

**RECORD OF DISCUSSION OF THE INTERACTION BETWEEN NHRC, INDIA  
AND THE UN SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR  
ARBITRARY EXECUTIONS HELD ON 22.03.2012 AT 1130 HRS. IN THE  
NHRC CONFERENCE ROOM**

The interaction of the National Human Rights Commission with the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Christof Heyns, was held in the National Human Rights Commission Conference Room on 22.03.2012 at 11:30 AM under the Chairmanship of Justice Shri GP Mathur, Member, NHRC.

The list of participants is at Annexure 1.

The interaction began with Member Justice Shri GP Mathur welcoming the UN Delegation to the Commission and briefing the Members of the Delegation on the composition, mandate, and the role and functions of the NHRC, India in protecting and promoting human rights in the country.

Member Justice Shri GP Mathur further briefed the Special Rapporteur on the Indian Judicial system, its three-tier structure and its reputation for being strong and fiercely independent. He highlighted the important legal provisions provided in the Constitution of India, especially the chapter on 'Fundamental Rights'. He also outlined the relevant provisions of the Code of

Criminal Procedure and the Indian Penal Code, to guarantee both citizens and non-citizens, fundamental rights against any arbitrary action of the state and/or its agencies. Member Justice Shri GP Mathur further stated that India's domestic laws were in strict conformity with all international human rights treaties and standards.

With regard to the issue of 'injury or death caused due to police action', Member Justice Shri GP Mathur stated that while the NHRC has received some reports/complaints in this regard, their number is not high. He stated that often, it happens that while pursuing criminals or attempting to arrest them, criminals resort to the use of lethal weapons to fend off the police. In several such cases, while exercising their right to self-defence, the police end up injuring, and in some instances even causing the death of such criminals. He emphasized that the right to self-defence also applies to police personnel and is provided for under the Code of Criminal Procedure. He added that extrajudicial killings have no sanction whatsoever, under Indian law.

He further informed the Special Rapporteur that the Commission had issued detailed guidelines to the Chief Secretaries of all states to report custodial deaths and custodial rapes to the Commission within 24 hours of their occurrence. Similarly, directives/guidelines had also been issued in matters relating among others, to post-mortem examinations in cases of deaths in custody; encounter deaths; arrests and polygraph tests; as also reporting on custodial deaths / rapes in Juvenile or Children's Homes.

On the receipt of such reports, the NHRC investigates these cases. Where it believes there was no apprehension of any possible injury or death to the police personnel at the hands of the criminal, and that the concerned police personnel made use of unjustified force, thus, causing grievous injury or death of an individual, the Commission is empowered to award compensation to the next of kin of the victim and even recommend the prosecution of the errant official.

The UN Special Rapporteur, Mr. Christof Heyns was deeply appreciative of the opportunity to interact with the Commission and briefly outlined the mandate of the UN Special Procedures to enquire into violations of various human rights across the globe. He stated that there are close to 44 UN mandates, established to monitor human rights situations in specific countries or territories, known as 'country mandates,' or on major phenomena of human rights violations worldwide, known as 'thematic mandates.' Various activities are undertaken by the UN Special Procedures, including country visits, responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities.

Speaking about his mandate, the UN Special Rapporteur stated that the purpose of his country visits was to see how protection measures could be strengthened to prevent extrajudicial, summary or arbitrary executions / killings. The purpose of his mandate as the Special Rapporteur, he added, was to 'patrol the borders between what is legitimate and illegitimate,' by ensuring

that there is a system in place to prevent the disproportionate use of power by state forces that might infringe on an individual's right to life.

