Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**658**
Land:	Pakistan
Kilde:	The South Asia Collective og Norad
Titel:	South Asia State of Minorities Report 2022
Udgivet:	februar 2023
Optaget på baggrundsmaterialet:	25. april 2023

South Asia State of Minorities Report 2022

Weakening Human Rights Commitments and Its Impact on Minorities

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Weakening Human Rights Commitments and Its Impact on Minorities

THE SOUTH ASIA COLLECTIVE

The South Asia Collective

Norad

South Asia State of Minorities Report 2022
Weakening Human Rights Commitments and Its Impact on Minorities

Edited by a team at Social Science Baha, Kathmandu, consisting of **Sanjit Shrestha**, **Apurwa Baral**, **Sudeshna Thapa**, **Khem Shreesh**, **Manesh Shrestha** and **Deepak Thapa**.

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This publication was produced with the financial support of several institutional and individual donors, including the Norwegian Agency for Development Cooperation (Norad). Its contents are the sole responsibility of the South Asia Collective and do not necessarily reflect the views of the Norad or other donors.

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February 2023

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Executive Summary

Background

The condition of minorities in the countries that make up the region of South Asia—home to a fifth of humankind—is rather grim. This is the outcome of poor commitment of the South Asian states to protecting and promoting human and minority rights, and poor implementation of the measures that do exist. Behind much of the failure is poor engagement of the countries of South Asia with international human rights (IHR) mechanisms.

This report, seventh in the South Asia State of Minorities Report series, provides an overview of how states in the region have performed vis-à-vis their commitments to human rights standards, and how they deliver, across civil and political as well as social, economic and cultural rights for their minorities. It uses the UN's 'human rigths indicators' framework, to review states' commitments to protecting the human rights of their minorities, using the database of the UN Human Rights Council (HRC), media reports, laws, court documents, budgets, national statistics, and non-government organisation (NGO) reports as sources.

Key Findings

Overview of regional trends

Engagement with UN human rights mechanisms—human rights treaties and other conventions and special procedures mandate-holders, among others— is a useful indicator of a state's performance in meeting its international obligations and improving human and minority rights outcomes. A review of status of ratifications of UN treaties reveals that many South Asian states perform poorly. With the Taliban takeover in Afghanistan in August 2021, it is unclear if the state recognises the IHR regime at all. Another South Asian country, Bhutan, is noteworthy for its disregard of IHR laws,

being party only to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) and the Convention on the Rights of the Child (CRC) (1989). The rest of the states do not perform much better. There appears to be great reluctance across the region to accede to the optional protocols of key treaties which would allow individual complaints to be brought as well. This failure contributes to poor incentives among South Asian states to improve their human rights record. Further, India, along with Bhutan, is among the very few countries, not to have acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

South Asian states also perform poorly on their reporting obligations under relevant UN treaties, with long delays common, including some where there has been no report for more than 10 years, demonstrating the poor regard South Asian states have for the IHR system.

The region also performs poorly in engagement with the other element of international human rights, viz, HRC's special procedures mandate-holders. A review of replies received from South Asian states in response to communications sent by mandate-holders is revealing. Afghanistan performs most poorly. Even Sri Lanka, which is at the other end of the performance spectrum, does not do better than a 50 per cent response rate.

The HRC data reveals that only four of the eight South Asian countries have issued standing invitations to mandate-holders for visits: Maldives (in 2006), India (in 2011), Sri Lanka (in 2015) and Afghanistan (in 2017). Afghanistan's situation has changed radically since. But India's invitation, too, has little meaning, given visits by mandate-holders to India in recent years have been scarce; requests for visits in recent years have received no response. Sri Lanka bucks the trend, with country visits by multiple mandate-holders in the past years, Pakistan is notable for not having hosted any such visit in the past 10 years.

South Asian state's poor performance on engagement with IHR mechanism goes to explain the poor performance of the states on their human rights commitment and the concomitant poor outcomes, especially for minorities.

Overview of national trends

Afghanistan

The Taliban takeover in August 2021 led to the dismantling of the nascent human rights regime in the country and the reinstatement of the 1964 Constitution, resulting in the recrudescence of Sharia Law, which accords no protection to many minority groups. Since then, the Taliban has reduced the judiciary to field courts and has replaced the Ministry of Women Affairs with the Ministry of Vice and Virtue. The Human Rights Commission has been dissolved and most human rights defenders and other civil society members have fled the country. Those that remain live under extreme scrutiny of the Taliban.

There has been a complete abrogation of all accountability mechanisms for ensuring the protection of human rights. All of Afghanistan's minorities have faced oppression, with extrajudicial killings, forced evictions and displacement, 'redress' of past incidents committed against the Pashtuns, and a complete fettering of women and LGBTIQA+ rights. Not only have civil, political, economic, social and cultural rights been violated, but the Taliban's oppressive acts have triggered a humanitarian crisis in the country with the minority population not even being able to provision for their basic needs.

Bangladesh

Despite being a state party to eight of the nine major IHR treaties, Bangladesh's performance on engaging with treaty bodies and special procedures is weak. This lack of commitment is reflected in its policies and practices. Minorities frequently report discrimination and exploitation on grounds of their religious affiliation and Bangladesh has yet to introduce a domestic legal regime that specifically caters to minorities. The Bangladeshi government also continues to engage in activities that violate rights, such as restricting access to social networking sites and arresting secular activists.

Additionally, the Sharia system excludes non-Muslims, limiting the ability of other religious groups to access civil remedies in

cases that also involve Muslims. The ongoing hostility toward religious groups has endangered minority Muslim sects like the Ahmadiyyas as well. The Bangladesh National Human Rights Commission has had little influence on human rights outcomes. Bangladesh has also historically targeted and struggled to accept sexual minorities and continues to penalise same-sex activities as part of its archaic postcolonial legacy.

India

India is party to only six of the major IHR instruments—having refused to ratify the Convention on Torture (1984), Convention on Migrant Workers (1990), and the convention on Enforced Disappearance (2006). It has refused to be party to any of the individual complaints procedures, and also to formally commit to abolishing the death penalty. It has also made several reservations to the International Covenant on Civil and Political Rights (ICCPR) and the Genocide convention. It has also refused to be state party to conventions on the status of refugees (1951); and the status of stateless persons (1954), and on the reduction of statelessness (1961). Neither is it a state party to the Rome Statute of the International Criminal Court. It has defaulted on timely reporting to UN treaties. The stance against international obligations has hardened since the Bharatiya Janata Party came to power in 2014, a period also marked by a spike in anti-minority targeting and rhetoric. It only occasionally responds to communications by special procedure holders and has not allowed any visit by mandate-holders since after 2017.

This poor record has had implications on the human rights situation in India, especially for its religious minorities. Recent reports demonstrate the gravity of the situation—with extrajudicial killings, custodial torture, arbitrary detention, enforced disappearance and acute discrimination indicating an unprecedented infringement of the freedom of religious minorities, amid an atmosphere of extreme anti-minority, particularly, Muslim, rhetoric. Basic freedoms—to association, assembly, and expression—have been encroached. India's National Human Rights Commission as well as its highest courts, besides other

national institutions, have been of little help to victims, given their increasing capture by the executive.

Nepal

Although Nepal has ratified seven of the core human rights treaties, failure to report to the various treaty bodies on a regular basis as well as disregard of recommendations provided through UN special procedures have called into question its commitment to human rights norms.

The new constitution of 2015 includes a number of fundamental rights for minorities. However, the use of arbitrary legal language and the imposition of a prohibition on proselytising, the Constitution, the Criminal Code, and other laws restrict religious freedom and deviate from the country's obligations under core human rights treaties such as the ICCPR. Nepal has also failed to strike down many of the laws that contravene principles laid out in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), to which it is a party. The law has also promised its minority communities affirmative action and state representation, but in practice, it has failed to keep these promises and uplift the living standards of minority groups. Constitutional bodies set up to look after the interests of minorities also face challenges—including delays in appointments and resource constraints, limiting their ability to be effective human rights fora.

Pakistan

Pakistan has ratified seven of the nine core IHR treaties but its performance on engaging with the IHR mechanism has been very poor. These include not being state party to several of the optional protocols of the treaties, poor reporting record, and disregard for the mandate of special procedures. Its human rights performance has been poor with religious minorities suffering the worst discrimination and violence.

The continued existence on the statute books of the blasphemy law that imposes the death penalty and the continued practice of forced conversion of minority girls through marriage have been the principal instruments of this marginalisation. This threat of

violence extends to human rights defenders as well as NGOs, both frequently attacked and vilified for upholding minority and human rights. With the judiciary undergirding the hegemonic regime, and judicial activism being non-existent, there is very weak protection and remedies for affected communities, particularly minorities.

Sri Lanka

Sri Lanka has a relatively better track record of ratifying UN treaties, reporting to treaty bodies, and accepting special procedures. However, weaknesses remain. Sri Lanka's Constitution guarantees religious freedom for all but Buddhism is given primacy, substantially modifying and diluting the legal effect of the right to freedom of worship and equality. Under the guise of fulfilling its core obligations under the ICCPR, the state has operationalised its intent through the International Covenant on Civil and Political Rights Act, No 56, resulting in discriminatory legal outcomes for minority communities, particularly Muslims and Tamils. Additionally, by introducing hostile provisions against the queer and LGBTIQA+ community, the Penal Code and the 'Vagrants Ordinance' have also codified discriminatory intent. Sections of the Code criminalise sexual activities deemed 'against the order of nature' while law enforcement officials have used the 'Vagrants Ordinance', prohibiting disorderly conduct, to arbitrarily detain members of the transgender community.

In recent years, the National Human Rights Commission's mandate has also been considerably weakened. The 20th Amendment to the Constitution gave the president full autonomy over making appointments to the Commission, eroding its independence. Even though the 21st Amendment repealed the earlier one, frequent interference/tampering with the Constitution has undermined the document's legitimacy.

Conclusion

The limitations of the IHR system means that there is poor incentive for South Asian states to engage effectively with human rights mechanisms as a means to improve their human rights performance. A key missing link in this chain is the absence of

regional human rights processes and mechanisms that could potentially facilitate better human rights outcomes for minorities in the region.

The cross-border dynamics regarding minorities adds another dimension to the abuse of their rights in South Asia, with a minority in one country often the majority in another, violence against minorities in one country having ripple effect on minorities in another, and competitive majoritarianism over-determining the political discourse across borders.

Traction on minority rights in the region will require not just action at local level and supported by international efforts, but also the building of a regional constituency and process to moderate regional dynamics and create regional incentives. This itself will need to be grounded in broader inclusion, pluralism and a democratisation agenda, to challenge majoritarianism that is the root cause of the democracy deficit facing South Asia's vast minorities.

Recommendations

To national governments

- Ratify human rights instruments not ratified so far.
- Undo reservations, where made.
- Become state party to UN's individual complaints, inquiry, and interstate communication procedures—under ICCPR, ICESRC, CEDAW, CRC, and CRSR.
- Sign and ratify the Rome Statute of the International Criminal Court.
- Clear the backlog in reporting to treaty bodies, and produce timely and constructive reports.
- Constructively engage with UN special procedures to support their mandate, by responding to communications, and allowing in-country visits.
- Use the UPR process as an opportunity to improve commitments to human rights.
- Align domestic laws and policies with commitments to human rights treaties.

- Create an enabling civic space and support minority-focused NGOs and CBOs.
- Strengthen domestic remedies against violations, by empowering justice and grievance redress institutions, including the courts, NHRIs, and ombudsmen bodies while ensuring they have the capacity and are independent.

To the United Nations and wider international community

- Demand and encourage states to ratify the key IHR instruments, and accede to UN's individual complaints procedures.
- Demand timely reports to treaty bodies and responses to special procedures communications while facilitating their in-country visits.
- Raise issues of concern of abuses and discriminations against minorities in the region, during bilateral trade and strategic dialogues and negotiations.
- Encourage the use of regional framing in discussions on human and minority rights in South Asia, and incentivise the strengthening of a regional constituency, to prepare the ground for a South Asian regional charter and mechanism on human and minority rights.
- Support local and regional civil society groups to better document, report and raise concerns on the violations of rights against minorities in South Asia.

Local and regional civil society on human and minority rights

- Invest in greater capacity for documentation and reporting of human rights performance affecting minorities, while advocating for improvements.
- Reference international standards and obligations when documenting and reporting human rights performances.
- Promote solidarities across borders, to aggregate regional demands on national mechanisms, and as spaces for sharing and learning.

