



# HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

No.32, Besant Road, Chokkikulam, Madurai - 625 002, Tamil Nadu, India.  
P: +91-452-2531874 & 2539520 Fax: +91-452- 2531874 Mobile: 99943-68540  
E.mail: hrda.india@gmail.com Web: www.hrdaindia.org

June 24, 2017

To,  
**Justice (Retd.) H.L. Dattu,**  
Chairperson,  
National Human Rights Commission,  
New Delhi  
Email: [chairnhrc@nic.in](mailto:chairnhrc@nic.in)

***Sub: Review against the order passed by Hon'ble NHRC - Case No. 183/9/13/2016 - Case of Mr. Khurram Parvez – Case closed solely based on report by the Intelligence Bureau – Regarding***

Respected Justice (Retd.) Dattu,

We are writing to express our grave and deep concerns over the Hon'ble National Human Rights Commission's order in the case of Mr. Khurram Parvez. Mr. Parvez who was illegally denied travel to Geneva and was detained under Public Safety Act in Srinagar, Jammu & Kashmir (J&K).

Mr. Parvez is the convenor of Jammu and Kashmir Coalition of Civil Society (JKCCS) which is a human rights group representing various non-funded and non-profit campaigns, researches and advocacy organisations based in Jammu and Kashmir. Presently, Mr. Parvez is also the Chairperson of Asian Federation Against Involuntary Disappearances (AFAD) which is a human rights federation of organisations campaigning against enforced disappearances in Asia. Mr. Parvez has been a part of the research group that published a report in December 2009 on the discovery of thousands of unmarked graves in Kashmir.

On September 14, 2016, Mr. Parvez was prevented from travelling to Geneva at the Indira Gandhi International Airport, New Delhi. Mr. Parvez was part of the AFAD & JKCCS delegation which was on a visit to Geneva from September 14-24, 2016, to attend 33<sup>rd</sup> session of the UN Human Rights Council. He had an invitation, a valid visa and other necessary documents. He was told by the Immigration authorities that due to orders from the Intelligence Bureau, he cannot travel to Geneva. Despite repeatedly asking for written orders, he was not shown any and was prohibited from leaving the country. He was not given any reasons for not allowing him to travel. He was only orally informed that immigration officers had instructions that he was not to be 'arrested', but that he should not be allowed to leave the country. Besides attending the UNHRC session, he was scheduled to brief various UN bodies including the UN High Commissioner for Human Rights regarding the concerning situation in J&K.

This travel ban on Mr. Parvez is part of the widespread and systematic targeting of human rights defenders and to prevent their access to the UN – a case of reprisals as termed in the United Nations. HRDA had sent a complaint to the Hon'ble Commission on September 16, 2016, in this matter, which was registered with Case No. 183/9/13/2016.

A close perusal of the file in the custody of HRDA at its headquarters reveals that the complaint was initiated on 16<sup>th</sup> September, 2016. The Hon'ble Commission was pleased to issue a notice

to the Director General of Police, Government of J&K and The Foreigners' Regional Registration Officer, [FRRO], East Block – VII, Level – 2, Sector I, R.K. Puram, New Delhi 110 066 on September 24, 2016, asking them to submit requisite information within 4 weeks from the date of receipt of notice. When HRDA viewed the status of this complaint on October 25, 2016, it indicated that response of the concerned authority was awaited. On February 8, 2017, HRDA sent an email to the registrar of the NHRC with Reference: F.No. 114/HRDA/N/ND/2016 stating that on February 7, 2017, the website of the Hon'ble NHRC showed that response received from the concerned authorities were under the consideration of the Hon'ble Commission. We now come to know that the response from the Joint Deputy Director, Intelligence Bureau of the Govt of India was dated December 13, 2016. This copy of the response was never made available to HRDA. It is incomprehensible how even in a case of human rights violation complaint relating to an internationally well know human rights defender, this Hon'ble Commission decides on the same without serving a copy of the same to the complainant, in this case HRDA.

HRDA even filed an online RTI petition to the Hon'ble Commission on June 17, 2017, with Registration No : NHRCM/R/2017/50190 asking for a copy of the report of the Intelligence Bureau dated December 13, 2016, received from the Joint Director of the Intelligence Bureau.

