

## **NHRC on Human Rights Defenders**

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## Executive Summary

An increasingly hostile environment has been fostering in India against the human rights defenders (HRDs), including human rights organisations, for seeking accountability and justice, and in this process for being critical of the State, its policies and actions. HRDs in India are increasingly been labelled as terrorists or seditious, criminalised, and incarcerated in retaliation for their work. Between 2015-2020, Human Rights Defenders Alert – India (HRDA), has submitted 554 complaints before the National Human Rights Commission (NHRC). India doesn't have a law and/or policy which define or defend HRDs.

In the absence of a protection mechanism for HRDs other than courts, the NHRC, to an extent, is the only available platform at present for the HRDs under threat and risk. In 2010, the NHRC established a 'Focal Point for HRDs'. The appointment of a focal point at the NHRC didn't aim to create a new mechanism for HRD protection but to only shorten the process and time taken to register and resolve a complaint of HRD under threat and risk.

Contrary to the claims by the NHRC and Government of India at multiple national and international platforms, this focal point system at the NHRC is considered predominantly inadequate and ineffective by the Indian HRDs in protecting and defending them. This study was conceptualised from a growing concern of increasing risks to HRDs in India and the perceived ineffective protection mechanism offered by the NHRC. This report is an analysis of the complaints' redressal mechanism of the NHRC vis a vis the complaints of HRDs. The report is based on a quantitative analysis of 554 complaints submitted by the HRDA to the NHRC between 2015-2020.

The study comprehensively establishes that the NHRC doesn't adhere to its own procedure regulation when it comes to its complaints' redressal mechanism. NHRC's claims that the focal point system allows it to treat complaints pertaining to HRDs as priority have been proved wrong with facts and numbers.

Despite establishing a focal point for HRDs in 2010, the NHRC has failed to even classify HRDs as a separate category in its internal systems. The study unequivocally confirms that the current complaints' redressal mechanism at the NHRC needs significant relook.

In only 50% of the complaints pertaining to HRDs, the NHRC has decided to call for responses from concerned authorities and the other 50% were either not registered or closed at the first stage itself. The average time period between a complaint submission and first order was 38 days, between first order and response from authorities was 176 days, and 210 days between response from authorities and the subsequent order to share the information with the HRDA. 38% of these complaints were closed by the NHRC without seeking a response from the HRDA. Relief was granted by the NHRC in only 1.5% of the 554 complaints. The findings mentioned in this report speak volume of NHRC's betrayal of HRDs.

On the 30<sup>th</sup> anniversary of the NHRC, the study calls for an objective assessment of NHRC's complaint redressal mechanism and recommends some measures towards strengthening the HRD protection mechanism at the NHRC.

## **List of Abbreviations**

APF – Asia Pacific Forum of National Human Rights Institutions

ATR – Action Taken Report

BJP – Bharatiya Janata Party

CrPC – Criminal Procedure Code

DD – Disposed with Direction

DIL – Dismissed in Limini

FCRA – Foreign Contribution Regulation Act

GANHRI – Global Alliance of National Human Rights Institutions

HRD – Human Rights Defender

HRDA – Human Rights Defenders Alert – India

MHA – Union Ministry of Home Affairs

NGO – Non-Governmental Organisation

NHRC – National Human Rights Commission

NHRI – National Human Rights Institution

PHRA – Protection of Human Rights Act

RSS – Rashtriya Swayamsevak Sangh

RTI – Right to Information

SHRC – State Human Rights Commission

SI – Self Investigation

TSHRC – Transferred to State Human Rights Commission

UN – United Nations

# 1

## Introduction

Globally, in the recent decades, Human Rights Defenders<sup>1</sup> (HRDs) have increasingly witnessed attacks on them, their colleagues, families and organisations. Multiple reports, by Non-Governmental Organisations (NGOs), United Nations (UN) and others, have extensively documented concerns on the extreme hostile circumstances for HRDs and the rapidly shrinking space for dissent. These HRDs are social activists, anti-corruption crusaders and whistle-blowers, lawyers, academics, bloggers, campaigners, etc. The thread connecting them is their quest for truth and justice through non-violent means.

During the last decade, one of the countries of concern has been India. A large multi-cultural multi-ethnic democracy. However, the basic tenets of the Indian democracy – free-thinking, secular ethos, freedom of opinion, expression, assembly, and association – are all under attack. The *Rashtriya Swayamsevak Sangh* (RSS), a Hindu nationalist socio-political organisation, is significantly influencing India's social and political life. Over several decades, the RSS has built its organisational structure to spread its ideology through its own schools, health services, and ostensibly through various charitable organisations which have extensive reach across Indian states. India's ruling political party, the Bharatiya Janata Party (BJP) is the electoral political face of the RSS. India's Prime Minister Narendra Modi, several ministers and members of government, have held positions in, or are members, of the RSS.

Since 2014, an increasingly hostile environment has fostered in India against the HRDs, including human rights organisations, for seeking accountability and justice, and in this process for being critical of the State, its policies and actions. The situation of HRDs in India continues to deteriorate despite ongoing advocacy from local and international NGOs.<sup>2</sup> HRDs in India are increasingly been labelled as terrorists or seditious, criminalised, and incarcerated in retaliation for their work.<sup>3</sup>

Between 2015-2020, Human Rights Defenders Alert – India (HRDA)<sup>4</sup>, an Indian organisation documenting and intervening in instances of attacks on HRDs, and instances pertaining to free speech, expression, assembly and association, has documented over 800 such instances and submitted 554 complaints before the Indian National Human Rights Commission (NHRC). India doesn't have a law and/or policy which define or defend HRDs. It also doesn't have a dedicated ministry for human rights, parliamentary committee on human rights, and a national action plan on human rights.

Human rights are legally defined in the Protection of Human Rights Act of 1993 (PHRA) as *“rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and*

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<sup>1</sup> <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders> for definition of human rights defenders.

<sup>2</sup> <https://www.omct.org/en/resources/statements/india-serious-concerns-raised-at-un-rights-review>

<sup>3</sup> [https://www.omct.org/site-resources/legacy/india\\_upr-submission\\_hrds\\_final.pdf](https://www.omct.org/site-resources/legacy/india_upr-submission_hrds_final.pdf)

<sup>4</sup> <https://hrdaindia.org>

*enforceable by courts in India*".<sup>5</sup> PHRA also provides for the NHRC and its state counter-parts known as the State Human Rights Commissions (SHRCs). In addition to the NHRC and SHRCs, India also have a galaxy of other national and state level institutions, over 170 such institutions, mandated to focus on the rights of specific population and themes, for examples, national and state commissions on women, religious minorities, scheduled castes, scheduled tribes, other backward classes, information, physical disability, etc.

Barring the commissions on human rights and information, all institutions are headed by those associated with the political party in power and these institutions are placed under the relevant thematic ministries.<sup>6</sup> Though the appointments to the commissions on human rights and information are not directly by the government, they are undertaken through committees which are dominated in numbers by government representatives. Further, a direct dependence of funds and personnel from the concerned ministries, do raise significant aspersions about their independence and autonomy. The NHRC is placed under the Union Ministry of Home Affairs (MHA), responsible for national security.

The closest among these institutions which recognise HRDs is the NHRC. In the absence of a protection mechanism other than courts, nationally or in the South Asian region, the NHRC, to an extent, is the only available platform at present for the HRDs under threat and risk. Following a workshop with HRDs in October 2009, the NHRC established a 'Focal Point for HRDs' in 2010 and designated its joint register (Law) as this focal point.

The appointment of a focal point at the NHRC didn't aim to create a new mechanism for HRD protection but to only shorten the process and time taken to register and

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<sup>5</sup> Section 2(1)(d) of Protection of Human Rights Act, 1993.