Foreword

Across the South Asia region, home to a fifth of humankind, individuals belonging to ethnic, religious, and linguistic minority groups, amongst others are not always able to enjoy human rights in full equality – on the contrary many of them may be negatively and disproportionally impacted – and can even be subjected to gross human rights violations in the form of deeply entrenched discrimination and violence in both the public and private spheres.

In this context, the South Asia Collective's *South Asia State of Minorities Report 2022: South Asian States' Obligations to International Human Rights Standards and Their Implications for Minorities* seeks to provide a comprehensive comparative overview of how South Asian states perform vis-à-vis their commitments to international human rights standards, and the related implications for the region's minorities. It also raises the very important question of how this reflects on the state of accountability, rule of law, inclusion and democracy in the region.

The report exposes how unfortunately many South Asian states perform rather poorly not only in terms of ratification of international human rights treaties but also compliance with reporting obligations arising from the treaties that have been ratified. Reservations, reluctance to accede to optional protocols of the key treaties and accept individual complaints procedures for violations of the rights enshrined therein, and failure to translate international human rights standards into the domestic legal framework are evidence of the weak commitment to respect, protect and fulfil the human rights of their citizens, particularly those belonging to minority groups, on the part of some States.

The outcome, as the report reminds us, is clear: weak institutional protection, poor application of the rule of law and missed opportunities, resulting in religious, ethnic and linguistic minorities facing persecution. This can be seen with minorities

such as Dalits suffering structural violence, hate speech and even calls to genocide targeting religious and other minorities going unpunished or allowed to circulate unhindered by authorities, or minority women and girls being subjected to deep-seated intersectional discrimination.

Improving their human rights performance and providing equally for their minorities – goals that all States are required to aim for by virtue of their being part of the comity of nations – will require States making changes in laws, policies, practices and attitudes. Constructive engagement with international human rights mechanisms and related institutions is among those critical changes. Effective international engagement also opens up space for cooperation, including on capacity building of national institutions, to deliver on the goals.

As rightly noted by the report, it is crucial that States engage constructively with monitoring mechanisms within the international human rights regime, and reform domestic laws and policies to strengthen remedies for human rights violations whilst ensuring alignment with international norms and standards. It is also equally important that states create an enabling environment for local and regional civil society to better document and report on the human rights performance of states, and advocate for improvements.

The report also serves as a timely reminder of the ever-pressing need for concerted and collective efforts by human rights institutions across the region as well as the need for a robust regional mechanism to facilitate and deliver better human rights outcomes for the region's minorities. Sub-regional cooperation - both state and citizens' led – working in tandem with international human rights mechanisms, have the potential to help push the needle for improved protection and promotion for South Asia's minorities. The report is a timely call to action!

Fernand de Varennes
UN Special Rapporteur on minority issues

Acknowledgements

We are grateful to UN Special rapporteur on Minority Issues, Fernand de Varennes, for kindly writing the foreword to the report, and for being a steadfast friend, ally and guide to the South Asia Collective. We have learned much and grown, thanks to the opportunities his mandate has provided the SAC to engage on the subject of minority rights and collaborate with many other stakeholders, including at the regional level. We are grateful for this opportunity.

We would also extend our thanks to Minority Rights Group International, also for being a longstanding supporter and ally of the SAC, and for the support and guidance it has provided in all our endeavours.

We are also grateful to unnamed donors and supporters, without whose generous help our work would not have been possible. Thanks are also due to minority communities, human rights defenders and activists across South Asia as well as human rights researchers and experts internationally with an interest in seeing an inclusive and caring South Asia and who give us the strength to carry on our work.

Afghanistan

Civil Society and Human Rights Network (CSHRN) would like to thank Mujtaba Moradi for writing the Afghanistan chapter on the human rights situation in Afghanistan at a critical time when the situation of Afghan minorities under the Taliban has to be highlighted. We also thank Rajab Taib and Rahman Yasa for their review of the chapter and enriching it with their productive comments.

Bangladesh

This report was prepared by Nagorik Uddyog (Citizen's Initiative) in consultation with relevant stakeholders, academics and activists from the country. We thank them for their cooperation. Especially,

we would like to mention the names of Sonu Rani Das of Dalit Women's Forum, Parimal Singh Baraik of Moulovibazar Tea Community Indigenous Front, Advocate Utpal Biswas of Minority Rights Forum and Khalid Hussain of Council of Minority for their time and contribution. We are grateful to Dr Masum Billah, Professor, Department of Law, Jagannath University, and Shahariar Sadat, Academic Coordinator, Centre for Peace and Justice (CPJ), BRAC University, for reviewing the chapter. Their comments greatly helped us in improving the final version. Finally, we would like to acknowledge the commitment of the SAC team for continuously taking account of the status of the minorities in the region.

India

The authors would like to thank Shikha Dilawri, for her insightful comments and suggestions, and several practitioners and experts—who cannot be named for fear of reprisal—whose tireless work in documenting and analysing ongoing human rights violations in India provided the crux of the evidence presented in the chapter.

Nepal

Thanks are due to Mandira Sharma, human rights activist, and Som Niroula, human rights expert and Program Officer at Action and Impact, for reviewing the Nepal chapter. We would also like to thank the members of the advisory committee, Dr Yam Bahadur Kisan, lawyer and social inclusion expert, and Dr Youba Raj Luitel, Department of Sociology, Tribhuvan University, who dedicated their invaluable time in providing comments on the Nepal chapter.

Pakistan

The author would like to thank Laiba Qayyum and Rabia Mazhar and acknowledge their research support provided to the Pakistan chapter. A note of thanks is also due to Zeeba Hashmi for reviewing the chapter and providing enriching feedback and comments. Thank you to other friends and activists who do not wish to be named but have provided some valuable insight into the implications on sensitive religious minority groups in Pakistan.

Sri Lanka

Dr Sakuntala Kadirgamar, Executive Director, Law and Society Trust thanks Kassandra Neranjan and acknowledges her extensive research support for this chapter. Kassandra Neranjan has an extensive background in social justice research and advocacy, including field work in Cox's Bazar, Bangladesh, analysing gendered elements of the Rohingya refugee crisis. Her research was supported by an internship she received from McGill University.

The South Asia Collective
February 2023

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Note on the South Asia Collective

A group of human rights activists and organisations that dream of a just, caring and peaceful South Asia came together in December 2015 to document the condition of the region's minorities—religious, linguistic, ethnic, caste and gender, among others—hoping this would help in bettering outcomes for South Asia's many marginalised groups. We call ourselves the South Asia Collective.

We have since been able to rally other like-minded groups and platforms to our cause. Building on this initial success, we have also begun experimenting with small-scale practical support to minority groups across borders, to nurture their capacity for better outcomes for minority communities, working at local and regional levels. And we are now exploring interventions for peacebuilding and dialogue, to challenge majoritarianism in the region that lies at the root of the problem.

This coming together of like-minded groups is particularly gratifying given the otherwise political environment in the region, which militates against any serious regional effort by state parties on minority and human rights. It is then left to civil society initiatives to try to pave the way in the hope for more formal efforts, going forward. Eventually, we want to see the establishment of a South Asia charter of minority and human rights, and regional and national mechanisms to enforce those.

Founding members of the South Asia Collective are:

- Civil Society and Human Rights Network, Kabul
- Citizens Against Hate, Mumbai
- Law and Society Trust, Colombo
- Nagorik Uddyog, Dhaka
- Social Science Baha, Kathmandu

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Abbreviations and Acronyms

AFN	Afghan Afghani
AFSPA	Armed Forces Special Powers Act
AIBA	Afghan Independent Bar Association
AIHRC	Afghanistan Independent Human Rights Commission
BBS	Bangladesh Bureau of Statistics
BJP	Bharatiya Janata Party
CA	Constituent Assembly
CAA	Citizenship Amendment Act
CAT	Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CCTV	Close-Circuit Television
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CHT	Chittagong Hill Tracts
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CNIC	Computerized National Identity Card
CPA	Comprehensive Peace Accord
CPPCG	Convention on the Prevention and Punishment of the Crime of Genocide
CPPED	Convention for the Protection of All Persons from Enforced Disappearances
CRC	Convention on the Rights of the Child
CRC-OP-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

CRC-OP-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography
CrPC	Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CRS	Reduction of Statelessness
CRSR	Convention on the Status of Refugees
CRSSP	Status of Stateless Persons
CSAs	Civil Society Activists
CSHRN	Civil Society and Human Rights Network
CSO	Civil Society Organisation
CSW	Commission on the Status of Women
EAD	Economic Affairs Division
EJK	Extra-Judicial Killing
EU	European Union
EVAW	Elimination of Violence against Women
FIR	First Information Report
FORB	Freedom of Religion or Belief
GANHRI	Global Alliance of National Human Rights Institutions
GDP	Gross Domestic Product
GoB	Government of Bangladesh
GSP	Generalised Scheme of Preferences Plus
HRC	Human Rights Committee
HRCP	Human Rights Commission of Pakistan
HRCSL	Human Rights Commission of Sri Lanka
HRD	Human Rights Defender
HRMI	Human Rights Measurement Initiative
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP2-DP	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICRC	International Committee of the Red Cross
ILO	International Labour Organization
ILO 169	The Indigenous and Tribal Peoples Convention
INGO	International non-governmental Organisation
IPC	Indian Penal Code
ISK	Islamic State of Khorasan
J&K	Jammu and Kashmir
JVP	Janatha Vimukthi Peramuna
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual Plus
MMDA	Muslim Marriage and Divorce Act
MOWA	The Ministry of Women Affairs
NATO	The North Atlantic Treaty Organization
NCHR	National Commission for Human Rights
NCRC	National Commission on the Rights of Child
NCSW	National Commission on the Status of Women
NDC	National Dalit Commission
NEFIN	Nepal Federation of Indigenous Nationalities
NGO	Non-Governmental Organisation
NHRAP	National Human Rights Action Plan
NHRC	National Human Rights Commission
NHRCB	National Human Rights Commission of Bangladesh
NMWWS	Nepal Muslim Women Welfare Society
NPO	Non-Profitable Organisation
NPR	Nepalese Rupees
NRC	National Register of Citizens
NRF	National Resistance Front
NSA	National Security Act
NSIA	The National Statistic and Information Authority
NWC	National Women's Commission

OAG	Office of the Attorney General
OBC	Other Backward Class
OHCHR	Office of the High Commissioner for Human Rights
OMP	Office of Missing Persons
PAF	Poverty Alleviation Fund
PECA	Prevention of Electronic Crimes Act
PKR	Pakistani Rupee
PPC	Pakistan Penal Code
PR	Proportional Representation
PSA	Jammu and Kashmir Public Safety Act
PTA	Prevention of Terrorism Act,
Rome Statute	Rome Statute of the International Criminal Court
SC	Supreme Court
SDGs	Sustainable Development Goals
SLR	Sri Lankan Rupee
SNC	Single National Curriculum
SR	Special Rapporteur
TLP	Tehreek e Labbaik Pakistan
TRC	Truth and Reconciliation Commission
UAPA	Unlawful Activities Prevention Act
UDHR	Universal Declaration of Human Rights
UN HRC	United Nations Human Rights Council
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNDM	UN Declaration on the Rights of Minorities
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UPR	Universal Periodic Review
USD	United States Dollar
WHO	World Health Organization

Introduction
South Asia, International Human Rights and Minorities: Improving the Record

Background

The condition of minorities in South Asia, home to a fifth of humankind, is grim, to say the least. Religious, ethnic and linguistic minorities face persecution; Dalits suffer structural violence; and women and girls besides other gender minorities are subjected to deep-seated intersectional discrimination. This is the outcome of poor commitment by South Asian states to protecting and promoting human and minority rights, and poor implementation of the measures that do exist. Behind much of the failure is South Asian states' poor engagement with international human rights mechanisms.

This report is a review of South Asian states' obligations under international law to protect and promote the rights of their minorities. The publication, sixth in the South Asia State of Minorities Report series, provides an overview of how states in the region have performed in their commitment to human rights standards, and how they deliver, across civil and political as well as social, economic and cultural rights for their minorities. By providing an audit of the states' engagement with international human rights mechanisms, the report also seeks to shine a light also on the question of accountability, rule of law, and democracy in South Asia.

The report uses the United Nation's (UN) 'human rights indicators' framework to review states' commitment to protect the human rights of their minorities, reflected in their ratification of key UN covenants and also engagement with UN treaty bodies

and special procedures. It also looks at the extent to which these commitments have been written into domestic laws and statutes while also dealing with efforts to translate the commitments into policies and programmes and their implementation. As source material, the report has made use of the UN Human Rights Council (HRC) database, media reports, laws, court documents, budgets, national statistics, and non-government organisation (NGO) reports.

