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# THE ROHINGYA REVERSAL

*By allowing refugee deportation, judiciary has stepped back from its own principles*

AT THE ANNUAL session of the executive committee of the UNHCR held in Geneva, India stated, "We are a responsible state with a functional democracy and rule of law." On the same day, October 3, seven Rohingya men were being taken to the Indo-Myanmar border for a scheduled deportation. Ironically, they had no access to legal counsel, courts or the UNHCR, which is mandated by the government to conduct refugee status determination of Myanmar nationals.

The men had entered Assam in 2012 without documentation and were prosecuted for illegal entry under the Foreigners Act. At that time, the Rohingya were already fleeing Myanmar. After completing their three month-sentence, the men were moved to "administrative detention" in Silchar where they languished. State officials claim that in 2016 the men expressed the desire to return to their families. In mid-September, the local media reported that pursuant to negotiations with Myanmar, India would be deporting the men on October 4. The decision to deport was surprising given that a case challenging the government's move to carry out en masse deportation of Rohingya refugees is still pending before the Supreme Court.

As the last resort, an intervention application was filed before the SC on September 29

The argument that the men are 'citizens' and therefore not in need of protection is without any legal basis. Refugees frequently, though not always, are citizens of the state they are fleeing from. What is also troubling is that while the affidavit submitted in court by the government states that the men have been accepted as 'citizens' by Myanmar. The root of the plight of the Rohingya is the denial of their citizenship.

seeking a stay order. Despite the stated urgency, the SC listed the matter for a hearing only on October 4. The government argued that the detainees had consented to return and that the Myanmar Embassy had confirmed that the men were "citizens". When counsel for the petitioners pointed out that the detainees were "refugees" as they were at the risk of persecution, the matter was dismissed by the Bench noting that they were "illegal immigrants".

In *NHRC v. State of Arunachal*, the Court extended protection under Article 14 and 21 to refugees. Further, various high courts have upheld the customary international law principle of non-refoulement in deportation cases and have referred the detainees to UNHCR. In view of these principles, the deportation of Rohingya refugees is in contravention of India's obligations both under the Constitution and international law.

With regard to the argument that the men were "illegal immigrants", it should be noted that, given the circumstances that cause them to flee, refugees often cross borders without prior planning or valid documentation. If anything, this should reinforce their status as "refugees". In the present case, given the overwhelming evidence to show that the Rohingya deported to Myanmar are at risk of

being tortured, indefinitely detained and even killed, the deportation potentially violates Article 21, and India's international obligations.

The argument that the men are "citizens" and therefore not in need of protection is without legal basis. Refugees frequently, though not always, are citizens of the state they are fleeing from. What is also troubling is that the affidavit submitted in court by the government states that the men have been accepted as "citizens" by Myanmar. The root of the plight of the Rohingya is the denial of citizenship. In Myanmar, they are being issued the controversial National Verification Card which does not recognise their religion or ethnicity — and definitely does not confer citizenship.

In the absence of a domestic law for refugee protection, it has been up to the judiciary to extend minimum constitutional protection to refugees. By allowing this deportation, the SC has set a new precedent that is contrary to India's core constitutional tenets. However, it is important to not overstate the implications of this order, which ultimately was based on the notion that the men had consented to return. In cases where there is no consent, this cannot apply as a precedent.

*Shanker is part of the legal team representing the petitioners in the Rohingya case*



**Dainik Jagran, Delhi**

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## कांग्रेस ने मानवाधिकार आयोग से की शिकायत

राज्य ब्यूरो, नई दिल्ली : प्रदेश कांग्रेस के कानूनी एवं मानव अधिकार विभाग के अध्यक्ष सुनील कुमार ने एक प्रतिनिधिमंडल के साथ सफाईकर्मियों पर लाठी चार्ज करने के खिलाफ मानव अधिकार आयोग में शिकायत दी है। साथ ही घायलों के लिए एक-एक लाख रुपये के मुआवजे की मांग की है।

प्रतिनिधिमंडल में चतर सिंह, सलीम अहमद, आसिफ खान, रजत शर्मा, कृष्ण ओबेराय, सोनिया रानी, नानक चंद मल्लाह, कपिल कौशिक और विनोद डबास शामिल थे।



# NHRC notice to Bihar govt, DGP over beating of 30 girl students in Supaul

## OUR CORRESPONDENT

**NEW DELHI:** The NHRC has sent a notice to the Bihar government and DGP in connection with over 30 girl students being beaten up by a mob after they protested against lewd comments on a wall allegedly written by boys of a neighbouring school in Supaul district.

The National Human Rights Commission (NHRC) in a statement Tuesday said it has taken suo motu cognisance of media reports, according to which, the mob had “a free run”, vandalising the Kasturba Gandhi Balika Vidyalaya (KGBV), which is exclusively for the girls belonging to Scheduled Caste, Sched-

uled Tribe, OBC and minority communities.