[https://nhrc.nic.in/sites/default/files/PHRAct\\_2021\\_0.pdf](https://nhrc.nic.in/sites/default/files/PHRAct_2021_0.pdf)

<sup>6</sup> National Commission for Backward Classes Chairperson is Dr. Bhagwan Lal Sahni, a (Bharatiya Janta Party) BJP leader from the state of Bihar - [https://www.business-standard.com/article/pti-stories/bjp-leader-from-muzaffarpur-bhagwan-lal-sahni-to-head-ncbc-119030100699\\_1.html](https://www.business-standard.com/article/pti-stories/bjp-leader-from-muzaffarpur-bhagwan-lal-sahni-to-head-ncbc-119030100699_1.html)

National Commission for Minorities Chairperson is Mr. Iqbal Singh Lalpura, a BJP leader from the state of Punjab and a member of the parliamentary board and election committee of BJP -

<https://www.hindustantimes.com/cities/chandigarh-news/lalpura-appointed-member-of-bjp-s-parliamentary-board-poll-committee-101660769139332.html>

National Commission for Protection of Child Rights Chairperson is Mr. Priyank Kanoongo, associated with the work and ideology of the Rastriya Swayamsevak Sangh (RSS) and supporter of the BJP in the state of Madhya Pradesh - <https://timesofindia.indiatimes.com/india/govt-appoints-chief-of-child-rights-body/articleshow/66200329.cms>

National Commission for Scheduled Castes Chairperson is Mr. Vijay Sampla, a BJP leader and former parliamentarian and union minister from the state of Punjab -

<http://ncsc.nic.in/files/review%20proforma/Biographical%20Sketch%20Chairman.pdf>

National Commission for Scheduled Tribes Chairperson is Mr. Harsha Chauhan, a former office bearer of the RSS in the state of Madhya Pradesh -

<https://www.news Bharati.com/Encyc/2021/2/20/Social-activist-Harsh-Chauhan-appointed-Chairman-of-NCST.html>

National Commission for Women Chairperson is Ms. Rekha Sharma, a BJP leader from the state of Haryana - [https://www.business-standard.com/article/pti-stories/ncw-gets-2-new-members-both-with-bjp-links-115082801309\\_1.html](https://www.business-standard.com/article/pti-stories/ncw-gets-2-new-members-both-with-bjp-links-115082801309_1.html)

Chief Commissioner for Persons with Disabilities is Ms. Anjali Bhawra, who is the Secretary, Department of Empowerment for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India - <https://pib.gov.in/PressReleasePage.aspx?PRID=1810592>

resolve a complaint of HRD under threat and risk. A dedicated phone number was assigned to the focal point and was expected to be attentive and responsive to distress calls. Since 2010, the focal point has always been an official of the law department at the NHRC.

This focal point system at the NHRC is considered predominantly inadequate and ineffective by the Indian HRDs in protecting and defending them. While there are larger concerns on NHRC's functioning<sup>7</sup>, this report is an analysis of the complaints' redressal mechanism of the NHRC vis a vis the complaints of HRDs. The report is based on a quantitative analysis of 554 complaints submitted by the HRDA to the NHRC between 2015-2020. These 554 complaints have been analysed on the parameters of types of actions taken by the NHRC and time taken for responding at each stage of complaints' redressal mechanism.

The objectives of the study are:

- Analyse NHRC's efficacy in responding to complaints pertaining to HRDs under threat and risk
- Document patterns of NHRC's response to HRD complaints
- Recommend measures to strengthen HRD protection by the NHRC

This study aims to contribute towards strengthening NHRC's response to complaints and concerns of HRDs. The study is an unique exercise and provides insights in the functioning of the NHRC, specifically its complaints' redressal mechanism, which is one of its key functions.<sup>8</sup> On an average, between 2015-2020, according to its annual reports, the NHRC received 91,104 complaints every year.<sup>9</sup>

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<sup>7</sup> <https://ainni.in/wp-content/uploads/2022/10/AiNNI-ANNI-Joint-Submission-to-SCA-2022.pdf>

<sup>8</sup> Section 12 (a) and (b) of the Protection of Human Rights Act, 1993.

<sup>9</sup> Average calculated from the annual reports. <https://nhrc.nic.in/publications/annual-reports>

## 2 Methodology

This study was conceptualised from a growing concern of increasing risks to HRDs in India and the perceived ineffective protection mechanism offered by the NHRC. National Human Rights Institutions (NHRIs) globally have recognised increasing risks to HRDs and have resolved effective actions to protect and promote HRDs and fundamental freedoms. Global Alliance of National Human Rights Institutions' (GANHRI) 2018 Marrakech Declaration,<sup>10</sup> GANHRI's Global Action Plan on HRDs,<sup>11</sup> and Asia Pacific Forum of NHRIs' (APF) Regional Action Plan on HRDs,<sup>12</sup> have emphasised significant actions to be undertaken by NHRIs to defend HRDs and civic space.

However, in the context of India, the civil society has been critical of the NHRC for its lack of independence from the government. It finds difficult to comprehend a role a non-independent institution can play to defend HRDs when the perpetrator in most instances is the State and its agencies. Absence of specific policies and framework on HRDs, which should have been developed after the above-mentioned global benchmarks, infuse little confidence. However, the NHRC on multiple domestic and international forums have stated about its role in defending HRDs through the focal point system.

To cite one such instance, the NHRC in its response to a questionnaire by the UN Special Rapporteur on the situation of HRD, submitted, *"the Focal Point ensures that the complaints of HRDs are placed before the Commission on priority, directions of the Commission in every case of alleged harassment of human rights defenders are complied with on priority and also conveyed to the concerned human right defender. The update of the complaints of alleged harassment of human rights defenders and action taken is also posted on the website of the Commission."*<sup>13</sup> Given that the role of focal point system largely focuses on the complaints' redressal mechanism of the NHRC, this study analyses the efficacy of this system.

Between 2015-2020, HRDA has filed 554 complaints with the NHRC pertaining to HRDs, and instances pertaining to violation of free speech, expression, assembly and association. In the NHRC portal, a dedicated page for HRD complaints is available and lists out these complaints. The criteria used for a complaint to qualify as HRD complaint is not mentioned. Between 2015-2020, it lists 517 complaints under the HRD category. All HRDA complaints are not tagged as HRD complaints by the NHRC in this list. Only 240 complaints here refer to the complaints submitted by the HRDA and 277 are submitted by other individuals and organisations. For the purpose of this study, all 554 complaints submitted by HRDA have been analysed. In the absence of documents and proceedings in the 277 complaints in NHRC's list of HRD complaints, these are not looked into for this study.

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<sup>10</sup> [https://ganhri.org/wp-content/uploads/2019/11/Marrakech-Declaration\\_ENG\\_-12102018-FINAL.pdf](https://ganhri.org/wp-content/uploads/2019/11/Marrakech-Declaration_ENG_-12102018-FINAL.pdf)

<sup>11</sup> [https://ganhri.org/wp-content/uploads/2022/04/Global-Action-Plan-on-HRDs-and-civic-space\\_EN.pdf](https://ganhri.org/wp-content/uploads/2022/04/Global-Action-Plan-on-HRDs-and-civic-space_EN.pdf)

<sup>12</sup> <https://www.asiapacificforum.net/resources/regional-action-plan-human-rights-defenders/>

<sup>13</sup> Page 4 of the submission.

<https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/LargeScale/NHRIs/NHRIIndia.pdf>

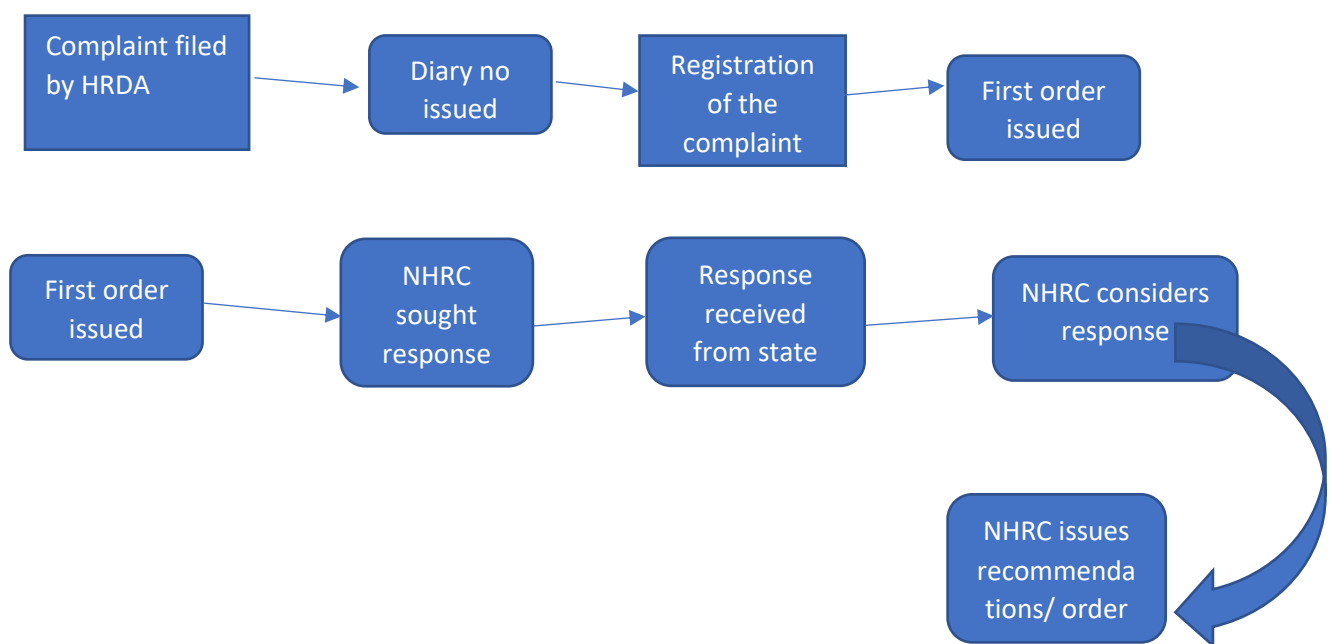
A detailed spreadsheet was developed by the HRDA and all relevant information in the complaints submitted at the NHRC were compiled and logged in this spreadsheet. Information obtained in individual complaints through Right to Information (RTI) applications with the NHRC and NHRC website were also considered and used to complete gaps in the data. Following the meticulous examination of complaints, indicators and codes were developed. An analysis of response from the NHRC has been undertaken at three stages – (a) immediately when a complaint is filed; (b) during the course of pendency of a complaint; and, (c) the final order.