Who Are South Asia's Minorities?[1]

In **Afghanistan**, Hindus, Sikhs, Shias, Hazaras, and Kuchis are the most visible minority groups although inter-marriages into Pashtun tribes appear to have reduced their numbers.[2] **Bangladesh** is home to two categories of ethnic minorities, including groups residing in the Chittagong Hill Tracts (CHT)—accompanied by a 'special status' in the country—and the plainland ethnic groups that receive little, if any, protection from the state.[3] The language and culture of both groups are quite different from Bengalis, the dominant majority.[4] Meanwhile, Ahmadiyyas, Hindus and Christians comprise the most significant religious minorities in Bangladesh. Similarly, Muslims, Sikhs, Christians, Buddhists, Jain, Zorastrians, Dalits, and *Adivasis* are the major minority groups in **India**.[5] Of these, Muslims have increasingly been subjected to

1 Minorities are defined as numerically inferior and non-dominant groups based on ethnic, religious, or linguistic characteristics—distinct from the rest of the population in their exercise and representation of culture, tradition, religion, or language. E/CN.4/Sub.2/384/Rev.1, para. 568; *Minority Rights: International Standards and Guidance for Implementation* (New York and Geneva: United Nations, 2010), 2-4, https://www.ohchr.org/sites/default/files/Documents/Publications/MinorityRights_en.pdf.

2 Minority Rights Group International, 'India', Minority Rights Group International, accessed January 30, 2022, https://minorityrights.org/country/india/.

3 Geoffrey Macdonald, 'The Challenges Facing Plainland Ethnic Groups in Bangladesh: Land, Dignity, and Inclusion', International Republican Institute, February 4, 2021 https://www.iri.org/resources/new-bangladesh-report-examines-needs-of-plainland-ethnic-groups/.

4 Minority Rights Group International, 'Bangladesh', Minority Rights Group International, accessed January 30, 2022, https://minorityrights.org/country/bangladesh/.

5 Minority Rights Group International, 'India', Minority Rights Group International, accessed January 30, 2022, https://minorityrights.org/country/

severe persecution in recent years. In **Nepal**, the Khas Arya are the dominant majority who have for centuries marginalised minority groups, including Madhesis, Dalits and Janajatis. In addition, Muslims and Christians are the major religious minority groups in the country. Ethnic minorities in **Pakistan** predominantly include Sindhis, Pakhtuns, and Baluchis, while Christians and Hindus constitute religious minorities.[6] The Shi'a Hazaras, Ahmadiyyas and Ismailis in the country are both religious and ethnic minorities. **Sri Lanka** sees a significant overlaying of ethnic and religious identities.[7] Most Muslims in the region are Sri Lankan Moors and Malays while Tamil minorities identify as Hindus.[8] Sri Lanka's privileged treatment of the Sinhalese Buddhists, leaves Muslims and Tamil minorities excluded from state protection.

Key Findings

Overview of regional trends

a. International commitments

UN treaties form the basis of the international human rights regime. Countries which are state parties to these treaties, i.e., having ratified them, are under obligation to ensure that everyone in the country enjoys the rights set out in the treaties. A review of the status of ratification of the treaties reveals that South Asian states perform rather poorly (Table 1). Afghanistan is recorded as being a state party to most of the treaties, but with the Taliban takeover in 2021, it is unclear what its position vis-à-vis these conventions is. Another South Asian state, Bhutan, is noteworthy in its general disregard for international human rights, being party only to the Convention on the Elimination of All Forms of Discrimination

india/.

6 Minority Rights Group International, 'Pakistan', Minority Rights Group International, accessed January 29, 2022, https://minorityrights.org/country/pakistan/.

7 Minority Rights Group International, 'Sri Lanka', Minority Rights Group International, accessed January 29, 2022, https://minorityrights.org/country/sri-lanka/.

8 Minority Rights Group International, 'Sri Lanka'.

Table 1: UN Treaty Ratification Status

	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1965								
International Covenant on Civil and Political Rights (ICCPR), 1966								
Optional Protocol to ICCPR, on Individual Complaints, 1966								
2nd Optional Protocol to ICCPR, Aiming at the Abolition of the Death Penalty, 1989								
International Covenant on Economic Social and Cultural Rights (ICESCR), 1966								
Optional Protocol to the ICESCR, on Individual Complaints, 2008								
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979								
Optional Protocol to the CEDAW, on Individual Complaints, 1999								
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1985								
Optional Protocol to CAT, on Visits, 2002								
Convention on the Rights of the Child (CRC), 1989								

Optional Protocol, to CRC on the Involvement of Children in Armed Conflict, 2000								
Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography, 2000								
Optional Protocol to the CRC on Communications Procedures, 2011								
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990								
International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), 2007								
Convention on the Rights of Persons with Disabilities (CRPD), 2007								
Optional Protocol to the CRPD, on Individual Complaints, 2006								
Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), 1948		Reservation		Reservation				
Rome Statute of the International Criminal Court, 2002								

Source: Tabulated from: https://indicators.ohchr.org.

State party (ratification/accession) Signatory No action

against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The remaining six countries do not perform much better either. Overall, there seems a great reluctance to accede to optional protocols of the key treaties—provisions that significantly deal with individual complaints to relevant treaty bodies against violations of rights under the said treaties. This singular failure, which cuts across states for the bulk of the treaties, contributes to South Asian states' poor incentives to improve their human rights record. India, along with Bhutan, is among the very few states, not to have acceded to the Torture Convention. Overall, Maldives, Nepal and Sri Lanka perform better in terms of ratification status.

b. Translation of treaty obligations into domestic legal framework

Most South Asian states, including Bangladesh, India, Nepal and Sri Lanka, appear to have made efforts to transpose their obligations arising from the ratification of international human rights treaties into their domestic legal order while offering some protection to minorities. But even though the laws reflect a commitment to fundamental human rights norms and principles for the most part, implementation remains a challenge in all the countries.

Afghanistan has seen the most dramatic erosion of human rights in recent years of any country in the region. With the Taliban having reinstated Sharia law in the country, coupled with the ongoing collapse of the rule of law and judicial independence, the country is facing what has been deemed 'a human rights catastrophe'.[9] The rights of women and of minority groups have no place under the Taliban's hardline interpretation of the Sharia, and the country's commitments under the human rights treaties previously ratified have been suspended.

Notwithstanding the fundamental rights guaranteed under Bangladesh's constitution—which hews to the Universal Declaration of Human Rights—and legal sanctions against religious denigration under the country's penal code, ethnic and linguistic minorities in the country are increasingly faced with restrictions in

9 Afghanistan: Collapse of Legal System is 'Human Rights Catastrophe', *UN News,* January 20, 2023, https://news.un.org/en/story/2023/01/1132662.

exercising their rights. Even the country's purported preservation of language and culture in the National Culture Policy of 2006 and the Education Policy of 2010 do not go far enough in protecting the cultural rights of minority groups. Further, the country's reliance on Sharia law, precludes non-Muslims from seeking civil remedies against Muslims. Overall, the state has failed to sufficiently embrace legislative action in translating treaty commitments.[10]

In India, despite a high number of ratifications, important treaty provisions remain unincorporated, and where integrated, they are often unrealised. The Constitution and other laws promote ideals like freedom of thought, conscience, and religion; participatory rights; and freedom of expression and opinion, among others, but all have been under attack during the rule of the Bharatiya Janata Party (BJP). Across several Indian states, laws have been enacted to prohibit proselytisation, with the overt aim of regulating and penalising conversion into the Muslim and Christian faiths, clearly undermining the state's obligations under human rights treaties such as the ICCPR and the ICESCR. Likewise, the Citizenship (Amendment) Act, 2019, overtly discriminates against minority Muslims, and together with the National Register of Citizens has the potential to render millions stateless. Discrimination is also written into the Presidential Order 1950, that excludes Muslims and Christians from the Scheduled Caste category, denying benefits on religious grounds.

Nepal's domestic legal framework accords protection to various minority groups in the country—Dalits, Janajatis and other marginalised communities, among others—in line with the international human rights treaties ratified by the country. Constitutional safeguards aimed specifically at the protection and promotion of the rights of minorities include the right to religion, language, and culture; Dalit rights; and the right against untouchability, among others. These are supplemented by provisions scattered across various legislations such as the civil and criminal codes and the Caste-Based Discrimination and Untouchability Act, 2011, with the latter requiring states

10 Islam and et. al., 'Application of International Laws in Bangladesh'.

to eliminate, among other things, 'descent-based or hereditary status', in line with the ICERD.[11] However, while the Act provides for prosecuting acts of untouchability and discrimination, it fails to outline procedural protections adequately. Further, the past decade has been witness to a rise in religious intolerance in Nepal as well as the country's institutionalisation of the prohibition on proselytisation, derogating from international human rights norms.

Pakistan has passed the harshest blasphemy laws in the region, which are often employed by the state to persecute religious minorities. The draconian provisions not only undermine due process and fair trial principles but also allow for the arbitrary enforcement of capital punishment. The state's refusal to amend these laws stands in contrast to the country's treaty obligations and is likely motivated by Pakistan's political endorsement of Islamic principles and practices.

In Sri Lanka, laws such as the ICCPR Act, meant to give effect to the rights enshrined in the ICCPR, are fraught with contradictions. For example, the said Act fails to adequately protect fundamental civil rights such as the right to fair trial, which have been shown to disproportionately affect the country's minorities. While the state's constitution promises equality and non-discrimination, it does not accord protection to minority groups explicitly. Sri Lanka also allows little space for dissent, particularly in the case of minority groups. The country penalises same-sex relationships, infringing on the principles of non-discrimination, equal protection under the law, and the right to privacy enshrined in the international bill of rights. Recently, the Sri Lankan parliament passed a legislation prohibiting the wearing of *burqas* in public places, reaffirming the state's intolerance towards religious minorities.[12]

Notably, curtailment of religious freedoms and the enactment of anti-conversion legislation have emerged as pressing issues across the region. In recent years, South Asian states appear to

11 UN Doc. A/51/18, 1996, para. 352.

12 'Sri Lanka Cabinet Approves Proposed Ban on Burqas in Public', *Aljazeera*, April 28, 2021, https://www.aljazeera.com/news/2021/4/28/sri-lanka-cabinet-approves-proposed-ban-on-burqas-in-public.

have launched a calculated onslaught on the exercise of religious freedom by minorities. For instance, while Bangladesh, Nepal, and Sri Lanka, as parties to the ICCPR, declare an unwavering commitment to protecting the religious freedom of their citizens, particular religions—i.e., Islam, Hinduism and Buddhism, respectively—continue to dominate the domestic legal framework of these countries. In Afghanistan, the Taliban has ordered judges to fully impose their interpretation of Sharia Law[13] and Islam continues to dictate the Pakistani legal system.

c. Engagement with UN human rights institutions

Reporting to treaty bodies

The poor performance of South Asian states on ratification of treaties and to translate commitments into domestic legislations is exacerbated by their poor record on reporting obligations under the treaties to which they are state party. A review of the reporting status is revealing (Table 2). Only Bhutan is up-to-date in its reporting; all the others have long delays, going past 10 years in some.

Table 2: Delay in submitting periodic reports to treaty bodies

States	Overdue, less than 5 years	Overdue, 5–10 years	Overdue, more than 10 years
Afghanistan	1	3	0
Bangladesh	4	0	1
Bhutan	0	0	0
India	2	0	2
Maldives	1	0	1
Nepal	4	1	0
Pakistan	2	0	1
Sri Lanka	4	0	0

Source: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/LateReporting.aspx.

13 Sahar Akbarzai, 'Taliban to Impose their Interpretation of Sharia Law in Afghanistan', *CNN*, November 15, 2022, https://edition.cnn.com/2022/11/15/asia/taliban-afghanistan-sharia-law-intl-hnk/index.html.

Engagement with special procedure mandate holders

An important element of the international human rights system is special procedures mandate-holders—special rapporteurs who are independent human rights experts brought in to report and advise on human rights from a thematic or country-specific perspective. States are expected to cooperate fully with special procedures in the realisation of the latter's mandate. Mandate-holders act on individual cases of reported violations or broader patterns of violations by sending communication to states. A review of replies received from the countries of South Asia in response to communications sent by mandate-holders demonstrates yet again the casualness that appears to mark the engagement (Table 3). Afghanistan performs most poorly but Sri Lanka, which is the other end of the performance spectrum, too, does not do better than 50 per cent response.

