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Table of Contents

<i>Thematic Areas</i>	<i>Page No.</i>
Right to life, legal protection and prohibition against Discrimination (Article 2, 6 & 26)	02-04
Violence Against Women and Harmful Practices (Article 2, 3, 6, 7, 8 & 26)	05-07
Counter-terrorism and Security Measures and Accountability for Serious Human Rights Violations (Article 2, 6, 7, 9, 14 & 26)	07-08
Freedoms of expression and peaceful assembly (Article 19 & 21)	08-10
Juvenile Justice (Article 14 & 21)	10-11
Anti-Corruption Measures (Article 2 & 25)	11-16
Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person (Article 6, 7, 9 & 14)	16-17
Child Trafficking/Trafficking in Persons (Article 7, 8 & 9)	18-19
Recommendations	20-21
List of WGHR Members (ANNEXURE 1)	22

Introduction

This submission is made by the Working Group on Human Rights in India and the UN (WGHR), a coalition of 9 human rights organisations and 2 independent experts from India. (See Annexure 1 for the list of WGHR members)

Right to life, legal protection and prohibition against Discrimination (Article 2, 6 & 26)

Raising caste-based violence

1. Article 6(1) asserts right to life and no one shall be deprived of his life, similarly Article 21 of the Indian Constitution emphasizes on the same thing. Despite legal provisions formulated during and immediately after the colonial era, the caste system has deteriorated the life of lower-castes (Scheduled Castes) with an increase the number of atrocities and their gruesomeness. The data of the NCRB¹ and multiple studies have exposed the Indian, administrative, judicial System, society and their biasness, e.g. *Hathras gangrape*², a 19-year-old Dalit girl was dragged into fields, allegedly raped by dominant caste men, her tongue chopped off, her spine was broken, they left her naked and bleeding to die. After the incident the UP-state police failed to register a complaint for several days. After a few days, in the middle of the night in the village the state police cremated her body, allegedly pouring petrol over it, and they did not even bother to inform the family members about it. When district magistrate, visited the victim's family, he threatened them asking them to change the statements made to the police.
2. Casteism has been likened to a virus that mutates, taking on different forms as it adapts to a changing environment. Its mutation is made harder to observe by it being deeply embedded, not only in our culture, traditions and institutions, but also in our unconscious lives.
3. The following are a few other examples: Shirdi, Maharashtra (Dalit man killed in Shirdi over Ambedkar ringtone on his cellphone)³, Gollapalli Tirupati District, Andhra Pradesh (Dalits barred from entering temple in Tirupati district)⁴, Bhavnagar, Gujarat (For riding horse, upper caste men kill Dalit youth in Gujarat)⁵, Pali District, Rajasthan (Killed for

¹ National Crime Records Bureau is an Indian government agency responsible for collecting and analyzing, crime data as defined by the Indian Penal Code and Special and Local Laws.

² Livemint, Hathras gang-rape case: A look at the timeline as UP court sets 3 accused free, livemint, 02March2023, <https://www.livemint.com/news/india/hathras-gang-rape-case-a-look-at-the-timeline-as-up-court-sets-3-accused-free-11677748908293.html>

³ Hindustan Times, Dalit man killed in Shirdi over Ambedkar ringtone on his cellphone, HT Correspondent, 23.05.15, <https://www.hindustantimes.com/india/dalit-man-killed-in-shirdi-over-ambedkar-ringtone-on-his-cellphone/story-ctB2Xev1zIsR7pQ9IZh2xN.html>

⁴ Times of India, Dalits barred from entering temple in Tirupati district, Sandeep Raghavan, 21.10.23, http://timesofindia.indiatimes.com/articleshow/102881558.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁵ Indian Express, For riding horse, upper caste men kill Dalit youth in Gujarat, Gopal B Kateshiya, 31.03.18,

Sporting a Moustache: Dalits in Rajasthan's Feudal Villages Face Rising Tide of Caste Violence)⁶, Pudukkottai district, Tamil Nadu (Another Dalit student dies by suicide after being attacked in Tamil Nadu, activists demand urgent action)⁷

4. On February 12, 2023, a sixteen-year-old Dalit boy from Uttar Pradesh's Sirwasuchand village of Bijnor was beaten by his principal for drinking the water from his bottle. In March 2023, another nine-year-old Dalit child from Jalaun district of UP was thrashed by a teacher for drinking water from a pond. In July 2023, a Dalit boy of Rajasthan's Netrad village (Barmer district) was physically abused by his school teacher for drinking water from the school pot.⁸ On 20 July 2022, a nine-year-old boy from the Dalit community in Sayla village in Jalore district, Rajasthan died after he was allegedly beaten by his school teacher for drinking water from a pot that had been kept aside for the teacher.⁹ The matter was not registered by the police for 23 days in spite of efforts made by the family of the victim.¹⁰
5. Despite more than 75 years of independence, India has not overcome its casteist mindset. Regardless of religious affiliation -be it Hindu, Muslim, or Christian- Dalits continue to be victims of pervasive prejudices within these communities. A Dalit man Billipuram Nagaraju, 26 was beaten and then stabbed to death in Hyderabad on May 4, 2022 for allegedly marrying a Muslim woman against her family's wishes.¹¹ A Dalit man Jagdish Chandra (39), was allegedly killed by his in-laws for marrying an upper-caste woman in Uttarakhand's Almora district.¹² Two Pathan men in Gujarat were booked by the police in the Gandhidham town of Kutch district on Tuesday for allegedly beating up a 27-year-old Dalit truck driver for wearing a 'pathani suit' on November 26, 2019.¹³ Adam Smith, belonging to Gurajala village of Nandavaram block, had married the woman of the same village six weeks ago at an Arya Samaj temple in Adoni, against her parents' wishes. Smith was a Dalit Christian and the woman hails from Kuruva community, an OBC caste.¹⁴

<https://indianexpress.com/article/india/for-riding-horse-upper-caste-men-kill-dalit-youth-in-gujarat-5117872/>

⁶ Article 14, Killed For Sporting A Moustache: Dalits In Rajasthan's Feudal Villages Face Rising Tide Of Caste Violence, Tabeenah Anjum, 06.04.22, <https://article-14.com/post/killed-for-sporting-a-moustache-dalits-in-rajasthan-s-feudal-villages-face-rising-tide-of-caste-violence-624cf9afb65f5>

⁷ SabrangIndia, Another Dalit student dies by suicide after being attacked in Tamil Nadu activists demand urgent action, SabrangIndia 10.11.23, <https://sabrangindia.in/another-dalit-student-dies-by-suicide-after-being-attacked-in-tamil-nadu-activists-demand-urgent-action/>

⁸ TheWire, Caste's Role in Shaping Water Access Is Missing From Indian Environmental Discourse, Abhijit Waghre, 14.08.23, <https://thewire.in/caste/caste-water-access-missing-india-environmental-discourse>

⁹ NDTVIndia, Dalit Boy Beaten By Teacher For Drinking Water From His Pot, Dies: Cops, Harsha Kumari Singh & Arun Nair, 14 August 2022 <https://www.ndtv.com/cities/dalit-boy-beaten-by-teacher-for-drinking-water-from-his-pot-in-rajasthans-jalore-dies-cops-3252935>

¹⁰ NHRC notice to Rajasthan govt, DGP over Dalit boy's death <https://nhrc.nic.in/sites/default/files/2022-8-17.pdf> Accessed on 21.05.24

¹¹ The News Minute, Dalit man beaten to death in Hyderabad allegedly for marrying Muslim woman, TNM staff, 5 May 2022, <https://www.thenewsminute.com/teelangana/dalit-man-beaten-death-hyderabad-allegedly-marrying-muslim-woman-163613>

¹² India Today, Dalit man killed by in-laws for marrying upper-caste woman in Uttarakhand, Press Trust of India, 3 September 2022, <https://www.indiatoday.in/india/uttarakhand/story/dalit-man-killed-by-in-laws-for-marrying-upper-caste-woman-in-uttarakhand-1995901-2022-09-03>