The study has analysed three major aspects in a complaint –

1. Time taken by the NHRC to respond at various stages in a complaint
2. Initial action (first order) by the NHRC in responding to a complaint
3. Final order in a complaint

In the course of analysis, the gravity of the complaint, nature of HRDs work and profile, state from which complaint was filed, follow up undertaken by HRDA, have been looked into at all stages.

Following aspects were looked into for the time taken by the NHRC to process complaints at different stages. It is depicted in the following chart.



The study analysed the time taken at various stages of complaint redressal from filing of a complaint to issuance of a diary number to registration of a complaint and time taken to issue the first order in a complaint. Similarly, after the first order by the NHRC, time taken for a response from the authority to the final order by the NHRC.

The next analysis was to examine the types of first order passed by the NHRC when a complaint was submitted by the HRDA. The NHRC in its first order usually issues five types of directions –

1. Dismissed in Limini: meaning that prima facie the NHRC considers that no human rights are violated and the complaint is closed.
2. Disposed with Direction: meaning that the concerned authority is asked to directly respond to the complainant and complaint is closed.
3. Transferred to SHRC: meaning that complaint is transferred to the SHRC of the state from where the complaint originates from and complaint is closed.
4. Action Taken Report from Authorities: meaning that the competent authority is asked to respond to the NHRC on a complaint within four to six weeks and the complaint is pending. Further actions are determined after the report is submitted by the authority.
5. Self-Investigation: meaning that the NHRC will undertake its own investigation through its investigation division and the complaint is pending. Further actions are determined after the report is submitted.

Lastly, the study examines the final order passed by the NHRC in a complaint and the relief provided to the HRD.

## Complaint Redressal Mechanism of the NHRC

Section 12 (a) of the PHRA has entrusted the NHRC to inquire on its own motion and/or based on a complaint either filed a victim of human rights violation, and/or on behalf of a victim of human rights violation, and/or on the directions of any court. Section 12 (b) further empowers the NHRC to intervene even in sub-judice matters with the permission of the concerned courts. Section 13 of the PHRA confirms that while inquiring into a complaint, the NHRC has powers of a civil court. PHRA's Section 14 details out on investigation and Sections 17 and 18 lay out the procedures for inquiry.

For this study, the regulation governing the NHRC is important as it lays down the technicalities of operations, including for complaint redressals. The regulation referred to in this study and used by the NHRC is the NHRC (Procedure) Amendment Regulation of 1997.<sup>14</sup> Though the PHRA was amended in 2006 and 2019, the regulation remain unamended. Clauses 8 – 38 of the 1997 regulation deal with complaint redressal function of the NHRC.

According to the 1997 regulation, a complaint can be submitted to the NHRC in either English or Hindi. To entertain complaints in any other language mentioned in the Eight Schedule of the Indian Constitution is at NHRC's discretion. There are a few categories of complaints that the NHRC can dismiss in limini which it considers are primarily vague, illegible, trivial, pending before any other commission, alleged event of human rights violation is more than a year old, etc. The scrutiny of each complaint has to be carried out by an officer designated as 'assistant registrar'. Complaints and communications requiring urgent response are to be placed before the registrar directly. After scrutiny, complaints are registered and numbers are assigned to the complaints with respective state and district codes.

Clause 13 of the 1997 regulation mentions about the subject-wise classification of the complaints. This classification exercise is guided by Appendix – I of the 1997 regulation and an important criterion determining further actions in a complaint. For complaints submitted through NHRC's website, this appendix has been codified and the user needs to select from the codes available. It is important to note here that as the 1997 regulation has not been updated, 'human rights defender' is still not a classified terminology despite establishment of the focal point system in 2010.

All newly registered complaints are to be placed before a bench not later than seven days of its receipt. The complaints which require urgent attention, though the term urgent is not specifically defined, are to be placed before a bench within 24 hours of its receipt. For the purpose of this study, the time duration between a 'diary number', i.e. acknowledgement of complaint, and the 'first order', should not be more than seven days. The details of the process of first order is mentioned in the following paragraphs.

All complaints are placed before a single bench (one commissioner bench) of the NHRC. Complaints can be referred to a division bench (two commissioners' bench) or

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<sup>14</sup> <https://nhrc.nic.in/acts-&-rules/nhrc-procedure-amendment-regulations-1997-1>

a full bench (three or more commissioners) by a single bench. Chairperson also has the power to refer a complaint to a larger bench.

The first direction in a complaint by any bench of the NHRC is considered the first order. Types of first orders are mentioned in the chapter on methodology. Immaterial of the type of the first order, it has to be communicated to the complainant. A complaint is treated as 'closed' if it is either dismissed in limini, or disposed with directions, or transferred to a SHRC. According to NHRC's annual reports of 2016-17, 2017-18, 2018-19, and 2019-20, 80%, 80%, 85% and 84% of complaints respectively, fell in these categories and were closed.

In a suo-moto complaint (complaint registered at NHRC's own motion) and a complaint where a response is called from an authority (NHRC calling for an action taken report), a time period, which is usually 4-6 weeks, is specified. In the absence of a specified time period, the time is considered as 30 days from the date of service of the direction to the respondent. If in a complaint the NHRC orders its investigation division or any other central or state agencies to investigate, they are required to submit the report in the time specified and if not specified, then within two weeks. At any stage of a complaint, investigation can be referred to a central or state agency.

Upon not honouring NHRC's direction to submit the report, NHRC can also issue summons, followed by a warrant, to the concerned authority. However, this is used as an exception and not a norm, and repeated opportunities are provided to the concerned authority to respond. Following the submission of the report from the concerned authority, it is at the discretion of the NHRC to conclude a complaint or call for further response from the complainant.

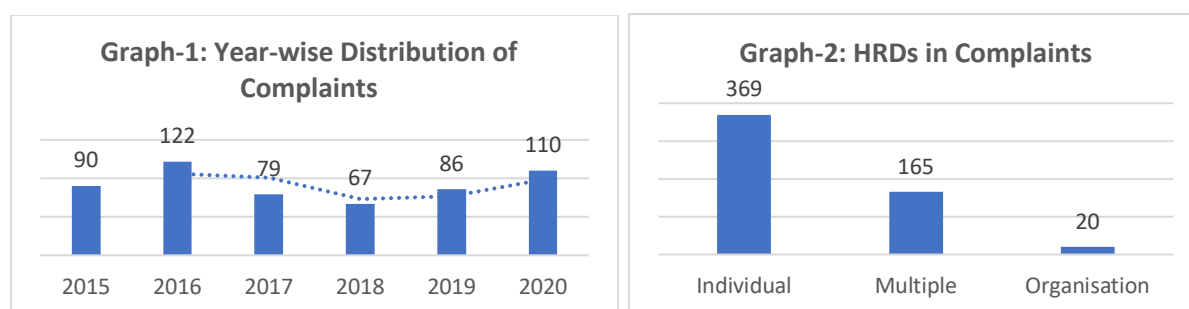
The NHRC can either recommend compensation to the victim, and/or disciplinary action against the accused official/s, and/or penalty on the accused official/s, and/or initiate legal proceedings against the accused official/s. Review of a NHRC final order or proceedings in a complaint is limitedly exercised. Any recommendation from the NHRC in a complainant is to be sent to both complainant and authority within seven days. The concerned authority has to submit a compliance report and NHRC also has the power to move court for its recommendation to be implemented.

According to the NHRC annual reports, in 2017-18, the NHRC recommended compensation in 757 complaints. The order for compensation was complied with in 151 (20%) complaints. 606 (80%) were pending for compliance. The NHRC recommended disciplinary action in 38 complaints and prosecution in 2 complaints. In 2018-19, the NHRC recommended compensation in 691 complaints. The order for compensation was complied with in 125 (18%) complaints. 566 (82%) were pending for compliance. The NHRC recommended disciplinary action in 25 complaints. It did not recommend prosecution in any complaint. In 2019-20, the NHRC recommended compensation in 437 complaints. The order for compensation was complied with in 113 (26%) complaints. 324 (74%) were pending for compliance. The NHRC recommended disciplinary action in 2 complaints. It did not recommend prosecution in any complaint.

