for heading an institution like the NHRC?

A: The NHRC is free to bring in Mishra, but what was the process? Did the process involve announcing the vacancies? GANHRI, in its General Observations, has mandated announcing the vacancies, the selection committee, the indicators to be followed for selection, and intimating the nominees. None of these mandates were followed.

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Mishra was cherry-picked. He was kept in waiting and [he continued to stay in the same house for several months](#) after his tenure as Supreme Court judge, and then was cherry-

picked. The appointment team has to select from a list of members who are suggested. Was there any list of members that were suggested? Except for Mishra, was the name of any other judges of the Supreme Court mentioned? The choice should be made on the basis of the indicators, and that is what GANHRI requires through its General Observations. Therefore, for me, the process of selection of Mishra was not in tune with the standards set for such appointments and selections by the GANHRI.

Q: Both the GANHRI SCA Reports of 2011 and 2017 have raised concerns about the involvement of the police in the investigations of human rights violations before the NHRC. Considering that the Commission is tasked with investigating complaints against the government, including the police, how concerning is this involvement?

A: If the investigations are criminal in nature, then the Commission needs people trained in criminal investigation to be present, including the police and forensic experts. A variety of experts are, thus, drawn into a purely criminal investigation. But under the Protection of Human Rights Act, 1993, the Commission is mandated to undertake an investigation of human rights violations that not only includes the right to life but the right to liberty, the right to equality, and personal integrity.

In case of such human rights investigations that are broad in nature, it needs a team that has different potentials and different professionals. In addition, top sociologists, psychologists, and experts in the field of human rights investigation are needed. The need is to have an investigation team that is qualitatively higher. Hence, a complaint against the police cannot be investigated by only the police.

If such a complaint against the police happened to be made by a woman, then a gender expert, along with a woman police investigator, may come out with findings that are revealing. In case of an atrocity against a Dalit, along with a police investigator, if there is a sociologist who is sensitive to such issues, then the whole question of what caste discrimination means will run through the thread of the investigation and form the main pillar on which the investigation will rely on, with references to the [soft law developed by the UN on caste](#).

We are not saying the investigation should not be done by the police at all. But since it is an investigation of human rights violations, there needs to be the presence of a large team of different competencies, who along with the police, will be investigating the violence.

Q: How, if at all, has the deferment in the re-accreditation impacted the composition and transparency of the Commission? Does the [Protection of Human Rights \(Amendment\) Act, 2019](#) address the concerns?

A: What the 2019 amendment should have done is at least outlined the selection process of the members, which should include the announcement of the vacancy or the vacancy that is to be caused in the future, the qualification of people who can apply or who can be nominated, the criteria or indicators to be followed by the Committee to shortlist candidates, that such list be presented before the Appointment Committee to select the people based on those indicators, and to make the final list available to the people. It is a whole process and none of this has been included in the 2019 Amendment.

In terms of the investigation team or inclusion and diversity of the members, none of it has been included. It is the question of building trust among victims of human rights violation through NHRC's own existing diversity, as is provided by GANHRI's recommendations. However, it is not reflected in the 2019 Amendment.

For me, the change does not come only through amendments. The change comes by making the NHRC accountable. Today, the NHRC is a body that is not accountable to anybody. Not accountable to Parliament since the Parliament is unaware of the NHRC and its workings, hence the absence of parliamentary questions raised regarding the NHRC. The only opportunity comes when the NHRC's annual report is placed for approval, which is usually three years late.

It is important that we make the NHRC answerable to a Parliamentary Committee like a Standing Committee on Human Rights of the Lok Sabha and the Rajya Sabha together. The Secretary of the NHRC will have to be called into that Committee and the true parliamentarians will be able to question.

Therefore, it is important that we make the NHRC answerable to a Parliamentary Committee like a Standing Committee on Human Rights of the Lok Sabha and the Rajya Sabha together. The Secretary of the NHRC will have to be called into that Committee and the true parliamentarians will be able to question. And once they know they will be able to question, then they will start preparing themselves for the questions.

The NHRC accreditation is a serious process and only if it becomes more effective, more trust will be built in these NHRIs by Indian civil society. For other countries, there is only one NHRI. In our country, we have nine other NHRIs and the model they look up to is the NHRC – one bad thing done by the NHRC means it will be repeated in nine NHRIs. We have over 160 state human rights institutions that have this wrong model to follow. Hence, accreditation becomes important for us. It is not something only a few lawyers have to fight about; political parties have to speak about this accreditation. Movements of ordinary people, the working class, farmers, fishermen, and so on; different thematic groups such as women, people with disabilities, Adivasis and so on have to start speaking about it – this has to be everyone's concern, not just a concern of a few alone.

Q: You have **pointed out the need “to form a truly independent commission which recognizes and practices diversity”. In what ways can we achieve this goal for a human rights commission?**

A: For the presence of diversity at the NHRC, there needs to be a nomination process by which the nominations can be filed by people representing different interests. The leader of

the opposition, and in his absence, the leader of the largest single party sitting in opposition, should be invited to be a part of the selection committee.

The process is what is most important – the process of announcing vacancies, the process of setting indicators, the process of selection based on those indicators, the process of asking for recommendations from members of the civil society – all this will lead to a much more diverse Commission. So, if there are already certain categories of people already represented, it is against that that the selection process should also move.

Q: When is the next accreditation of the NHRC due? What do you think must be particularly focussed on by the GANHRI SCA during the upcoming reaccreditation?

A: There are two events that must be traced at the moment that are of importance. Firstly, the [Universal Periodic Review](#) of India is due in 2022, the run-up to which has already started. This is an event where the NHRC is most likely to get exposed.

Secondly, the accreditation process is likely to take place in March 2023 at the earliest. This means that by September 2022, the stakeholders' report of the NHRC will have to be completed and submitted. The report will not only have to be prepared but also endorsed by large sections of the civil society, to be submitted to the GANHRI SCA. The Indian civil society should now be ready to participate on a larger platform on this issue.

<https://theleaflet.in/indias-human-rights-record-under-scrutiny-as-nhrc-prepares-for-renewal-of-accreditation-with-ganhri-sca/>