¹³ The Wire, Two Pathans Assault Dalit Man for Wearing 'Pathani Suit', TW Staff, 5 December 2019, <https://thewire.in/caste/muslim-men-dalit>

¹⁴ Hindustan Times, Dalit youth killed in alleged hate-crime by in-laws in Andhra's Kurnool, Srinivas Rao Apparasu, 21 January 2021, <https://www.hindustantimes.com/andhra-pradesh/dalit-youth-killed-in-alleged-hate-crime-by-in-laws-in-andhra-s-kurnool/story-s9LHy72N6FmICsBUqlTzpO.html>

6. The above cases show that there are caste prejudices in India. These prejudices have been ingrained with historical juncture in the psyche of the people who take part in such incidents. The social psychology and mindsets of the people can be illustrated by an evil social practice called “Untouchability”.
7. An analysis of the National Crime Records Bureau (NCRB)¹⁵ data in India from 2018 to 2022, as reported in their "Crime in India" reports, reveals a troubling rise in crimes against Scheduled Castes (SCs). The number of registered incidents began at 42,793 in 2018 and steadily climbed to 57,582 in 2022, with a total of 247,527 offenses recorded over the five-year period.
8. The data from 2021 to 2022 indicates a 13.1 percent increase in crimes against Dalits. Over the five-year period (2018-2022), the conviction rate under the special law¹⁶ [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rules 1995, (PoA Act)], enacted to address targeted violence against Dalits averaged at 33.96%, while the acquittal rate stood significantly higher at 59.62%.
9. In many cases, FIRs are being lodged only after the intervention of the commissions (or other Commissions) or after intervention by courts¹⁷.
10. Exclusive Special Courts reduced from 190 in 2020 to 176 in 2021. The rest are operating as Designated Special Courts. The mandated requirement under the Sec. 14 of the PoA Act to dispose-off the cases within 60 days is not followed¹⁸.
11. Total Crimes registered under PoA Act in 2021 were 54081 but the number of survivors benefitted of legal aid were 4789 and only 6755 benefited from travelling allowance. Most of the states have not covered survivors under legal aid while some states have not submitted data regarding the beneficiaries¹⁹.
12. According to Section 21(2)(v) of PoA act with Rule 16 and 17 of PoA rules, 1995, each state has to conduct at least one meeting per year. However, only 3 states have conducted at least one meeting in all the years between 2019-2022. 8 states have met twice and 3 states have met only once and 23 states have not conducted any SMVC meetings between 2019-2022. DVMC meetings are also not conducted frequently in many districts of the states²⁰.

¹⁵ NCRB, Crime/Atrocities against Scheduled Castes (SCs), Ministry of Home Affairs, 2022, <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

¹⁶ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rules 1995

¹⁷ Annual Report submitted to the President of India on 21.09.2021 and Laid in Parliament on 26.07.2022 for the years 2018-2019 and 2019- 2020, National Commission for Scheduled Castes).

¹⁸ Annual Reports under Section 21(4) of PoA Act, 2021 and Lok Sabha Starred Question No 149 answered on 13.02.2019 by Mr. Ravi Shankar Prasad, Minister of Law and Justice on Exclusive Special Courts.

¹⁹ Annual Report (2021) filed by the Ministry of Social Justice & Empowerment, Department of Social Justice and Empowerment filed under section 21(4) of SCs and STs (PoA) Act 1989.

²⁰ Annual Report (2019, 2020 and 2021) filed by the Ministry of Social Justice & Empowerment, Department of Social

Violence Against Women and Harmful Practices (Article 2, 3, 6, 7, 8 & 26)

1. Nearly 30% of women in India have experienced physical violence since the age of 15. This violence is predominantly perpetrated by husbands and intimate partners. Approximately 31% of married women reported experiencing spousal violence, including physical, sexual, or emotional abuse by their husbands. The prevalence of domestic violence varies significantly across states, with Bihar (43%), Manipur (53%), and Tamil Nadu (42%) reporting higher rates compared to Goa (8%) and Himachal Pradesh (6%).²¹
2. As per NFHS-V (2019–2020), physical and sexual violence declined in most states, compared to the fourth round (2015–2016). However, Maharashtra is one of the five states that registered an increase in such violence, from 21% to 25% between the two surveys.
3. Despite the significant health burden, the health system response to Violence Against Women in India remains *ad hoc* and fragmented, comprising of different models of service delivery on a small scale, delivered mostly by non-governmental organizations (NGOs).²²
4. During the period of 2016 to 2021, there has been a rise of 26.35% in crimes against women in India. A majority of the cases in 2021, were of kidnappings and abduction, rapes, domestic violence, dowry deaths and assaults.²³ With a staggering 4,45,256 cases registered in 2022 alone, equivalent to nearly 51 FIRs every hour, the data exposes a grim escalation from 2021 and 2020. The rate of crimes against women per lakh population stood at 66.4 while the charge sheeting in such cases was logged at 75.8%.²⁴
5. An increase in violence against women in India during the global COVID-19 outbreak has been described by the United Nations as a "shadow pandemic".²⁵
6. In 2021, police received complaints from 137,956 women - which breaks down to about one every four minutes. It's an increase of 27% from 2016 when 110,434 women sought police help.²⁶
7. As per the Crime in India Report, a total of 162449 incidences of crimes against children were recorded in 2022, out of which almost 39% cases (63414) were of child sexual abuse reported under the Protection of Children from Sexual Offences Act, 2012. There has been a significant increase of 25.89% as against 2017 in overall crimes against children.²⁷

Justice and Empowerment filed under section 21(4) of SCs and STs (PoA) Act 1989.

²¹ National Family Health Survey (NFHS-5) 2019-21, Ministry of Health and Family Welfare, Government of India

²² WHO India, CEHAT and HRP, Scaling up the health system response to violence against women: lessons from hospital interventions in Maharashtra, India. Research brief. New Delhi: World Health Organization, Country Office for India; 2021. Licence: CC BY-NC-SA 3.0 IGO

²³ Crime in India Report, 2016 and 2021; National Crime Records Bureau

²⁴ Crime in India Report, 2022; National Crime Records Bureau

²⁵ "FROM THE FIELD: India's pandemic of violence against women"; 28 December 2020;

<https://news.un.org/en/story/2020/12/1080182>

²⁶ "Rising crimes against Indian women in five charts"; Pandey Geeta; 13 September 2022; BBC News, Delhi;

<https://www.bbc.com/news/world-asia-india-62830634>

²⁷ Crime in India Report: 2017 & 2022; National Crime Records Bureau

8. In almost 96.8% cases of child sexual abuse, offenders were known to victims.²⁸
9. While for the sexual offences against children, the pendency of cases at Police Station level decreased from 33.6% in 2017 to 26.2% in 2021, the pendency at Courts level increased from 90.1% in 2017 to 92.6% in 2021.²⁹ In furtherance to the Criminal law (Amendment) Act, 2018, Department of Justice has started a Centrally Sponsored Scheme in October, 2019 for setting up of a total of 1023 Fast Track Special Courts (FTSCs) (including 389 exclusive POCSO Courts) Across the country. As on 31.05.2023, a total of 758 FTSCs including 412 Exclusive POCSO (e-POCSO) Courts are functional in 29 States/UTs across the country. As per data provided by the High Courts up to May, 2023, total 169342 cases have been disposed of by these courts since inception of the Scheme.³⁰
10. The Protection of Children from Sexual Offences Act (POCSO) criminalises adolescent sexual activities as the age of consent for sexual engagement is 18 years and below this, any act of sexual engagement is considered an offence. In Indian laws, there is no exception for adolescent sexual behaviour/ “Romantic Relationship” among adolescents. One in every four cases under the Protection of Children from of Sexual Offences (POCSO) Act in West Bengal, Assam and Maharashtra constituted “romantic cases”, where the victim was found to be in a consensual relationship with the accused. Significantly, in nearly half of the “romantic cases” (46.6%), the girl was between 16 to 18 years.³¹ In the past few years, even the judiciary has expressed its concern over overburdening the judicial system with “Romantic Relationship” cases and expressed the need to lower the age of consent from 18 years to 16 years,^{32 33 34 35 36} but the Government is reluctant to move ahead in this direction and has refused to lower the age of consent to 16 years,^{37 38} which means criminalisation of more and more young people under stringent POCSO Act where the punishment is for minimum 20 years and can be extended upto life imprisonment.