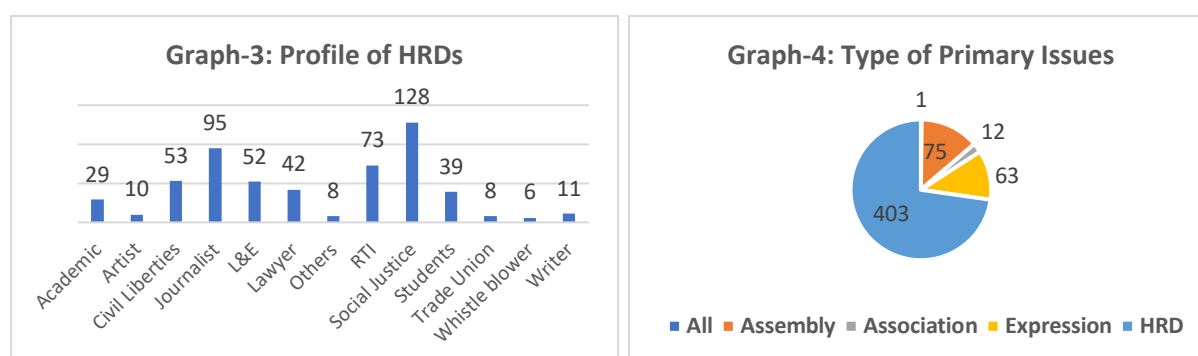
## 4

### HRDA Complaints' Profile

Between 2015-2020, HRDA had submitted 554 complaints with the NHRC on instances of risks, threats and attacks on HRDs, and this include instances of physical assault, killing, preventive detention, arrest, etc., and instances of restrictions on free speech, expression, assembly and association. Most complaints were submitted in 2016 and 2020, 122 and 110 respectively (Graph-1 for year-wise categorisation). Complaints were submitted in cases of individual HRDs, two or more HRDs jointly mentioned in one complaint, and instances pertaining to assemblies and associations (categorised as organisation). 67% of the complaints pertained to cases of individual HRDs (Graph-2 for this categorisation).

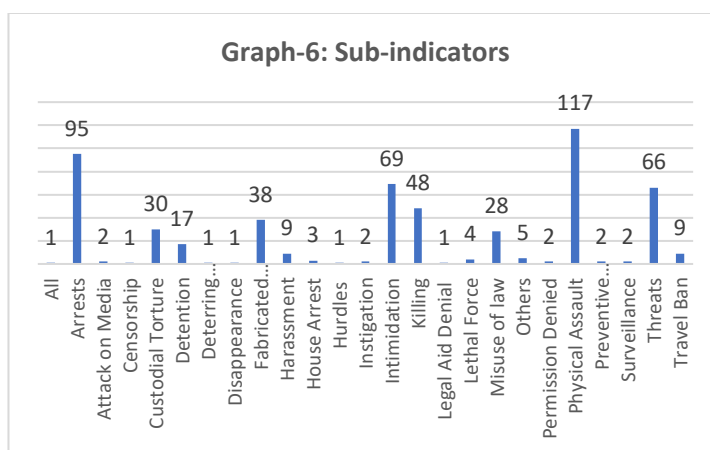
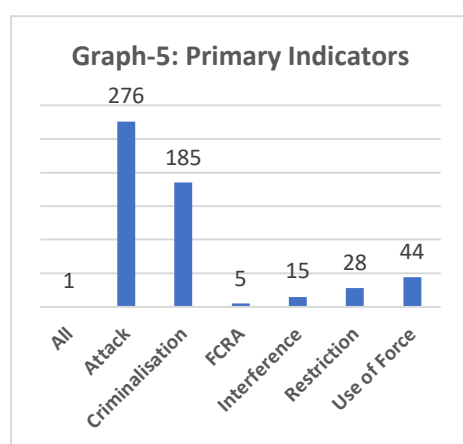


The complaints were also profiled based on the primary work, profession, and/or engagement of the HRD/s and organisations mentioned therein. The closest possible indicator was used to designate a profile in each case. However, this will not be able to provide an absolute picture as issues and roles do overlap in many cases. 23% of the complaints were initiated in cases of HRDs working on issues of social justice which include issues of caste, gender, religion and issues concerning social discrimination. Journalists and RTI activists comprised 17% and 13% of the total complaints (Graph-3 for profile of HRDs). Close to 30% of the total complaints are in cases of accessing and dissemination of information and opinions.



Complaints largely fell in four broad categories (primary issues) – instances of risks, threats and attacks on HRDs; instances of violation of free speech and expression; instances of violation of right to association; and instances of restrictions on free assembly. 73% of the complaints pertained to instances of risks, threats and attacks on HRDs (Graph-4 for issue-wise categorisation). One complaint which followed the abrogation of Article 370 of the Indian Constitution pertained to Jammu and Kashmir and comprised of all the above-mentioned issues.

Primary issues were further divided into six main primary indicators to specify the nature of cases in which complaints were filled. These primary indicators are – attack, criminalisation, interference, restriction, use of force, and Foreign Contribution Regulation Act (FCRA) restrictions. Attack indicator includes instances of physical assault, killing, threat, disappearance, torture, etc. Criminalisation refers to detention, preventive detention, fabricated charges, legal aid denial, etc. Interference indicator includes instances of verbal threats, intimidation, threats to colleagues and family, harassment by officials, etc. Restrictions refers to denial of permissions to undertake work as HRD, imposition of Section 144 of the Criminal Procedure Code (CrPC), internet shutdown, curbing social media, travel ban, freezing bank account, surveillance, etc. Use of force pertains to assemblies and during physical protests and demonstrations. FCRA restrictions refer to misusing this legislation to initiate actions against NGOs. Most of the complaints pertained to attack and criminalisation indicators, 50% and 33% respectively (Graph-5 primary indicator categorisation).



The primary indicators were further divided as sub-indicators and 24 sub-indicators were developed. 117 instances of physical assault, 95 instances of arrest and detention, 69 instances of intimidation and 48 instances of killing of HRDs and protestors were recorded (Graph-6 sub-indicators).

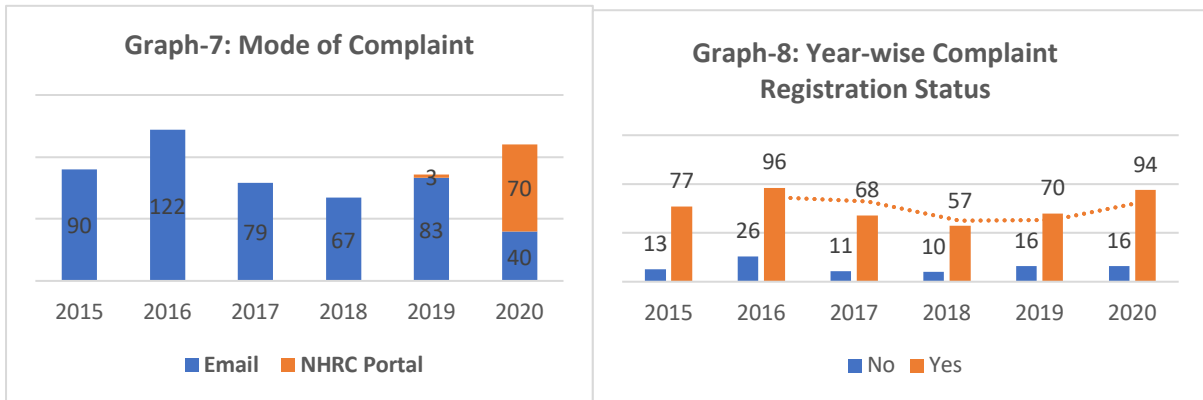
Cross tabulating HRDs' profile and sub-indicators, most arrests were documented in complaints of HRDs working for social justice (21), followed by land and environmental rights defenders (19) and journalists (13). Highest number of killings were documented in complaints pertaining to RTI activists (19), followed by journalists (15), HRDs working for social justice (6) and land and environmental rights defenders (3). Most instances of physical assault were recorded in complaints pertaining to HRDs working for social justice (27), followed by RTI activists (22), Journalists (21) and students (17).

Most complaints pertaining to RTI activists were from Odisha (11) followed by Maharashtra and Karnataka (8 each), and for journalists from Uttar Pradesh (17), followed by Chhattisgarh (14), Delhi and Tamil Nadu (8 each). Killing of HRDs was documented the highest in Bihar (8), followed by Karnataka (7) and Tamil Nadu (6). Custodial torture of HRDs was documented the highest in Uttar Pradesh (9). Physical assault against HRDs was recorded the most in Tamil Nadu (16), followed by Delhi (12), Assam (10) and Uttar Pradesh (9).

