

# Assessing the Effectiveness of the National Human Rights Commission of Bangladesh: Compliance with the Paris Principles

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## Abstract

This paper examines the extent to which the National Human Rights Commission of Bangladesh (NHRC) complies with the Paris Principles in relation to capacity-building as part of its statutory mandate under the National Human Rights Commission Act 2009 (NHRC Act). It analyses the institutional role of the NHRC as a national human rights institution (NHRI) within the framework of the Paris Principles and the Global Alliance of National Human Rights Institutions (GANHRI). Focusing on selected quasi-judicial decisions concerning human rights violation (HRV) complaints, the paper evaluates the NHRC's institutional and individual capacity in complaint disposal processes. It argues that the NHRC has yet to develop a sufficient understanding of the quasi-judicial functions required for effective HRV complaint handling, thereby limiting its compliance with the Paris Principles and GANHRI accreditation standards.

## Key Words

NHRIs, Paris Principles, Human Rights, Human Rights Violations, Human Rights Protection.

## 1. Introduction

National human rights institutions (NHRIs) have become a salient feature of both national and global human rights architecture.<sup>1</sup> They are generally defined as state organs with constitutional or legislative mandates to protect and promote human rights.<sup>2</sup> Often described as institutions playing essential bridging role between international and national human rights protection systems,<sup>3</sup> NHRIs and their functions in human rights protection have received significant attention from UN bodies. Consequently, the Paris Principles 1993, adopted by

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<sup>1</sup> Luka Glusac, Universal Periodic Review and Policy Change: The Case of National Human Rights Institutions, *Journal of Human Rights Practice* (2022) 285-304.

<sup>2</sup> Global Alliance of National Human Rights Institutions (GANHRI), 'National Human Rights Institutions' <https://ganhri.org/> (accessed 25<sup>th</sup> January 2025). Many constitutional experts term these NHRIs as institutions of 'fourth branch' institutions, integrity institutions or guarantor institutions. See for example, Ackerman, B. the New Separation of Powers. *Harvard Law Review* (2000) 113(3), 633-729; Khaitan, T., Guarantor Institutions. *Asian Journal of Comparative Law* 16(S1), S40-S59; Rosalind D. & Mark T., Democratic Constitutions, Poverty and Economic Inequality: Redress through the Fourth Branch Institutions? *Australian National University Federal Law Review* 2023, 51(3) 285-295.

<sup>3</sup> Richard Carver, A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law, (2010) 10 *HRLRev* 1, 2. See also, Sonia Cardenas, National Human Rights Institutions and State Compliance, in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge 2012), Part-1, Chapter 2.

the UN General Assembly,<sup>4</sup> have emerged as primary foundation and reference point for the establishment, regulation and assessment of NHRI mandates, activities and performances.<sup>5</sup> The Bangladesh NHRC is one such institution, established in 2010 with an active support from the UN.<sup>6</sup> However, twice, once in 2011 and again in 2015, the NHRC has been assessed by GANHRI evaluating its compliance with the Paris Principles.<sup>7</sup> On both occasions, the NHRC was denied ‘A’ status, meaning it was not fully compliant with the Paris Principles. In contrast, NHRIs of neighbouring countries, such as, Nepal, India, Thailand and Malaysia have been given ‘A’ status.<sup>8</sup> This disparity has led the NHRC to allege that it was discriminated against in the GANHRI accreditation process.<sup>9</sup> Although there is no dearth of international literature examining the performance of NHRIs globally, the available literature in Bangladesh has largely failed to engage critically with the performance of the NHRC. Against this background, this paper examines selected quasi-judicial decisions of the NHRC concerning human rights violations (HRVs). It argues that these decisions reveal an unprincipled and inadequately uninstitutionalised capacity and expertise within the NHRC. This paper further contends that, in order to be compliant with the Paris Principles and meet GANHRI accreditation standards, and to function effectively as the ‘fourth branch’ institution<sup>10</sup> of the state, the NHRC requires both *de jure* and *de facto* institutionalism in its complaint disposal processes.

## 2. What is a National Human Rights Institution?

The UN defines an NHRI as ‘a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically defined in terms of

<sup>4</sup> In 1991, an UN-sponsored meeting of representatives of NHRIs was held in Paris. This meeting developed a detailed set of principles on the status of NHRIs, popularly known as the Paris Principles. These principles, subsequently endorsed by the UN Commission on Human Rights (UNCHR) and the UN General Assembly have become the foundation and reference point for the establishment and operation of NHRIs around the globe (General Assembly Resolution 48/134 of 20 December 1993, A/RES/48/134/ dated 4 March 1994) (hereinafter referred to as the Paris Principles).

<sup>5</sup> As of April 2023, there are 129 states which have NHRIs and 89 of them have ‘A’ status whilst 40 have ‘B’ status. For detail, see GANHRI Status List of NHRIs. According to this ‘Status Chart of National Institutions’ dated 13 July 2022 of the GANHRI and OHCHR, there is a list of 129 NHRIs. Among these 129 NHRIs 89 are accredited with A status. Among these 89 institutions, 49 exist in the form or model of ‘Commissions’, 12 exist in the form of ‘Defensor’ (also Defensor, Defensor etc), 10 exist in the form of ‘Ombudsman’, 9 exist in the form of ‘Institute’, 1 as ‘Centre’, 1 as ‘Committee’, 3 as ‘Counsel’ (or Counsel, Council), 2 as ‘Protector’, 2 as ‘Peoples’ Advocate’ and 1 as ‘Chancellor’ (assembled by the researcher). [https://ganhri.org/wp-content/uploads/2022/11/StatusAccreditationChartNHRIs\\_29-Nov-2022.pdf](https://ganhri.org/wp-content/uploads/2022/11/StatusAccreditationChartNHRIs_29-Nov-2022.pdf) (accessed 20 January 2024).

<sup>6</sup> See, Establishment of the National Human Rights Commission in Bangladesh <http://www.nhrc.org.bd/site/page/1c65dfa1-f9c2-48e9-a66b-eab8de75d9b1/-> (accessed 23 July 2023). NHRC is not the first of its kind among the South Asian countries. Indian NHRC was the first in formation of such commission in 1993. The Human Rights Commission of Sri Lanka was established under the Human Rights Commission of Sri Lanka Act, No. 21(1996) and became operational in September 1997. The National Human Rights Commission (NHRC) of Nepal is an independent and autonomous statutory body established in the year 2000 under the Human Rights Commission Act 1997.