²⁸ Crime in India Report: 2022, National Crime Records Bureau

²⁹ “CRIME IN INDIA: 2017 TO 2021: A Glimpse at Crimes Against Children”; HAQ: Centre for Child Rights; <https://www.haqrc.org/wp-content/uploads/2022/10/crime-in-india-2017-2021-5-year-analysis.pdf>

³⁰ <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1945850>

³¹ Ramakrishnan & Raha, “Romantic” Cases under the POCSO Act; Enfold Proactive Health Trust: 2022

³² “Criminalisation of romantic relationships under POCSO Act has overburdened system, says Bombay HC”; <https://scroll.in/latest/1052655/criminalisation-of-romantic-relationships-under-pocso-act-has-overburdened-system-says-bombay-hc>

³³ “POCSO Act was never meant to criminalise consensual romantic relationship between adolescents: Allahabad HC”; Mishra Ishita; The Hindu; November 01, 2023; <https://www.thehindu.com/news/national/other-states/pocso-act-was-never-meant-to-criminalise-consensual-romantic-relationship-between-adolescents-allahabad-hc/article67481093.ece>

³⁴ “CJI DY Chandrachud pitches for relook at ‘age of consent’ under Pocso Act”; <https://timesofindia.indiatimes.com/india/cji-dy-chandrachud-pitches-for-relook-at-age-of-consent-under-pocso-act/articleshow/96139041.cms>

³⁵ “POCSO Act not intended to penalise adolescents or teenagers in romantic relationships: Madras High Court”; <https://www.barandbench.com/news/litigation/pocso-act-not-intended-cover-adolescents-teenagers-romantic-relationships-madras-high-court>

³⁶ “Delhi High Court bats for ‘true love;’ quashes case against man who eloped with allegedly minor girl”; <https://www.barandbench.com/news/delhi-high-court-true-love-quashes-case-man-eloped-with-allegedly-minor-girl>

³⁷ “No plan to reduce age of consent to 16: Centre”; <https://www.hindustantimes.com/india-news/no-plan-to-reduce-age-of-consent-to-16-centre-101671649031112.html>

³⁸ “Age of Consent under the Protection of Children from Sexual Offences Act”; 283rd Report of Law Commission of India; <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/09/20230929466194485.pdf>

11. In India, harmful practices against women such as Female Genital Mutilation (FGM) is prevalent in Indian muslim Bohra community.^{39 40} Despite the large scale prevalence, the Govet. Dfoes not collect and maintain any data on this.⁴¹

Counter-terrorism and Security Measures and Accountability for Serious Human Rights Violations (Article 2, 6, 7, 9, 14 & 26)

1. The issue of the Armed Forces (Special Powers) Act (AFSPA) came up prominently in the last review of India in 1997. The Human Rights Committee (hereinafter referred to as the Committee) in its Concluding Observation stated that
 - a. **the Committee remains concerned at the continuing reliance on special powers under legislations such as Armed Forces (Special Powers) Act ... in areas declared to be disturbed and at serious human rights violations, in particular with respect to Articles 6, 7, 9 and 14 of the Covenant... The Committee noting that the examination of the constitutionality of the Armed Forces (Special Powers), long pending before the Supreme Court is due to be heard in August 1997, hopes that its provision will also be examined for their compatibility with the Covenant.**
2. The recommendation of the Committee was submitted to the Constitutional Bench hearing the matter by the counsel of National Human Rights Commission. However, when the Supreme Court pronounced its judgment on 27 November 1997, the issue of examining the compatibility of the AFSPA with the Covenant was completely ignored in the judgment.
3. Following the lead of the Committee, other treaty bodies including the *Committee on Elimination of All Forms of Discrimination against Women* recommended the review/repeal of the AFSPA in 2000, 2007 and 2014. Describing the Act as racist, the *Committee on the Elimination of Racial Discrimination* also recommended its repeal in 2007, followed by multiple reminders under the Early Warning and Urgent Action Procedure of CERD. The *Committee on Economic Social and Cultural Rights* also recommended its repeal in 2008.
4. (Late) Professor Christof Heyns, the then *Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* made an official visit to India in 2012. In his report to the Council, he gave a detailed legal analysis of the AFSPA, wherein he observed that, "...the NHRC shared with the Special Rapporteur its views in support of AFSPA's repeal ... The Supreme Court of India ruled, however, in 1997 that AFSPA did not

³⁹ "Understanding Female Genital Cutting in the Dawoodi Bohra Community: An Exploratory Survey"; Taher Mariya; February 2017; https://www.fgmcri.org/media/uploads/Continent%20Research%20and%20Resources/Asia/sahiyo-study_final_12.28.18.pdf

⁴⁰ "INDIA'S DARK SECRET"; <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>

⁴¹ "In India's Bohra Community, a Battle Over Genital Mutilation"; <https://undark.org/2021/03/10/india-battle-over-female-genital-mutilation/>

violate the Constitution. The Special Rapporteur is unclear about how the Supreme Court reached such a conclusion. ... the powers granted under AFSPA are in reality broader than that allowable under the state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent.” Thus he pointed out the inherent incompatibility of the AFSPA with the Covenant.

5. The *Special Rapporteur on Human Rights Defender* and the *Special Rapporteur on Violence Against Women* who visited India in 2011 and 2013, respectively, also made the same recommendation for repeal of AFSPA. The Working Group on *Universal Periodic Review* (UPR) in all the four cycles (2008, 2012, 2017 and 2022) also recommended the repeal of AFSPA. But the Government of India has consistently refused to accept the recommendations.
6. Each and every committee and commission set up by Government of India to look into the matter has recommended the repeal of AFSPA. Yet the Act remains in the statute books till today.

Freedoms of Expression and Peaceful Assembly (Article 19 & 21)

1. The Government of India published the draconian Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2023, expanding its control over online content. The Rules authorize a “fact check unit of the central government” to identify online content “in respect of any business of the Central Government” as “fake or false or misleading”. Online intermediaries, including social media companies and internet service providers, will be required to take down any such content. Failure to remove content may result in liability for any third-party information hosted on their platform.⁴²
2. Internet Shutdowns have become a new normalcy in the country. India topped the global internet shutdown list for 6 consecutive years in a row in 2022.^{43 44 45} In 2022, the world observed 187 incidents of internet shutdowns across 35 countries, out of which, 84 were from India, accounting for 58% of all documented shutdowns globally.^{46 47}

⁴² <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/india/report-india/>

⁴³ “India tops global internet shutdown list for 6th year in a row — ‘it is widening digital divide’”; Chakraborty Debdutta; The Print; <https://www.msn.com/en-in/news/India/india-tops-global-internet-shutdown-list-for-6th-year-in-a-row-it-is-widening-digital-divide/ar-BB1mZnKY?ocid=BingNewsSerp>

⁴⁴ “India Remains Internet Shutdown Capital of the World for Fifth Year Running: Report”; Kaskar Zeeshan; 28 February 2023; The Wire; <https://thewire.in/tech/india-remains-internet-shutdown-capital-of-the-world-for-fifth-year-running-report>

⁴⁵ “India, world’s largest democracy, leads global list of internet shutdowns”; Mogul Rhea; CNN; 1 March 2023; <https://edition.cnn.com/2023/03/01/tech/internet-shutdowns-india-report-intl-hnk/index.html>