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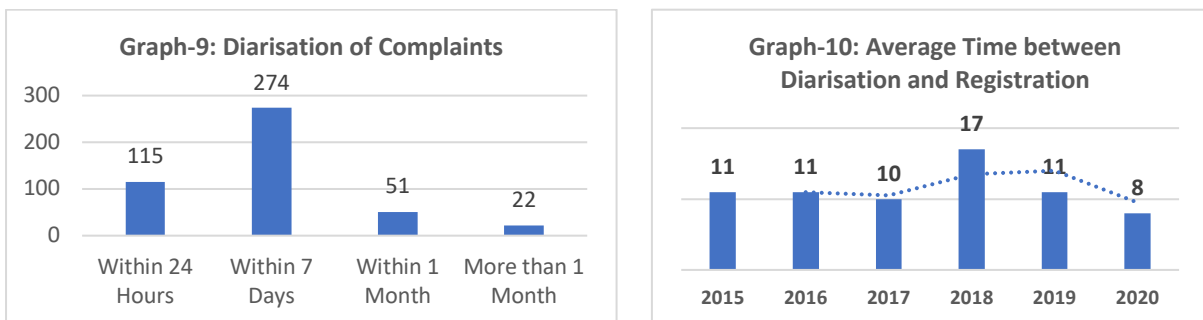
### Analysis: Time Frame for Complaint Registration and First Order

HRDA submits complaints with the NHRC through emails to the focal point for HRD and NHRC’s commissioners, and through submissions on the NHRC web portal. Complaints submitted through the web portal are then followed up by emails. In urgent instances, instances of immediate threat to life and liberty, HRDA also alerts the focal point, through telephone calls and messages and follow them up by formal submissions. Out of the 554 cases analysed, 481 were submitted through emails and 73 through the web portal and then followed up by emails. Submission of complaints through the web portal commenced partially in 2019 and then fully from the mid 2020 onwards (Graph-7 on mode of complaints).



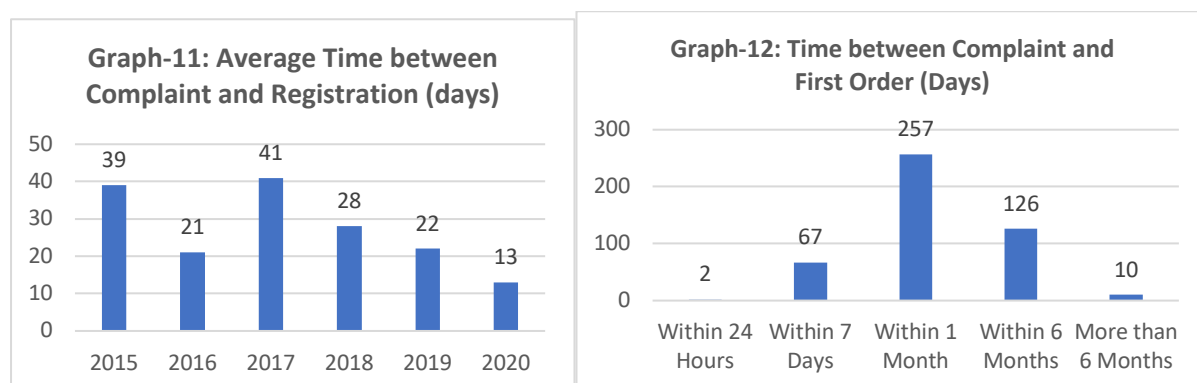
Out of the 554 complaints submitted with the NHRC, only 462 complaints (83%) were diarised and registered. This was the lowest at 79% in the year 2019. There were no acknowledgements and further proceedings in 92 complaints (17%) (Graph-8 on complaint registration status).

The main reasons for shifting the mode of complaint submissions from email to web portal were to ensure registration and minimise the time taken for registration and follow up action on complaints. A ‘Diary Number’ is generated at the time of submission of a complaint and this is an acknowledgement by the NHRC confirming the submission. A diary number was issued and shared by the NHRC to the HRDA in complaints submitted by email but not on all instances. However, it was extremely challenging to track this acknowledgement back to a specific case. An email confirming acknowledgement and allocating a diary number seldom referred to the complaint date and other details. Web portal complaint submission allows for an autogenerated diary number at the time of submission.



Out of the 462 complaints, only in 25% of the complaints, diary numbers were provided within 24 hours, in 59% of the complaints it was within one week, 11% of the complaints took up to one month and it was more than one month in 5% of the complaints. Four complaints were diarised after a year (Graph-9 on diarisation status of complaints). After the diarisation, 44% of the complaints were registered within 24 hours and the same percentage of complaints were registered between 1-7 days. 8% of the complaints took up to a month's time to register and the remaining others more than a month. Four complaints were registered after a year. The average time taken between diarisation and registration was 11 days. This was at its highest in 2018 (17 days) and lowest in 2020 (8 days) (Graph-10 on average time taken between diarisation and registration).

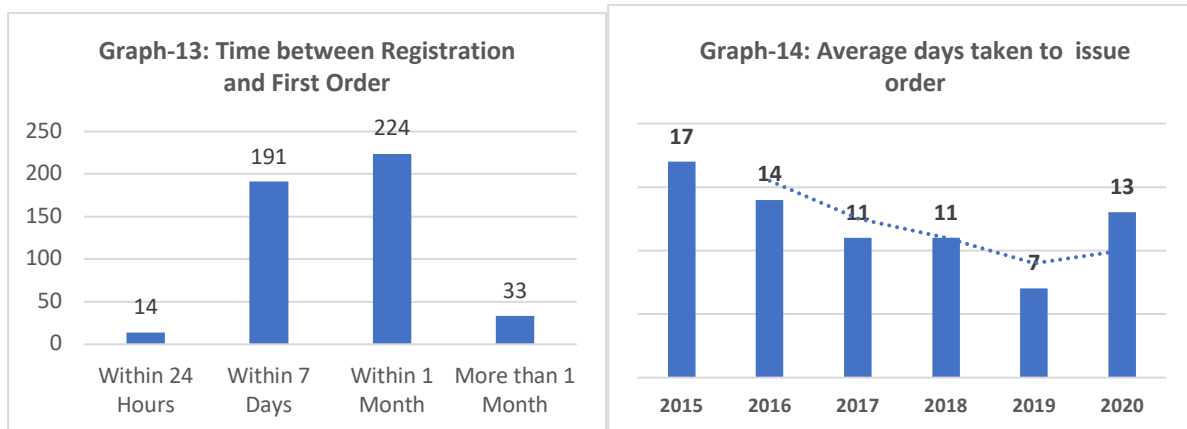
Further, the average time frame between submission of a complaint and its registration at the NHRC was 26 days. It was the highest in 2017 with 41 days and lowest with 13 days in 2020 (Graph-11 on average time between complaint submission and registration). Complaints pertaining to land and environmental HRDs took the longest to register and averaged 60 days, followed by complaints pertaining to writers (46 days) and student HRDs (27 days). The lowest average was 3 days in complaints pertaining to whistle blowers. Complaints of custodial torture of HRDs on an average took 42 days for registration and 40 days in case of arrest and detention of HRDs. Complaints pertaining to HRDs barred from traveling abroad averaged 42 days for registration. In cases of grave physical assaults and killings, the average period for registration was 16 days.



After a complaint is registered by the NHRC, it is presented before one of the benches. According to the analysis, only 15% of the 462 registered complaints were presented before a bench and a first order was issued within seven days. 21% of 462 complaints took between 7-14 days, 34% of 462 complaints took between two weeks to a month, 15% of 462 complaints took between one to two months, 12% of 462 complaints took between three to six months, and 10 complaints took more than six months to be placed before a bench after registration (Graph-12 on time taken between complaint submission and first order). The percentages for time taken to present before the bench would be further low if we take into account the 92 complaints which were not registered.

Analysing the time period between registration of a complaint and the first order passed, in 44% of the 462 complaints it was less than seven days, 48% of the 462 complaints it was between seven days and a month, 8% of the 462 complaints it was

between one to six months (Graph-13 on time taken between registration and first order). The average time between a complaint registration and first order was 12 days. It was the highest in 2015 with 17 days and lowest in 2019 with 7 days (Graph-14 on average time between complaint registration and first order).



Average time period between complaint submission and first order, based on analysing the 462 complaints from HRDA submitted with the NHRC, is 38 days, i.e. a little over five weeks. There was no adherence whatsoever to clause 15 of the 1997 regulation which prescribes that all newly registered complaints are to be placed before a bench not later than seven days of its receipt. The complaints which require urgent attention are to be placed before a bench within 24 hours of its receipt.

In grave complaints of killings and physical assault of HRDs, time period between registration and first order was 14 days. Complaints pertaining to preventive detention and arrests of HRDs averaged 20 days between registration and first order. Such complaints definitely fall under the ambit of urgent attention complaints. In one case of a disappearance of an RTI activist in 2015, it took 98 days between registration and first order, and from the date of complaint submission it is 109 days.