Table 3: Special Procedures Communications (1 January 2013 to 31 December 2022)

Country	Communications sent	Replies received
Afghanistan	17	1
Bangladesh	69	27
Bhutan	Data unavailable	Data unavailable
India	157	47
Maldives	24	5
Nepal	36	14
Pakistan	105	30
Sri Lanka	55	26

Source: (Comms) https://spcommreports.ohchr.org/TmSearch/TMDocuments.

Mandate-holders also make country visits to engage directly with stakeholders and better understand the human rights situation on the ground. HRC data reveal that only four South Asian states have issued standing invitations for such visits: Maldives (in 2006), India (in 2011), Sri Lanka (in 2015) and Afghanistan (in 2017). Afghanistan's situation has changed radically with the Taliban takeover while India's invitation holds little meaning given that visits by Special Rapporteurs to India have become very scarce in recent year, the last being in 2017 (by the Special Rapporteurs on

water and sanitation) and in 2016 (Special Rapporteur on housing). Requests for visits in recent years have received no response from the Indian government. Sri Lanka bucks the trend, with country visits by multiple mandate-holders over the past years while Pakistan has not had any country visit in the last 10 years.

Engagement with the UPR

The Universal Periodic Review (UPR), a state-driven process under the auspices of the United Nations Human Rights Council, allows for a review of the human rights records of all UN member states and provides each state the opportunity to 'declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations'.[14] Reviews are based on the information provided by the state under review in the form of national reports; information contained in the reports of independent human rights experts, human rights treaty bodies, and other UN entities; and information from other stakeholders including national human rights institutions and non-governmental organisations.[15] The review process involves interactive discussions between the state under review and other UN member states.[16] The year when the latest UPR cycle was concluded for each of the South Asian countries encapsulated in the report is presented in the table below:

Table 4: Latest UPR cycle concluded in the South Asian countries

Country	Latest UPR cycle	Number of UPR Cycles concluded
Afghanistan	2019	3
Bangladesh	2018	3
India	2022	4 (fourth ongoing)
Nepal	2021	3
Pakistan	2022	4 (fourth ongoing)
Sri Lanka	2022	4 (fourth ongoing)

Source: https://www.ohchr.org/en/hr-bodies/upr/cycles-upr.

14 Universal Periodic Review', United Nations Human Rights Council, accessed January 28, 2023, https://www.ohchr.org/en/hr-bodies/upr/upr-main.

15 Ibid.

16 Ibid.

India, Pakistan, and Sri Lanka are currently going through their fourth UPR cycle. Although the reports of the Working Groups (WG) in relation to the same are not yet available, a look at the national reports and the stakeholders' submissions help discern key trends.

Afghanistan's last UPR cycle was concluded prior to the Taliban takeover in 2021, thus having little relevance, if any, to the current human rights situation in the country. In light of the recommendations received from the previous cycle, the major achievements highlighted in the national report include the incorporation of all international conventions ratified by the country into its domestic laws and the enactment of a plethora of new legislation such as the Anti-Women's Harassment Law, 2016, aimed at prohibiting discrimination against women in public spaces and offices.[17] Also notable are the measures taken to strengthen the independence of the Afghan Independent Human Rights Commission, including the provision of an independent budget unit in the national budget, and reforms in the judiciary. The concurrent stakeholders' reports condemn the pitiful state of the rights of religious minorities in the country and exhort the government to repeal discriminatory blasphemy laws, end the culture of impunity rampant in the country, and create an enabling space for civil society activism.[18] Among the recommendations from the review were ratification of human rights conventions not yet ratified and abolishment of the death penalty.[19]

The Government of Bangladesh mentions in its national report that it has made 'every possible effort' to implement the 191 recommendations it received in the preceding UPR cycle.[20]

17 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Afghanistan, 2018, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/339/51/PDF/G1833951.pdf?OpenElement.

18 Summary of stakeholders' submissions on Afghanistan, 2018, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/332/93/PDF/G1833293.pdf?OpenElement.

19 Report of the Working Group on the Universal Periodic Review, Afghanistan, 2019, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/097/86/PDF/G1909786.pdf?OpenElement.

20 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Bangladesh, 2018, https://

The major achievements highlighted include a sharp reduction in poverty and a drastic increase in per capita income. With regard to minorities, the government reported having formulated the Anti-Discrimination Bill, 2014, aimed at empowering the unprivileged sections of society, namely, the Dalits, Harijans, Bede, tea plantation workers and transgenders. The concurrent stakeholders' submissions condemned the country's delay in submitting periodic reports to the Convention against Torture and urged the government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, in addition to demanding the establishment of a national commission for Dalits and the elimination of unwarranted restrictions on civic space.[21]

As for India, most of the stakeholders' submissions from the current UPR cycle point to the increasingly despotic tendencies of the Indian government with discrimination and outright violence against minorities and human rights defenders rampant

documents-dds-ny.un.org/doc/UNDOC/GEN/G18/050/26/PDF/G1805026.pdf?OpenElement.

21 Summary of stakeholders' submissions on Bangladesh, 2018, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/061/83/PDF/G1806183.pdf?OpenElement.

in the country.[22] The reports highlight the state's human rights transgressions, including discriminatory practices, use of force by the police, and surveilling of those expressing dissent, among others. India's national report, on the other hand, mostly delves into overarching issues that pertain to the general population, with explication on issues related to particular groups limited only to persons with disabilities, women, and children.[23] While talking about its religious and other minorities, the national report alludes to the term 'harmony' multiple times, dismissing the grave concerns constantly raised by these groups. Some of the major achievements highlighted in the report include the enactment of the Transgender Persons (Protection of Rights) Act, 2019 and the introduction of various programmes to provide relief to minorities. Although it is mentioned that the 152 recommendations from the previous cycle were 'accepted', it is not clear whether they have all been implemented.

Similarly, while Nepal's national report submitted as part of the last UPR cycle mentioned that the country has accepted and implemented 152 recommendations from the previous cycle, it does not provide adequate details on the same.[24] The major achievements highlighted include the enactment of a spate of legislations to enforce the fundamental rights enshrined in the 2015 Constitution and the introduction of affirmative action measures that have improved minority representation in the state structure. While the report discusses achievements with regard to women's rights at length, it contains very little explication of the state of minority groups in the country. Further, with regard to recommendations from previous cycles, only those that align with the country's political environment seem to have been accepted and implemented while those likely to spark controversy remain

22 Summary of stakeholders' submission on India, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/411/95/PDF/G2241195.pdf?OpenElement.

23 National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21, India, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/463/20/PDF/G2246320.pdf?OpenElement.

24 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Nepal, 2021, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/278/61/PDF/G2027861.pdf?OpenElement.

ignored. Some of the recommendations received during Working Group meetings included eliminating restrictions imposed on the National Human Rights Commission.[25] The concurrent stakeholders' submissions urged the government to protect the rights of Janajatis in particular, develop an effective transitional justice mechanism, and retract the ban on proselytisation, among others.[26]

Pakistan's national report has taken a very recommendations-centric approach to its UPR submission.[27] The themes in the report have been developed by grouping similar recommendations received during the previous cycle juxtaposed with the progress made. As reported by the Government of Pakistan, a plethora of new bills were proposed and legislations enacted for the protection of the rights of women and 'minorities'. However, the report does not specify which groups are considered to be minorities and completely ignores the specific and intersectional forms of discrimination faced by certain groups. The concurrent stakeholders' reports ask the Pakistani government to enact and implement laws for the protection of women from forced conversions and forced marriages and also urge the government to repeal the anti-blasphemy law that violates the rights of religious minorities.[28] The reports also highlight the human rights violations being perpetrated against human rights defenders in the country.

Sri Lanka's national report submitted as part of its current UPR cycle also employs a similar approach.[29] The report provides updates on the status of implementation of 177 of the 230 recommendations received from the previous cycle and the 12

25 Report of the Working Group on the Universal Periodic Review, Nepal, 2021, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/074/68/PDF/G2107468.pdf?OpenElement.

26 Summary of stakeholders' submissions on Nepal, 2020, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/280/84/PDF/G2028084.pdf?OpenElement.

27 National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21, Pakistan, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/581/81/PDF/G2258181.pdf?OpenElement.

28 Summary of stakeholders' submission on Pakistan, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/590/90/PDF/G2259090.pdf?OpenElement.

29 National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21, Sri Lanka, https://www.ohchr.org/en/hr-bodies/upr/lk-index.

voluntary pledges. However, as with Pakistan's report, there is little mention of the minorities in the country, particularly Tamils, Muslims, and Christians. The major achievements reported by the government include the incorporation of the provisions in the Convention for the Protection of All Persons from Enforced Disappearances (CPPED) into domestic law and accession to the Optional Protocol to the Convention against Torture. The major themes in the report have been developed in the context of the 2019 Easter Sunday terrorist attacks and the unprecedented economic hardships the nation is struggling with. The concurrent stakeholders' submissions urge the government to repeal the 20th amendment to the Constitution that undermines the independence of the judiciary and key institutions such as the Human Rights Commission of Sri Lanka, address issues of transitional justice for crimes committed during the civil war, do away with anti-blasphemy laws which violate the rights of religious minorities, and stop the use of excessive force against human rights defenders, among others.[30]

Assessment of the human rights records of one another: UPR interactions and beyond

Reviews under the UPR process are conducted in the form of Working Group meetings during which questions can be raised by both members of the HRC and observer states with the state under review provided with the opportunity to respond.[31] A review of how the six South Asian countries encapsulated in the report have engaged with one another with regard to the UPR process hints at political undercurrents and partisanship.

For the most part, the comments made and the recommendations provided to each other by the six countries are positive and appreciate the progress made.[32] However, such mutual praise

30 Summary of stakeholders' submission on Sri Lanka, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/579/21/PDF/G2257921.pdf?OpenElement.

31 'Basic Facts About the UPR', United Nations Human Rights Council, accessed January 31, 2023, https://www.ohchr.org/en/hr-bodies/upr/basic-facts.

32 The Working Group reports for the latest cycle for India, Pakistan and Sri Lanka have not been released so their reports from the third cycle have been

is not evident in interactions between countries with political disagreements such as India and Pakistan, with both making incendiary comments and accusing each other of grave human rights violations. The contentious issue of Kashmir seems to be at the crux of such interactions; India urged Pakistan to provide freedom to the people of 'Pakistan-occupied Kashmir'[33] while Pakistan asked India to repeal the Armed Forces (Special Powers) Act and the Public Safety Act and end the culture of impunity in 'Indian-occupied Kashmir'.[34] Both countries also censure the other's treatment of their minorities.

The issue of Afghan refugees in Pakistan has been a long-standing point of contention between the two countries. Hence, Pakistan called for the effective management of returning refugees by Afghanistan[35] while the Afghan government called for the Government of Pakistan to ensure the human rights of refugees within the territory of Pakistan with guarantees of protection against arbitrary arrest, humiliation and enforced expulsion.[36]

In their review of other South Asian countries, the countries are seen calling attention to human rights issues they themselves are also grappling with. Pakistan recommended that Afghanistan take steps to bring an end to child marriage,[37] while forced marriages of girls from minority communities has also been a major and regular human rights violation in Pakistan.[38] Likewise, Nepal

considered for this.

33 Report of the Working Group on the Universal Periodic Review, Pakistan, 2017, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/370/42/PDF/G1737042.pdf?OpenElement.

34 Report of the Working Group on the Universal Periodic Review, India, 2017, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/193/56/PDF/G1719356.pdf?OpenElement.

35 Report of the Working Group on the Universal Periodic Review, Afghanistan, 2019, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/097/86/PDF/G1909786.pdf?OpenElement.

36 Report of the Working Group on the Universal Periodic Review, Pakistan, 2017, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/370/42/PDF/G1737042.pdf?OpenElement.

37 Report of the Working Group on the Universal Periodic Review, Afghanistan, 2019, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/097/86/PDF/G1909786.pdf?OpenElement.