<sup>7</sup> See, GANHRI Accreditation Chart November 2022 (n 5). For Bangladesh status, see B status item 2 in ‘Asia and the Pacific part’; Also see, NHRC Annual Report 2012, p. 9; NHRC Annual Report 2013, p. 12; NHRC Annual Report 2014, p. 5; NHRC Annual Report 2015 pp. ix, 41; NHRC Annual Report 2019 p. 8; NHRC Annual Report 2020, p. 58; Also, ASK 2020 (Ain O Shalish Kendra), *A Decade of National Human Rights Commission of Bangladesh: Efficacy, Existing Challenges and Opportunities* (Dhaka 2020); Also, SCA Accreditation Report, May 2011; Also, SCA Accreditation Report, May 2015 [https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA\\_MARCH\\_2015\\_FINAL\\_REPORT\\_-\\_ENGLISH.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_MARCH_2015_FINAL_REPORT_-_ENGLISH.pdf) (accessed 14 February 2022).

<sup>8</sup> See, GANHRI Status chart for NHRIs (n 5). For the status of India, Indonesia, and Malaysia, see A status list ‘Asia and Pacific’ part; for Nepal see item 8, and for Thailand, see item 15.

<sup>9</sup> NHRC Annual Report 2019, p. 8; NHRC Annual Report 2020, p. 58; NHRC Annual Report 2021, p. 104.

<sup>10</sup> On ‘fourth branch institutions, see Ackerman, Rosalind & Mark (n 2).

the promotion and protection of human rights.<sup>11</sup> According to the GANHRI statute, NHRI is also defined as an independent national institution established by a Member or Observer State of the UN with a constitutional or legislative mandate to promote and protect human rights, and which is, or intends to be, accredited by GANHRI in line with the Paris Principles.<sup>12</sup> They are established by the state but operate independently from the government.<sup>13</sup> Although there is no uniform definition of NHRIs,<sup>14</sup> they are defined by different scholars from different perspectives. However, NHRIs can be characterised by the following five common features: (i) statutory autonomous and independent bodies created by a ‘constitutional or legislative text’;<sup>15</sup> (ii) mandate to protect and promote human rights;<sup>16</sup> (iii) bridging the gap between national and international human rights system;<sup>17</sup> (iv) recommendatory powers and process as opposed to enforcing powers and processes like courts;<sup>18</sup> and (v) quasi-judicial powers as opposed to judicial powers by Commonwealth-type NHRIs.<sup>19</sup>

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<sup>11</sup> OHCHR (2010), *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (Geneva, 2010, Professional Training Series No. 4), para 39 (Hereinafter, UN NHRI Training series- 4).

<sup>12</sup> GANHRI Statute, Article 1 (UN Commission on Human Rights resolution 2005/74, dated 20 April 2005; the United Nations Human Rights Council resolution 5/1 dated 18 June 2007), available at [https://ganhri.org/wp-content/uploads/2023/04/GANHRI-Statute-adopted-March2023\\_EN.pdf](https://ganhri.org/wp-content/uploads/2023/04/GANHRI-Statute-adopted-March2023_EN.pdf) (accessed 12 January 2024).

<sup>13</sup> GANHRI, *A Practical Guide to the Work of the Sub-Committee on Accreditation*, (Online edn, 2023) p. 10; Also, Lyer, K. R., National Human Rights Institutions in Oberleitner G and Hoadley S. (eds) *Human Rights Institutions, Tribunals and Courts- Legacy and Promise* (Springer Major Reference Works series 2019).

<sup>14</sup> UN NHRI Professional Training Series No. 4 (n 11), para 36.

<sup>15</sup> Paris Principles: Competence and Responsibilities, Article 2; ICC, General Observations (GOs) 1.1; Also, UN NHRI Training Series-4 (n 11) pp. 13-14; Also, United Nations (1990), *National Institutions for the Promotion and Protection of Human Rights*, C.H.R. Res. 1990/73, 3 UN Doc. E/CN.4/RES/1990/73 (1990); United Nations (2011), *National Institutions for the Promotion and Protection of Human Rights: Report of the Secretary General* (2011), (A/HRC/16/76 dated 7 February 2011; OHCHR (2005), *Economic, Social and Cultural Rights, Handbook for National Human Rights Institutions* (Professional Training Series No. 12); OHCHR (2010), *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (Geneva, 2010, Professional Training Series No. 4); See also, OHCHR Annual Report 2010, A/HRC/13/44 dated 15 January 2010. OHCHR (UN Office of the High Commissioner for Human Rights) has recognised them as the pillars of national human rights systems for the promotion and protection of human rights connected to the international human rights system. See also, OHCHR Annual Report 2012, A/HRC/20/10 dated 10 April 2012 (hereinafter referred to as ‘the UN Documents on NHRIs).

<sup>16</sup> Paris Principles: Competence and Responsibilities, Article 1; ICC, GOs 1.2; See generally Burdekin and Naun, *National Human Rights Institutions in the Asia Pacific Region* (Boston: Martinus Nijhoff Publishers, 2007) at xiv, 555; Carver, *Performance and Legitimacy: National Human Rights Institutions* (Geneva: International Council on Human Rights Policy, 2000) at 132; De Beco G and Rachel Murray, *A Commentary on the Principles on National Human Rights Institutions* (Cambridge, Cambridge University Press 2015).

<sup>17</sup> Paris Principles, Competence and Responsibilities, Article 3(d), (e); SCA, GOs 1.4, 1.5

<sup>18</sup> UN NHRI Training Series No. 4 (n 11), pp. 15-18; Also see Carver (n 3).

<sup>19</sup> Paris Principles: Additional principles concerning status of the Commissions with quasi-judicial competence; Also SCA, GOs 2.10; Also see, Carver (n 3); See, for example, section 16, NHRC Act, 2009 (Bangladesh); section 13(1), the Protection of Human Rights Act 1996 (India); section 18, Law on the Public Defender of Georgia 1996; section 14, Human Rights Commission of Malaysia Act 1999; section 21, Human Rights and Equal Opportunity Act 1986 (Australia); section 9(c), Human Rights Commission Act 1994 (South Africa). Also see, SCA, General Principles 2.10; L. Lindholt and F. Kerrigan, General Aspects of Quasi-judicial Competence of National Human Rights Institutions, in B. Lindsnaes, L. Lindholt and K. Ygen (eds), *National Human Rights Institutions. Articles and Working Papers* (Copenhagen: Danish Centre for Human Rights, 2000) 92-93; Also see, UNDP, OHCHR, APF, *Capacity Assessment for NHRIs* (UNDP, December 2012), p. 60.