## 6

### **Analysis: First Order Categorisation**

This analysis examines the types of first order passed by the NHRC in a complaint after registration. The NHRC in its first order usually issues five types of directions –

1. Dismissed in Limini (DIL): In a complaint if the NHRC arrives at the conclusion that prima facie no human rights are violated or the complaint is vague, it is dismissed and closed. A decision on this is primarily held at the stage of scrutiny undertaken by designated officials and complaints potentially falling under this category are separated, followed by a formal decision by a bench.
2. Disposed with Direction (DD): In a complaint if the NHRC is of the view that prima facie there is a human rights violation and the same can be directly looked at by a senior official, the NHRC directs the concerned official to respond directly to the complainant and complaint is closed.
3. Transferred to SHRC (TSHRC): In a complaint if the NHRC is of the view that prima facie there is a human rights violation and the same can be intervened by a SHRC, the complaint is transferred to the SHRC of the state from where the complaint originates from and complaint is closed.
4. Action Taken Report from Authorities (ATR): In a complaint if the NHRC is of the view that prima facie there is a human rights violation and the same requires to be looked into, the NHRC directs the competent authority to respond on the complaint within four to six weeks (in the absence of any specific time period the response time is 30 days according to the 1997 regulations). The complaint remains pending and follows further proceedings explained in the next chapter.
5. Self-Investigation (SI): In a complaint if the NHRC is of the view that prima facie there is a human rights violation and the same requires to be looked into independently, the NHRC undertakes its own investigation through its investigation division or any other central or state agency it deems appropriate. The complaint remains pending and further actions are determined as explained in the next chapter.

According to NHRC's annual reports of 2016-17, 2017-18, 2018-19, and 2019-20, 80%, 80%, 85% and 84% of complaints respectively, were closed at the first stage itself following directions falling under the categories of DIL, DD and TSHRC. As we can interpret from this, only 20% of complaints in 2016-17 and 2017-18, 15% in 2018-19, and 16% in 2019-20, were intervened by the NHRC, predominantly as complaints following under the ATR category.

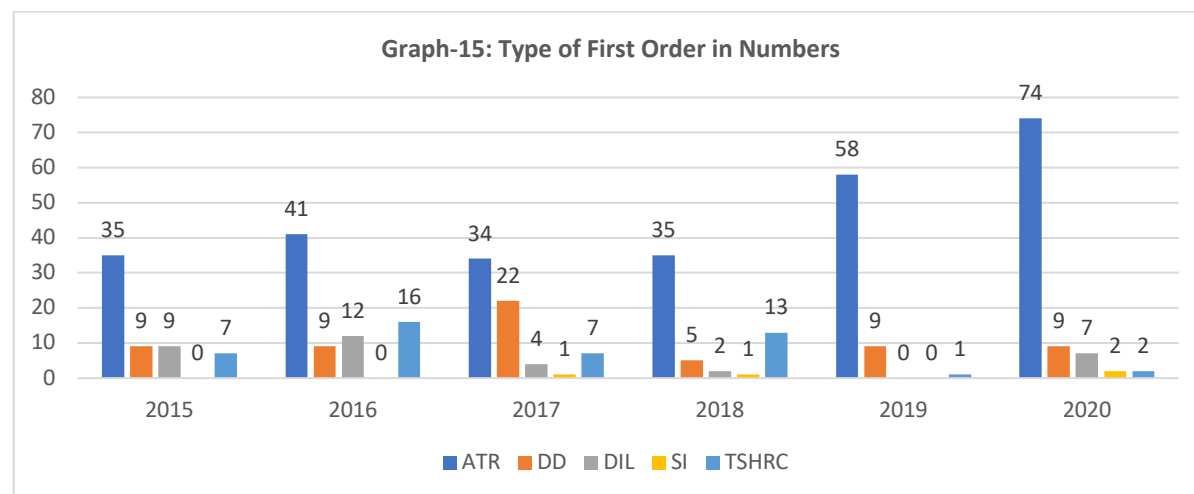
Before presenting the analysis of the complaints submitted by HRDA, out of 462 complaints registered by NHRC, 38 complaints were linked/tagged/attached to other complaints registered on the same incident and submitted by another complainant. There are no complaints that were linked in 2017 and 2020, in 2015 and 2016, 17 and 18 complaints respectively were linked and in 2018 and 2019, one and two complaints respectively. In linked complaints, HRDA couldn't maintain case files with all records as the primary complainants were other parties and information on proceedings wasn't

shared with HRDA. Analysis from here onwards is for the 424 complaints directly submitted and followed up by the HRDA.

Contrary to the records mentioned in NHRC’s annual reports, as mentioned above in this section, the NHRC in 66% of the 424 complaints submitted by the HRDA, proceeded for further actions. The NHRC directed for response from concerned authorities in 65% of the complaints and in 1% complaints referred to NHRC’s investigation division. 34% of the complaints were closed through the first order. 8% of the 424 complaints were DIL, 15% were DD and 11% were TSHRC (year-wise break up in provided in Table-1 (in percentage) and Table-2 (in numbers) and Graph15 on types of first order in numbers).

Year	ATR	DD	DIL	SI	TSHRC	Total
2015	58	15	15	0	12	100
2016	53	12	15	0	21	100
2017	50	32	6	1	10	100
2018	63	9	4	2	23	100
2019	85	13	0	0	1	100
2020	79	10	7	2	2	100
<b>Total</b>	<b>65</b>	<b>15</b>	<b>8</b>	<b>1</b>	<b>11</b>	<b>100</b>

Year	ATR	DD	DIL	ID	TSHRC	Total
2015	35	9	9	0	7	60
2016	41	9	12	0	16	78
2017	34	22	4	1	7	68
2018	35	5	2	1	13	56
2019	58	9	0	0	1	68
2020	74	9	7	2	2	94
<b>Total</b>	<b>277</b>	<b>63</b>	<b>34</b>	<b>4</b>	<b>46</b>	<b>424</b>



Complaints falling under the DIL category have come down significantly and from 2015 to 2020, down from 15% to 7%, and the same is the case with TSHRC category complaints. Complaints in ATR category have increased from 58% to 79%. A significant number of complaints pertaining to academics, writers, civil liberties activists, trade unionists, and artists, fell in the categories of DD, DIL and TSHRC. Most of the complaints pertaining to lawyers, journalists and whistle blowers were categorised as ATR. All complaints pertaining to restrictions in free assembly were closed as DD.

DD complaints comprised of 15% of the 462 complaints registered by the NHRC, meaning that the NHRC through its first order had directed the concerned authorities in these complaints to respond directly to the complainant, i.e. the HRDA. In only 19 complaints, authorities submitted a response to the HRDA and there was no response in 44 complaints. In 70% of these complaints, authorities didn't comply with NHRC's directions. Out of these 19 complaints where responses were submitted to the HRDA, in six complaints there was a delay of over six months. Barring one complaint, in all 18 complaints responses were submitted after the specified time period. Complaints pertaining to artists, civil liberties activists, and students, and complaints related to detention, restrictions of free assembly, and travel restrictions, received no response from the authorities.

HRDA had appealed to the NHRC for review to reconsider its orders in DD complaints. One of the grounds for review was non-response from the concerned authorities and their failure to honour NHRC's directions. In 24 out of 63 DD complaints, NHRC reviewed its first order and called for reports, i.e. thereby converting them as ATR complaints.

Out of the 46 complaints that were categorised as TSHRC, SHRCs have seldom been prompt and proactive in registering these complaints and updating HRDA of their actions. These complaints were transferred to SHRCs by the NHRC without assessing if the SHRC in a particular state was functional. RTIs were submitted with SHRCs in 39 of these complaints enquiring about complaint registration and updates, and RTIs had to be submitted twice in 14 complaints. Since this study limits to the complaint redressal mechanism of the NHRC, analysis of SHRCs' complaints redressal wasn't undertaken.

## Analysis: 'Action Taken Report' Complaints

The section deals with the details of the complaints in the category of ATR, i.e. complaints in which inquiries were initiated. This section analyses and provides an insight in the inquiry procedure at the NHRC. Out of 554 complaints submitted by the HRDA, 277 complaints, i.e. 50% of the total complaints, were inquired by the NHRC. The remaining 50% of the complaints were either not registered, linked to other complaints, were categorised as DIL, DD and TSHRC, and 4 complaints were investigated by the investigation division.

In 11 out of 277 complaints, authorities were provided between 4 – 8 weeks to respond to the NHRC, and in the remaining 266 complaints response period was maximum four weeks. All these 11 cases pertained to the year 2020. At the time of analysing the data, in 7% of the 277 complaints, compliance to the ATR first order was pending (report due from authorities). The dates of compliance by responding authorities in 5% complaints weren't clear. In only 3% of the ATR complaints, compliance from authorities was within the 30 days, i.e. within the time prescribed by the NHRC in its first order. In 40% of the ATR complaints, reports from authorities were received between two to six months, 23% between six month and a year, and in 8% more than a year later. The average time taken by responding authorities to submit report was 176 days, roughly six months. It was highest in 2019 with 200 days and lowest in 2015 and 2020 (Table 3 and 4 on time frame for compliance by responding authorities).

