

## **₹3 lakh ex gratia paid to deceased minor's family**

POST NEWS NETWORK

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**Bhubaneswar, Sept 9:** Following the intervention of the National Human Rights Commission (NHRC), authorities of Kodala NAC finally paid ₹3 lakh compensation to the family of a 13-year-old minor who had died due to the collapse of an information pillar in Ganjam in 2018.

The officials also sent separate copies of payment receipt as proof to the state Housing and Urban Development (H&UD) department and the complainant Dillip Kumar Das apart from the Commission.

Earlier August 16, the NHRC had asked the H&UD department to pay ₹3 lakh as compensation to the family of the deceased minor. The commission had gone through the district Collector's report on the issue, and concluded that the negligence on part of the officials during the erection of the information board had violated the human rights of the victim.

## NHRC में रिक्त पद भरने संबंधी याचिका खारिज

नई दिल्ली (एसएनबी)। उच्चतम न्यायालय ने राष्ट्रीय मानवाधिकार आयोग (एनएचआरसी) में रिक्त पदों को भरने के लिए निर्देश देने का अनुरोध करने वाली याचिका वृहस्पतिवार को खारिज कर दी।

न्यायमूर्ति एल नागेश्वर राव और न्यायमूर्ति वी आर गवई की पीठ ने कहा कि उच्चतम न्यायालय के पूर्व न्यायाधीश अरुण मिश्रा को एनएचआरसी का अध्यक्ष नियुक्त किया गया है। उन्होंने कहा, 'अध्यक्ष और सदस्यों की नियुक्ति के बाद की घटनाओं को देखते हुए यह याचिका व्यर्थ हो गयी है।' संक्षिप्त सुनवाई के दौरान याचिकाकर्ता ने पीठ को बताया कि अध्यक्ष और सदस्यों की नियुक्ति की गयी है और केवल दो पद रिक्त हैं। इस पर शीर्ष न्यायालय ने पूछा, 'अध्यक्ष की नियुक्ति की गयी है तो हम इसे लंबित क्यों

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रखें। सुप्रीम कोर्ट वकील राधाकांत त्रिपाठी की याचिका पर सुनवाई कर रहा है जिसमें राष्ट्रीय मानवाधिकार आयोग में रिक्त पदों को भरने का निर्देश दिया गया है। न्यायाधीश मिश्रा भारत के पहले गैर प्रधान न्यायाधीश हैं जिन्हें 2019 में मानवाधिकार सुरक्षा अधिनियम में संशोधन के बाद से एनएचआरसी प्रमुख के पद पर नियुक्त किया गया है। पूर्व प्रधान न्यायाधीश एच एल दत्त के पिछले साल दिसम्बर में कार्यकाल पूरा करने के बाद एनएचआरसी अध्यक्ष का पद खाली था।

# Plea seeking filling of vacant NHRC posts junked

PTI ■ NEW DELHI

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"In view of subsequent events of appointment of chairman and members this petition has become infructuous," the bench also comprising Justice B R Gavai said.

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appointed, why should we keep it pending. The matter has become infructuous."

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# Does India Need A Law To Make Reparations For Wrongful Detention Or Prosecution By The State? The Case For And Against

## We need a proper compensation law instead of relying on judicial discretion

## There are sufficient legal remedies already available, so why a new law?

**C**reation of a uniform legal framework for compensation to victims of wrongful detention is a pertinent issue facing the country today. Rampant misuse of draconian laws like the NSA, UAPA and sedition provision of the IPC has once again sparked a debate on the prevailing socio-legal framework and criminal justice system.

Liberty of a person is of paramount importance in a democracy. Protection of innocent people from wrongful legal actions is fundamental to any legal system operating in a modern democracy.

India, the largest democracy in the world, is a signatory to the International Covenant on Civil and Political Rights (ICCPR) which upholds to protect the civil and political liberties of an individual. The right to compensation for wrongful convictions is laid down in Article 14(6) and for wrongful arrests and detentions in Article 9(5) of the covenant. India ratified the ICCPR in June 1978 while declaring that compensation is not an enforceable right under the Indian legal system.

While various provisions in the Indian Constitution enable such victims



**Kishor Chandra Wangkhem**  
**FOR**

therefore adhere to international commitments and make necessary judicial reforms.