⁴⁶ “In 2022, the world saw 187 internet shutdowns – 84 by India alone”; 28 February, 2023; Al Jazeera; <https://www.aljazeera.com/news/2023/2/28/in-2022-the-world-saw-187-internet-shutdowns-84-by-india-alone>

⁴⁷ “India: ‘Internet shutdown capital of the world’”; Krishnan Murali; 15th March 2023; <https://www.dw.com/en/india-internet-shutdown-capital-of-the-world/a-64997062>

3. Media Freedom remains one of the most controversial, contested and compromised issues in recent years in the country. In April 2022, at least five journalists covering an event organized by Hindu nationalist groups in Delhi were attacked. Delhi police subsequently opened a criminal investigation into one of these journalists, Meer Faisal, accusing him of inciting hatred through a tweet, in which he alleged that participants in the event attacked him and a photojournalist because they were Muslim.⁴⁸ As of 2024, India ranks 159 in the World Press Freedom Index, 2024 which evaluates a total of 180 countries.⁴⁹ ⁵⁰ The first four months of 2024 in India have already seen at least 134 instances of free speech violations, with journalists, academics, YouTubers and students being among those affected.⁵¹ There have been 36 cases of arrest, 36 cases of censorship, 24 cases of internet control, 13 cases of attacks and seven cases of lawfare⁵² so far in 2024.⁵³ Moreover, independent media houses and grassroots journalists have been targeted for raising the critical questions of governance.⁵⁴
4. Freedom of peaceful assembly and association is another growing concern which has received least attention from the government. For instance, various right wing supremacist organisations like Rashtriya Swayamsewak Sangh (RSS) and their offshoots are at liberty to violate all constitutional and international norms to take out armed processions,⁵⁵ attack mosques⁵⁶ and churches.⁵⁷ Another example of disrupting the peaceful assembly is the most recent Farmers' Protest and their call to march to New Delhi, the capital of India with a set of 12 demands. These protests were met with the stringent government responses like placing the barricades, concrete road blocks, barbed wires and sometimes use of brute force on the protesters.⁵⁸ Similar response from the Government machineries were observed during the anti-CAA protests⁵⁹ in

⁴⁸ "India: Media Freedom Under Threat"; 3rd May, 2022; Human Rights Watch;

<https://www.hrw.org/news/2022/05/03/india-media-freedom-under-threat>

⁴⁹ Reporters Without Borders; <https://rsf.org/en/country/india>

⁵⁰ "India ranks 159 among 180 countries in World Press Freedom Index"; 3rd May 2024; The New Indian Express; <https://www.newindianexpress.com/world/2024/May/03/india-ranks-159-among-180-countries-in-world-press-freedom-index#:~:text=India%20ranks%20159th%20in%20the%202024%20world%20Press,journalists%20to%20work%20and%20report%20freely%20and%20independently.>

⁵¹ "India Has Seen At Least 134 Violations of Free Speech in 2024: Free Speech Collective"; 1st May 2024; The Wire;

<https://thewire.in/rights/india-134-free-speech-violations-2024-free-speech-collective>

⁵² A word that is a blend of law and warfare and that is used to refer to the use of the judicial system against one's opponents

⁵³ "Crossing The Line: 18th Lok Sabha Elections and Free Speech In India"; 1st May 2024; Free Speech Collective Report;

<https://freespeechcollective.in/crossing-the-line18th-lok-sabha-elections-and-free-speech-in-india/>

⁵⁴ "What the NewsClick Raid Says About Declining Press Freedom in India"; <https://time.com/6320395/india-newsclick-raid-press-freedom/>

⁵⁵ "Nuh villages live in fear after nocturnal raids and mass arrests of Muslim youth"; Singh Prabhjit; 13th August 2023; The Caravan; <https://caravanmagazine.in/crime/nuh-haryana-bajrang-dal-communal-violence-arrest-muslim-youth>

⁵⁶ "Arsonists Set Fire to Mosques in Nuh; Internet Remains Suspended There and in Adjoining Areas"; 3rd August 2023; The Wire; <https://thewire.in/communalism/nuh-mosques-arson-internet-remains-suspended>

⁵⁷ "Christians Attacked and Bible Torn in Church Attack in Delhi During Sunday Service"; 21st August 2023; The Wire;

<https://thewire.in/communalism/christians-attacked-in-delhi-church-during-sunday-service>

⁵⁸ <https://www.amnesty.org/en/latest/news/2024/02/india-right-to-peaceful-protest-under-threat-due-to-mounting-restrictions-and-escalating-crackdown-on-farmers-march/>

⁵⁹ The Citizenship Amendment Act, 2019 was passed by the Parliament on December 11, 2019, and was notified on December 12 of the same year. From December 2019 to February 2020, there was a wave of anti-CAA protests across the country, which eventually led to the Northeast Delhi riots.

2019, where even minors were subjected to police brutalities^{60 61 62 63 64} and no coercive actions were taken by the administration.⁶⁵

Juvenile Justice (Article 14 & 21)

1. The enactment of a Juvenile Justice (Care and Protection) Act has led to controversy and discontent amongst experts.⁶⁶
2. In 2012, the Jammu and Kashmir State Assembly amended PSA to prohibit the detention of people under 18 years of age. However, during the 2016 unrest, there were multiple cases of children under 18 years being detained under PSA.⁶⁷
3. The umbrella scheme called “Mission Vatsalya”, the single scheme responsible for the administration of Juvenile Justice System, has been heavily under-resourced over the years. The inadequate budget allocation towards the scheme has resulted in poor and tardy implementation of the Juvenile Justice Act.⁶⁸
4. Although the new law now covers a wide range of issues, it includes a regressive provision of waiver of 16-18 year olds into the adult criminal justice system for having committed heinous offences, and is based on a controversial “mental and physical” assessment clause. This has led to the lowering of standards for dealing with children in conflict with the law.⁶⁹

⁶⁰ <https://www.thegovernancepost.org/2020/04/indias-citizenship-amendment-act-part-ii-the-protests/>

⁶¹ “Citizenship Act protests: Why fear has gripped Muslims in this Indian state”; 31st December 2019; BBC; <https://www.bbc.com/news/world-asia-india-50946271>

⁶² “Ehraz Zaman’s documentary captures police brutalities during anti-CAA protests in AMU”; Written by: Cris; Edited by: Shaji Sukanya; 26th Feb 2024; The Newsminute; <https://www.thenewsminute.com/flix/ehraz-zamans-documentary-captures-police-brutalities-during-anti-caa-protests-in-amu>

⁶³ “Three years since anti-CAA protests: Law and lawlessness”; Kaiser Nidah & Jaffrelot Christophe; 21st January, 2023; The Indian Express; <https://indianexpress.com/article/opinion/columns/three-years-since-anti-caa-protests-law-and-lawlessness-8394755/>

⁶⁴ “An anatomy of anti-CAA protests”; HASAN ZOYA; 1st January, 2020; The Hindu;

<https://www.thehindu.com/opinion/op-ed/an-anatomy-of-anti-caa-protests/article30446145.ece>

⁶⁵ “Brutalizing Innocence: Detention Torture & Criminalization of Minors by UP Police to Quell Anti-CAA Protests”; HAQ: Centre for Child Rights; <https://www.haqcrc.org/wp-content/uploads/2020/02/brutalizing-innocence-report.pdf>

⁶⁶ “A year since the new Juvenile Justice Act came into being, chaos rules its implementation”; Bhavya Dore; Scroll; Jan 15, 2017; <https://scroll.in/article/826668/a-year-since-the-new-juvenile-justice-act-came-into-being-chaos-rules-its-implementation>

“When populism takes over: why the Juvenile Justice Act, 2015 is flawed”; <http://pragati.nationalinterest.in/2016/01/when-populism-takes-over-why-the-juvenile-justice-act-2015-is-flawed/>

⁶⁷ Office of the United Nations High Commissioner for Human Rights: Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan

⁶⁸ The concern of inadequacy of financial resources towards children has also been resonated by the concluding observations made by the UNCRC on 13 June 2014, based on India’s report presented to the Committee on 3 June 2014 in Geneva. The Committee noted “The budgetary allocations do not adequately take into consideration child protection needs. There is also mis-management of allocated resources, a problem which is exacerbated by a high level of corruption and the lack of effective monitoring and evaluation systems”. (full document available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en)

⁶⁹In the absence of proper tools of assessment, training and infrastructure, children are already being subjected to arbitrary treatment.