### 3. GANHRI and NHRI Accreditation Process within the UN System

GANHRI is a global association of NHRIs.<sup>20</sup> NHRIs are reviewed by the Sub-Committee on Accreditation (SCA) of GANHRI.<sup>21</sup> GANHRI also represents NHRIs within the UN system, and has achieved formal status within UN structures, although it is not directly a UN body.<sup>22</sup> In other words, the OHCHR supports the work of the GANHRI SCA in its accrediting and monitoring NHRIs' compliance with the Paris Principles.<sup>23</sup> This SCA consists of four members, one from each of the GANHRI regions: Africa, the Americas, Asia Pacific and Europe. Each member must be an NHRI who is already accredited with 'A' status.<sup>24</sup> It should be noted that in the accreditation process, the OHCHR, a permanent observer, serves as the secretariat of the SCA or GANHRI.<sup>25</sup> This accreditation process assesses compliance with the Paris Principles from both a legal and practical perspective. It considers, inter alia, the concerned NHRI's enabling law, institutional capacity, independence, budget, and personal independence of the members and their willingness to address pressing human rights issues.<sup>26</sup>

### 4. 'B' Status of the NHRC and its Performance under the Paris Principles

As indicated in section 1, the NHRC made its first application in 2011 before the ICC (now GANHRI) and the SCA met in Geneva from 23 to 27 May 2011 to consider the applications submitted from Bangladesh, Hungary, Sierra Leone and Sweden.<sup>27</sup> Bangladesh, Hungary, and Sweden received 'B' status while Sierra Leone was awarded 'A' status. When GANHRI considers the application for the status of a particular NHRI of a country, it follows its General Observations (GOs).<sup>28</sup> The SCA's accreditation decision consist of two components:

<sup>20</sup> See, GANHRI (Global Alliance for National Human Rights Institutions) <https://ganhri.org/> (accessed 10 January 2024); GANHRI was known formerly as ICC (International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights) which was established in 1993 in accordance with the Paris Principles. Initially, an informal grouping of NHRIs formed in Vienna. In 2008, the ICC was incorporated under Swiss law as an association. See, Linos, K. & Pegram, T., Architects of their own Making: National Human Rights Institutions and the United Nations, *Human Rights Quarterly*, 38(2016) 1109-1134; Also, Linos, K., & Pegram, T., What Works in Human Rights Institutions? *The American Journal of International Law* (2017), Vol. 111:3, PP. 628-688.

<sup>21</sup> See, GANHRI (ibid).

<sup>22</sup> National Institutions for the Promotion and Protection of Human Rights, C.H.R. Res. 2004/75, U.N. Doc. E/CN.4/RES/2004/75 (2004); Also see, UNGA Res 172 (18 December 2008) UN Doc A/Res/63/172, para 19.

<sup>23</sup> The ICC drafted in 1998 to establish an accreditation system and the SCA met for the first time in April 2000 at the Fifth ICC International Workshop in Rabat, Morocco.

<sup>24</sup> Rules of Procedure for the GANHRI Sub-Committee on Accreditation 2019, Section 3.1 (hereinafter SCA Rules of Procedure); Also, SCA Practice Note 3 on 'Assessing the Performance of NHRIs.' [https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN\\_PracticeNote3\\_AssessingPerformance\\_adopted\\_06.03.2017.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN_PracticeNote3_AssessingPerformance_adopted_06.03.2017.pdf) (accessed 10 January 2024).

<sup>25</sup> Rosenblum in Goodman, R. & Pegram, T. (eds) *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press, 2012), p. 318.

<sup>26</sup> SCA Rules of Procedure 2019 (n 24) Section 8.1; Also, SCA Practice Note 3 (n 24). For a critical discussion on this, see, Beco & Murray (n 16) 143-147; The SCA Rules of Procedure provide that each NHRI applying for either its first accreditation or re-accreditation must complete a 'Statement of Compliance with the Paris Principles' and additional supporting materials. Addition to the statement, the NHRI must submit (1) a copy of the legislation or other instrument by which it is established and empowered in its official or published format; (2) an outline of its organizational structure, including staff complement; (3) its annual budget; (4) a copy of its most recent annual report or equivalent document in its official or published format. See also, SCA Rules of Procedure (n 24) Section 6.1.

<sup>27</sup> ICC Sub-Committee on Accreditation Report, May 2011; Also see UN GA Documents, A/HR/20/10 (10 April 2012), [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=20000](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=20000) (accessed 20 January 2024).

<sup>28</sup> ICC Sub-Committee on Accreditation Report, May 2011, < [https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA\\_REPORT\\_MAY\\_2011\\_-\\_FINAL\\_%28with\\_annexes%29.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_REPORT_MAY_2011_-_FINAL_%28with_annexes%29.pdf) > (accessed 14 February 2022).

the recommendations and concerns or observations.<sup>29</sup> In recommendations section of its 2011 report, the SCA placed particular emphasis that the Bangladesh NHRC needed to develop its institutional capacity by working in close cooperation with the UNDP.<sup>30</sup> However, it is argued that the NHRC and its Chairman were vocal in responding to the SCA's observations concerning the amendment to the NHRC Act, but they contributed little to the capacity building despite this being explicitly highlighted in the recommendation section. In 2015, the NHRC's application for accreditation was reviewed by the SCA for a second time and it was re-accredited with B status. In its recommendation section, the SCA once more emphasised the importance of strengthening the NHRC's institutional capacity.<sup>31</sup> It is further argued that this 'institutional capacity', similar to that developed by the Indian NHRC, could have been strengthened sufficiently to secure 'A' status, notwithstanding concerns regarding legislative amendments. This is particularly significant given that the effectiveness of an NHRI depends more on its institutional capacity than its legal framework.<sup>32</sup>

## 5. Capacity and Performance of NHRI under the Paris Principles

The concept of capacity can be of different types and dimensions.<sup>33</sup> For the purposes of this paper, two specific forms of capacities of the NHRC are examined here: institutional capacity and personal capacity, particularly that of the members and chairman of the NHRC, as an NHRI operating within the framework of the NHRC Act and the Paris Principles. In this paper, the terms 'capacity to identify human rights and their violations', 'capacity to protect human rights' and 'capacity to prevent HRVs' are used as umbrella concepts. They refer to the expressions found in the NHRC Act 2009, relevant treaties and conventions, case law, and other interpretative sources that take into account a State's (Bangladesh) obligation and consequent breach that influence what is capable of doing to protect human rights obligations in particular circumstances.<sup>34</sup> It has also been asserted and argued that 'capacity' of the NHRIs a fourth branch institutions refers to possessing high levels of relevant

<sup>29</sup> The SCA noted as follows: "*The SCA recommends the NHRCB be accredited B status. The SCA welcomes the recent establishment of the NHRCB. In particular, the SCA recognises the significant public advocacy undertaken by the new Chairperson [...] The SCA also welcomes the information that the NHRCB is working in cooperation with the UNDP to develop further the capacity of the Commission.*" (ibid).

<sup>30</sup> In the observation section, the SCA wrote about three things: (i) Composition of the selection committee, (ii) Secondment of the Secretary General, and (iii) Adequate Resources. (SCA Report n 28)).