The Law Commission of India in its 27th report titled 'Wrongful Prosecution (Miscarriage of Justice): Legal Remedies' recommended legisla-

tion that makes compensation mandatory for victims of wrongful imprisonment. The recommendation itself has proven that there is a need for a law to compensate victims of wrongful detention in the country. The report identifies wrongful prosecution to be the appropriate standard to approach the issue of compensation. It recommends the creation of a statute laying down the conditions, amounts, procedure, etc of awarding compensation to ensure that the injustice done is redressed. One of the main highlights of the recommendations is that causing harm or damage to any innocent person in body, mind, reputation or property is to be the central reason for the compensation claim.

When I was wrongfully incarcerated in 2018 under NSA, it left an indelible scar on my life. I suffered damage to health, loss of income or earnings, loss of family life, loss of opportunities, reputation and ostracisation besides having to fork out litigation fees, and other consequential expenses. The psychological and emotional harm caused to me and my family was further compounded with subsequent arrests. The latest being this year, under NSA again, for the mere expression of my opinion. Justice in its true sense is hardly served by mere release of the victim from prison after prolonged wrongful detention. Often in such cases, victims go through traumatic experiences during and after the ordeal that may lead to post traumatic disorder in their lives. The sense of injustice will always haunt the mind of the victim and his/her family. The psychological and emotional scars may leave a permanent injury.

Wrongful prosecution and incarceration flow from the unjust actions of the state. The state which has taken away the rights, dignity and personal liberty of these individuals should be held responsible and accountable for all the loss and pain that the victims go through. One way to make public officials liable for miscon-



**REALITY CHECK:** After fighting for justice for more than two decades, former Isro scientist Nambi Narayanan, who had been wrongfully implicated in an espionage case, was awarded compensation by the courts

duct is through the court of law, where they could be directly prosecuted for purported misuse of power. As a retired Justice of the Supreme Court stated, that a district magistrate should be made to pay compensation for wrongful detention under NSA is plausible. The state thus needs to have a legal obligation to compensate for the suffering caused due to wrongful imprisonment.

Currently, the amount of compensation awarded, if any is awarded at all, depends on the case and the judge who is hearing it. This discretion has resulted in many victims not receiving or not even seeking the compensation they deserve. An effective compensation law will deter public officials from criminal activity and encourage victims to bring their cases to court. Therefore, I strongly believe and opine that a mandatory right to compensation must be established.

Wangkhem, a journalist, was arrested under NSA for a Facebook post and released following a Manipur HC order

2010, and certain restrictions were imposed, particularly for offences punishable with imprisonment up to seven years. The Supreme Court (SC) in Arunesh Kumar vs. State of Bihar (2014) held that conditions precedent to arrest must also be scrutinised by the magistrate. Thus, if an investigating police officer fails to satisfy the magistrate with the material or information produced on record which necessitated arrest, he can release the accused on bail.

The problem arises when a person is kept in custody for long hours without putting his arrest on record. Such detention is nothing but 'wrongful confinement' (defined under section 340 of the IPC) punishable with imprisonment under various sections depending upon the purpose and duration of confinement. This problem gets aggravated when the person so detained is also subject to custodial violence which is not only an offence but also deprivation of a fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution. Such a person is, therefore, entitled for suitable compensation under the CrPC or remedy available in public law based on the strict liability for contravention of the guaranteed inalienable rights of the citizen.

Under section 357 of the CrPC, a court may order compensation to the person who has suffered any loss or injury, even if fine does not form a part of the sentence. This power is also available to appellate and revisional courts. The SC in Ankush Shivaji Galkwad vs. State of Maharashtra (2013) held that the power to award compensation to victims of offence conferred on the court is coupled with duty. The courts are bound to consider the issue of award of compensation in every case and record reasons for awarding or refusing compensation. The only limitation is that the accused must have the capacity to pay compensation.

A new section 357A of the CrPC (in force from December 2009) makes it mandatory for every state government to notify its own 'Victim Compensation Scheme' for providing funds for the purpose of compensation to the victim or his dependents. The courts under this provision can award compensation even in cases which end in acquittal or discharge.



**R K Vij**  
**AGAINST**

Another section 358 of the CrPC also lays down the principle of compensation when there is no sufficient ground for causing arrest of the accused. However, there must be a direct and proximate nexus between the complaint and the arrest for the award of compensation.

