



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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June 19, 2019

To

Mr Khaleel Ahmad

National Focal Point - Human Rights Defenders & Deputy Registrar

National Human Rights Commission,

Manav Adhikar Bhawan, Block-C,

GPO Complex, INA,

New Delhi – 110 023

Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – Criminal cases filed by the CBI against human rights organisation Lawyers Collective, Senior Advocate Anand Grover and its functionaries

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We express grave concerns over the filing of criminal cases by the Central Bureau of Investigation (CBI) on June 13, 2019, against human rights organisation 'Lawyers Collective', Senior Advocate Anand Grover and its other unnamed functionaries. The charges have been filed by the CBI on June 13, 2019, under various sections of Indian Penal Code (IPC), Foreign Contribution Regulation Act 2010 (FCRA) and Prevention of Corruption Act (PC) 1988 which include 120 –B r/w, Section 406, 420, 199 IPC, r/w Section 33, 35, 37, 39 of FCRA 2010 and Section 13 (2), r/w 13 (1) (d) of PC Act 1988. The Ministry of Home Affairs (MHA) had written to the CBI on May 15, 2019, for further investigation. The charges levelled against Lawyers Collective, Anand Grover and its other unnamed functionaries deal with criminal conspiracy,

criminal breach of trust, cheating, false statement made in declaration, violation of FCRA 2010 and criminal misconduct under PC Act 1988.

Lawyers' Collective is a national human rights organisation based in New Delhi with its registered office in Mumbai founded by noted Indian activists and lawyers Ms Indira Jaising and Mr Anand Grover. It is a group of lawyers with a mission to empower and change the status of marginalised groups through the effective use of law, and an engagement in human rights advocacy, legal aid and litigation. Anand Grover was the UN Special Rapporteur on Right to Health between August 2008 – July 2014. Indira Jaising was an Additional Solicitor General of India between July 2009 – May 2014 and a member of the UN Committee on the Elimination of Discrimination Against Women between 2009-12.

HRDA believes that criminal cases registered by the CBI against Lawyers Collective, Anand Grover and its other unnamed functionaries is a step to intimidate and harass them for their human rights work. It is an act of reprisal for raising critical questions and litigating in courts in several sensitive cases and cases of human rights violations. Lawyers Collective's office bearers had litigated against Mr Amit Shah, the present Union Minister of Home Affairs, in the Sorabuddin case, represented the persons detained in the Bhima Koregaon case, the Police Commissioner of West Bengal, Rajiv Kumar etc.

It is pertinent to mention here that Lawyers Collective's FCRA was first suspended on May 31, 2016, and its bank accounts were frozen. Its FCRA license was not renewed on October 28, 2016 and the same was cancelled on November 27, 2016. Lawyers Collective had moved the Bombay High Court on January 25, 2017 (First Appeal Number 36/2017), challenging the FCRA cancellation and on March 31, 2017 (Writ Petition Number 729/2017), challenging the FCRA non-renewal. A civil application (137/2017) was filed along with the case 36/2017, through which the Bombay High Court provided Lawyers Collective an interim relief by way of de-freezing its domestic accounts on January 30, 2017. Matters 36/2017 and 729/2017 continue to be pending before the Bombay High Court.

As the matters continue to be sub-judice, on May 15, 2019, Mr Anil Kumar Dhasmana, Under Secretary (FCRA), MHA, wrote to the Director of CBI for 'further investigation as per law'. Point 9 of the said letter states, *'it is, further requested that*

if during the course of the investigation, it comes to the notice of the CBI that violations of other specific statues like The Income Tax Act, The Prevention of Money Laundering Act (PMLA) etc. have also taken place, CBI may send suitable references to the competent authorities administering those relevant Acts for appropriate follow up action.'

On June 13, 2019, Mr Lalit Mohan Jindal, Superintendent of Police, CBI, EOB, Mumbai, solely relying on the '*Inspection Report of Foreign Contribution Received by Lawyers Collective*' which was submitted by the MHA based on its investigation between January 19-23, 2016, registered the FIR under Sections 120 –B r/w, 406, 420, 199 IPC, r/w 33, 35, 37, 39 of FCRA 2010 and Section 13 (2), r/w 13 (1) (d) of PC Act 1988. Solely based on this report, Mr Lalit Mohan Jindal wrote, '*The above facts and circumstances mentioned in above complaint prima facie disclose commission of cognizable offence punishable u/sec. 120-B IPC and Sec. 406, 420, 199 of IPC r/w Sec. 33, 35, 37 and 39 of Foreign Contribution (Regulation) Act 2010 and Sec. 13(2) r/w 13(1)(d) of PC Act 1988 and substantive offence thereof on the part of accused persons namely Lawyers Collective, Shri Anand Grover, President Lawyers Collective, unknown Office bearers & functionaries of Lawyers Collective, unknown Private individuals and unknown public servants.'*

The filing of criminal charges on June 13, 2019, solely based on a MHA report of January 2016, when the matter has been pending in the Bombay High Court is a blatant act of reprisal on Lawyers Collective, Senior Advocate Anand Grover and its other unnamed functionaries. There has been no change in circumstances or material on record since 2016 and hence no material to show that any of the provisions invoked under the IPC, PC Act have any basis.