<sup>31</sup> ICC Sub-Committee on Accreditation Report, May 2015 [https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA\\_MARCH\\_2015\\_FINAL\\_REPORT\\_-\\_ENGLISH.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_MARCH_2015_FINAL_REPORT_-_ENGLISH.pdf) (accessed 14 February 2022). *The SCA acknowledges [...] and commends its ongoing efforts to promote and protect human rights in Bangladesh [...] the SCA also commends the NHRC's efforts to: (i) progressively build institutional capacity, including through the current process to develop its strategic plan; (ii) pursue amendments to the NHRC Act; (iv) establish a parliamentary committee on human rights; (v) engage regularly with the IHRS.*

<sup>32</sup> Renshaw, Catherin, Byrnes, Nadrew and Durbach, Andrea. Human Rights Protection in the Pacific: The Emerging role of National Human Rights Institutions in the Region. 8(1) *New Zealand Journal of Public and International Law* (2010) 117-144; OHCHR (2010) (n 11) <http://www.ohchr.org/Documents/Publications/FactSheet19en.pdf> (last accessed 10 January 2022); Jensen, Steven L.B., *Lessons from Research on National Human Rights Institutions* (The Danish Institute for Human Rights, 2018), pp. 15-27.

<sup>33</sup> For a detail discussion on the NHRI capacities, see, Global Principles for the Capacity Assessment of NHRIs (OHCHR, UNDP, 2016), available at <https://ganhri.org/wp-content/uploads/2020/03/GANHRI-UNDP-OHCHR-Global-Principles-for-the-Capacity-Assessment-of-NHRIs.pdf> (accessed 23 January 2024).

<sup>34</sup> On the issues of relationship between crime and human rights violations, See, Nieke, v.d. H, *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague, Asser Press & Springer 2018) p.3; Also, F. Tulkens, The Paradoxical relationship between Criminal Law and Human Rights 9 *Journal of International Criminal Justice* (2011) 577; Also, M. Pinto, Awakening the Leviathan through Human Rights Law- How Human Rights Bodies trigger the Application of Criminal Law, *Utrecht Journal of International and European Law* 34(2) (2018) 161-184; Kent Roach, *Remedies for Human Rights Violations: A Two-track Approach to Supra-National and National Law* (Cambridge, Cambridge University Press 2021); See also, Kamber K, *Prosecuting Human Rights Offences: Rethinking the Sword Functions of Human Rights Law*, (Leiden, Brill 2017) 6-9.

knowledge, expertise, and skill in decision-making process and procedures.<sup>35</sup> It is also widely acknowledged that an NHRI may formally comply with the Paris Principles yet still lack genuine independence if its members do not possess independent capacity and thinking.<sup>36</sup> True independence is a personal quality, best described as independent thinking and decision making.<sup>37</sup> Some of the most effective NHRIs have not been in full compliance with the Paris Principles but because of their member's independent thinking and capacity, they proved to be strong protectors of human rights.<sup>38</sup> Researchers find that an NHRI can work effectively even in dictatorial regimes<sup>39</sup> and this is possible because of the institutional strengths and moral personality of the Chairman.<sup>40</sup> Researchers find further that although the founding law does not empower the Indian NHRC (INHRC) to investigate against the disciplined force, it was the institutional capacity of the Indian retired Chief Justice as the Chairman of the Commission which strengthened its internal capability.<sup>41</sup> The Indian NHRC was awarded 'A' status by GANHRI since 1996 onwards despite the fact that its constituent law does not allow it to investigate HRVs allegations against LEAs<sup>42</sup> and this has been possible because the Indian NHRC used its 'report-seeking' quasi-judicial process with progressive and purposive interpretation.<sup>43</sup> Some researchers find that while most NHRIs in the Asia-Pacific region have medium degree of *de jure* independence, they possess higher degree of *de facto* independence and capacity and these come from NHRI leadership and institutional ability to form constructive ties with governmental and CSO levels.<sup>44</sup>

## 6. Institutional and Personal Capacity of the Members under the NHRC Act

It is a matter of record that the NHRC, as part of its institutional capacity, has failed to frame rules of procedure for the disposal of HRVs complaints even after more than a decade of its existence. This institutional failure persists despite the High Court Division issued three

<sup>35</sup> Elliot, B. Independent Regulatory and Oversight (Fourth Branch) Institutions (2019) IDEA. Available at <https://www.idea.int/publications/catalogue/independent-regulatory-and-oversight-fourth-branch-institutions> (Accessed 25 January 2025).

<sup>36</sup> APF: Fact Sheet-3: The Importance of Independence of NHRIs, p. 20, available at <https://www.asiapacificforum.net/members/what-are-nhris/independence/> (accessed 24 July 2022); See also, Asia Pacific Forum, *A Manual on National Human Rights Institutions* (APF, Sydney 2018) p. 37-40; See further, UNDP-OHCHR *Toolkit for Collaboration with National Human Rights Institutions* (Geneva and New York, 2010) (hereinafter UNDP-OHCHR Toolkit), pp. 247-250.

<sup>37</sup> Beko and Murray (n 16), pp. 82-90.

<sup>38</sup> APF Fact Sheet-3 (n 36), p. 20.

<sup>39</sup> Linos & Pegram (n 20). In their piece, Linos and Pegram find, for example, that in authoritarian regimes like Chile and Peru, NHRIs have been very effective in making the government accountable for HRVs; See also, Welch, R. M., National Human Rights Institutions: Domestic Implementation of International Human Rights Law, *Journal of Human Rights*, (2017), 16(1), 96-116.

<sup>40</sup> On this, also see, Murray (n 16), Gomez and Ramcharan, B. (eds). *The Protection Role of National Human Rights Institutions* (The Hague, Martinus Nijhoff Law Special Series, (2005) Vol. 62; also, Welch (n 39).

<sup>41</sup> Dhavan, R. Strengthening Capabilities: Reflecting on the National Human Rights Commission's (NHRC) Fifth Report (1997-98), *Journal of Indian Law Institute*, 43(4), (2001), 469-499; Halim, Md. Abdul, *National Human Rights Commission of Bangladesh: Problems and Prospects* (Dhaka, CCBF, 2015).

<sup>42</sup> More on the activism of the Indian NHRC, see, Dhavan (ibid), Halim (ibid).

<sup>43</sup> More on the 'report-seeking' process as a quasi-judicial process, see Halim (ibid), pp. 73-80, 105-114. In particular, see, interpretation given by the Indian NHRC, for example, *The Killing of two civilians by a BSF Jawan, District Ganganagar, Rajasthan*- Case No. 1060/20/2000-2001-PF & 1061/20/2000-2001-PF; Complaint No. 4499/4/3/2014, (Indian NHRC AR 2015-2016, pp. 59-62); Also see, 16-year old boy killed by Indian Army, Case No. 1438/7/15/2012 (Indian NHRC AR 2015-2016, p. 174); See also, Sexual harassment of a girl by a teacher, Case No. 1438/7/15/2012 (Indian NHRC AR 2015-2016, p. 174). In this complaint, the Indian NHRC recommended for a monetary compensation of Rs. 50,000 to be paid to the victim by the Chief Secretary of the Government; Also, a deaf and dumb girl sexually abused by her co-student at Deaf & Dumb school (Indian NHRC Case No.31/8/2001-2002, INHRC AR 2007-2008, P. 44).