Most importantly, the SC has held that it has the power to award monetary compensation when the constitutional right to personal liberty is invaded by enforcement agencies. The Rudal Sah vs State of Bihar (1983) was a landmark judgment in which the SC ordered the Bihar government to pay compensation of Rs 30,000 to Rudal Sah, who had to remain in jail for 14 years after his acquittal. Similarly, in Bhim Singh vs State of J&K, the Court awarded a sum of Rs 50,000 as compensation because the petitioner as MLA was detained in custody and deliberately prevented from attending the legislative assembly session. The detention was held to be mala fide and deliberate.

Another landmark step was the enactment of the Protection of Human Rights Act, 1983, and constitution of the National Human Rights Commission

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(NHRC). The definition of "human rights", under the Act, is large enough to include fundamental rights to life, liberty, equality and dignity of individuals. The commission can make an inquiry into such violations and make recommendations to the government for compensation or damages to the victim etc. In suitable cases, the NHRC, which is easily accessible to common people, has awarded compensation for violation of their human rights by the police.

In view of this, there seems no reason to enact another statute. The only need is to spread awareness among the common populace about the prevalent legal remedies and continuously sensitise the law enforcement agencies so that the instances of human rights violations are minimised at the hands of their protector.

The writer is a senior IPS officer in Chhattisgarh. Views are personal

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to approach the court for availing compensation by virtue of the fact that wrongful imprisonment is a violation of fundamental rights under Article 21 (protection of the right to life and liberty) and Article 22 (protection against arbitrary arrests and illegal detention etc), such compensation is not absolute, uniform or even universal.

Nevertheless, the Supreme Court evolved this compensatory jurisprudence through its various landmark pronouncements setting precedence of awarding compensation as a public law remedy for violations of constitutional rights, including wrongful imprisonment. However, the SC has tried to limit the scope of cases covered under the remedy of awarding compensation for violation of Article 21 in multiple cases due to lack of a legislation.

I am of the opinion that India as a responsible democratic nation must



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compensation in appropriate cases. "Thus, there seems no rationale to enact another statute when the jurisprudence on compensation has already been developed in our country."

A police officer may arrest any person based on credible information, or reasonable suspicion of having committed a cognizable offence. However, this power is not absolute, and is subject to the scrutiny of courts. The law on arrest was amended with effect from November

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## **Delhi: Complaint against DMRC over 'wrong' signages for transgenders at new toilets**

<https://www.timesnownews.com/delhi/article/delhi-complaint-against-dmrc-over-wrong-signages-for-transgenders-at-new-toilets/809648>

A complaint has been filed with National Human Rights Commission (NHRC) against Delhi Metro Rail Corporation (DMRC) for alleged wrong signages at new toilets installed by the metro authorities at stations.

The complaint has been filed by transgender activist Dr Aqsa Sheikh in Delhi. Aqsa alleges the transgender persons have been misrepresented at new toilets by DMRC.

"We submit that DMRC has violated Section 8(3) of the Act [Transgender Persons (Protection of Rights) Act 2019 ] under which the appropriate government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory," the report quoted from the complaint filed by Aqsa.

The DMRC last month made provisions to allow access to transgender persons to separate toilets at its stations. Till now, the toilets were meant only for disabled people.

Dr Aqsa had welcome DMRC's approach but pointed out several mistakes in signages installed by DMRC.

According to the activist Aqsa, the signages used the word 'ubhaylingi' meaning intersex persons and not transgender persons.

Aqsa argued that the DMRC signages have spread incorrect terms as the agency has used these signages in at least 47 toilets across Delhi Metro stations.

"Though the Hindi translation of the term in the Transgender Persons Act is ubhaylingi, the community prefers that the word should be used for intersex persons and not transgender persons," she wrote in the complaint. Dr Aqsa has now sought the removal of all such bilingual signages.

The transgender activist further argued in her complaint that the signage uses the wrong symbol for transgender (half-male and half-female) which gives a wrong impression that transgender persons are half male and half female.

The complaint said the usage of such symbol violates the order of Delhi chief secretary making mandatory the usage of the symbol 'T' for transgender persons.