38 Summary of stakeholders' submission on Pakistan, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/590/90/PDF/G2259090.pdf?OpenElement.

urged Bangladesh to protect and promote the rights of migrant workers[39] despite itself not having ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Along similar lines is Afghanistan's recommendation for continued efforts for the improvement in girls' education in Bangladesh.[40]

Beyond the interactions under the UPR framework, the overall assessment of and deliberations on the human rights situation in another country also appears to be driven by national interest for most South Asian states. For instance, Pakistan's failure to condemn the grave human rights violations—including extrajudicial killings, forced evictions and enforced disappearances targeted against minority groups—rampant in Afghanistan since the Taliban takeover in 2021 is glaring.[41] Pakistan has long been accused of abetting the Taliban insurgency in Afghanistan.[42] The Pakistani government has stated that it will not act alone but take a regional, consensual approach to the recognition of the Taliban government as the legitimate government in Afghanistan.[43] Similarly, India recently abstained from voting on an HRC resolution that held Sri Lanka accountable for its failure to realise the 13th Amendment,[44] which in 1987 committed to devolving power in the state and recognised Tamil as a national language.[45] The political move

39 Report of the Working Group on the Universal Periodic Review, Bangladesh, 2018, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/211/03/PDF/G1821103.pdf?OpenElement.

40 Report of the Working Group on the Universal Periodic Review, Bangladesh, 2018, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/211/03/PDF/G1821103.pdf?OpenElement.

41 'Afghanistan 2021', Amnesty International, accessed January 30, 2023, https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/afghanistan/report-afghanistan/.

42 Ibid.

43 Anwar Iqbal, 'Pakistan to Recognise Taliban Regime After Regional Consensus', March 19, 2022, https://www.dawn.com/news/1680703.

44 Meera Srinivasan, 'India abstains on Sri Lanka vote at Human Rights Council', *The Hindu*, December 9, 2022, https://www.thehindu.com/news/international/india-abstains-on-sri-lanka-vote-at-human-rights-council/article65976659.ece.

45 Meera Srinivasan, 'Amendment to the Sri Lankan Constitution, and why is it contentious?', *The Hindu*, September 5, 2020, https://www.thehindu.com/news/international/the-hindu-explains-what-is-the-13th-amendment-to-the

was seen as one intended to appease Sri Lanka while also avoid worsening the fraying ties between the two nations.[46]

Engagement with the UN human rights mechanism—including ratification of treaties, reporting to treaty bodies and engaging with special procedures, besides the UPR—is a helpful indicator of a state's performance on commitment to improving human and minority rights outcomes. South Asian states' overall poor performance on these counts, go to explain the poor showing on their human rights outcomes, especially for minorities. We will review these national trends in the rest of the chapter.

Overview of national trends

Afghanistan

Afghanistan's 2004 Constitution recognised fundamental rights in line with international human rights norms. Along with the Afghanistan Independent Human Rights Commission, there existed a national framework for the protection of minorities in Afghanistan. However, the Taliban takeover in August 2021 was soon followed by the dismantling of the nascent human rights regime in the country. Further, the reinstatement of the 1964 Constitution led to the recrudescence of the Sharia Law, which accords no protection to many minority groups. The Taliban government is not one recognised by the UN and it does not adhere to any international commitments on human rights either. During its one-year reign, the Taliban has reduced the judiciary, which had been gradually becoming increasingly more independent during the previous regime, to field courts. At the same time, it has replaced the Ministry of Women Affairs with the Ministry of Vice and Virtue. The Human Rights Commission has been dissolved and most human rights defenders and other civil society members have fled the country while those who stayed back are under extreme scrutiny of the Taliban.

-sri-lankan-constitution-and-why-is-it-contentious/article32531844.ece.

46 P.K. Balachandran, 'Why India Abstained From Voting on the Lanka Resolution Passed by UNHRC', The Citizen is Hopeful, March 24, 2021, https://www.thecitizen.in/index.php/en/NewsDetail/index/6/20145/Why-India-Abstained-From-Voting-on-the-Lanka-Resolution-Passed-by-UNHRC–.

The result has been the complete abrogation of all accountability mechanisms for ensuring human rights protection. Afghanistan's minorities—ascribed minority status based on the principle of a 'non-dominant position in society' such as the Hazaras, Sikhs, Kyrgyz, Tajiks, women and the lesbian, gay, bisexual, transgender, queer, intersex, asexual (LGBTIQA+) community—have been facing the brunt of this oppression with extrajudicial killings and even subjected to war crimes in suppressing any kind of armed rebellion. In other cases, they have faced forced eviction and displacement from homes along with 'redress' of past incidents committed against Pashtuns, and a complete fettering of women and LGBTIQA+ rights. Not only have civil, political, economic, social and cultural rights been violated, but the Taliban's oppressive acts have also triggered a humanitarian crisis in the country with the minority population not even being able to meet their basic needs.

Bangladesh

Bangladesh is a state party to eight of the nine major human rights treaties. But its performance with regard to engaging with treaty bodies and special procedures is weak, a fact that is reflected in its policies and practices. Bangladesh is yet to introduce a domestic legal regime that specifically caters to minorities. Under the current constitutional framework, minorities per se are not recognised and the little protection afforded to them is provided through the generally applicable rights of equal treatment, non-discrimination and dignity.

Minorities frequently report discrimination and exploitation on grounds of their religious affiliation even as the Bangladeshi government continues to engage in activities that violate rights, such as restricting access to social networking sites and arresting secular activists. Additionally, the Sharia system excludes non-Muslims, limiting the ability of other religious groups to access civil remedies in cases that also involve Muslims. The ongoing hostility toward religious groups has endangered minority Muslim sects like the Ahmadiyya. The Bangladeshi state has also historically targeted and struggled to accept sexual minorities and continues

to penalise same-sex activities as part of its archaic postcolonial legacy. The Bangladesh National Human Rights Commission has had little influence on human rights outcomes.

India

India is party to only to six of the nine major international human rights instruments—refusing to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of All Persons from Enforced Disappearance. It has also refused to be party to any of the various individual complaints, inquiry, and interstate communication procedures or to formally commit to abolishing the death penalty. India also made several key reservations and declarations at the time it acceded to the International Covenant on Civil and Political Rights and the Convention on the Prevention and Punishment of the Crime of Genocide.

Other crucial international instruments that India has refused to be party to include those relating to the Convention relating to the Status of Refugees (CRSR, 1951, and its 1967 Optional Protocol); and the Convention relating to the Status of Stateless Persons (CRSSP, 1954), the Convention on the Reduction of Statelessness

(CRS, 1961) as well as the Rome Statute of the International Criminal Court. India has also defaulted on reporting to treaties it is party to, with long delays being common. The poor showing on international obligations has hardened since the Bharatiya Janata Party took power in 2014, a period particularly marked by a spike in anti-minority targeting and rhetoric in the country. India only occasionally responds to communications by special procedure mandate-holders and has not allowed any visit by the latter since 2017.

India's poor performance on international obligations and poor engagement with the international human rights legal mechanism has implications for the worsening human rights situation, especially for its large population of religious minorities. Recent reports demonstrate the gravity of the situation, with extrajudicial killings, custodial torture, arbitrary detention, enforced disappearance and acute discrimination indicating an unprecedented infringement of the freedom of religious minorities, Muslims and Christians particularly by the state, amid an atmosphere of extreme anti-Muslim rhetoric. At the same time, democratic, cultural and social rights of the freedom of association, assembly, and expression and the freedom of religion or belief have been encroached upon at will. The historically poor performance on economic and social indicators too have also worsened in recent years, a result of the COVID-19 pandemic but also the exclusionary policies of the government in power. India's National Human Rights Commission as well as its highest Courts along with other national institutions have been of little help to victims, given their increasing capture by the executive.

Nepal

Nepal's ratification of the seven core human rights treaties as well as its continued participation in the UPR process appear to demonstrate the State's commitment to human rights norms. But its failure to report to the various treaty bodies on a regular basis as well as its disregard of recommendations provided through UN special procedures, calls its professed commitment into question. The new constitution includes a number of fundamental rights for

minorities, including the right to religion, language and culture as well as rights for Dalits. However, through arbitrary legal language and the imposition of a prohibition on proselytising, the Constitution, the Criminal Code, and other legislation restrict religious freedom and deviate from the country's obligations under core human rights treaties such as the ICCPR.

Nepal has also failed to strike down many of the laws that contravene principles such as the need to obtain informed consent of indigenous communities prior to enforcing decisions concerning them laid out in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), to which it is a party. The Constitution has promised its minority community affirmative action and state representation, but in practice, it has failed to keep these promises and uplift the living standards of minority groups. Dalits, indigenous communities and other minority groups thus face significant disparities as a result of gaps in law and implementation.

The constitutional bodies provided for to protect minority rights have been undermined by delays in appointments and resource constraints. There has also been an attempt to revise the mandate of the National Human Rights Commission, signalling the government's intent to shrink its influence.

Pakistan

Despite having ratified seven of the nine core international human rights treaties, Pakistan's human rights performance is relatively poor when measured against international standards, with its religious minorities in particular facing severe discrimination and outright violence. The translation of some of the commitments from human rights treaties into the domestic legal framework has been initiated, including the establishment of the National Commission for Minorities, but the human rights performance of the country has worsened. Given the many cases of religious discrimination induced through the blasphemy law that imposes the death penalty, and the forced conversion of girls from minority communities through marriage, religious minorities in the country remain the most marginalised.

The threat and manifestation of violence extends to human rights

defenders as well as NGOs with both being attacked and vilified for upholding minority and human rights. The flagrant violations of human rights have resulted in castigation and sanctions from other countries in the international sphere, particularly from the West, severely diminishing Pakistan's international presence. With judicial activism non-existent and the judiciary undergirding the hegemonic regime, there is very weak protection and remedies for affected communities, particularly minorities.

Sri Lanka

Sri Lanka has a strong track record of ratifying international human rights instruments, participating in the UPR process, reporting to treaty bodies, and accepting special procedures. With regard to the implementation of international human rights commitments, however, the State still falls short. Although Sri Lanka's Constitution guarantees religious freedom for all, Buddhism is given primacy, substantially modifying and diluting the legal effect of the right to freedom of worship and equality. Under the guise of fulfilling its core obligations under the ICCPR, the State has operationalised its discriminatory intent through the International Covenant on Civil and Political Rights Act, No. 56, resulting in adverse legal outcomes for minority communities and the possibility of fostering an environment of discontent against Sri Lanka's Tamil and Muslim minorities.

Further, by introducing hostile provisions against the queer and LGBTIQA+ community, the Penal Code and the 'Vagrants Ordinance' have also codified its discriminatory intent. Sections of the Code criminalise sexual activities deemed 'against the order of nature' while law enforcement officials have used the 'Vagrants Ordinance', which prohibits disorderly conduct, to arbitrarily detain members of the transgender community. The Human Rights Commission's mandate has also been considerably weakened in recent years. The 20th Amendment to the Constitution gave the president full autonomy over appointments to the Commission, eroding its independence, and even though the 21st Amendment 2022 repealed the contentious Amendment, frequent tampering of the Constitution has undermined its legitimacy overall.

Conclusion

International human rights mechanisms have failed to encourage South Asian states to do better on human rights and to protect their minorities. The limitations of the UN system mean there is little incentive for South Asian states to engage effectively with the international human rights regime as a means to improve their performance towards minorities.

A key missing link in this chain is the absence of regional processes and mechanisms in South Asia, that in other regions (Europe, Americas, Africa, and Southeast Asia) have been seen to facilitate better human rights outcomes for their communities. This absence is telling, given cross-border dynamics on minority rights in South Asia, which adds another dimension to the abuse of their rights, with a minority in one country often the majority in another, violence against minorities in one country having ripple effect on minorities in another, and competitive majoritarianism over-determining the political discourse across borders.

Traction on minority rights in the region will require not just action at local level, supported by international efforts, but also by the building of a regional constituency and process, to moderate regional dynamics and create regional incentives. This itself will need to be grounded in broader inclusion, pluralism and the democratisation agenda, to challenge majoritarianism that is the root cause of the democracy deficit that imperils the region with devastating consequences for its vast minority populations.

Recommendations

To national governments

- Ratify human rights instruments not ratified so far.
- Undo reservations, where made.
- Become state party to UN's individual complaints, inquiry, and interstate communication procedures—under ICCPR, ICESCR, CEDAW, CRC, and CRSR.
- Sign and ratify the Rome Statute of the International Criminal Court.

- Clear the backlog in reporting to treaty bodies, and produce timely and constructive reports.
- Constructively engage with UN special procedures to support their mandate, by responding to communications, and allowing in-country visits.
- Use the UPR process as an opportunity to improve commitments to human rights.
- Align domestic laws and policies with commitments to human rights treaties.
- Create an enabling civic space and support minority-focused NGOs and CBOs.
- Strengthen domestic remedies against violations, by empowering justice and grievance redress institutions, including the courts, NHRIs, and ombudsmen bodies while ensuring they have the capacity and are independent.