It is important to note here that the MHA's communication to the CBI and registration of the FIR has been after the petition was filed by an NGO Lawyers Voice in the Supreme Court on May 8, 2019. Lawyers Voice is believed to be close to the Bharatiya Janata Party (BJP) as its main protagonist Mr Neeraj is the head of its legal cell in Delhi and it comprises several lawyers from the BJP.

Below is a list of dates concerning this submission –

DATE	PARTICULARS
January 19-23, 2016	Onsite inspection of books of accounts & records of Lawyers Collective to ascertain violations of FCRA 2010, led by Under Secretary, FCRA (MHA)
March 30, 2016	Response submitted by Lawyers Collective on the observations made by inspection team of MHA
May 31, 2016	FCRA registration of Lawyers Collective suspended u/s 13 of FCRA, 2010 & a show-cause notice u/s 14 of FCRA, 2010 was issued to Lawyers Collective
July 2, 2016	Lawyers Collective submitted its written reply to the show cause notice issued by MHA
September 6, 2016	Opportunity for personal hearing granted to Lawyers Collective before the Additional Secretary, MHA & opportunity granted to furnish written arguments within two weeks
October 28, 2016	Application for renewal of FCRA registration of Lawyers Collective pending with the MHA was refused
November 27, 2016	FCRA registration of Lawyers Collective was cancelled after examination of the records & written arguments made available by Lawyers Collective
January 25, 2017	Lawyers Collective filed First Appeal No. 36/2017 along with Civil Application No. 137/2017 in the High Court of Bombay against the cancellation of Lawyers Collective's FCRA
January 30, 2017	High Court of Bombay disposed off Civil Application No. 137/2017 with an ad-interim direction to allow Lawyers Collective to operate its non-FCRA/domestic accounts & utilise the money therein. The appeal is currently pending in the High Court
March 31, 2017	Lawyers Collective filed Writ Petition No. 729/2017 in the High Court of Bombay against the order of refusal of renewal of FCRA registration of

	Lawyers Collective. The Writ Petition is currently pending in the High Court.
May 8, 2019	A Public Interest Litigation by an NGO named Lawyers Voice in the Supreme Court for 'deliberate inaction' and non-registration of FIR against senior advocates Indira Jaising, Anand Grover and the NGO Lawyers Collective after cancellation of FCRA license. Supreme Court issued notice. Lawyers Collective strongly disputed any allegation of misconduct. raised procedural issues as this petition was did not have the basic averments of a writ petition under Article 32 of the Constitution, and therefore was not maintainable.
May 15, 2019	Mr Anil Kumar Dhasmana, Under Secretary (FCRA) wrote to the Director of CBI for 'further investigation as per law' against Lawyers Collective.
June 13, 2019	CBI registered an FIR solely based on proceedings under the FCRA in which orders for suspension and cancellation of Lawyers Collective's registration to receive foreign funding were passed by the MHA in 2016, which Lawyers Collective has challenged by way of appeal before the Bombay High Court. The Appeal is pending.

It is also important, we believe that the Hon'ble Commission uses the legal analysis of the United Nation's Special Rapporteur on the freedom of assembly and association who has categorically held that the right to access resources is part of the right to association. This is an established international standard as of today. It is equally pertinent that the Hon'ble Commission also sees this urgent appeal in the light of GANHRI's 'Marrakech Declaration' of October 2018 titled *"Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions"*.

Appeal:

In the light of above mentioned facts and circumstances, HRDA most respectfully appeals that this Hon'ble Commission takes urgent notice of this case of reprisal against Lawyers Collective and its functionaries, and exercise all provisions of the Protection of Human Rights Act, 1993 (PHRA) and order an immediate, thorough,

transparent, effective, time bound, impartial and independent investigation into the above-mentioned case.

HRDA would like to recall here the recent meeting (June 13, 2019) of the Hon'ble Commissions 'Core Group of NGOs and Human Rights Defenders' where participants in the meeting had jointly emphasised the urgent necessity for the Hon'ble Commission to take greater visible and decisive steps to hold all state actors accountable.

HRDA also appeals that the Hon'ble Commission should exercise provisions under Section 12(b) of the PHRA and intervene in all the courts where the cases of Lawyers Collective are pending to let the court know that Mr Anand Grover and Ms Indira Jaising are both very reputed international human rights defenders who have also held positions as independent experts within the United Nations human rights mechanisms and ensure that they are not made to face any custodial interrogation at any cost.

HRDA also appeals that the Hon'ble Commission should exercise provisions under Section 12(d) of the PHRA and act on its long standing request of urgently reviewing FCRA, that was also indicated by the UN SR on the situation of HRDs after her visit to India in the year 2011, by constituting a team of legal experts. FCRA has been systematically misused by the Indian authorities to stifle the voices of civil society.

Looking forward to your immediate action in this regard,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Henri Tiphagne', with a horizontal line underneath it.

(Henri Tiphagne)

National Working Secretary

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