## NHRC में नियुक्ति की याचिका सुप्रीम कोर्ट ने खारिज किया

■ विस, नई दिल्ली : एनएचआरसी के खाली पदों को भरने के लिए निर्देश देने की याचिका को सुप्रीम कोर्ट ने खारिज कर दिया। बेंच ने कहा कि पूर्व जस्टिस अरुण मिश्रा को एनएचआरसी का अध्यक्ष बनाया गया है। साथ ही अन्य मेंबरों की नियुक्ति के बाद अब इस याचिका का कोई मतलब नहीं रह जाता है। सुनवाई के दौरान याचिकाकर्ता ने कहा कि अध्यक्ष और सदस्यों की नियुक्ति हुई है अब सिर्फ दो पद खाली हैं। सुप्रीम कोर्ट ने कहा कि अब इस याचिका को हम क्यों पेंडिंग रखें अब मामला व्यर्थ हो गया है।



## SC lauds efforts, but calls PIL on NHRC pointless

**New Delhi:** The SC on Thursday said that the PIL filed by top court lawyer and human rights activist, Radhakanta Tripathy, is now infructuous since the National Human Rights Commission Chairperson has already been appointed (Justice Arun Mishra). The bench of apex court, headed by Justice L Nageswara Rao, said, "The plea now is infructuous since the NHRC Chairperson has already been appointed." —ANI



## एनएचआरसी में रिक्त पद भरने संबंधी याचिका खारिज की

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# CBI gets more complaints from WB post-poll violence victims

■ By Saibal Gupta

KOLKATA, Sept 9 (IANS)

THE Central Bureau of Investigation that is probing the cases of post-poll violence in West Bengal under the direction of the Calcutta High Court, has recently written to the National Human Rights Commission to send them the list of complaints that could not be probed because of circumstantial pressure.

The central agency wanted to get the list because it was receiving a series of complaints from several people who are not in the NHRC list submitted to the High Court.

The NHRC in their report to the Calcutta High Court had mentioned 29 cases of murder and 12 cases of rape and sexual harassment in post-poll violence in the State but the CBI officers

have reasons to believe that the figure is much higher than expected.

CBI sources said that even some victims and their family members, whose cases are yet to be registered, have been rushing the CBI office in Kolkata to get their complaints registered. Sources further said that although the members of the CBI investigating teams are going to places in the state to investigate the cases, they are yet to reach out to all corners.

"People are getting in touch with us with new complaints. The number of complaints is high enough and it doesn't figure in the NHRC list. We have asked the NHRC to provide us a list of people that could not be enquired for some other reasons," a CBI officer told IANS on the condition of anonymity.

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## नोएडा: 21 किसानों को जेल से रिहा किया गया

[https://hindi.business-standard.com/storypage\\_hin.php?autono=2132823](https://hindi.business-standard.com/storypage_hin.php?autono=2132823)

गौतमबुद्ध नगर जिले में अपनी विभिन्न मांगों को लेकर नोएडा प्राधिकरण पर धरना देने के मामले में जेल भेजे गए 103 किसानों में से मंगलवार देर रात को 21 किसानों को रिहा किया गया। जेल से रिहा हुए लोगों में कांग्रेस नेता ओमवीर यादव और अनिल यादव तथा समाजवादी पार्टी के नेता सुनील चौधरी भी शामिल हैं।

जेल से रिहा हुए कांग्रेस नेता अनिल यादव ने बताया कि कुल 103 किसान इस आंदोलन में बंद हुए थे, जिसमें से मेडिकल आधार पर दो किसानों को छोड़ दिया गया था। फिलहाल 101 किसान गौतमबुद्ध नगर जेल में बंद थे, जिनमें से आज कुल 21 किसानों को छोड़ दिया गया है। उन्होंने बताया कि किसानों का आंदोलन जारी रहेगा वे लोग कल भी धरना स्थल पर जाकर अपना विरोध-प्रदर्शन जारी रखेंगे।

जेल अधीक्षक अरुण प्रताप सिंह ने बताया कि मंगलवार देर रात को गौतमबुद्ध नगर लुक्सर जेल से 21 किसानों को रिहा कर दिया गया है।