<sup>44</sup> Lacatus, C. & Carraro, V. National Human Rights Institutions: Independent Actors in Global Human Rights governance, *International Affairs* 99(3) (2023), 1176-1189.

separate directions to the Commission over time.<sup>45</sup> As a result, the entire institutional *de jure* process of receiving, managing, processing, and disposing of complaints has remained largely ad hoc, reflecting a significant deficit in institutional capacity.

This paper further argues that the NHRC Chairmen and members generally lack sufficient capacity, knowledge and independent thinking on the concepts of ‘human rights’, ‘HRVs’, ‘human rights protection’ in the context of a crime, criminal law and criminal process.<sup>46</sup> Institutional capacity and independence are fundamental requirements for the effective functioning of a NHRI.<sup>47</sup> In this regard, independence under the NHRC Act operates at two levels: (i) institutional independence and (ii) personal independence. Section 3(2) of the Act regulates the Commission’s institutional independence and capacity.<sup>48</sup> Additionally, the Act provides that no suit, prosecution, or other legal proceedings shall lie against the Commission or its members for any report, act, or action performed in good faith in the discharge of their official duties.<sup>49</sup> This provision ensures the legal independence and capacity of the Chairman and members of the Commission and aligns with the general observations of the Sub-Committee on Accreditation (SCA).<sup>50</sup> In order to strengthen the Commission’s independence, the Act has secured the positions of its members by providing that ‘the Chairman or Members of the Commission shall not be removed from their office except in like manner and on the like grounds as a Judge of the Supreme Court.’<sup>51</sup> The Commission consists of a Chairman, an FTM and six other honorary members who are selected by a selection committee.<sup>52</sup> The Chairman and one FTM serve the Commission on a full-time basis, along with five other Honorary Members who provide their expertise and support to the Commission.<sup>53</sup> In its first Annual Report, the Commission stated that, as a statutory independent body, the NHRC stands in conformity with the Paris Principles,<sup>54</sup> and has acquired sufficient capacity, expertise and experience in its human rights protection programmes.<sup>55</sup> In 2021, the Commission informed the High Court Division in 2021 that the detailed rules of procedure under the NHRC Act either for investigation or inquiry remain in draft form.<sup>56</sup> Sections 16, 17, 18 and 19 read together with sections 12 and 2 confer quasi-judicial powers upon the NHRC to investigate and inquire into HRVs and to ‘seek reports’<sup>57</sup>

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<sup>45</sup> The first direction was issued in 2013 in *Md. Mozammel Hoque v NHRC and Others* (WP No. 6228 of 2013); the second followed in the same case during a supplementary rule (show-cause) hearing on 23 August 2016; and the third arose in the *Khadiza torture case* in 2019. See, *CCB Foundation v NHRC and Others* [2020] 8 CLR(HCD) 49; See also, Sidoti, C., *NHRC: Capacity Assessment of the National Human Rights Commission, Bangladesh* (UNDP, 2019, p. 11.

<sup>46</sup> See, Halim (n 41) pp. 30-32, 83-89; For a critical analysis of crime and human rights violations and their interaction, see, Kent Roach (n 34); The author has designed a framework for the interaction of crime-HRVs in his doctoral thesis, *National Human Rights Commission in Bangladesh: Exploring Quasi-Judicial Activism in Human Rights Protection* (to be submitted).

<sup>47</sup> GANHRI SCA General Observations May 2013, GO 2.3.

<sup>48</sup> ‘The Commission shall be a statutory independent body having perpetual succession and the power, among others, to acquire, hold, manage, dispose of property, both moveable and immovable, and shall by the said names sue and be sued.’ NHRC Act 2009, Sec. 3.

<sup>49</sup> NHRC Act, 2009, section 29.

<sup>50</sup> GANHRI SCA General Observations, May 2013, GO 2.3. Also, OHCHR Training Series-4 (n 11), p. 42.

<sup>51</sup> NHRC Act 2009, Section 8(1).

<sup>52</sup> NHRC Act 2009, Section 7.

<sup>53</sup> NHRC Act 2009, section 7.

<sup>54</sup> NHRC Annual Report, 2010, p. 12.

<sup>55</sup> NHRC Annual Report, 2013, (Preface of the Chairman) p. 07.

<sup>56</sup> See, *CCB Foundation v NHRC and Others* [2020] 8 CLR(HCD) 49 (arising out of the NHRC Complaint No. 413/2013, full Commission’s decision on 14.09.2020, popularly known as *Khadiza torture case*).

<sup>57</sup> ‘Report-seeking’ is an independent quasi-judicial process for NHRIs.

from the Government in assessing HRVs committed by LEAs.<sup>58</sup> These sections also empower the Commission to issue recommendations and to seek compliance from the Government.<sup>59</sup> Despite this extensive statutory mandate, a critical question remains as to whether the Chairman and members have exercised their independent thinking or decision making in complaint disposal process of the Commission.

### 7. Complaint Disposal by the NHRC against Law Enforcement Agencies (LEAs)

This section critically analyses selected HRV complaint disposals of the Commission against LEAs<sup>60</sup> to examine whether, and to what extent, the Commission has exercised its institutional and individual capacity, and how it has understood the quasi-judicial ‘report-seeking’ process in contrast to the formal investigation process for establishing HRVs.

#### (a) Beaten up and Injured by Rapid Action Battalion (RAB) (2011): Who is the Violator of Human Rights?

One Ziaul filed a complaint alleging that RAB<sup>61</sup> members illegally beat him, causing injuries to his leg and a fractured finger. His records of hospitalisation and treatment were attached to the complaint. The Commission took cognisance of the complaint, and in its first order, sought a report from a local district bar association.<sup>62</sup> From 06.06.2011 to 13.11.2011, five orders were issued by the Full Time Member (FTM), each seeking a report from the same third party.<sup>63</sup> This disposal shows that the FTM’s orders were in violation of Section 18 of the Act.<sup>64</sup> Under the Act, the NHRC has a legal duty to seek a ‘report’ from Ministry of Home Affairs (MOHA) which represents the Government.<sup>65</sup> This disposal order further substantiates that the Commission lacks institutional knowledge on how and who to approach against a complaint on gross HRVs committed by LEAs and who should be held accountable for such violations.

#### (b) 16-Year-old Boy shot Dead by Police (2011): Are HRVs lost in the Process Gap?

A 16-year-old boy was shot dead by the police.<sup>66</sup> In his first order, the Chairman sought a report from the IGP<sup>67</sup> instead of ‘the Government’. The Chairman issued five orders on five different dates seeking a report from the IGP. Finally, the IGP sent a report to the NHRC and the NHRC disposed of the complaint on the grounds that there three criminal charges

<sup>58</sup> Law Enforcement Agencies (LEAs) means members of a ‘disciplined forces’ including police force, army, navy, air force and any other force declared by law to a disciplined force (See, Article 152 of the Constitution of Bangladesh. Government of Bangladesh may declare any other force to be included as a ‘disciplined force’ within the meaning of this definition. RAB has been declared by the GOB as a ‘disciplined force’. See, section 2(hh), the Armed Police Battalions Ordinance 1978, amended by the Armed Police Battalions (Amendment) Act, 2003.