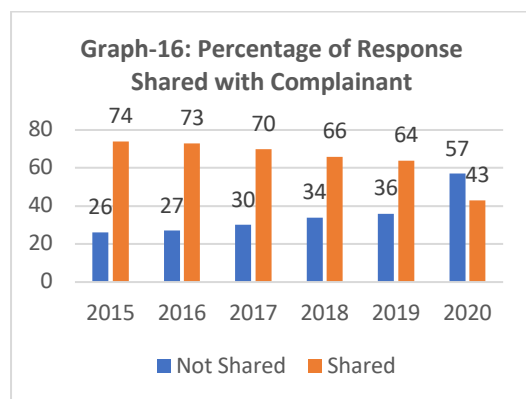
Time Taken	Frequency	Percentage
0-30 days	7	3%
30 to 60 days	41	15%
60 to 180 days	111	40%
180 to 365 days	63	23%
365 days and over	22	8%
Date not clear	14	5%
Pending	19	7%
<b>Total</b>	<b>277</b>	<b>100%</b>

Year	Average days
2015	157
2016	183
2017	172
2018	181
2019	200
2020	157
<b>Total</b>	<b>176</b>

Among the Indian states, Odisha has been the most prompt in responding to the NHRC and submits a response within an average of 73 days. Other states which averaged less than 100 days were Uttarakhand (80 days), West Bengal (85 days) and Manipur (89 days). Kerala (542 days), Meghalaya (325 days) and Jammu and Kashmir (292 days) averaged the most days in this category. Analysis based on profiles of HRDs confirms that complaint pertaining to trade unionists, writers and artists averaged the most as 511, 307 and 188 days respectively. It averaged the lowest in complaints pertaining to academics (85 days). In complaints of custodial torture of HRDs the average response period was 112 days and for physical assault complaints it was 185 days.

As it can be interpreted from Table 3, out of the 277 complaints in ATR category, the responding authorities submitted responses in 258 complaints and the 19 complaints pending responses are from 2020. Once the NHRC receives the ATR, upon its examination of the response, it can either conclude a complaint or call for a response

from the complainant. In 98 of the 258 complaints, i.e. 38% of complaints, the NHRC didn't share the response from the authorities with the HRDA. These complaints were concluded at this stage. Responses from authorities in 160 of 258 complaints were shared with the HRDA for its response, i.e. 62% of complaints. This trend of not sharing responses from authorities with the complainant has increased significantly from 2015 to 2020. This averaged to 28% between 2015-17, 35% between 2018-19, and 57% in 2020.



Time Taken	Frequency	Percentage
0-30 days	11	7%
30 to 60 days	30	19%
60 to 180 days	65	41%
180 to 365 days	23	14%
More than 365 days	28	17%
Not clear	3	2%
<b>Gran Total</b>	<b>160</b>	<b>100%</b>

Out of the 160 complaints in the ATR category in which further responses from HRDA were called upon, in only 7% of these complaints, such directions to share these responses, were passed within one month after NHRC received earlier responses from authorities. In 19% complaints such directions were passed within one to two months, in 41% between three to six months, in 14% between 6 months to a year, and in 17% complaints after a year. Dates couldn't be verified in 2% of the complaints (Table-5 on average time period between response received from concerned authority and NHRC order directing it to be shared with the complainant). In 14 complaints, i.e. 9% of 160 complaints, even after NHRC's direction to share these responses with the HRDA, they were not shared and HRDA was in the process of following up through RTIs in some of these complaints at the time of drafting this report. The break-up of 14 complaints is – one complaint in 2015, three in 2016, five in 2017, none in 2018, two in 2019 and three in 2020.

The average time period between a response received by the NHRC from a responding authority and the NHRC directing it to be shared with the complainant was 210 days. This was the highest in 2016 with the average as 329 days and lowest in 2020 with 118 days (Table-6 on average time between response received and NHRC order sharing with HRDA). The average time in this category in complaints of custodial torture was 123 days, 171 days in complaints of killing, 211 days in complaints of assaults and 248 days in cases of detentions.

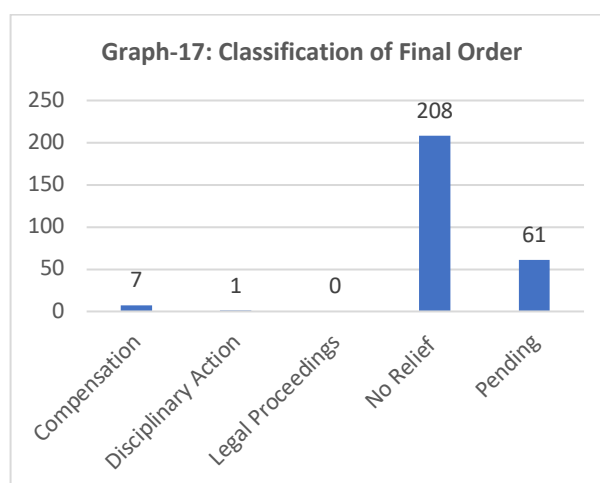
Following NHRC's directions to share responses from authorities with the HRDA, the average time period between such directions and receipt of responses by HRDA was 42 days. There has been a significant drop in the average time in this category in 2020 when it was just 9 days (Table-7 on average time between NHRC order and receipt of response by HRDA).

Year	Average days
2015	324
2016	329
2017	189
2018	135
2019	155
2020	118
<b>Total</b>	<b>210</b>

Year	Average days
2015	48
2016	35
2017	60
2018	39
2019	57
2020	9
<b>Total</b>	<b>42</b>

Out of the 277 complaints in the ATR category, in 216 complaints final directions were passed and closed by the NHRC. 61 complaints remain pending at various stages. Majority of the pending complaints are from 2019 and 2020 (Table-8 on year-wise pending complaints at NHRC). HRDA had submitted review applications in several closed complaints and nine of them were permitted. Out of these nine complaints which were reopened, two each are from 2016, 2017, and 2020, and three from 2019.

Year	Pending	Closed	Total	%
2015	0	35	35	0%
2016	1	40	41	2%
2017	4	30	34	12%
2018	3	32	35	9%
2019	19	39	58	33%
2020	34	40	74	46%
<b>Total</b>	<b>61</b>	<b>216</b>	<b>277</b>	<b>22%</b>



Out of the 216 complaints which were closed, compensation and/or disciplinary action were granted by the NHRC in only eight complaints, i.e. 4% of the closed complaints and nearly 1.5% of the 554 complaints submitted by the HRDA (Graph-17 on classification of final orders by the NHRC). Compensation was granted in seven complaints, it comprised of three complaints of physical assault, two complaints of criminalisation, one complaint each of restriction and use of force. No compensation was provided in complaints pertaining to the FCRA. These complaint categories have been defined in Chapter 4 of this report. NHRC directed for disciplinary action against officials in one complaint of criminalisation. Recommendation to initiate legal proceedings against concerned officials was not ordered in any complaint.

According to the annual reports of 2017-18, 2018-19, and 2019-20, the NHRC had directed for compensation and disciplinary actions in 4-5% and less than 1% respectively, of the complaints it disposed in the ATR category. It is interesting to note here that though comparatively a high number of complaints from HRDA were treated under ATR category as compared to overall complaints handled by the NHRC, the final order trends are similar.

Four complaints were categorised as SI and investigations were undertaken by the NHRC's investigation division. The four complaints included one complaint each from 2017 and 2018, and two complaints from 2020. In three complaints, the investigation division submitted its report on time and in one complaint it took 257 days. Three complaints were closed; two without sharing reports and allowing HRDA to respond and one on grounds stating sub-judice. In one complaint, report was shared after a delay of almost three years asking for HRDA's response. Despite the HRDA submitting the response within the time frame granted by the NHRC, this complaint was closed stating no response from the HRDA. A review application filed by the HRDA was permitted and the complaint was closed again after taking the response on record.

## 8

### Right to Information in Complaint Follow Up

RTI applications were frequently used by the HRDA during the entire process of complaint follow up at the NHRC. Though this study didn't focus on the RTIs used during the follow up process, this itself is a subject of further research and analysis. RTIs continue to be used by HRDA right from the submission of the complaints till the final orders and consume significant amount of time, energy and resources. This is a short-note on the use of RTIs in the complaint follow up process.