Now finally as per the copy of the order dated May 18, 2017, received by HRDA on May 27, 2017, from the Hon'ble Commission, we have learnt that it has been decided by the Hon'ble Commission to close the case on the basis of a report filed by the Intelligence Bureau, a copy of which was never served on the complainant by this Hon'ble Commission. The Hon'ble Commission did not chose to undertake an independent assessment of facts given the seriousness of the case, involving a serious violation to freedom of movement and expression and reprisals because of engagement with the UN human rights mechanisms. This independent investigation could have been carried out given the nature of the case even by an Hon'ble Member of the Commission, or any of the several Special Rapporteurs of the Commission or the investigation wing of the NHRC. The principles of natural justice were grossly neglected by the Hon'ble Commission. Given that the Hon'ble Commission decided to call for reports from the Intelligence Bureau, HRDA was not given any opportunity to file its response. Given the sequence of events and approach undertaken by the Hon'ble Commission, even if it might not be the case, HRDA is forced to comprehend this as a deliberate attempt by the Hon'ble Commission to disregard the principle of independence which is one of the most important of the Paris Principles and support the action initiated by the State authorities.

It has been stated in the order of the Hon'ble Commission that:

*“...It has been reported that Khurram Parvez is a Valley based Human Rights activist having anti-India and pro-separatist disposition. He maintains close links with prominent separatist leaders in the valley and has also participated in conferences / seminars organized by them. With a view to internationalize the ongoing disturbance and to castigate Indian policies, he had written a letter to UN High Commissioner for Human Rights and other Special Rapporteurs of UN for their urgent intervention and at the behest of SAS Geelani. He met foreign diplomats as well as representatives of HR organization based in Delhi and apprised them of the current situation and sought their intervention. He had also planned to attend the session of UNHRC at Geneva. During the current unrest in Kashmir Valley, he was at forefront of propagating separatist narrative among the valley based civil society activists. Four criminal cases have been against him for inciting violence in the District of Srinagar. Hence, damage could have been caused to national interest if he was allowed to go out of the country. No report in the matter has, however, been received from DGP, Jammu & Kashmir. Commission has considered the report of IB and is of the view that no further enquiry is required in the matter. The report is taken on record and the case stands closed.”*

We bring to your notice that, the Hon'ble High Court of Jammu & Kashmir in an order dated November 25, 2016, on a Habeas Corpus petition (Case No. HC(p) 297/2016) has quashed the detention order against Mr. Parvez terming it 'illegal' and an 'abuse of power'. The Hon'ble High Court had observed that in none of the four FIRs which were cited as the ground for detention by the police, Mr. Khurram had been named as an accused nor during the investigation he was proved to be an accused. The Hon'ble High Court also observed that the police witnesses had made 'parrot' statements in the case against Mr. Parvez. The Hon'ble High Court further pointed out the fact that none of the documents relating to his detention were provided to him and stated that it "*has deprived of the opportunity of making an effective representation against his detention in terms of Article 22(5) of the Constitution of India*", and that will alone be sufficient to 'invalidate' the detention order. The Hon'ble High Court in its judgement termed the detention order as 'arbitrary' as the detaining authority has not elucidated which of the activities of Mr. Parvez was found to be 'prejudicial to the security of the State or maintenance of public order'. The Hon'ble High Court also mentioned that the detention order suffers from 'lack of application' of mind.

HRDA would like to emphasise that in the directions issued by the Hon'ble Commission, it had mentioned that "*Four criminal cases have been against him for inciting violence in the District of Srinagar*", whereas the Hon'ble High Court of Jammu & Kashmir had in its judgment mentioned above has observed that:

*"..Perusal of the grounds of detention would reveal that the detenu has been, allegedly, found involved in (4) F.I.Rs, in which it is shown that he has committed offences u/s 307, 147, 158, 336, 149 & 332 RPC. Perusal of the said F.I.Rs, which have been placed on record and are also available in the record produced by learned counsel for the respondents, would show that in none of these F.I.Rs, the detenu has been named as accused. Nothing is brought to the notice of the Court, either in the grounds of detention or in the Reply Affidavit, that in the investigation of these F.I.Rs, involvement of the detenu surfaced as an accused. In absence of any such material having been brought to the notice of the Court, at this stage, it has to be presumed that the detenu is not involved in any of the above said F.I.Rs."*

This clearly shows that the claims made in the report provided by the Intelligence Bureau submitted to the Hon'ble Commission to substantiate the detention of Mr. Parvez is not only wrong on facts but also written with an intent of malice and aimed at harming the dignity of HRD Mr. Parvez.

We would also like to bring to the kind notice of the Hon'ble Commission that a group of UN experts<sup>1</sup> had urged the Government of India (GoI) in October, 2016 to release Mr. Parvez and observed that:

*"Mr. Parvez is a well-known and outspoken human rights defender who has had a longstanding and positive engagement with the UN human rights mechanisms. His continued detention following his arrest just a few days before his participation in the UN Human Rights Council, suggests a deliberate attempt to obstruct his legitimate human rights activism."*

---

<sup>1</sup> The experts: the UN Working Group on enforced or involuntary disappearances; the UN Special Rapporteur on the situation of human rights defenders, the Chair-Rapporteur of the UN Working Group on Arbitrary Detention, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

A group of UN mandate holders from the Office of the High Commissioner of Human Rights (OHCHR) had written<sup>2</sup> to the Gol on September 16, 2016, concerning arbitrary arrest, detention and travel ban against Mr. Parvez to which the UN group had received a reply from the Gol. It is learnt that the response sent by the Gol, apparently similar to the referred IB report in Hon'ble Commission's order in this case, levelled allegations against Mr. Parvez and has stated that he "in the garb of being a human rights activist" has been working against the interests of J&K. It is also stated in the reply that he has been involved in "anti-India" activities and has disrupted public order by instigating the youth to resort to violence.