Mr. Christof Heyns added that in the exercise of his mandate, he had been confronted most frequently by three particular concerns:

- (i) Disproportionate use of force by armed forces: Is there a system in place to ensure that the use of force is limited by concerns for 'proportionality' and 'necessity', and that security forces do not transgress the limits imposed on them by law?
- (ii) Diligence / accountability or the state's duty to protect: The use of force by civilians against each other and what state prevention/protection mechanisms exist/are employed to prevent incidence of violence among civilians.
- (iii) Death Penalty: What is the state's stand on the issue of death penalty? Under what circumstances is death penalty awarded? Even if a country's laws allows for the death penalty, is it exercised within the limits of international law?

Accordingly, Mr. Christof Heyns enquired the following of the Commission:

- (i) On the issue of 'encounter killings', does the NHRC, India share the concern that there may be a gap between the existence of theoretical legal provisions prohibiting extrajudicial or summary executions and actual practice on the ground? Does the NHRC believe that legal provisions, for instance, the provision regarding

the right to self-defence, can and perhaps is being used by the police and security forces to cover up / justify encounter deaths?

- (ii) What is the view of the NHRC, India on the Armed Forces (Special Powers) Act, 1958 [AFSPA]?
- (iii) How serious is the problem of dowry deaths and 'honour' killings in the country? Has there been a specific targeting of particular groups or sections of people in the country? And how can one tackle the problems of dowry and honour killings – is there a need for the enactment of more legislation or greater education and rights awareness to address the problem? What role does the NHRC have in this regard?
- (iv) What route can the country follow or what measures can be adopted to deepen the respect for the right to life?
- (v) Although death penalty is not a very serious matter in India, given that the judiciary awards the death sentence only in the “rarest of rare” cases, does this particular exception comply with international human rights standards? How does one understand what constitutes “rarest of rare”?

Member Justice Shri GP Mathur responded to the question on 'death penalty' by referring to Section 303 of the Indian Penal Code (IPC) which was a unique section, in that it was the only section in the whole Code, which prescribed mandatory death sentence. It ran thus: "Whoever being under sentence of imprisonment for life, commits murder, shall be punished with death." However, the Indian Supreme Court struck down this section in 1980 while hearing the Bachan Singh case. As of now, there is no section in the IPC which makes any offence mandatorily punishable by death penalty.

The Supreme Court has held, and time and again reiterated, that death penalty can be imposed only in the "rarest of rare" cases. However, the exact definition or contours of the phrase have not been spelt out by the courts; to that extent therefore, there is no clarity on what exactly constitutes "rarest of rare".

Since 1990, only in one case has the death sentence been awarded. Usually, Courts in India have only given life imprisonment. In practice, there is practically no death sentence. Moreover, the Constitution, under Article 72 grants the President the power to grant pardons and to suspend, remit or commute sentences. Additionally, Article 161 grants similar powers to the Governor of the State. It is pertinent to point out the reason the death penalty has been retained in the Statute Book. India is facing a large volume of terror-related cases. Terrorism manifests in many forms – prominent among them being the Naxal/Maoist threat in Central India.

On the question of whether police and other security forces were staging fake encounters and using legal provisions such as 'self-defence' to get around the laws, Member Justice Shri GP Mathur stated that the issue was one which would have to be examined on the basis of the nature of evidence by an authorized body such as a Court of Law or the NHRC, India.

Member Shri Satyabrata Pal stated that given India's population, the number of cases the NHRC, India receives on the issue of extrajudicial killings is not very high. He added that while widespread allegations of extrajudicial killings especially in Jammu and Kashmir are often made by NGOs, the numbers do not reflect a widespread practice or pattern in a country the size of India. The Commission, he added, was satisfied that most states were diligently following the guidelines issued by the NHRC in respect of death in custody, particularly the guideline on reporting custodial deaths/ custodial rapes to the Commission within 24 hours of their occurrence. He added that the number of cases vary across years, but they are never beyond a couple of hundred a year. Compared to other countries, the issue is not of a grave nature. However, as a rights body, the NHRC, India is concerned about the issue.