Moreover, in heavily militarized zones like Jammu & Kashmir, often children are detained under the Public Safety Act,⁷⁰ which is in clear violation of the Juvenile Justice Act, the UNCRC⁷¹ and The Beijing Rules.⁷²

5. The new Juvenile Justice system provides for differential treatment of children in 16-18 years' age group, not just allowing them to be tried as adults on the basis of a preliminary assessment that rests on assumption of guilt, but also allowing children in this age group found guilty for committing a heinous offence to be disqualified from employment and denied other such opportunities and right to reform on the basis of their record. Procedurally too, the current law is unclear about the trial of children in the age group of 16-18 years alleged to have committed heinous offences. There is a provision for review of the decision of the Juvenile Justice Board transferring the child to be tried as an adult by a Court of Sessions designated as a Children's Court. However, even after review if the Children's Court decides to treat such child as a child, it cannot send the matter back to the Board, but is required instead to function like a Board and conduct an inquiry like a Board, without the requisite infrastructure and human resources that are otherwise mandated for a Juvenile Justice Board. A whole range of procedural rights and guarantees are thus denied to such children once transferred to the adult criminal justice system.
6. Absence of a clear system for determination of age of children who come in contact with the law further renders them vulnerable. Most litigation under the Juvenile Justice law has been around age determination and there is ambiguity in interpretation of statute that allows many children in conflict with the law ending up in jails (prisons) for adults, or many child victims of crimes being deprived of protection guarantees enshrined in various beneficial legislations.

Anti-Corruption Measures (Article 2 & 25)

The Right to Information Act, 2005 (RTI Act) and the Central Information Commission:

1. In 1975, in a landmark judgement involving a challenge to the election of the individual who was occupying the post of the Prime Minister of India (to Parliament's House of the People i.e., the Lok Sabha), the Supreme Court of India ruled that in a government of

⁷⁰“A Lawless Law: Detention under the Jammu & Kashmir Public Safety Act”; A Report by Amnesty International
In 2012, the Jammu and Kashmir State Assembly amended Public Safety Act (PSA) to prohibit the detention of people under 18 years of age. However, during the 2016 unrest, there were multiple cases of children under 18 years being detained under PSA. (OHCHR Report on the Situation of Human Rights in Kashmir;
<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>)

⁷¹ According to the Article 40 (1) of the UNCRC “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”

⁷² The UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") adopted by the UN General Assembly in November 1985, stipulate in particular that proceedings for children should be conducive to the best interests of the child.

responsibility, people have a right to know every public act, everything that is done in a public way by public functionaries.⁷³ This right was deemed to be a fundamental right within the meaning and scope of the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. However, the Union Government enacted and implemented a national law to give effect to this fundamental right only in 2005 bowing down to pressure from grassroots level people's movements, civil society actors, academics and mass media.⁷⁴

2. *The Right to Information Act, 2005* (RTI Act) covers all State agencies wholly or partially (as in the case of security and intelligence agencies) and entities in the non-government sector which receive substantial financing from the government in a direct or indirect manner. Arguably one of the most popular laws enacted after independence, between 4-6 million information requests are lodged by citizens every year seeking transparency and accountability from government at various levels.⁷⁵
3. The RTI Act provides for an autonomous dispute resolution mechanism in the form of Information Commissions if the internal appeals systems fail to resolve the grievances of information seeking citizens. The Central Information Commission (CIC) adjudicates information access disputes between information requestors and the Union Government and State Information Commissions (SICs) perform similar functions and responsibilities at the State level.⁷⁶ The original RTI Act stipulated the tenure (maximum of five years or until the age of 65 years) and the service conditions for all Information Commissioners at the Union and the State level. The Central Information Commissioners and the heads of SICs were equal in rank to the Election Commissioners of India- a constitutional position and the remaining State Information Commissioners were equal in rank to the highest-ranking civil servant in the State.
4. However, in 2019, the Union Government pushed through Parliament an amendment to the RTI Act to usurp the powers to determine the tenure and service conditions of all Information Commissioners across the country ignoring the serious and very vocal objections raised by the Opposition Parties, civil society organisations and the mass media.⁷⁷ The amendment Bill was not even referred to a parliamentary standing committee for detailed vetting which would have required the citizenry to be consulted. Subsequently, the Union Government notified rules to limit the tenure of newly appointed Information

⁷³ *State of U.P. vs Raj Narain & Others*, 1975 AIR 865. Also see for a summary of the judgement: <https://globalfreedomofexpression.columbia.edu/cases/state-of-uttar-pradesh-v-narain/>, accessed on 28 May, 2024.

⁷⁴ <https://rti.gov.in/rticorner/studybypwc/introduction.pdf>

⁷⁵ Maneesh Chibber, "In 15 years, RTI has gone from Indian citizens' most powerful tool to an act on life support", *The Print*, dated 24 June, 2020, accessible at: <https://theprint.in/opinion/in-15-years-rti-has-gone-from-indian-citizens-most-powerful-tool-to-an-act-on-life-support/447507/>, accessed on 28 May, 2024.

⁷⁶ Tarakanta Mohanty, "Provisions and Salient Features of the Right to Information Act, 2005", accessible at: <https://magazines.odisha.gov.in/Orissareview/aug2005/engpdf/provisions%20and%20salient%20features.pdf>, accessed on 28 May, 2024.

⁷⁷ Shyamlal Yadav, "Explained: What has changed in in RTI Act? Why are opposition parties protesting?", *Indian Express*, dated 22 July, 2019, accessible at: <https://indianexpress.com/article/explained/what-changes-in-rti-rti-amendment-bill-2019-mean-5840814/>, accessed on 28 May, 2024.

Commissioners for a period of three years with the possibility of reappointment for another two-year term. The rank-related parity of Central Information Commissioners and heads of SICs was discarded thereby lowering the prestige and gravitas of these bodies in the eyes of the bureaucracy.⁷⁸

5. Despite the burgeoning volume of information access disputes⁷⁹ resulting from the increasing tendency of the bureaucracy to resist the implementation of the statutory mandate of transparency, Government at the Union and State level have rarely filled up the vacancies in the Information Commissions.⁸⁰ In fact since May 2014, efforts to fill up the vacancies in the CIC and the SICs have not been initiated even once by the respective governments until questioned by the Supreme Court of India in the course of hearing public interest litigation suits filed by RTI activists.⁸¹ The CIC has 23,103 cases pending before it currently with eight vacancies yet to be filled up.⁸² The minimum waiting period for the disposal of a case by the CIC is between 10-12 months due to this huge pendency. It may take much longer for cases to be resolved in other SICs which function with one or two Information Commissioners. On the 18th anniversary of the RTI Act in October, 2023, four SICs in the States of Jharkhand, Mizoram, Telangana and Tripura had become defunct because none of the vacancies had been filled up.⁸³

Attacks on RTI activists and absence of whistleblower protection

6. Despite the immense popularity enjoyed by the RTI Act as a tool which empowers private citizens to ask questions and demand answers from government about their actions and omissions, the implementation of this seminal law has not been without its violent fallout. As of 2018 more than 65 RTI activists had been allegedly murdered, more than 380 others physically assaulted, often brutally, or threatened or harassed due to their use of the RTI Act to unearth petty and big-ticket corruption.⁸⁴ Nevertheless the justice delivery system

⁷⁸ “Government notifies RTI rules: CIC tenure cut to 3 yrs, govt to decide salary other perks”, *Economic Times*, dated 25 October, 2019, accessible at: <https://economictimes.indiatimes.com/news/politics-and-nation/govt-notifies-rti-rules-cic-tenure-cut-to-3-yrs-govt-to-decide-salary-other-perks/articleshow/71760604.cms?from=mdr>, accessed on 28 May, 2024.