To the United Nations and wider international community

- Demand and encourage states to ratify the key IHR instruments, and accede to UN's individual complaints procedures.
- Demand timely reports to treaty bodies and responses to special procedures communications while facilitating their in-country visits.
- Raise issues of concern of abuses and discriminations against minorities in the region, during bilateral trade and strategic dialogues and negotiations.
- Encourage the use of regional framing in discussions on human and minority rights in South Asia, and incentivise the strengthening of a regional constituency, to prepare the ground for a South Asian regional charter and mechanism on human and minority rights.
- Support local and regional civil society groups to better document, report and raise concerns on the violations of rights against minorities in South Asia.

Local and regional civil society on human and minority rights

- Invest in greater capacity for documentation and reporting of human rights performance affecting minorities, while advocating for improvements.
- Reference international standards and obligations when documenting and reporting human rights performances.
- Promote solidarities across borders, to aggregate regional demands on national mechanisms, and as spaces for sharing and learning.

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Prospects of International Human Rights Standards Implementation by the Taliban and Its Implications for Minority Groups in Afghanistan

Mujtaba Moradi

Overview

Introduction

Since the establishment of the League of Nations followed by the efforts by the United Nations (UN), various Afghan governments have been exhorted by the international community to comply with international human rights norms and standards to protect the rights of minority groups in the country. Afghanistan has ratified seven international human rights treaties—the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD) (Details on Afghanistan's international commitments in Section 2).[1]

1 'Ratification Status for Afghanistan', UN Treaty Body Database, United Nations Human Rights Treaty Bodies, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN.

Domestic laws had been reformed in accordance with international human rights law, including the revision of Afghanistan's Penal Code along with 33 other laws.[2] The 2004 Constitution protected the rights of minorities to enjoy their own culture, religion, and language.[3] Civil society and several institutions were also working for the institutionalisation of international human rights standards in the country.

However, the fall of Kabul to the Taliban in August 2021 marked a catastrophe for Afghanistan's improving human rights regime. The Taliban government is not recognised as a member state of the UN. Shortly after the takeover, it announced the re-establishment of the Islamic Emirate of Afghanistan, aiming to implement Sharia Law. After more than a year, it is still unclear what rights of minority communities will be guaranteed in the Taliban interpretation of Sharia. The former judicial system has been replaced by field trials.[4] All the laws enacted during the former regime have been dissolved and independent human rights and civil society organisations (CSOs) can no longer work effectively.

Afghanistan's minority groups have no representation in the Taliban cabinet with most of the cabinet members being the masterminds of deadly attacks on ethno-religious minorities in the country over the previous two decades. The entire existence of minority groups is in danger. Hazaras are at risk of genocide. Kyrgyzes and Sikhs are in a struggle to flee the country. Women are entirely marginalised and forced to stay at home. Girls are forbidden to attend school. Extrajudicial killings, arbitrary detentions, redressal of past disputes, and forced evictions by the Taliban are increasing. Additionally, the resulting economic hardships have already pushed the country towards the world's worst humanitarian crisis, culminating in the starvation and deaths of many people.

2 Afghanistan's Penal Code, 2018.

3 The Constitution of Afghanistan, 2004.

4 In the field trials, the Taliban normally punishes by whipping, stoning, executing either by gunfire or hanging in the public like a show before the eyes of people. Sometimes they conduct punishment in a stadium where a large number of people can watch it.

Methodology

The author has used a qualitative research method to write the report. The data for analysis has been obtained from both primary and secondary sources. The statements by Taliban authorities, data on the situation of minority groups from international organisations, international human rights treaties, and news articles have been utilised for the first and second sections of the report. The third section is based on cases documented by the author from reports by reliable media outlets on the violations of minority rights in the country. These newspapers have first-hand data and were in Dari and Pashto languages but English language newspapers have been referenced as well.

Who are minority groups in Afghanistan's context?

The Office of the United Nations High Commissioner for Human Rights (OHCHR) defines a minority as 'any ethnic, religious, or linguistic group which constitutes less than half of the population in the territory of a state whose members share common characteristics of culture, religion, or language, or a combination of any of these'.[5] This definition focuses on the numerical criterion for the recognition of a group as a minority group. However, in the context of Afghanistan, no cultural, religious, or ethnic group constitutes half of the population in the country for them to be considered as a majority group and the rest to be perceived as minorities.[6]

A more useful definition was provided by Francesco Capotorti, Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, in 1977 whereby a minority is 'a group numerically inferior to the rest of the population of a State, in a non-dominant position'.[7] Capotorti focuses on the concept of non-dominance of a group to be considered a minority

5 'Concept of a Minority: Mandate Definition', Office of the United Nations High Commissioner for Human Rights, https://www.ohchr.org/en/special-procedures/sr-minority-issues/concept-minority-mandate-definition.

6 'World Directory of Minorities and Indigenous Peoples: Afghanistan', Minority Rights Group International, https://minorityrights.org/country/afghanistan/.

7 OHCHR, *Minority Rights: International Standards and Guidance.*

group, a condition that is applicable to Afghanistan's context, especially after the fall of the previous government to the Taliban. Except for Pashtuns, the ethnicity the Taliban belongs to, other ethno-religious groups have been largely excluded from the government structure under the Taliban regime so far. Tajiks have only two ministers and Hazaras have a deputy minister in the cabinet. Hence, except for the Pashtun ethnic group, all other ethnic, religious, or cultural groups, gender and sexual minorities (LGBTQIA+), and even women and girls, who constitute almost half of the population,[8] are minorities.

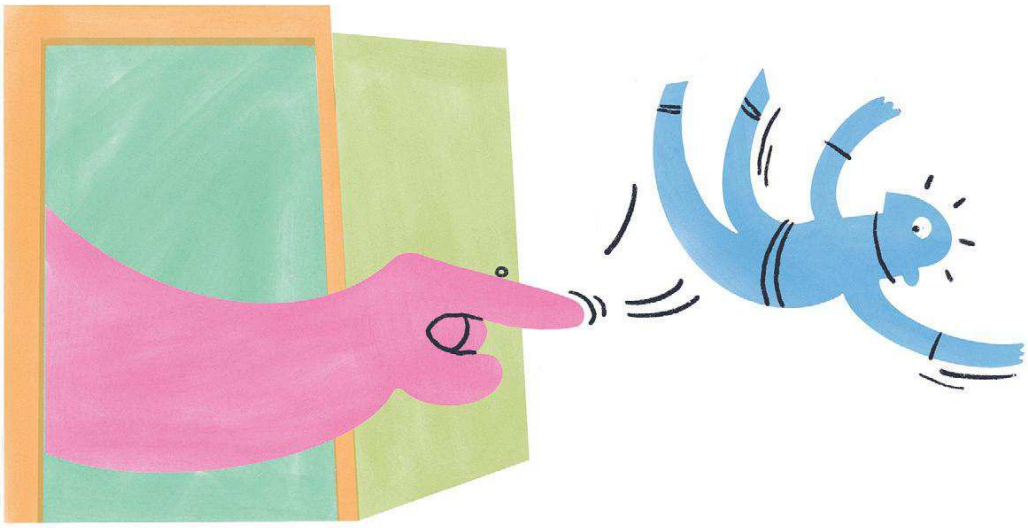
Taliban's Commitments to International Human Rights Norms and Efforts at Minority Rights Protection

Afghanistan was known to be one of the most dangerous places for everyone, but especially for women, even before the Taliban takeover.[9] Minority groups were discriminated against in one way or another. Despite such precarious conditions for minorities, progress was being made for the protection of their rights. There were signs of hope under the former republican government (2001-2021). Afghanistan had signed and acceded to seven core international human rights treaties.[10] In 1983, it ratified three treaties, including the ICCPR, the ICESCR and ICERD. It ratified the CAT in 1987. Later, under the former republican government, Afghanistan ratified CEDAW in 2003. It has also ratified two other international human rights treaties—the CRC and the CRPD. The country also acceded to the Optional Protocol of the Convention Against Torture, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed

8'Population, female (% of total population) – Afghanistan', The World Bank, https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=AF&most_recent_value_desc=false.

9 Sophie Cousins, 'A Quiet Crisis: As the Economy Fractures, Violence Soars for Afghan Women', *The New Humanitarian,* December 16, 2020, https://www.thenewhumanitarian.org/news-feature/2020/12/16/Afghanistan-women-economy-gender-based-violence.

10 Ratification Status for Afghanistan', UN Treaty Body Database, United Nations Human Rights Treaty Bodies, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN.



conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of child prostitution and child pornography. Hence, unless it withdraws from these conventions, not only the current Taliban regime, but any government of Afghanistan are obliged to adhere to the principles of international human rights law enshrined in the aforementioned instruments.[11]

Under the former republican government, the democratic 2004 Constitution was in force.[12] The Afghanistan Independent Human Rights Commission (AIHRC) was active and other independent human rights non-governmental organisations (NGOs) were advocating for the protection and promotion of the rights of minority groups. The Ministry of Women Affairs (MOWA) was established in 2001 and the law on the Elimination of Violence against Women (EVAW Law) was enacted and passed in 2009.[13] The penal code also criminalised violence against women and minorities.[14]

However, the fall of Kabul to the Taliban in 2021 reversed all progress. The Taliban government does not acknowledge adherence

11 'Afghanistan: UN Experts Condemn Taliban Decision to Deny Girls Secondary Education', Office of the United Nations High Commissioner for Human Rights, March 24, 2022, https://www.ohchr.org/en/press-releases/2022/03/afghanistan-un-experts-condemn-taliban-decision-deny-girls-secondary.

12 The Constitution of Afghanistan, 2004.

13 Ministry of Justice, *Law on Elimination of Violence Against Women (EVAW)* (Islamic Republic of Afghanistan, 2009), https://www.refworld.org/pdfid/5486d1a34.pdf.

14 Afghanistan's Penal Code, 2018.

to international human rights treaties. The former democratic constitution is not in force.[15] The AIHRC, MOWA, EVAW Law, and the penal code have been dismantled. Instead of these 'human-made' laws, the Taliban intend to enforce the Sharia Law.[16] But it is not clear to what extent the Sharia Law is compatible with minority rights. The Taliban government is not an UN-recognised government. The human rights NGOs have been downgraded. Human rights defenders (HRDs) and civil society activists (CSAs) have fled the country. All these factors have negatively affected minority groups in the country.

Dissolution of the 2004 Constitution

Though the former government had not comprehensively fulfilled provisions for minority rights protection in the country, the 2004 Constitution had clearly recognised fundamental rights for minority groups based on international conventions. Ethnic minorities had the right to education in their own language. Religious minorities had the right to practise their religion.[17] Despite some discrimination, representation of all minority groups was reflected in public administration. Alongside Tajiks, Hazaras, Uzbeks, and Turkmens, Kochi nomads had 10 seats in the parliament[18] and Punjabis received a seat in the parliament in 2013.[19] Besides female ministers in the cabinet, 69 members of the parliament out of 249 were women prior to the Taliban takeover.[20]

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15 Ayaz Gul, 'Taliban Say They Will Use Parts of Monarchy Constitution to Run Afghanistan for Now', *VOA,* September 28, 2021, https://www.voanews.com/a/taliban-say-they-will-use-parts-of-monarchy-constitution-to-run-afghanistan-for-now/6248880.html.

16 Andrew Jeong, Jennifer Hassan and Sarah Pulliam Bailey, 'The Taliban Says It Will Rule Under Sharia Law. What Does That Mean?', *The Washington Post,* August 19, 2021, https://www.washingtonpost.com/world/2021/08/19/sharia-law-afghanistan-taliban/.

17 The Constitution of Afghanistan, 2004.

18 Ali Mohammad Latifi, 'Afghanistan's Kochis: Nomads No More', *Al Jazeera,* May 15, 2013, https://www.aljazeera.com/features/2013/5/15/afghanistans-kochis-nomads-no-more.

19 'Decree Reserves Seat for Hindus and Sikhs in Parliament', *TOLO News,* September 4, 2013, https://tolonews.com/afghanistan/decree-reserves-seat-hindus-and-sikhs-parliament.