मालूम हो कि अपनी विभिन्न मांगों को लेकर 21 गांव के किसान नोएडा प्राधिकरण के खिलाफ विरोध-प्रदर्शन कर रहे हैं और इस मामले में कई किसानों को जेल भेजा जा चुका है। जिनमें इस आंदोलन को खड़ा करने वाले सुखवीर पहलवान समेत कई नेता शामिल हैं। इन लोगों के परिजनों ने अब राष्ट्रीय मानवाधिकार आयोग को पत्र लिखा है। जिसमें कहा गया है कि गौतमबुद्ध नगर पुलिस ने गिरफ्तार किसानों को कहाँ रखा, यह जानकारी नहीं दी जा रही है। इसे सीधे तौर पर मानवाधिकारों का उल्लंघन करार दिया गया है।



## **Plea seeking filling of vacant NHRC posts junked**

<https://www.dailypioneer.com/2021/india/plea-seeking-filling-of-vacant-nhrc-posts-junked.html>

The Supreme Court on Thursday dismissed a plea seeking directions to fill vacant posts at the National Human Rights Commission (NHRC).

A bench headed by Justice L Nageswara Rao noted that former apex court judge Justice Arun Mishra has been appointed as the chairperson of the National Human Rights Commission.

“In view of subsequent events of appointment of chairman and members this petition has become infructuous,” the bench also comprising Justice B R Gavai said.

During the brief hearing, the petitioner told the bench that chairperson and members have been appointed and only two posts are lying vacant.

The apex court then asked, “Chairperson has been appointed, why should we keep it pending. The matter has become infructuous.”

The top court was hearing a plea filed by lawyer Radhakant Tripathi seeking a direction to fill vacant posts at the National Human Rights Commission.

Justice Mishra is also the first non-CJI to be appointed to the NHRC chief post since the amendment of the Protection of Human Rights Act in 2019.

The post of NHRC chairperson was lying vacant after Justice H L Dattu, a former Chief Justice of India (CJI), completed his tenure in December last year.

Rajiv Jain, former director of the Intelligence Bureau, and justice M M Kumar, former chief justice of the Jammu and Kashmir High Court have also joined as members of the commission.

# NHRC में रिक्त पद भरने संबंधी याचिका खारिज

नई दिल्ली (एसएनबी)। उच्चतम न्यायालय ने राष्ट्रीय मानवाधिकार आयोग (एनएचआरसी) में रिक्त पदों को भरने के लिए निर्देश देने का अनुरोध करने वाली याचिका वृहस्पतिवार को खारिज कर दी।

न्यायमूर्ति एल नागेश्वर राव और न्यायमूर्ति वी आर गवई की पीठ ने कहा कि उच्चतम न्यायालय के पूर्व न्यायाधीश अरुण मिश्रा को एनएचआरसी का अध्यक्ष नियुक्त किया गया है। उन्होंने कहा, 'अध्यक्ष और सदस्यों की नियुक्ति के बाद की घटनाओं को देखते हुए यह याचिका व्यर्थ हो गयी है।' संक्षिप्त सुनवाई के दौरान याचिकाकर्ता ने पीठ को बताया कि अध्यक्ष और सदस्यों की नियुक्ति की गयी है और केवल दो पद रिक्त हैं। इस पर शीर्ष न्यायालय ने पूछा, 'अध्यक्ष की नियुक्ति की गयी है तो हम इसे लंबित क्यों

■ अध्यक्ष और सदस्यों की नियुक्ति के बाद की घटनाओं को देखते हुए यह याचिका व्यर्थ हो गयी है : सुप्रीम कोर्ट

रखें। सुप्रीम कोर्ट वकील राधाकांत त्रिपाठी की याचिका पर सुनवाई कर रहा है जिसमें राष्ट्रीय मानवाधिकार आयोग में रिक्त पदों को भरने का निर्देश दिया गया है। न्यायाधीश मिश्रा भारत के पहले गैर प्रधान न्यायाधीश हैं जिन्हें 2019 में मानवाधिकार सुरक्षा अधिनियम में संशोधन के बाद से एनएचआरसी प्रमुख के पद पर नियुक्त किया गया है। पूर्व प्रधान न्यायाधीश एच एल दत्तू के पिछले साल दिसम्बर में कार्यकाल पूरा करने के बाद एनएचआरसी अध्यक्ष का पद खाली था।