The UN group categorically expressed their concerns about the broad and vague allegations and particularly emphasised about the accusation that Mr. Parvez pretends to be a human rights defender and has mentioned about the 'long standing' and 'positive engagement' with the UN human rights mechanisms. It is clear from the observations made by the UN experts group to the reply sent by Gol that accusations could not be proved substantially and have been refuted.

We would like to state the communication sent from OHCHR to the GovernmEnt of India:

*"We are also concerned at the implication that Mr. Parvez would not be a human rights defender or that he would pretend to be one, despite his longstanding and positive engagement with the United Nations human rights mechanisms."*

*"We express, once more, our serious concern that the arrest of Mr. Khurram Parvez, and/or the timing of his arrest, may represent a direct retaliation for his legitimate activities as a human rights defender, including in particular the exercise of his rights to freedom of expression and freedom of association."*

We would like to emphasise on the series of communications from several offices of United Nations expressing their concerns over arbitrary arrest, travel ban and detention of Mr. Parvez and their reiteration that Mr. Parvez is a human rights defender.

In May 2011, during Hon'ble Commission's accreditation at the then International Coordination Committee of NHRIs (now Global Alliance of NHRIs - GANHRI), the Sub Committee on Accreditation (SCA) expressed its concern about the practice of having police officers and former police officers involved in the investigation of human rights violations, particularly in circumstances where the alleged perpetrators are the police. The SCA noted that this practice has adverse implications for the actual and perceived independence of the Hon'ble Commission which is justified in this case. GANHRI's SCA made similar observations in November 2016 which formed one of the basis for Hon'ble Commission's accreditation to be deferred by a year.

In light of the above observations, it is amply clear that had the Hon'ble Commission adopted the principles of natural justice in this case by handling over the copy of the report received from the Intelligence Bureau to HRDA, HRDA would have been in a position to bring all these facts to the attention of the hon'ble Commission. The decision arrived at now is clearly not one that the NHRC itself would be proud of in the light of what has now been stated.

We therefore request the Hon'ble Commission to urgently

- (i) review the decision taken in the case of Mr. Parvez in a full court sitting of the Hon'ble Commission and immediately pass orders to reopen the case (Case No.: 183/9/13/2016).

---

<sup>2</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22800>

- (ii) order urgently for all papers/reports in the custody of this Hon'ble Commission in this case to be handed over to HRDA as scanned copies;
- (iii) urgently call for the report from the Director General of Police of the Govt of J&K that has not yet been received by the Commission;
- (iv) urgently order for an independent inquiry through an independent team of experts, preferably one of the Special Rapporteurs of the NHRC and at least one member of the NGO Core Group of NHRC.

The comments made through the report submitted by the Intelligence Bureau is too vague and does not substantiate any specific charges against Mr. Parvez other than maligning him and causing hurt to his repute. The Hon'ble Commission should consider observations of the Hon'ble High Court of Jammu & Kashmir while vindicating the charges against Mr. Parvez in the case on his arbitrary detention. Based on the independent enquiry, the Hon'ble Commission, if it finds the Intelligence Bureau guilty of restricting free movement of Mr. Parvez, should take stern actions against them as regards the same. The hon'ble Commission should also take into consideration the pledges India has made before the UN Human Rights Council.

We expect positive actions by the Hon'ble Commission in this case of persecution of a human rights defender by State authorities, violating his fundamental freedoms enshrined in the Constitution. It is expected from the Hon'ble Commission to act on this matter, failing which HRDA would seek justice in this case in other appropriate forums. We urge the Hon'ble Commission to honour this communication from HRDA, immediately acknowledge the same and communicate action taken by June 30, 2017 without any delay whatsoever.

We urgent the hon'ble Commission to kindly understand that this is an opportunity provided presuming that the above acts attributed to the Hon'ble Commission could have taken place without the full application of mind by the Hon'ble Commission. However, the result that is caused to the human rights defender in question is very serious and its effect therefore on all human rights defenders in the country is greater. It is therefore that we humbly request that this request for review is urgently placed before a full commission sitting specially called for this purpose and the result of the same sent to us before June 30, 2017.

Looking forward to your immediate action in this regard,

Yours sincerely,



**(Henri Tiphagne)**

National Working Secretary