20 'How Afghan Women Conquered a 27% Share in Parliament after Decades

In September 2021, the Taliban government dissolved the 2004 Constitution. Abdul Hakeem, the Taliban acting Minister of Justice, announced they plan to partly enforce the 1964 Constitution of Afghanistan enacted during the rule of King Mohammad Zahir Shah.[21] The 1964 Constitution does not fully embrace Afghanistan's ethno-religious diversity. Article 2 recognises the Hanafi jurisprudence of the Sunni sect as the only source of authority for the judiciary. Article 35 obligates the government to promote only the Pashto language, the language of the Pashtuns.[22] This is despite the fact that a large number of Shiites live in the country and more than 30 other languages are spoken in Afghanistan, with Dari being the most widely spoken language.[23]

Some articles of the 1964 Constitution comply with international norms and standards, but the Taliban do not heed to them. These include Article 26, prohibiting arbitrary detention and torture; Article 28, ensuring peoples' right against arbitrary or unlawful search of their property; and Article 42, ensuring the political participation of people in the parliament. The government was made accountable to the parliament by Article 65.[24] However, the Taliban have violated all of these provisions.

Implementation of Sharia Law

Shortly after the fall of Kabul, the Taliban announced they will be governed by Sharia Law because democratic principles do not have bases in the country.[25] Later, in June 2022, the supreme leader of the Taliban, Mullah Hibatullah, referred to the laws enacted under the former government as 'human-made' and ordered the

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of War', *8am,* 2021, https://8am.media/eng/how-afghan-women-conquered-a-27-share-in-parliament-after-decades-of-war/.

21 Gul, 'Taliban Say They Will Use Parts of Monarchy'.

22 Afghanistan's Constitution of 1964, https://www.constituteproject.org/constitution/Afghanistan_1964.pdf?lang=en.

23 'Languages in Afghanistan', Swedish Committee for Afghanistan, https://swedishcommittee.org/afghanistan/language/.

24 Afghanistan's Constitution of 1964, https://www.constituteproject.org/constitution/Afghanistan_1964.pdf?lang=en .

25 Arwa Ibrahim, 'Explainer: The Taliban and Islamic Law in Afghanistan', *Al Jazeera,* August 23, 2021, https://www.aljazeera.com/news/2021/8/23/hold-the-taliban-and-sharia-law-in-afghanistan.

governors of all the provinces to set them aside and implement the 'pure' Islamic laws instead.[26]

Sharia Law is a wide-ranging body of moral and ethical principles based on the Quran and the practices and sayings of the prophet Mohammad.[27] The principles of Sharia Law vary greatly, depending on the interpretation by scholars of different schools of thoughts. While many Muslim-majority countries rule on the basis of Sharia Law, none of them have interpreted it in the same manner. Even the former government of Afghanistan claimed to be Islamic in its governance. Islam was mentioned in the 2004 Constitution to be the ultimate source of any law. Nothing was stated to be above Islam. But the republican government's way of ruling vastly differed from the Islamic Emirate of the Taliban. The Taliban's interpretation of Sharia Law comes from the Deobandi strand of the Hanafi jurisprudence mingled with the culture and norms of tribal society.[28]

In their first official news conference after their 2021 takeover, the Taliban declared that they would respect the rights of women and all other minority groups under the interpretation provided by Sharia Law.[29] The Sharia Law in itself does not discriminate against any minority group on the bases of race, colour or language. It states, 'the dearest person to Allah is the one who observes righteousness and piousness'.[30] But the Taliban's interpretation of Sharia Law in this regard remains vague. It is not yet clear how the Taliban will enforce the Sharia although so far, they have operationalised Sharia against the rights of women and other minorities.

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26 'Taliban Leader: Abandon Man-Made Laws and Implement Sharia', *8am*, 2022, https://8am.media/hebatullah-akhundzadeh-laws-established-by-the-people-cannot-be-implemented-sharia-must-be-implemented/.

27 Ibrahim, 'Explainer: The Taliban and Islamic Law'.

28 Ibid.

29 'Transcript of Taliban's First News Conference in Kabul', *Al Jazeera,* August 17, 2021, https://www.aljazeera.com/news/2021/8/17/transcript-of-talibans-first-press-conference-in-kabul.

30 Shaykh Muhammad Saalih Al-Munajjid, 'Is the Arab Muslim Better than the Non-Arab Muslim?', Islam Question & Answer, 2017, https://islamqa.info/en/answers/182686/is-the-arab-muslim-better-than-the-non-arab-muslim.

Dissolution of the Afghanistan Independent Human Rights Commission

The Afghanistan Independent Human Rights Commission (AIHRC) was established as a national human rights institution in the days following the Bonn Agreement[31] based on Article 58 of the 2004 Constitution. It was established with a legal mandate to monitor the observance of human rights principles within the country and to promote and protect them through the establishment of a complaints mechanism accessible to all citizens.[32] In May 2022, the Taliban authorities dissolved the AIHRC along with four other institutions citing a budget shortfall.[33] They confiscated vehicles, computers, and other facilities of the commission.[34]

It was a major setback for the country. The AIHRC was one of the truly independent institutions working for the protection and promotion of human rights. It was a powerful advocate for the compliance of human rights principles in the country and a trusted partner for the UN's human rights mechanism.[35] Though the Commission later announced that it will continue its work despite political hindrances,[36] human rights advocates are not optimistic. They believe that after the Taliban's decree on the dissolution of the AIHRC, the prospect for clear monitoring,

31 After the U.S. invasion of Afghanistan, the Bonn Agreement (a series of agreements in an initial international conference) held in Bonn on December 5, 2001. It was intended to re-create the Islamic State of Afghanistan.

32 'A Brief Introduction of the Independent Human Rights Commission of Afghanistan and Its Programs and Activities', Afghanistan Independent Human Rights Commission, https://www.aihrc.org.af/home/introduction.

33 'Rights Groups Decry Taliban Shuttering of Human Rights Commission', *VOA,* May 21, 2022, https://www.voanews.com/a/rights-groups-decry-taliban-shuttering-of-human-rights-commission-/6582933.html.

34 'The Afghan Human Rights Commission Called the Dissolution of this Commission by the Taliban "Ruled Out"', *BBC News Dari,* May 27, 2022, https://www.bbc.com/persian/afghanistan-61604814.

35 'Comment by Michelle Bachelet, UN High Commissioner for Human Rights, on the Dissolution of Afghanistan's Independent Human Rights Commission', Office of the United Nations High Commissioner for Human Rights, May 19, 2022, https://www.ohchr.org/en/press-releases/2022/05/comment-michelle-bachelet-un-high-commissioner-human-rights-dissolution.

36 BBC News Dari, 'The Afghan Human Rights Commission Called the Dissolution'.

protection, and promotion of human rights seems far-fetched.[37]

Disruption of local civil society and human rights organisations

Several civil society and human rights organisations were active over the last two decades working for the protection and promotion of the rights of women and girls, minority groups, and the LGBTIQA+ community in the country. They had initiated efforts towards the institutionalisation of democratic values and human rights principles by pushing relevant institutions and making the government accountable for the protection of human rights. However, after the fall of Kabul, almost all such NGOs closed. One example is the Civil Society and Human Rights Network (CSHRN). It had developed several years of experience in the field of human rights, particularly on the rights of minority groups. Its office was closed in August 2021. For now, there are only international organisations working on human rights protection in the country.[38]

Most of the HRDs, CSAs, and advocates of democracy have fled the country. Those HRDs left behind are suffering from restrictions imposed by the Taliban. They live under conditions of constant fear, threats, intense insecurity and growing desperation. They are in hiding and have to move frequently to avoid arrest.[39] They have resorted to deleting their social media accounts as a primary tactic to avoid detection. The Taliban have raided offices of civil society and human rights organisations which still had staff data that had not been erased. They have also made use of the passport department to seek out HRDs and CSAs who had taken out passports to cross the border to neighbouring countries.[40]

37 VOA, 'Rights Groups Decry Taliban Shuttering of Human Rights Commission'.

38 'New Alliance to Protect Human Rights in Afghanistan', *Human Rights Watch,* March 3, 2022, https://www.hrw.org/news/2022/03/03/new-alliance-protect-human-rights-afghanistan.

39 'Afghanistan: Human Rights Defenders Continue to Face Immense Danger', Freedom House, August 15, 2022, https://freedomhouse.org/article/afghanistan-human-rights-defenders-continue-face-immense-danger.

40 'Afghanistan: Human Rights Defenders Living under "Climate of Fear" – UN Expert', Office of the United Nations High Commissioner for Human Rights, November 3, 2021, https://www.ohchr.org/en/press-releases/2021/11/afghanistan-

Dismantling of the former judicial system

In the last two decades, the global community and Afghanistan's allies had put considerable efforts into the establishment of an independent judicial system and a prosecution mechanism in the country. Despite hardships in founding a comprehensive legal system in tribal Afghanistan in the aftermath of 2001, international allies had assisted the former Afghan government in enhancing its skills in the development of legal mechanisms to address different kinds of crimes. After the adoption of the 2004 Constitution, the judicial system was set up with a Supreme Court (SC), appellate courts, and primary courts as independent judicial organs.[41]

When the Taliban came to power, they dismantled the former judicial system. The SC is no longer active in the same way and the specific divisions (or special courts or special departments) operating to combat violence against women have been dismantled.[42] They have re-established the court system but not in line with the principles of democratic rule of law and international human rights standards. Instead, the traditional dispute resolution mechanisms such as *jirgas*[43] have been reinstated and field trials have become the most prominent feature of the Taliban's judicial system.[44]

In November 2021, the Taliban issued a decree, placing the Afghan Independent Bar Association (AIBA) under the control of the Ministry of Justice.[45] Their gunmen raided the AIBA's office and expelled all lawyers not approved by the Taliban. Around

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human-rights-defenders-living-under-climate-fear-un-expert.

41 'History of the Supreme Court of Afghanistan', Advocatetanmoy Law Library, 2021, https://advocatetanmoy.com/2021/08/16/history-of-the-supreme-court-of-afghanistan/.

42 'Afghanistan Dispatches: "Now There Are No Clients for Lawyers"', *Jurist,* September 20, 2021, https://www.jurist.org/news/2021/09/afghanistan-dispatches-now-there-are-no-clients-for-lawyers/.

43 A jirga is an assembly of leaders that makes decisions by consensus according to Pashtunwali, the Pashtun social code.

44 'How Legal is the Punishment of the Taliban and their "Field Courts?"', *VOA,* 2021, https://www.darivoa.com/a/is-punishment-by-taliban-legal/6336860.html.

45 Ron Synovitz, 'Judge, Jury, and Executioner: Taliban Brings Afghanistan's Justice System Under its Thumb', *Radio Free Europe/ Radio Liberty,* December 1, 2021, https://www.rferl.org/a/taliban-afghanistan-justice-system/31588972.html.

2500 lawyers lost their licences.[46] Later, in August 2022, Mullah Hibatullah, released an order stating, 'Prosecutors no longer have jurisdiction in criminal law cases and that the Taliban intelligence department is designated as the investigative body'.[47] Most of the former judges have been replaced by those who have studied Islamic law of Sunni Hanafi jurisprudence based on Deobandism with no female judges among them and all of the former female judges being removed from their jobs.[48]

Access to lawyers for detainees has been severely restricted by the Taliban. A Talib or a religious leader investigates, sentences, and executes the judgement. It is like one person acting as the police, the prosecutor, and the judge.[49] Even though they refer to Sharia Law while talking about women's *hijab* observance, there are no female prosecutors for detained women.[50]

Ministry of Women Affairs to the Ministry of Vice and Virtue

The announcement by the Taliban making public the establishment of their new interim government in September 2021 was notable for the dissolution of the Ministry of Women Affairs (MOWA). It was replaced by the Taliban with the Ministry of Vice and Virtue. MOWA's building has also now been handed over to the latter.[51]

46 Abubakar Siddique, 'After Realizing Dream, Disabled Afghan Prosecutor Finds Herself Jobless and in Danger Under Taliban', *Radio Free Europe/ Radio Liberty,* January 12, 2022, https://www.rferl.org/a/afghan-disabled-woman-prosecutor-jobless-taliban/31651273.html.

47 'Taliban Leader's New Order: Prosecutors No More Authorized to Investigate Criminal Cases', *8am*, August 23, 2022, https://8am.media/eng/taliban-leaders-new-order-prosecutors-no-more-authorized-to-investigate-criminal-cases/.

48 'We're no longer "the University of Jihad" but "the University of the Taliban Cabinet": Inside Pakistan's Notorious Madrasa', *The Independent,* September 22, 2021, https://www.independent.co.uk/asia/south-asia/madrasa-jihadi-pakistan-taliban-b1920669.html.

49 Nilofer Langer and Mukhtar Wafai, 'Torture in Taliban Prisons; From a Shot in the Palm to a Needle in the Penis', *The Independent Persian,* July 3, 2022, https://bit.ly/3DGFSN9.