⁷⁹ “2.2 lakh cases pending as RTI Act marks 15th anniversary”, *Times of India*, dated 12 October, 2020, accessible at: <https://timesofindia.indiatimes.com/india/2-2-lakh-cases-pending-as-rti-act-marks-15th-anniversary/articleshow/78609038.cms>, accessed on 28 May, 2024. This figure crossed 300,000 in October, 2023: <https://www.thehindu.com/news/national/over-three-lakh-appeals-and-complaints-pending-with-information-commissions-report-finds/article67408268.ece>, accessed on 28 May, 2024.

⁸⁰ “Why Haven’t All Vacancies in Central Information Commission Been filled: RTI Activists”, *The Wire*, dated 08 November, 2020, accessible at: <https://thewire.in/government/central-information-commission-rti-vacancies-activists-fill>, accessed on 28 May, 2024. As of May 2024, eight of the 11 posts in the Central Information Commission were lying vacant, accessed on 28 May, 2024.

⁸¹ “Mounting pendency, Petitioners Ask SC to Urgently List Information Commissioner Vacancies Matter”, *The Wire*, dated 19 October, 2020, accessible at: <https://thewire.in/law/vacancies-information-commissioners-cic-rti-act-supreme-court>, accessed on 28 May, 2024.

⁸² Data available on the website of the CIC at: <https://dsscic.nic.in/cause-list-report-web/view-pending-cases>. Also see Chief IC/IC Profile on the website of the Central Information Commission at: <https://cic.gov.in/cic-profile>, accessed on 28 May, 2024.

⁸³ Sarah Thanawala, ‘Report card’ on information commissions flags alarming number of pending complaints”, *The Wire*, dated 14 October, 2024: <https://theleaflet.in/report-card-on-information-commissions-flags-alarming-number-of-pending-complaints/>, accessed on 28 May, 2024.

⁸⁴ Chetan Chauhan, “How RTI is dying a slow death in India”, *Hindustan Times*, dated 03 May, 2018: <https://www.hindustantimes.com/india-news/how-rti-is-dying-a-slow-death-in-india/story->

has rarely been able to punish the culprits⁸⁵ resulting in the creation of an atmosphere of impunity for the perpetrators who in some cases happen to be Legislators.⁸⁶ Despite investigation being carried out by the law enforcement agencies at the Central and State level, the perpetrators in the very first case of the alleged murder of an RTI activist have not been identified even after 14 years.⁸⁷

7. Governments at the Union and State level have completely failed to put in place any protective mechanism to prevent such attacks. Parliament enacted *Whistleblowers Protection Act* in 2014.⁸⁸ Even though this law does not provide any protection for citizens who are attacked only because they have sought information to expose corruption and wrongdoing in government, it provides for several measures to protect RTI users who expose irregularities and malfeasance in government. Nevertheless, this law has remained a dead letter for over a decade because the Union Government has not brought it into force yet.⁸⁹ None of the State Governments have enacted whistleblower protection laws either as they wait for the Union Government to enforce the existing law.

Dilution of the anti-corruption measures

8. In 2018, the Union Government pushed through Parliament a series of amendments to the *Prevention of Corruption Act, 1988* (the Act). The amendment created a new offence of bribe-giving which is punishable with a prison term of up to seven years or with fine or both, unless the bribe-giver reports such action to the competent authorities within seven days or if he/she is compelled by the authorities to pay the bribe. However, the scope of actions which constitute ‘criminal misconduct’ on the part of the public servant under the Act has been diluted considerably. In the original version, actions such as habitually taking bribes, accepting anything or consideration for free or obtaining pecuniary advantage for oneself without any public interest being served were all termed ‘criminal misconduct’. The amendments restrict criminal misconduct to only fraudulent misappropriation of

[sTpdC63K7s42vxgV1bxwTI.html](https://www.factchecker.in/data-dive/rti-anniversary-multiple-barriers-to-right-to-information-persist-in-india-838707), accessed on 28 May, 2024. By October 2022, this number had crossed 450. See, “RTI anniversary: Multiple Barriers to ‘Right to Information’ Persist in India”, *Factchecker*, dated 13 October, 2022: <https://www.factchecker.in/data-dive/rti-anniversary-multiple-barriers-to-right-to-information-persist-in-india-838707>, accessed on 28 May, 2024.

⁸⁵ *Life and Death in the Time of RTI: Case Studies from Maharashtra*, accessible on the website of the Commonwealth Human Rights Initiative, New Delhi: <https://www.humanrightsinitiative.org/download/1585041950Life%20And%20Death%20In%20The%20Time%20Of%20RTI%202020.pdf>, accessed on 28 May, 2024.

⁸⁶ “Gujarat HC acquits ex-BJP MP, 6 others in RTI activist Amit Jethwa murder case”, *Deccan Herald* dated 06 May 2024: <https://www.deccanherald.com/india/gujarat/gujarat-hc-acquits-ex-bjp-mp-6-others-in-rti-activist-amit-jethwa-murder-case-3009381>, accessed on 28 May, 2024.

⁸⁷ Sukanya Shantha, “14 years After RTI Activist Satish Shetty’s Murder, a Small Win in Family’s Fight for Justice”, *The Wire*, dated 22 October, 2023: <https://thewire.in/rights/14-years-after-satish-shettys-murder-a-small-win-in-his-family-s-fight-for-justice>, accessed on 28 May, 2024.

⁸⁸ “The President gives assent to the Whistleblowers Protection Act, 2014”, *Livelaw* dated 14 May 2014: <https://www.livelaw.in/president-gives-assent-whistleblowers-protection-act2014/>, accessed on 28 May, 2024.

⁸⁹ Shemin Joy, “Why whistleblowers act not operationalised”, *Deccan Herald*, dated 22 February, 2019: <https://www.deccanherald.com/india/why-whistleblowers-act-not-719682.html>, and Monjorika Bose, “The sound of the whistle blowing in the wind”, *The Hindu*, dated 21 July, 2023: <https://www.thehindu.com/opinion/open-page/the-sound-of-the-whistle-blowing-in-the-wind/article67107228.ece>, accessed on 28 May, 2024.

property and illicit gain such as amassing assets disproportionate to the public servant's known sources of income.⁹⁰

9. Further, the amendment introduces a prohibition on the commencement of any inquiry or investigation into any complaint of corruption against a public servant. Prior approval of the relevant government or competent authority is necessary before the anti-corruption agency can even commence an inquiry or investigation into a complaint of corruption (unless the public servant is caught in the act of accepting bribes). Further, the amendments bar any person other than the investigating officer or agency or law enforcement authority from making a request to the relevant government or the competent authority to accord sanction for the purpose of the competent court to take cognizance of any offence under the Act and set the prosecution process in motion.⁹¹ Even though the amendments set a time limit of three months (extendable by one month if legal consultation is required) for the relevant government or competent authority to make a decision on the request for sanction for prosecution, the amendments are silent about what will happen to the case if such time limit is breached and no decision is made on the request. The amendments do not provide for 'deemed sanction' principle if the limitation period is breached.
10. Further, despite having an obligation to enact and implement a law to criminalise bribery of foreign public officials, the State has not made much progress in this regard after 2012. IN 2011, the then Government introduced the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations, Bill 2011 upon the recommendation of the Law Commission of India.⁹² This Bill was referred to a Department-related Standing Committee for detailed vetting. However, that Bill lapsed with the dissolution of the House of the People (Lok Sabha) in May 2014 after the completion of the General Elections to Parliament. The present Government has not gone back to Parliament to legislate on the subject again.⁹³
11. Further, currently, there is no formal mechanism to receive, investigate and prosecute complaints of corruption against judges of constitutional courts (High Courts and the Supreme Court of India). In 2010, the then Government introduced in Parliament, The Judicial Standards and Accountability Bill, seeking to create a mechanism for receiving and inquiring into complaints of corruption and other kinds of misconduct against sitting

⁹⁰ "Prevention of Corruption Act diluted? What changes did the amendment Bill bring", *India Today*, dated 27 July, 2018: <https://www.indiatoday.in/education-today/gk-current-affairs/story/prevention-of-corruption-act-anti-corruption-bill-diluted-bribery-investigation-1297993-2018-07-27>, and July 2018, Monthly Policy Review accessible on the website of PRS at: <https://prsindia.org/policy/monthly-policy-review/july-2018>, both accessed on 28 May, 2024.