<sup>59</sup> In particular see section 16 which gives the NHRC the power of a civil court. However, since the Commission has not outlined its detailed rules, it arguably lacks the process of the power of a civil court. More on this, see, Halim (n 41), pp. 95-179.

<sup>60</sup> Law Enforcement Agencies (LEAs) (n 58).

<sup>61</sup> RAB and other LEA members are controlled by MOHA. It has been held by the apex court in *Bangladesh v Md. Mojibul Haque* 3 CLR (AD) (2015) 261 that ‘[...] by no stretch of imagination can the Inspector General of Police, [...] be brought within the definition of the phrase ‘Government’ (paras 75, 112-115).

<sup>62</sup> First order dated 06.06.2011, Barishal District Bar Association is an organisation composed of lawyers which is not a part of the Government.

<sup>63</sup> Complaint No. 133/2011.

<sup>64</sup> The only signature found in the disposal was the signature of the FTM, which is violative of section 11(3) of the NHRC Act 2009.

<sup>65</sup> RAB and other LEA members are controlled by MOHA. It has been held by the apex court in *Bangladesh v Md. Mojibul Haque* 3 CLR (AD) (2015) 261 that ‘[...] by no stretch of imagination can the Inspector General of Police, [...] be brought within the definition of the phrase ‘Government’ (paras 75, 112-115).

<sup>66</sup> Complaint No. 108/2011 dated 04.07.2011, 25.07.2011, 25.08.2011, 25.09.2011, 25.10.2011.

<sup>67</sup> Inspector-General of Police. To be noted that IGP is not the Government. For a legal interpretation on this see, *Bangladesh V Md. Mojibul Haque* 3 CLR (AD) (2015) 261 (Paras 75, 112-115).

had been pending against the boy.<sup>68</sup> This disposal raises grave concerns over the capacity of the NHRC and its chairman. First, it is not clear on what grounds the Chairman dismissed a complaint involving the killing of a child by the police. Furthermore, the disposal order is non-speaking order. It provides an example of how the pendency of criminal cases justified the killing. Second, the order, which consists of less than one paragraph, fails to cite any section of the Act, or any article of the Constitution or relevant provisions of the ICCPR that guarantee the right to life of every individual in Bangladesh. The disposal order lacks any discussion of the substance and procedure of HRP, or the due process of police investigation, or whether the State and its agents (police) have fulfilled their duties by following the process of investigation (the ‘means’ obligation as opposed to ‘ends’ obligation).<sup>69</sup> Third, the Commission did not even ask for the post-mortem report to assess the legal and *prima facie* causes of the death. Fourth, while the NHRC does not have the power to prosecute a murder, it was its legal duty to use its quasi-judicial power to examine whether the public duties had been breached by the police. There is no objective assessment by the NHRC on how it formed its ‘institutional satisfaction’ as part of its institutional capacity.<sup>70</sup> Neither is there any assessment by the NHRC of the police action that led to the killing. Fifth, the complainant was not sent any notice for a hearing before its disposal. It is a well-established principle that failure to hold a hearing before the disposal of a quasi-judicial complaint is a gross breach of the principle of natural justice,<sup>71</sup> considering that the complainant was an NGO working for HRP in the country. Sixth, this disposal order reflects the absence of a quasi-judicial process of the NHRC. This further illustrates a serious institutional incapacity of the Commission, which is why the High Court Division strongly criticised the Commission’s unprofessional disposal in *Khadija torture* case by the same Chairman.<sup>72</sup> This disposal provides the Commission’s inadequate understanding of what

<sup>68</sup> The last order written by the Chairman was: “There have been specific criminal cases being Police Station Case No. 27 (10.01.2011) under section 19A of the Arms Act 1878, Case No. 28 (10.01.2011) under section 353/332/333 under the Penal Code, and Case No. 29 (10.01.2011) under section 399/402/302 and the matter being pending before a criminal court the Commission has no jurisdiction.”

<sup>69</sup> For the State’s positive obligation as to both the process of means and ends, see HRC decisions, e.g., in *Pedro Pablo Camargo v. Colombia*, Communication No. 45/1979, U.N. Doc. CCPR/C/OP/1 at 112 (1985) paras 13.1, 13.2, 13.3, 15; *Jayawardena v Sri Lanka*, Communication No. 916/2000, UN Doc A/57/40 at 234 (2002) paras 7.2, 7.3; *Njaru v Cameroon*, Communication No. 1353/2005, UN Doc CCPR/C/89/D/1353/2005, para 8; Report of the UNHRC, UN GOAR, Comm. No. 1353/2005, UN Doc CCPR C/89/D/1353/2005(2007); *Mukong v Cameroon*, Communication No. 458/1991 UN Doc CCPR/C/51/D/458/1991, paras 10-11; Also see, HRC, General Comment No. 35(2014) on liberty and security of persons, paras 9 and 55; Also, the Report of the Secretary General of HRC, A/HRC/13/44 (13<sup>th</sup> Session, agenda 2, 15<sup>th</sup> January 2010; Also, HRC Report on ICCPR, General Comment No. 6, 16<sup>th</sup> Session 1982, General Comment No. 14, 23<sup>rd</sup> Session 1984; Also, HRC Report on ICCPR (CCPR/C/GC/36 (General Comment No. 36, 3 September 2019) (hereinafter HRC General Comments).

<sup>70</sup> ‘Satisfaction’ mentioned in section 18(3a and b) means ‘institutional satisfaction of the Commission’ and not any personal satisfaction of the Chairman.

<sup>71</sup> Natural justice comprises two pillars- the hearing rule and the rule against bias. The hearing rule requires that people affected by the exercise of official power be provided with sufficient notice of a possible adverse decision and a sufficient chance to put their own case before any decision is made. Matthew Groves, *The Waiver of Natural Justice*, [https://law.adelaide.edu.au/ua/media/1386/ALR\\_40%283%29\\_03\\_Groves\\_Web.pdf](https://law.adelaide.edu.au/ua/media/1386/ALR_40%283%29_03_Groves_Web.pdf) (accessed 22 June 2023); also Mark Aronson, Matthew Groves and Greg Weeks, *Judicial Review of Administrative Action and Government Liability* (Thomson Reuters, 6th ed, 2017) 715–21; “The principles of natural justice were those fundamental rules, the breach will prevent justice from being seen to be done.” Lord Widgery in *Ridge v Baldwin and others* [1963] 2 All ER 66. Even both the SC and HCD of Bangladesh has held that in all proceedings by whomsoever held, whether juridical or administrative, the principles of natural have to be observed if the proceedings might result in consequences affecting the person or property or other right of the parties concerned *Miah Mobammad Abdul Nayem v. Review Panel* (2017) 5 CLR (HCD) 247 Para 23). The concept of “administrative fairness” requires that an Authority, while taking a decision which affects a person’s right prejudicially, must act fairly and in accordance with law. *Md Shamsuzzaman Khan v Bangladesh and Others* (2019) 7 CLR(HCD) 301 (Para 23).

