recognised human rights organizations.

Second, the commission is to comprise of only three members, which will preclude a fair representation of the most discriminated groups, such as the socially excluded, the ethnic and religious minorities and women.

The commission is mandated to review conformity of legislation with international standards, undertake education on human rights, visit jails or other custodial institutions, and to investigate human rights abuses. Its activities include suo motu investigation into complaints of violation, or abetment of violation by a public servant, or failure to prevent such a violation.

After investigation, the commission can only refer such cases to relevant authorities, which implies that it will not have independent power of action. This implies that it will not have the power to start independent proceedings against cases of communal violence as the Indian Human Rights Commission was able to do following the attacks on Muslims in Gujarat.

The ordinance prescribes the settling of disputes through mediation or conciliation or by reference to relevant authorities. But violations of the right to life, of freedom from torture, freedom of expression, or by the corporate sector in failing to comply with social and economic rights of workers cannot be resolved through mediation. Particularly when law enforcement agencies or security forces acquire impunity.

In 2003, Parliament even went so far as to grant indemnity for the deaths occurring during Operation Clean Heart. Even cross-fire deaths have evaded due process. How will the commission deal with such situations? Section 11(2)(ga) of the ordinance excludes consideration by the commission of "persons involved in activities of the republic and any person employed in a statutory body." In the past we have seen no transparency in administrative proceedings which has led to doubts of an internal disciplinary process.



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The requirement for submission of an annual report to the president ignores the need for transparency. Not only should it submit its report to Parliament (following elections within the year), but it must be made public through the media in the interest of transparency.

In fact as far as possible, the commission should make its reports public so that there is no doubt that the State will not tolerate violations. If enquiry reports on the causes of the death of Cholish Richil had been published, if deterrent action had been taken against those who tortured journalists Tasneem Khalil and Jahangir Alam Akash, it would have shown a strong government commitment to observing human rights. The Human Rights Commission must be able to demonstrate zero tolerance for abuses by state agencies, and to ensure that the state will not default in its responsibility of reining in violators.

The rules for the commission, which have yet to be formulated, need to underwrite financial viability, an independent staffing structure, etc. Concerns of the human rights community need to be addressed, by looking afresh at the ordinance and making necessary amendments. To be effective, the Human Rights Commission has to provide a powerful check against egregious violations such as extra-judicial deaths or custodial torture by state agencies; to raise alarms in cases of communal violence or land grabbing under the Vested Property Act.

The commission must be able to hold perpetrators to account and to provide victim and witness protection, particularly in the case of violence against women. It must be able to make its reports public, so that the public is aware of how rights can be secured.

Freedom of information and expression are vital to a human rights culture, and the commission must call a halt to the encroachments on civil liberties and on a free press.

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