⁹¹ Ibid.

⁹² See PRS's analysis of the Bill at: <https://prsindia.org/billtrack/the-prevention-of-bribery-of-foreign-public-officials-and-officials-of-public-international-organisations-bill-2011>, accessed on 28 May, 2024.

⁹³ Avik Biswas, "Bridging the UNCAC gap: India's need for legislation banning the bribery of foreign public officials," *International Bar Association*, : <https://www.ibanet.org/bridging-the-UNCAC-gap-Indias-need-for-legislation-banning-the-bribery-of-foreign-public-officials#:~:text=Efforts%20to%20introduce%20a%20foreign%20bribery%20law&text=On%204%20February%202022%2C%20a,%20in%20the%20Lok%20Sabha.>, accessed on 28 March, 2024.

judges of the High Courts and the Supreme Court of India.⁹⁴ This Bill was extensively debated within and outside Parliament. However, that Bill lapsed with the dissolution of the House of the People (Lok Sabha) in May 2014 after the completion of the General Elections to Parliament. The present Government has not gone back to Parliament to legislate on the subject again.⁹⁵ The Lokpal Act, 2013 which creates the Lokpal as India's apex anti-corruption investigation and prosecution agency does not have jurisdiction to receive or investigate complaints of corruption against members of the judiciary. However, the Supreme Court of India has instituted an In-House Procedure to receive and inquire into complaints against its judges. Similarly, a complaint against a sitting judge of the High Court may be submitted to the Chief Justice of that High Court or the Chief Justice of India.⁹⁶

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person (Article 6, 7, 9 & 14)

Dysfunctional Police Complaints Authorities

1. Even after 17 years have lapsed after the Supreme Court issued specific directives to the Union and the State Governments to establish authorities at the district and the State level to receive and inquire into complaints against serving police personnel, compliance remains extremely poor across the country. An evidence-based study⁹⁷ of the constitution and functioning of the State Police Complaints Authorities (SPCAs) completed and released in December 2023 has come up with the following findings:⁹⁸
2. Only 11 of the 28 States and 7 Union Territories (UTs) had functional PCAs as of June 2023. Appointments had been made to three more such bodies in other States but they were yet to become fully functional. Civil society organisations and public-spirited lawyers have

⁹⁴ See: https://prsindia.org/files/bills_acts/bills_parliament/2010/Judicial_standard_and_accountability_bill_2010.pdf, accessed on 28 May, 2024.

⁹⁵ Avik Biswas, "Bridging the UNCAC gap: India's need for legislation banning the bribery of foreign public officials," *International Bar Association*, : <https://www.ibanet.org/bridging-the-UNCAC-gap-Indias-need-for-legislation-banning-the-bribery-of-foreign-public-officials#:~:text=Efforts%20to%20introduce%20a%20foreign%20bribery%20law&text=On%204%20February%202022%2C%20a,%20in%20the%20Lok%20Sabha.>, accessed on 28 March, 2024.

⁹⁶ "Explainer: Mechanisms to investigate charges against a Supreme Court Judge, accessible on the website of PRS: <https://prsindia.org/theprsblog/explainer-mechanisms-to-investigate-charges-against-a-supreme-court-judge>, accessed on 28 May, 2024.

⁹⁷ Venkatesh Nayak (ed.), Aditi Pradhan and Devyani Srivastava (auth.), *Police Complaints Authorities in India: Updates, Gaps, Challenges- National Assessment*, Commonwealth Human Rights Initiative, New Delhi, 2023: <https://www.humanrightsinitiative.org/publication/police-complaints-authorities-in-india>, accessed on 28 May, 2024.

⁹⁸ "Activist Medha Patkar approaches, Bombay HC over vacancies in the State Police Complaints Authorities", *India Today*, dated 03 April, 2022: <https://www.indiatoday.in/law/story/activist-medha-patkar-bombay-hc-vacancies-state-police-complaints-authority-maharashtra-pil-1932835-2022-04-02>; "HC notice to Karnataka govt. on failure to appoint Chairperson, member to State Police Complaint Authority, *The Hindu*, dated 06 January, 2023: <https://www.thehindu.com/news/national/karnataka/hc-notice-to-karnataka-govt-on-failure-to-appoint-chairperson-member-to-state-police-complaints-authority/article66346576.ece>; "Calcutta High Court asks State to respond to PIL to make West Bengal State Police Complaints Authority Functional: <https://x.com/barandbench/status/1780925099551469697>, all accessed on 28 May, 2024.

had to take recourse to public interest litigation suits to get High Courts to question the non-compliant State Governments about the dysfunctional PCAs;

3. Nine States and UTs have serving police officers as members of the SPCAs which is a complete violation of the Supreme Court's 2006 directive in *Prakash Singh v Union of India & Others* that such bodies must be independent of government control. Only two States have civil society members on the SPCAs which is also another violation of the Court's directives;⁹⁹
4. Several States and UTs have diluted the mandate of the SPCAs and severely restricted the definition of 'serious misconduct' which allegations they must investigate based on complaints received from the citizenry;¹⁰⁰
5. Only 50% of the SPCAs across the country have developed their own Rules of Procedure to act upon complaints received against police personnel. Only two SPCAs in Assam and Tripura have dedicated investigation cells to investigate such complaints. In other States, the SPCAs are dependent upon the respective police departments to investigate complaints of serious misconduct against their own personnel;¹⁰¹
6. Data obtained through the Right to Information Act shows that people complain to the SPCAs in the hundreds and thousands. However, a large number of them are about omissions of the police or non-registration of crime-related complaints (first information reports- FIRs). As such matters are not included in the definition of 'serious misconduct' the SPCAs end up admitting only a fraction of complaints for investigation;
7. Even when only a small fraction of the complaints admitted are investigated, the process takes a long time to reach finality. Cases remain pending for several years. SPCAs recommend action against the erring police personnel in very few cases while most of the complaints are simply closed;
8. Where the SPCAs recommend action to be taken against erring police after the completion of investigation into the complaint of serious misconduct, the State Governments rarely act on them; and
9. Only a handful of SPCAs (Assam, Delhi, Karnataka, Tripura and Uttarakhand) publish annual reports about their performance. Only the Karnataka SPCA publishes its annual reports in the official language of the State apart from English.

⁹⁹ *Supra*, f.n., #25.

¹⁰⁰ *Ibid.*, pp. 3-5.