<sup>72</sup> *Khadija torture case* (n 56).

constitutes HRV, particularly in the context of an ‘unlawful killing by the police’, how to identify such violations, and how to hold the State agents, i.e., members of LEAs accountable. It appears, as though, for the NHRC, all issues of HRVs ‘die a natural death’ as soon as a crime is reported to a police station or a charge sheet is submitted to the court. However, the growing global scholarship developed by IHRL and NHRIs suggests otherwise.<sup>73</sup> This disposal order raises two contextual question- Does the mere existence or pendency of a crime function as an ‘open manhole’ into which all HRVs are discarded by the Commission? A further question arises as to whether the NHRC adequately understands the significance of HRVs as distinct from criminal offences. Such forms of disposal<sup>74</sup> by the NHRC potentially sent a ‘green signal’ to the police and other LEAs that the NHRC, as an institution, lacked a minimum level of understanding of HRVs within the criminal process and applicable standards.<sup>75</sup> This, in turn, provided the police with a rationale for their subsequent non-cooperation with the NHRC.<sup>76</sup>

(c) **Bullet-Injuries by RAB (2011): Quasi-Judicial Process lost in a Crime?**

ASK, a reputed NGO complained based on a newspaper stating that RAB<sup>77</sup> members had picked up two persons in their pickup van, both were then found in hospitals with bullet injuries.<sup>78</sup> Hospital beds were reportedly being monitored by the RAB members. The Chairman sought a report from the Director General of the RAB (DG, RAB). This raises a legal question as to whether DG, RAB qualifies as the ‘Government’ within the meaning of Section 18 of the Act. In this complaint, the Commission issued more than 13 orders, all signed by the Chairman.<sup>79</sup> In the final order dated 01.08.2012, the Chairman dismissed the complaint on two grounds: (i) that the information in the complaint was not true, and (ii) that two suspects were accused in criminal cases.<sup>80</sup> This disposal requires analysis. First, the Commission failed to give the complainant an opportunity to make submissions on the question of jurisdiction. Second, it is legally problematic to accept such mechanical or stereotyped orders from the Chairman, who is expected to apply the Commission’s quasi-judicial power to derive ‘institutional satisfaction’ as part of its institutional capacity.<sup>81</sup> However, the final order shows no reflection of such ‘satisfaction’. Third, it was the NHRC’s legal duty to ask for a medical reports and hospital records to assess whether HRVs had occurred. The Commission or its Chairman failed to do so. Fourth, the pattern of these orders reveal that neither the NHRC nor its Chairman demonstrated its understanding of

<sup>73</sup> In this context, see the activism of the Indian NHRC in *The Killing of two civilians by a BSF Jawan, District Ganganagar, Rajasthan- Case No. 1060/20/2000-2001-PF & 1061/20/2000-2001-PF; Complaint No. 4499/4/3/2014, (Indian NHRC AR 2015-2016, pp. 59-62); Also see, 16-year old boy killed by Indian Army, Case No. 1438/7/15/2012 (Indian NHRC AR 2015-2016, p. 174) (n 43).*

<sup>74</sup> See more of these types of disposals, Halim (n 41) Chapter 7 pp. 126-190.

<sup>75</sup> See Halim (n 41) pp. 30-32, 106-190. For a general discussion on human rights in a criminal proceeding, see further, Trechsel, Stefan. *Human Rights in Criminal Proceedings* (Oxford, Oxford University Press, 2006).

<sup>76</sup> “We don't like to be engaged in loose talks with anybody.” (amra karor sathe bahase jorate chaina). This was what the IGP commented against the NHRC Chairman’s statement on the lack of chain of command in the police. *Bangla News*, 10 December 2014. <https://www.banglanews24.com/print/339183> (accessed 21 June 2023). Also see, Halim, MA, *Making the National Human Rights Commission grow up*, *Daily Financial Express*, 11 December 2014.

<sup>77</sup> RAB (n 58).

<sup>78</sup> Complaint No. 112/2011 dated 04.07.2011, 25.07.2011, 29.09.2011, 27.10.2011, 28.11.2011, 28.12.2011, 29.11.2012, 29.02.2012, 29.03.2012, 29.05.2012, 28.06.2012, 26.07.2012, 01.08.2012; For RAB (n 58) (a copy on file with the author).

<sup>79</sup> The Commission had set up two Benches to hear complaints on HRVs, the Full Bench being chaired by the Chairman to dispose of the sensational and more complicated cases and the other Bench being chaired by the FTM to deal with the comparatively easier cases. See NHRC Annual Report, 2016, p. 2.

<sup>80</sup> The Chairman also noted that charge sheets were submitted in those cases before court, the Commission lacked jurisdiction.

<sup>81</sup> ‘Institutional satisfaction’ of the Commission as an outcome of its quasi-judicial process (n 70).

due process for establishing HRVs.<sup>82</sup> The Chairman's orders suggests that the Commission waits for a report containing some information of a criminal allegation, and once such a report is received, that information becomes the basis for the 'mechanical disposal'<sup>83</sup> of complaints of HRVs by it.<sup>84</sup> It appears that the existence of a crime or criminal process becomes a 'quasi-judicial crossfire' for the NHRC through which it conveniently 'dumps' or rejects all HRVs committed by LEAs or any other public authorities. Fifth, it is legally and logically questionable whether the NHRC, a quasi-judicial body, should accept a one-sided report from LEAs without any quasi-judicial process or institutional satisfaction as required by the Act.<sup>85</sup>

(d) *The Limon Case (2011): The Critical Juncture of Hype versus real Action of the NHRC*

The NHRC's role can also be assessed by analysing how it disposed of the widely publicised Limon case, involving a 16-year-old student who was shot in the leg by RAB in 2011.<sup>86</sup> Being very vocal on this issue, the Chairman met Limon and his family immediately after his hospital admission, where his leg had to be amputated.<sup>87</sup> The subsequent admission by RAB of an accidental shooting, hospital record, amputation and filing of two false cases as a counter to the shooting could have provided the Commission with strong grounds to determine HRVs in favour of Limon.<sup>88</sup> However, the Commission lacks that capacity and knowledge of HRVs standards.<sup>89</sup> In an official press conference, the Chairman stated that 'the state is playing a crucial game with the innocent boy and the Commission will take this matter to the HCD.'<sup>90</sup> However, on 23 June 2013, the Chairman made an ominous proposal to Limon and his family to withdraw the case they filed against RAB.<sup>91</sup> This Limon case also

<sup>82</sup> More on the absence of a fair process, see Halim (n 41), pp. 127-189.