Member Shri Satyabrata Pal added that the denial of economic and social rights results in far more number of deaths in the country than extrajudicial executions. The issue of extrajudicial killings was not as grave compared to other issues of a much greater complexity and magnitude such as starvation deaths. He added that there had been no cases/instances

of the targeted killing of women or children; the victims were usually young males.

Nearly 60 per cent of all cases on extrajudicial deaths are received from the state of Uttar Pradesh (UP), where the victims are usually individuals with criminal backgrounds. In the case of states affected by Naxalism, such incidents occur usually when there has been a huge exchange of fire between the security personnel and the Naxals. In the Northeast, it is rare that someone completely innocent is killed by security forces. There may be cases where during a conflict between two armed groups, the Indian Army may have had to step in and casualties may have occurred.

On the question of shootings by the Border Security Force (BSF) along the borders, Member Shri Satyabrata Pal stated that it was a case not of extrajudicial killings, but the disproportionate use of force. The NHRC investigates all the reports/cases that it receives. In case it is not satisfied with the reply sent to it by the authorities concerned, it directs its own investigation wing, comprising high-ranking officials to conduct an independent investigation; in some instances, the Commission may also decide to approach the Central Bureau of Investigation (CBI) to conduct such investigation.

In cases where the Commission finds that the police did in fact exceed their powers, it recommends the payment of relief to the next of kin of



those killed. Criminal prosecution may also be initiated on the recommendation of the NHRC by the concerned state government after conducting its own investigation into the matter.

On the UN Special Rapporteur's query whether compensation has led to accountability, Member Shri Satyabrata Pal responded by stating that compensation has worked as a deterrent to the commission of such crimes. Usually the state government pays the victim and recovers the same amount from the accused official. Some states have been seen to be resistant to the payment of compensation to the victims or their families, and instead insist on waiting for a court of law to establish guilt on the part of the accused official, which is very difficult to prove in such cases since there are invariably no witnesses.

Member Justice Shri GP Mathur stated that the NHRC examines each case that it receives and also, that anyone can file a criminal case against the concerned official. He added that there are several cases where police officials, including high-ranking officers have been prosecuted.

The DG(I), Shri Sunil Krishna informed the Delegation that in the last year only about 129 cases alleging extrajudicial killings were received by the Commission.

Member Justice Shri GP Mathur added that even of this number, not all were genuine cases. While the Commission investigates each case, it often turns out that only a very small portion of these cases are genuine, in which case, the Commission recommends compensation to the families of those affected. He further pointed out that while NGOs make allegations, often exaggerated, about the death of civilians in police action, they seldom talk about the death of police personnel. In 2010, while there were 239 civilian casualties, 166 policemen were also killed during the course of discharging their duties.

Member Shri BC Patel pointed out to the problem of the lack of scientific collection of evidence, which, in the past, has proved to be a stumbling block in the conduct of investigations and the verification of the truth. However, gradually this state of affairs is changing, with better training being imparted to investigating officials in the collection of scientific evidence. This has greatly facilitated the Commission's work and has placed it in a better position to establish the veracity of the allegations of fake or staged police encounters.

The UN Special Rapporteur stated that while the Government of India has maintained that there is a need for the Armed Forces (Special Powers) Act [AFSPA] for counter insurgency, those opposed to the Act argue that the exception is gradually becoming the norm and that the Act has given the armed forces a licence to kill. The UN Special Rapporteur enquired about the NHRC, India's views on the AFSPA, which is largely viewed as an

Act which usurps a large number of safeguards usually available to the people against any arbitrary action of the state which may violate their rights. The Special Rapporteur also wished to know if the Commission was pursuing the matter of the repeal of the said Act.

Member Shri Satyabrata Pal stated that the NHRC is of the view that the AFSPA should be repealed. However, the Supreme Court of India has held that the Act is constitutional. Thus, it will be for the Government to decide whether or not to repeal the Act. Member Pal added that the NHRC has not pursued the issue as a priority, since it is not central to the work of the Commission and also since there is a range of other pressing and complex issues that the Commission is presently engaged in addressing. However, the impact of legislations on the people remains an important concern for the Commission.