¹⁰¹ *Ibid.*

Child Trafficking/Trafficking in Persons (Article 7, 8 & 9)

1. Inclusion of Section 370 in the Indian Penal Code (IPC) has expanded the definition of human trafficking in keeping with the Palermo Protocol, whilst amendment to the Immoral Traffic (Prevention) Act, 1956 was pending for long. This IPC provision provides for higher punishment for trafficking in children.
2. The Juvenile Justice (Care and Protection of Children) Act 2015 prohibits sale and procurement of all children up to the age of 18 years for any purpose, making it a cognizable and non-bailable offence.
3. Central Government has evolved protocols and advisories to prevent trafficking in women for commercial sexual exploitation and labour purposes. Unfortunately, despite child labour being one of the largest reasons for child trafficking, the recently amended law on this issue does not mention trafficking.
4. The statistics of the Ministry of Women and Child Development state that 19,223 women and children were trafficked in 2016 against 15,448 in 2015, with the highest number of victims being recorded in the eastern state of West Bengal.¹⁰²
5. Based on a report published by the Govt of India, there are approximately 10 million sex workers in India out of which 1,00,000 belong to Mumbai alone which is Asia's largest sex industry center. 300,000 to 500,00 under 18 years of age children are involved in the sex trade.¹⁰³
6. The National Commission for Protection of Child Rights (NCPCR) reported that the states of Manipur, Assam, Meghalaya and Nagaland and Arunachal Pradesh were the "source" states in the North East from where children as young as five year olds were trafficked in the name of free education.¹⁰⁴
7. Women and children from India are trafficked across 18 countries with new purposes for their being trafficked added every day.¹⁰⁵
8. The problem of human trafficking, including child trafficking, is multidimensional and requires coordination between several ministries.¹⁰⁶

¹⁰² "Govt. Report suggests, Almost 20,000 Women & Children Trafficked in India in 2016";

<http://www.fiinnovation.co.in/news/govt-report-suggests-almost-20000-women-children-trafficked-india-2016/>

¹⁰³ <http://www.fiinnovation.co.in/news/govt-report-suggests-almost-20000-women-children-trafficked-india-2016/>

¹⁰⁴ "CHILD TRAFFICKING IN THE INDO-MYANMAR REGION: A CASE STUDY IN MANIPUR"; Shri S. Saratkumar Sharma, Chairperson MANIPUR COMMISSION FOR PROTECTION OF CHILD RIGHTS Ref. No. 54/1/2016/MCPCR, dated 12/02/2016; https://wcd.nic.in/sites/default/files/RESEARCH%20PROJECT%20REPORT_0.pdf

¹⁰⁵ Child Trafficking in India. HAQ: Centre for Child Rights and CACT. 2016

¹⁰⁶ The Government is presently formulating a new 2016 national anti-trafficking law, which could replace even present positive provisions of the Indian Penal Code and existing Immoral Trafficking Prevention Act

9. The Indian Ministry of Home Affairs (MHA)¹⁰⁷ has set up anti-human trafficking units (AHTU) across districts,¹⁰⁸ which are under resourced.
10. The Government of India does not fully meet the minimum standards for elimination of trafficking, though it is making efforts to do so.¹⁰⁹ Unfortunately, here too most efforts are directed at making new laws than ensuring implementation of the existing one and investing in preventive measures.
11. Overall victim protection remained inadequate and inconsistent, and the government sometimes penalized victims through arrests for crimes committed as a result of being subjected to human trafficking. The government's conviction rate and the number of investigations, prosecutions, and convictions was disproportionately low, relative to the scale of trafficking in India, particularly with respect to bonded and forced labour. Despite reports of some officials complicit in trafficking, the government did not report investigating such allegations.¹¹⁰

¹⁰⁷ The MHA is the nodal agency for the implementation of the ITPA 1956 and other human trafficking initiatives, through its Anti-Trafficking Cell. The Ministry of Women and Child Development (MWCD) continues to be the nodal ministry for tackling this crime with respect to children and is also responsible for inter-ministerial coordination. The United Nations Office of Drugs and Crime (UNODC) Regional Office for South Asia (ROSA) has been involved in initiatives to address human trafficking in collaboration with the Government of India, particularly the MWCD and the MHA. Since the child victims of trafficking are children in need of care and protection under JJ Act, their responsibility vests with the Child Welfare Committee (CWC) set up under the juvenile justice system and also the mechanisms laid down in the Integrated Child Protection Scheme (ICPS). Both of these are the responsibility of the central MWCD and the departments in charge of women and children in the states. In addition, the National Commission for Protection of Child Rights (NCPCR) has undertaken some initiatives to address child trafficking. Each year questions are asked in Parliament on issues concerning trafficking. District task forces are there for tracking trafficking but these mechanisms should devolve up to the village/subdistrict levels by engaging Local Self Governance units respectively.

¹⁰⁸ The Ministry of Home Affairs has established 234 Anti-Trafficking Units in various districts. (PTI; "Over 14000 girls rescued from human trafficking in last 2 years"; April 29, 2016; <http://indiatoday.intoday.in/story/over-14000-girls-rescued-from-human-trafficking-in-last-2-yrs/1/655482.html>)

¹⁰⁹ "United States report urges India to increase prosecution for human trafficking"; <https://scroll.in/latest/884594/united-states-report-urges-india-to-increase-prosecution-for-human-trafficking>

¹¹⁰ 2018 Trafficking in Person Report: India Narrative; <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282672.htm#>

Recommendations

In the context of abovementioned issues of concern, the Government of India should do the following:

1. Repeal AFSPA 1958 and 1990 immediately to comply with obligations under the ICCPR and end the culture of impunity.
2. Institute an effective mechanism of redress for victims of violations by security forces, tasked to conduct independent investigations and prosecutions in civilian courts.
3. Expedite comprehensive sexual and reproductive health services for women across ages.
4. Increase budgetary and resource allocation and utilisation (infrastructural and human personnel) for effective implementation of all laws to combat gender-based violence against women and girls.
5. Ratify the Optional Protocol on Individual Complaints and inquiry mechanisms to CEDAW.
6. Increase the budget allocation for children in light of increased vulnerabilities during COVID.
7. Bring necessary legislative changes through wider consultation on the issue of age of sexual consent to stop criminalisation of minors in age group of 16-18 years for consensual sexual relationship.
8. Establish Exclusive Special Courts in every district of India, appoint Special Public Prosecutors; set up and regularise mandatory State and District Vigilance Monitoring Committee meetings for the effective implementation of the POA Act.
9. Conduct a comprehensive review of the amended provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rules 1995 to strengthen the legal framework and identify and rectify loopholes in the law, including those related to registration of FIRs, investigation, prosecution and monitoring mechanisms, by involving experts from various fields, including law, sociology, and anthropology, to review and suggest improvements. The strengthening of the legal framework will help ensure that victims of caste-based atrocities receive justice and compensation. Complete the review and suggest improvements within the next 24 months.
10. Increase the conviction rate by at least 15% under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rules 1995 within the next 24 months by implementing measures to improve investigation and prosecution techniques.

11. Implement the Whistle blowers Protection Act 2014 by notifying subordinate legislation and inserting provisions for whistleblowing through the media.
12. Immediately ensure compulsory registration and investigation of cases of attacks on citizens and journalists utilising the RTI Act under the supervision of Human Rights Commissions, Information Commissions and Vigilance Commissions and ensure a more proactive disclosure of information by public authorities.
13. Empower the Lokpal ombudsman by providing the investigative and prosecutorial machinery as envisaged under the parent Act and encourage State Governments to align their Lokayukta laws with the letter and spirit of the Lokpal Act.
14. Fill up all vacant positions in the Central Information Commission (CIC) and State Information Commissions (SICs) with competent individuals after advertising the vacancies
15. Withdraw the retrograde amendments to the Prevention of Corruption Act.
16. Fill up vacancies in the State Police Complaints Authorities and empower them to fulfil their mandate as laid down by the Supreme Court in the matter of *Prakash Singh vs Union of India*

ANNEXURE 1

List of Member Organisations and Individual Experts of the Working Group on Human Rights in India and at the UN (WGHR)

Organisations	Email Ids
Housing and Land Rights Network	www.hlrn.org
HAQ: Centre for Child Rights	www.haqcrc.org
Commonwealth Human Rights Initiative	www.humanrightsinitiative.org
Centre for Justice and Peace	www.cjp.org.in
Human Rights Alert	
People's Watch	www.peopleswatch.org
National Campaign on Dalit Human Rights (NCDHR)	www.ncdhr.org.in
FIAN India	www.fian.in
Lawyers Collective	www.lawyerscollective.org

Independent Experts

- Advocate Ms. Vrinda Grover – Supreme Court Advocate
- Mr. Miloon Kothari - Former Special Rapporteur on adequate housing, UN Human Rights Council