One of the most common challenges faced by the HRDA in complaint follow up at the NHRC is that the information is not forthcoming. Complaint submissions through NHRC website did solve some puzzles related to diary number allocations. These allocations are now automated and serve as a handy tool to follow up and track complaints' status on NHRC's website. However, there continue to be significant challenges from the stage of registration till final orders. Between 2015-2020, HRDA has filed over 850 RTIs at various stages of complaint redressal mechanism to obtain required information about the developments in the complaints. While most of these RTIs pertained to ascertaining periodic developments while a complaint is pending, 159 RTIs were submitted asking for registration details in complaints submitted and 127 RTIs were submitted requesting to provide copy of the reports submitted in the complaints categorised as ATR (Table-9 year-wise break up of RTIs sent at stages of complaints redressal).

<b>Year</b>	<b>Registration</b>	<b>Reports in ATR Complaints</b>
2015	16	6
2016	34	11
2017	18	11
2018	19	13
2019	33	45
2020	39	41
<b>Total</b>	<b>159</b>	<b>127</b>

During the follow up of complaints at the NHRC, at least 950 letters were sent in 554 complaints as reminders to the NHRC at all stages. For example, in an ATR complaint, whereby four weeks were provided by the NHRC for an authority to respond, reminder letters were sent by the HRDA once this period is over. This report has elaborated on the inordinate delays in NHRC's complaint redressal mechanism. These letters were seldom responded by the NHRC and RTIs were then used as tools to formally enquire about updates and request documents which were otherwise not shared. Though this needs to be analysed scientifically based on data, HRDA is the opinion that letters and RTIs aided the NHRC in sending reminders to responding authorities and ensuring compliance to its directions.

As mentioned here, this is an area of further study which the HRDA intends to undertake in the near future and contribute towards strengthening the complaints' redressal mechanism of the NHRC.

## 9

### Conclusion

This study aimed at analysing NRHC's efficacy in responding to instances of threats and risks to HRDs. However, before specific findings from previous chapters are summarised here, it might be important to re-state what NHRC had submitted to the UN Special Rapporteur on the situation of HRD. *"The Focal Point ensures that the complaints of HRDs are placed before the Commission on priority, directions of the Commission in every case of alleged harassment of human rights defenders are complied with on priority and also conveyed to the concerned human right defender. The update of the complaints of alleged harassment of human rights defenders and action taken is also posted on the website of the Commission."* Further, clause 15 of the 1997 regulation prescribes that all newly registered complaints are to be placed before a bench not later than seven days of its receipt. The complaints which require urgent attention are to be placed before a bench within 24 hours of its receipt.

The study based on 554 complaints filed with the NHRC by the HRDA comprehensively establishes that neither the 1997 regulations are adhered even remotely by the NHRC nor the complaints of HRDs are treated on priority. Further, despite establishing a focal point for HRDs in 2010, in the absence of HRDs being classified as a separate category in NHRC's internal system, there is limited scope to prioritise cases pertaining to HRDs. The findings mentioned below speak volume of this. The focal point is an officer of NHRC's law division, often seconded from the government, and lacking understanding and first-hand experience of challenges faced by the HRDs. The study unequivocally confirms that the current complaints' redressal mechanism at the NHRC needs significant relook. At present it significantly lacks both expertise and sensitivity.

Some of the key findings of this study are –

- There is no adherence whatsoever to clause 15 of the 1997 regulation. According to this clause, the time period between complaint submission and first order should be maximum seven days. On the contrary, the study establishes that the average time period of this process was 38 days, i.e. more than five times of the allowed. Complaints requiring urgent attention are to be processed within 24 hours and this remains a distant ambition at the moment. In grave complaints of killing of HRDs, the time period of this process was 14 days, and complaints of preventive detention and arrests of HRDs was 20 days.
- In only 50% of the complaints pertaining to HRDs, the NHRC has decided to call for responses from concerned authorities. It is concerning that the other 50% of the complaints were either not registered or treated as DIL, DD and TSHRC categories and no further interventions are undertaken.
- After the NHRC issues the first order, authorities are expected to respond within 30 days or the time allotted by the NHRC which is generally between four to eight weeks. The average time period at this process was 176 days, i.e. approximately six months. The NHRC on multiple occasions have been kind enough to grant additional time to the respondents and non-compliance to its directions are seldom viewed seriously.

- The NHRC closed the complaints without seeking a response and sharing a copy of the response from authorities with the HRDA in 38% of the ATR category complaints. This trend of not sharing responses from authorities with the complainant has increased significantly from 2015 to 2020. This averaged to 28% between 2015-17, 35% between 2018-19, and 57% in 2020. A significant number of complaints closed, without providing an opportunity to the complainant to respond, serves against the trust citizens may place in the NHRC and its complaints' redressal mechanism.
- The average time period between a response received by the NHRC from a responding authority and the NHRC directing it to be shared with the complainant was 210 days, i.e. seven months. This is extremely concerning not only for the complaints pertaining to HRDs but also complaints on human rights violations in general. A gap of seven months between response receipt and action on the same takes away from the much required attention and sensitivity of the complaint. This doesn't only lead to people losing faith in the effectiveness of the institution but also devalues its standing among the authorities.
- Following NHRC's directions to share responses from authorities with the HRDA, the average time period between such directions and receipt of responses by HRDA was 42 days. In complaints where the NHRC shared responses from authorities with the HRDA, between the first order of the NHRC and receipt of the report by the HRDA, the average time period was slightly over a year.
- Compensation and/or disciplinary action were granted by the NHRC in only eight complaints, i.e. 4% of the closed complaints and nearly 1.5% of the 554 complaints submitted by the HRDA. A high number of complaints from HRDA were treated under ATR category when compared to all complaints handled by the NHRC in this category, but the final order trends are similar.

HRDA has observed an increasing reluctance among HRDs in approaching the NHRC. It is not only the ineffectiveness of the NHRC in providing any kind of immediate protection to the HRDs but also dismal outcomes of the complaints' redressal mechanism. Unjustifiable delay at various stages of this process often leaves HRDs more vulnerable and prone to reprisals. On multiple occasions Indian civil society and even the NHRC have claimed the institution being toothless. The study establishes that this is a situation of not only being toothless. An institution must not only be independent but should also be perceived as independent. The NHRC doesn't inspire confidence on either of these. NHRC's overwhelming desire to be blind has betrayed the trust of HRDs. Facts mentioned in this study don't prove otherwise.

This year will be the 30<sup>th</sup> anniversary of the NHRC and only an objective assessment can help strengthen the institution. The study hopes to contribute towards it. Submitting and following up on a complaint at the NHRC remains a tedious exercise for a common person. Not everyone has the capacity and resources to submit a complaint on the web portal.

The NHRC can significantly strengthen HRD protection if it opens its doors to HRDs and make them a partner in defending HRDs. Till then, to begin with, the focal point for HRDs should be a team of HRDs, eyes and ears of the NHRC, having the mandate and powers to initiate timely interventions. The study recommends the following on developing and strengthening HRD protection mechanism at the NHRC –

- As recommended by the UN Special Rapporteur on the situation of HRDs, in her report of March 2012 after visiting India, the NHRC should ensure that its focal point for HRDs is a member of the NHRC and has experience to fully understand the challenges faced by HRDs. The focal point for HRDs should have a clear written mandate and independence to work towards realising the objectives of the mandate.
- The focal point for HRDs should have a dedicated team of HRDs, having expertise and knowledge in the field of human rights, and should conduct regular visits and meetings with HRDs at risk, undertake trial observations and prison visits, and denounce publicly violations against HRDs.
- The NHRC should lead a national process for advocating a law on protection of HRDs, developed in full and meaningful consultations with civil society and relevant UN institutions. The NHRC should develop and publicize its own definition of HRDs and use the same to classify complaints pertaining to HRDs.
- The NHRC should lead the process of developing a comprehensive, adequately resourced, well-advertised national and state protection programme for HRDs at the central and state levels.
- The NHRC should use its powers under Section 12 (d) of the PHRA and review laws used by the state agencies to criminalise HRDs.
- A fast-track procedure for complaints pertaining to HRDs should be developed and actions should be initiated within assigned time periods at all stages of NHRC's complaints' redressal mechanism. Officials not complying to NHRC's directions must be viewed seriously and strict and timely actions should be taken.
- The NHRC in all complaints pertaining to the HRDs should seek responses from the complainants on reports submitted by the authorities and then decide complaints accordingly.
- In all complaints pertaining to HRDs, the NHRC should undertake independent investigation using the services of its special rapporteurs, members of 'Core Group on NGOs and HRDs' at the NHRC and special investigation teams appointed from time to time. HRDs stand to face reprisals if the same state agencies are asked to investigate a complaint who most often are the accused in a complaint.
- The NHRC should intervene in courts using its powers under Section 12 (b) of the PHRA in cases of fabricated charges against HRDs. The NHRC should

undertake independent investigations and based on its investigations should intervene in courts through competent senior lawyers.

- In all complaints pertaining to HRDs, the NHRC along with compensation and disciplinary action, should recommend prosecution proceedings against the officials.