Member Shri Satyabrata Pal further clarified that the AFSPA applies and the Army is called in to operate only in areas that have been declared 'disturbed areas' by the state government. During the preparation for UPR II, the Commission did receive representation from the Northeast for the repeal of the AFSPA. However, very rarely has the Commission found that the AFSPA is itself the problem; most times the problem is individual officers who have overstepped the limits of their power/authority.

Member Justice Shri GP Mathur stated that the AFSPA is not applicable throughout India, but only in the state of Jammu and Kashmir and India's Northeast – regions which have witnessed large-scale insurgency. Further, the Constitution of India has special provisions for the proclamation of a state of emergency, notably Article 352.

On the issue of dowry deaths and honour killings, Member Justice Shri GP Mathur stated that these are social problems, and that there is already an Act in place to deal with dowry-related matters. On the issue of honour killings, Member Justice Shri GP Mathur stated that the term itself was a media construct, and that the phenomenon being referred to was more or less confined to the state of Haryana. The instances of these so-called 'honour' killings were very few. He further added, that a killing, irrespective of the intent or motivation, was a murder, and hence, a crime punishable under law. Responding to the UN Special Rapporteur's query on the NHRC's role vis-à-vis the problem of honour killings, Member Justice Shri GP Mathur stated that the NHRC's jurisdiction was limited to violations of human rights by the state and its agencies, and not by private individuals. The Commission's role only comes into play if a public servant does not, for instance, register a case or act to prosecute an offender, that is, fails to perform her/his duty as mandated by law.

In such cases, Member Shri Satyabrata Pal added, the Commission inquires into why action was not taken by the concerned official, and subsequently, acts according to the case under consideration.

Registrar (Law), Shri AK Garg added that where a man and woman who have married against the wishes of their respective families, have approached the NHRC requesting for police protection for fear of being harmed by their families, the Commission has directed the police to provide protection to the concerned couples. He further added that there was a separate Commission, the National Commission for Women, to look into problems and issues specific to women.

On the question of human rights education, the JS (Training), Shri J.S. Kochher informed the Special Rapporteur that Section 12(h) of the Protection of Human Rights Act, 1993 (PHR Act) mandates the NHRC to spread human rights education in the country. Accordingly, the NHRC has been actively engaged in spreading human rights education and sensitization across the country. The NHRC has a separate Training Division, which has so far conducted nearly 120 sensitization programmes, focusing on issues such as police violations of human rights and their responsibility to protect and uphold human rights; rights of women and children; rights of minorities; rights of dalits; female foeticide; bonded and child labour, and other social, economic, civil and political rights.

The UN Special Rapporteur also enquired about the position of the country on two core international human rights conventions – the *Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment* and the *Convention for the Protection of All*

*Persons from Enforced Disappearance*, as also the Rome Statute of the International Criminal Court (ICC).

Member Shri Satyabrata Pal stated that the Government's position on the CAT was to enact an enabling domestic legislation before ratifying the Convention. The Draft Bill presented in the Lok Sabha was fairly weak. It was subsequently sent to the Rajya Sabha, which set up a Committee to examine the Draft. The Committee invited comments of the civil society and the NHRC and also examined the Bill in light of the best practices in other states. The Bill will now have to be sent back to the Lok Sabha for approval.

Member Justice Shri GP Mathur stated that the IPC contains provisions such as Sections 330 and 331 for prosecuting police officials who resort to the use of torture. Thus, India already has laws in place and yet it has chosen to enact a separate legislation to make the safeguards against torture, more stringent.

On the question of the ICC, Member Justice Shri GP Mathur stated that the Indian Judiciary is absolutely independent, strong and fair. There are numerous problems with the working of the ICC and with just one prosecution in the last 10 years, one is bound to question the use and effectiveness of the international court.