<sup>83</sup> The term 'mechanical disposal' is used by the researcher as opposed to quasi-judicial or speaking disposal.

<sup>84</sup> Similar type orders have frequently been passed by the Chairman of the first and second Commissions. For example, in Complaint No. 420/2013 (Pallab Sarkar), involving an allegation of a 'crossfire' death, the Commission merely requested an investigation report, despite the fact that this is not the method mentioned in section 18 of the Act. Similarly, in Complaint No. 379/2013 (Md. Fourkan), in which two criminal cases were filed against a 9-year-old-boy by members of the armed forces, the Commission sought report from the Director of the Social Service Department and continued for almost two years seeking a report. The NHRC appeared unable to understand how to appropriately approach or dispose of a HRV case involving an innocent child. It was particularly alarming that two false cases (Criminal Misc. case No. 745/13 and Criminal False Case No. 708/13) were filed against a child aged only 9, a child by law, is incapable of committing a crime, and the Commission failed to generate any meaningful recommendation for the child. Ultimately, after two years, the complainant ceased to communicate, and the Commission also kept silent thereafter. Similarly, in Complaint No. 417/2013 (Pallab Sarakr), a 10-year-old girl was brutally raped and was hospitalized. The NHRC took the allegation into cognisance. However, in the first order, the Chairman disposed of the complaint on the grounds that the complainant's complaint was untrue, and that a criminal case has already been filed with the local police station. Notably, the complainant was not given any opportunity to controvert the Commission's position. Moreover, when a child below the age of consent is subject to rape, it inherently constitutes a grave HRV, raising concerns about the role of the State institutions and the criminal justice system.

<sup>85</sup> See Sections 17, 18 and 19 of the Act.

<sup>86</sup> NHRC *Suo Motu* Complaint No.01/2011; See also Halim (n 41) chapter VIII.

<sup>87</sup> Daily Newage, 7 July 2012.

<sup>88</sup> HRVs are assessed on a balance of probabilities and there are thousands of examples of complaint disposals by Indian NHRC. For example, see *the Killing of a 16-year-old boy by the Indian Border Safety Force; Sexual harassment of a girl; Sexual Abuse of a Deaf Girl*. See n 43; See further, Halim (n 41), pp. 279-322.

<sup>89</sup> A Bench of the HCD could realise this and issued a supplementary rule against the NHRC in 2017, see, WP No. 6228/2013 (*Md. Mozammel Hoque v NHRC and Others*, pending for hearing as of December 2025).

<sup>90</sup> Daily Newage, 28 August 2012, <http://www.newagebd.com/detail.php?date=2012-08-28&nid=21664#.UIPUB8XR7dp> (accessed 29 July 2021).

<sup>91</sup> Daily Star, *NHRC Chairman's advice is an affront to concept of justice*, editorial, Daily Star, 27 July 2013; *Due process of law ignored in Limon case: BBC Sanglap*, Daily Star, July 8, 2013; Abrar, C.R., *Paris Principles and NHRC: The Rights Commission on a Wrong Track*, Daily Star, August 9, 2013; *Limon Repression case: the Proposal of Mediation by NHRC is contrary to Law and Ethics*, Prothom Alo, 26 June 2013. For details of this case, see Halim (n 41) chapter VIII.

exemplifies how the NHRC deviated from its legal mandate and capacity under the Act. It involved a brutal action by LEAs against a boy, and the NHRC's role under Section 18 warrants close analysis. First, this case is a glaring example of loss of 'life and limb'<sup>92</sup> caused by LEAs without justification, as admitted RAB. Further, two false cases were filed by the RAB against this boy and his mother simply because his mother had filed a criminal case against RAB members. Sections 12 and 18, read with Section 2(f) require the NHRC to seek 'reports' with full explanations from MOHA. However, the Commission failed to do so. Instead, it directed MOHA to conduct an investigation, which itself violated the NHRC's legal mandate. This reveals that the 'report-seeking' process' on the basis of 'institutional satisfaction of the Commission' and then generate 'recommendations' for HRVs have been bypassed by the NHRC. This elucidates that the Commission, both as a statutory organ and as an NHRI, lacks awareness of the process of establishing HRVs against the members of LEAs. Third, the Commission sent a DO letter to the Home Minister requesting the withdrawal of two false cases against Limon.<sup>93</sup> This act, clearly a personal step initiated by the Chairman, was outside the purview of the Act. Such steps not only turned the NHRC a toothless institution, but also undermined the idea that the State should be held liable for gross HRVs under its positive obligations.<sup>94</sup> Fourth, even when charge sheets were given in the court against Limon, the Commission did not provide any legal assistance to him or intervene in the court proceeding as required by Section 19(6).<sup>95</sup> What the NHRC did in this case is completely against the ethics and norms of human rights.<sup>96</sup>

## 7. Conclusion

The analysis of four quasi-judicial complaint disposals by the NHRC substantiates the argument that the NHRC has yet to develop adequate institutional and individual capacity to properly identify and adjudicate complaints of HRVs. As the GANHRI has twice emphasised the need to enhance the NHRC's institutional capacity in its accreditation reports, this paper concludes by recommending that the NHRC undertake targeted training programmes with either UNDP or the Indian NHRC. Such training should focus on distinguishing HRVs from ordinary criminal offences and on developing a sound understanding of the quasi-judicial functions essential for the effective disposal of HRV complaints. Rather than emphasising the expansion of its formal legal investigative powers, the NHRC should prioritise strengthening its capacity to exercise its existing quasi-judicial powers effectively.

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<sup>92</sup> "The right to life is lost not only when someone loses his/her body or limbs but also when they cannot have protection of health, pollution free water and air..." *Bangladesh and Others v Professor Nurul Islam and another* [2017] 9 SCOB (AD) 46.

<sup>93</sup> DO (Demi Official) letter was signed on 11.07.2012. The Supreme Court held that there is no legal consequence of a DO letter, *Md Mahmudul Hasn v Government* [2014] 2 CLR (HCD) 377. For details, see Halim (n 41) p. 208-209.

<sup>94</sup> More on this, see Halim (n 41), pp. 192-212.

<sup>95</sup> It will be examined later that the Commission has interpreted this sub-section narrowly and against the substance and process of NHRC Act 2009.

<sup>96</sup> TIB, ASK, Human Rights Forum, *The Role of the NHRC in Limon Case is contrary to Human Rights*, Daily Prothom Alo, 26 June 2013; BLAST, Rights Organisations protest at NHRC Chair's call to Limon, Daily New Age 24 June 2013. There are many instances of complaint disposals by the Commission on custodial deaths and torture. However, since 2010 to till date, there is no noticeable development in the process or institution building within the Commission. See for example, Complaint No. Cha. 59/2019, D. 153/22 (Razib Kor Razu) in which the Commission made no recommendation for effective remedy or interim relief even though there were sufficient evidence on HRVs committed by the police.