“On October 6, at least 34 girl students of in Supaul district of Bihar were brutally beaten up by some local youths when they opposed their routine sexual advances and lewd comments. “Their tormentors included students of the adjacent Middle School and their parents,” the rights panel said.

The commission said it has issued notices to the chief secretary and the director general of police (DGP) of Bihar, seeking a detailed report in the matter, including status of medical treatment of the injured students, measures taken to step up security at residential schools

and action taken against the unruly group of people named in the complaint.

“Going by the media reports, it is apparent from the sequence of incident that there is serious security lapse at the girls’ school, where the miscreants entered at their free will, committed the brutal act and fled from the spot,” the NHRC said.

“The administration should have taken timely action when the issue was raised by the girl students regarding routine sexual advances by the local youths. The victim girls have been beaten up when they were in the custody of a government-run hostel school,” it said.

The incident has raised issue of safety of the girl students studying in the state-run residential schools, the rights panel said.

The incident occurred Saturday evening when the girl students of the residential school were playing within the campus.

“Both the schools are in the same campus with separate buildings and a common playground.

The boys allegedly wrote some lewd comments on the wall of the girls school, which the minor girls resisted and beat up the boys before chasing them away, Supaul District Magistrate Baidyanath Yadav had earlier said.

## **The Indian Express**

### **More teeth for NHRC**

#### **Panel requires independent investigation mechanism, diversity in composition.**

October 10, 2018

This year marks the 25th anniversary of the National Human Rights Commission (NHRC). The Commission, which draws its mandate from the Protection of Human Rights (PHR) Act 1993, has been mired in controversies since its formation. As the government seeks to introduce amendments to the Act in Parliament's Winter Session, it is important to understand this piece of legislation in the context of its history. The Amendment Bill intends to strengthen human rights institutions in this country. But it falls short of this objective by some distance. Is the reform, then, merely an attempt to save the country's reputation in international human rights fora?

In 1993, the UN General Assembly adopted the Paris Principles on Human Rights. This led to the constitution of national human rights institutions in almost every country. Every five years, India's human rights agency, the NHRC, has to undergo accreditation by an agency affiliated to the UN Human Rights Council (UNHCR). The Commission's compliance to the Paris Principles is ascertained in this process, which is similar to NAAC accreditation of Indian colleges — better the grade, higher the benefits. Thus, if India gets an A-status, the NHRC can play a pivotal role in the decision-making processes of the UNHRC and other important international bodies.

In 2016, the accreditation agency deferred grading the NHRC because of the Commission's poor track-record — especially, political interference in its working. But the agency was satisfied with the government's commitment to introduce necessary changes to the Commission and granted the NHRC A-status in 2017. The PHR (Amendment) Bill, 2018 is an outcome of this commitment. While the Bill seeks to diversify the Commission's composition, it falls short of bringing out substantial changes to the NHRC.

The NHRC is fraught with mischief at its very basis. The selection committee tasked with appointing the chairperson and the members to the Commission is dominated by the ruling party. It consists of the prime minister, home minister, Leaders of the Opposition in the Lok Sabha and Rajya Sabha, the Lok Sabha Speaker and the Deputy-Chairman of the Rajya Sabha. There is thus a need to diversify the selection committee.

It comes as no surprise that the NHRC's selection process is very obscure. Very often, the government does not publicise vacancies in the Commission. The criteria to assess candidates is also not specified. As a result, appointments to the NHRC have been fraught with disputes. All this can change if the government commits to greater transparency in the selection process.

The strong representation of the judiciary in the NHRC has often been defended on the ground that the Commission's work is quasi-judicial. However, this is pertinent to only one of the 10 functions of the NHRC, as described in the PHR Act. The NHRC has also defended the strong presence of the judiciary on the ground that it creates trustworthiness, especially in the eyes of the government. But such reasoning fails to explain the long pendency of the Commission's requests for additional funds.

The much-needed diversification that the Amendment Bill seeks to introduce could be realised through the inclusion of civil society members and academicians with proven track record in the improvement of human rights. The NHRC could certainly benefit from the grass roots level experience, widespread community outreach and the expertise of these organisations or individuals.

However, the above-mentioned changes would be of little consequence if the investigation mechanism is not rectified. Police officials investigating for the NHRC are sent on deputation by their forces. Their allegiance lies with their home cadre to which they return after their tenure at the Commission is over. This conflict of interest restricts the scope of their work, as they often are charged with investigating abuse of power by law enforcement personnel. Adding officials of the Intelligence Bureau to the mix only muddies the water. These officials are not answerable to anyone, there is no parliamentary oversight on their functioning, they do not owe financial accountability to the Comptroller and Auditor General, and have often been accused of human rights violations themselves. The NHRC urgently requires officers of its own to carry out independent investigations, and the government should provide it resources for the same.

The NHRC cannot escape the blame either. It does have powers to conduct its own investigation in cases where the Centre or state government do not respond within the time stipulated by Section 17 of PHR Act. However, the Commission has rarely used this power.

A year after the Supreme Court called the NHRC a "toothless tiger", the onus is on the government to bestow the Commission with more teeth.