Member Shri Satyabrata Pal stated that there are political reasons why the Government of India has not ratified the Rome Statute. He added that it is not the remit of the NHRC, but the Government to decide whether or not India should sign the Statute.

Member Shri Satyabrata Pal further stated that the Commission is mandated to recommend to the Government of India to sign and/or ratify international conventions, and it does so, on issues and concerns vital to the protection of the rights of India's people, such as the Convention on Torture. However, one has to ask if the Optional Protocol to the ICCPR, for instance, which essentially creates a body to hear individual complaints, is necessary for a country like India, which already has a robust judiciary in addition to the NHRC and other Commissions to hear and address individual complaints? If the Government decides to ratify the Protocol, the Commission would definitely support it, but this particular issue is not central to the Commission's concerns.

The UN Special Rapporteur enquired about the landscape of human rights protection in the country, specifically bodies such as the State Human Rights Commissions (SHRCs) and other National Commissions.

Member Shri Satyabrata Pal responded by stating that while the other National Commissions are very active and performing well, State Human

Rights Commissions, owing to various factors, including a lack of resources and infrastructure, have been unable to perform as effectively.

The DG(I), Shri Sunil Krishna informed the UN Delegation that the NHRC, India has developed the following important mechanisms to address the issue of extrajudicial encounters:

1. Focal Point on Human Rights Defenders who can be reached through dedicated mobile and fax numbers and e-mail, 24 hours of the day, throughout the week by human rights defenders and activists across the country.
2. Rapid Action Cell of the Investigation Division. On receiving directions from the Commission, the Cell immediately contacts concerned officials/authorities in the states to establish the whereabouts of a person feared to have been abducted or faced with the possible threat of an encounter.

Further all DGs of Police across states have been given detailed instructions regarding the guidelines on false encounters. The Commission is also assisted by a Panel of Forensic Pathologists which greatly facilitates the work of the Commission in cases of fake encounters. The Commission recently also published a Police Manual to sensitize police personnel regarding the protection and promotion of human rights, which has been circulated across all states.



Further, in 2006, the Supreme Court delivered a historic judgment in the *Prakash Singh and Others vs. Union of India and Others* case, instructing the central and state governments to comply with a set of directives laying down practical mechanisms to kick-start police reforms. One of these directives was for state governments to create a 'Police Complaints Authority' at the district level, where complaints against police officers of and up to the rank of Deputy Superintendent of Police could be lodged. Similarly, the Court directed that there be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. However, very few states have created these bodies.

The NHRC has also signed an MOU with the Indira Gandhi National Open University (IGNOU), to conduct on-line training programmes using the University's distance learning facility for police personnel in the field.

There is also an encouraging move towards the use of non-lethal weapons by the police and other security forces. NHRC, India had taken up the case of deaths along the border caused in police action. The Border Security Force (BSF) is also increasingly opting for the use of non-lethal weapons such as rubber bullets and pump-action shotguns also known as riot shotguns.

The discussion concluded with a vote of thanks by Member Justice Shri GP Mathur.

## **ANNEXURE 1**

### Represented from NHRC

- (1) Justice Shri G.P. Mathur, Member
- (2) Justice Shri B.C. Patel, Member
- (3) Shri Satyabrata Pal, Member
- (4) Shri Rajiv Sharma, Secretary General
- (5) Shri Sunil Krishna, DG (Investigation)
- (6) Shri A.K. Garg, Registrar (Law)
- (7) Shri J.P. Meena, Joint Secretary (P&A)
- (8) Shri J.S. Kochher, Joint Secretary (Trg)
- (9) Shri A.K. Parashar, Joint Registrar (Law)
- (10) Shri B.S. Nagar, Under Secretary (Coord)
- (11) Shri T. Raveendran, Section officer (Coord)

### Represented from MEA

- (1) Ms. R. Mishra, Under Secretary

### Represented from the UN

- (1) Mr. Christof Heyns, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions
- (2) Ms. Elina
- (3) Ms. Romi