50 Langar and Wafai, 'Torture in Taliban Prisons'.

51 Alasdair Pal, 'Taliban Replaces Women's Ministry with Ministry of Virtue and Vice', *Reuters,* September 17, 2021, https://www.reuters.com/world/asia-pacific/taliban-replaces-womens-ministry-with-ministry-virtue-vice-2021-09-17/.

MOWA was established in late 2001. The existence of MOWA in the structure of the former democratic government was a step forward for the promotion of women's rights in the patriarchal society of Afghanistan. It was a female-oriented institution for the 'implementation of the government's social and political policy to secure legal rights of women in the country'.[52]

The Ministry of Vice and Virtue existed in the previous government structure of the Taliban (1996-2001) as well. In the previous period, this ministry became the symbol of fear among people by enforcing restrictions on both men and women. Ministry employees would beat women in public for, among other things, 'wearing socks that were not sufficiently opaque, showing their wrists, hands, or ankles, and not being accompanied by a close male relative'.[53] Also, they would beat men for not growing their beards which, according to them, was a sign of being Muslim.

This time, the Vice and Virtue Ministry is deepening its roots by designating representatives in all governmental administrations with the responsibility of ensuring employees pray five times a day and gender segregation is enforced.[54] They force people to fast during Ramadan. During the festival, uniformed patrols acting as moral police are on the streets making sure people do not eat or drink.[55] They have not only beaten men who do not have beards but barbers have also been tortured for cutting men's beards.[56]

52 Heather Barr, 'For Afghan Women, the Frightening Return of "Vice and Virtue"', *Human Rights Watch,* September 29, 2021, https://www.hrw.org/news/2021/09/29/afghan-women-frightening-return-vice-and-virtue.

53 Barr, 'For Afghan Women, the Frightening Return of "Vice and Virtue"'.

54 'The Taliban Ministry of Vice and Virtue Appointed Representatives in Government Departments', *Shafaqna,* August 22, 2022, https://af.shafaqna.com/FA/532864.

55 'An Overview of the Activities of the Vice and Virtue Ministry; Violation of Citizens' Freedom and Conflict with Women's Clothing Issues', *Etilaatroz,* 2022, https://www.etilaatroz.com/142342/an-overview-of-the-activities-of-the-ministry-of-enjoining-the-good-and-forbidding-evil-violation-of-citizens-freedom-and-conflict-over-womens-issues/.

56 'The Taliban Beat Barbers for Cutting Men's Beard', *8am,* 2022, https://8am.media/eng/taliban-fighters-beat-up-barbers-close-their-shops-in-ghazni/.

Outcomes of One Year of Taliban Rule for Minorities

Exclusion of minority groups from the state

The Taliban's interim cabinet is currently a male-exclusive one. Except for two Tajiks, other minority groups, including women, have been excluded. Power-holders belong only to two factions—affiliates of Mullah Ghani Baradar and the Haqqani Network. Both are of Pashtun ethnicity and for the last two decades have been fighting against the former government and its allies, the US-NATO.[57] Among the senior figures of the Taliban cabinet, affiliates of the Haqqani Network are those behind the most violent attacks on ethnic and religious minority groups. The current leader of the Haqqani Network, Sirajuddin Haqqani, who was earlier the most wanted person by the US State Department, is now the acting interior minister of the Taliban government.[58] Also, Mullah Hassan Akhund, who is on the UN sanctions list, is the acting prime minister.[59]

Apart from the exclusion of minorities from the cabinet, the Taliban has also started ethnic and religious cleansing in public administration to make sure their trusted persons were assigned to higher positions across the country and also for rewarding their affiliates who had fought against the former government. They have also been selectively expelling technical and professionals who belong to other ethnic groups from various departments of the government and designating the positions to their affiliates. In September 2021, they ousted 150 employees from the Education Department of the Lugar province.[60] The head of the Taliban Press

57 Khudai Noor Nasar, 'Afghanistan: Taliban Leaders in Bust-up at Presidential Palace, Sources Say', *BBC News,* September 15, 2021, https://www.bbc.com/news/world-asia-58560923.

58 'Taliban's Most Wanted Mostly in Plain Sight', *VOA,* May 18, 2022, https://www.voanews.com/a/taliban-s-most-wanted-mostly-in-plain-sight/6579407.html.

59 'Taliban Announces New Government in Afghanistan', *Al Jazeera,* September 7, 2021, https://www.aljazeera.com/news/2021/9/7/taliban-announce-acting-ministers-of-new-government.

60 'Appointments in the Directorate of Education in Logar; The Seats of 150 Professional Employees Have Been Assigned to the Taliban', *8am,* 2022, https://8am.af/appointments-in-the-logar-department-of-education/?fbclid=IwAR

Department fired 46 employees of Tajik and Hazara origin from a governmental television channel.[61] In March 2022, the head of the Agriculture Department in Daikundi province expelled 15 Hazara employees.[62] Another 15 Hazaras were replaced by Pashtun ethnics in the National Statistic and Information Authority (NSIA) in January 2022.[63] Also, the Taliban treats employees of other ethnicities inhumanely at the workplace. Four Taliban affiliates beat a traffic official, who was a Dari speaker, in Samangan province in September 2022. They then cut his ear with a machete because he had stopped a Taliban car in a traffic jam.[64]

Forced displacement

In 2021, around 665,000 people were displaced in the country—driven by drought, internal conflict, and economic hardships.[65] But since the Taliban takeover, the major reason behind the displacement of people belonging to minority groups has been forced eviction. The Taliban have forcibly displaced residents of several provinces to distribute lands to their supporters.[66] The targets of such collective evictions have primarily been the ethno-religious minorities of Hazara and Panjshiri people of Tajik ethnicity.

From mid-August till mid-October 2021, the Taliban selectively forced residents belonging to the Hazara community in the provinces of Helmand, Balkh, Kandahar, Daikundi, and Uruzgan to leave their homes, lands, and farms. Evictions were carried out

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2LeBPFZmcp5f2DNcjQLOPK5uWB4XgqP52c6UwFmgW2f6wQEpBgzsSE0Ls.

61 'Tens of Employees of Volsi Jirga TV Channel Has Been Fired', Voice of Afghanistan, 2022, https://bit.ly/3RChTUW.

62 'Taliban and Ethnic Cleansing in Government Offices in Daikundi; From Reducing the Salary of Employees to Their Dismissal', *Memar Wahdat Newspaper,* 2022, https://memaarpress.com/%D8%A8%D8%A7%DB%8C%DA%AF%D8%A7%D9%86%DB%8C/29495 .

63 'The Taliban Fired 15 Employees of Electronic Identity Card Distribution Centers in Kabul', *Shafaqna,* 2022, https://af.shafaqna.com/FA/497010.

64 Viewer discretion advised while opening the link provided here; 'Taliban Cut Off the Ear of a Samangan Traffic Official in Public', *8am,* September 9, 2022, https://www.facebook.com/8am.media/videos/1135845827279503/.

65 'Afghanistan: Taliban Forcibly Evict Minority Shia', *Human Rights Watch,* October 22, 2021, https://www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia.

66 Human Rights Watch, 'Afghanistan: Taliban Forcibly Evict Minority Shia'.

with the threat of violence and without any legal process. Residents from the Hazara community of the Mazar-e Sharif's Qubat al-Islam district in Balkh province were given only a few days to leave their homes. In a similar case, the Taliban ordered the eviction of 400 families from the Hazara community in Mish district of Helmand province—giving them so little time they could neither take their belongings nor harvest their crops. The largest forced displacement took place in the Uruzgan and Daikundi provinces where around 2800 Hazara residents were forcibly evicted.[67] In all of the cases, victims were not provided the right to challenge the evictions. In any case, those who have resisted the Taliban invasion have been severely punished.[68]

The Panjshiri people of Tajik ethnicity have been one of the primary victims of forced displacements due to the mobilisation of the National Resistance Front (NRF) against the Taliban in Panjshir province. The Taliban have treated Tajiks, mainly Panjshir civilians, inhumanely, and have forced them to evacuate their homes in Takhar, Baghlan, and Panjshir provinces. They use such tactics against civilians to suppress the military opposition. Recently in May 2022, the Taliban evicted 40 families in Pul-e-Hesar district of Baghlan province and established their military bases in the evacuated houses.[69] Also, they conducted forced collective expulsions of residents in the Parian district of Panjshir province[70] and threatened civilians of another district, Abdullah Khil, with expulsion from their homes unless the residents were able to persuade the anti-Taliban militants to surrender.[71] NRF conducts activities and movements in all of the above-mentioned provinces.

67 Ibid.

68 Ibid.

69 Amin Kawa, 'Forced Displacement in Andarab; A Taliban Affiliates: I will fire directly to your mouth', *8am*, 2022, https://8am.media/forced-migration-from-andarab-a-student-i-will-hit-you-in-the-mouth-with-a-bullet/.

70 'Taliban Have Forcibly Displaced Several Families in Panjshir', *Etilaatroz,* 2022, http://bit.ly/3HaHAap .

71 'Taliban Warning to the Residents of Abdullah Khel Panjshir to Either Hand over Resistant or Move', *AriaPress, 2022,* https://bit.ly/3jDhYuY.

Forced redress of past disputes

The Taliban has begun to enforce redress for past disputes, even for those from decades earlier and even if most had already been resolved. They forced a minority group to compensate for the losses of another group backed by the current regime. After the Taliban takeover, Kochi nomads, who are of Pashtun ethnicity but deemed as minorities due to their distinct traditional way of living,[72] gained power and began claims for redressal in past disputes with Hazaras they had lost, in several provinces. The decisions for redressal were taken by the Taliban without legal process—with no regard to court jurisdiction or sufficient evidence to support claims.[73]

In August 2022, the Taliban ordered Hazara ethnics of Sang Takht district in Daikundi province to pay AFN 2.5 million (ca. USD 27,000) and an AK-47 rifle as ransom for the alleged murder of a Kochi shepherd 30 years earlier.[74] In another case, the Taliban ordered Hazaras from Navor district of Ghazni province to pay PKR 11 million (ca. USD 62,000) for the alleged murder of a Kochi in a case that was 20 years old. Despite the humanitarian crisis and poverty prevalent in the district, the Hazaras have been able to

72 'Afghanistan: Kuchis', World Directory of Minorities and Indigenous Peoples, Minority Rights Group International, https://minorityrights.org/minorities/kuchis/.

73 'Taliban Have Taken a Number of Residents of Naver District of Ghazni as Hostages Due to Non-Payment of Ransom to the Nomads', *8am*, 2022, https://bit.ly/3WK2bIm.

74 'In Daikundi, the Taliban Decided Ransom of Alleged Murder of a Kuchi Shepherd to Be 2.5 Million Afghanis', *8am*, 2022, https://bit.ly/3XEHtuR.

pay half of the stipulated amount till August 2022. Yet, the Taliban have taken hostage nine residents belonging to the Hazaras from nine villages from the district to force the Hazara community to pay the rest.[75]

It is not only Kochi nomads who have made such claims but other Pashtun groups have also received forced ransoms from Hazaras. In September 2022, the Taliban ordered Hazaras living in the Malistan district of Ghazni province to compensate USD 28,000 for an undocumented claim of the loss of 700 sheep of a Pashtun shepherd 34 years ago.[76]

At the same time, the Taliban overlook armed attacks, plunders, and murders committed by Kochi nomads. During the previous government's rule, Hazaras in the central provinces suffered repeated attacks by Kochi nomads on their lands.[77] However, the situation used to be handled by the council with the mediation of the government. But now, under the reign of the Taliban, Kochi nomads are in an exalted position compared to the local populations. They attacked the Hazaras of Miramor district in Daikundi province for plunder in late August 2022.[78] They were all armed with guns although the Taliban conducts door-to-door inspections to disarm people across the country.[79] In another case, armed Kochi nomads killed two Tajik ethnics in the Takhar province during a brawl caused by the forced eviction of 100 local families from their homes in September 2022.[80]

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75 'Taliban Have Arrested Nine People in Naver Ghazni', *Etilaatroz,* 2022, http://bit.ly/3wusUxR.

76 'The Pashtun Man Received Compensation Equal to 27,000 Dollars from Hazaras', *The Independent Persian,* 2022, https://www.facebook.com/indypersian/photos/a.2118183315148154/3002321703400973/?type=3.

77 Fabrizio Foschini, *The Kuchi-Hazara Conflict, Again* (Afghanistan Analysts Network, 2010), https://www.afghanistan-analysts.org/wp-content/uploads/wp-post-to-pdf-cache/1/the-kuchi-hazara-conflict-again.pdf.

78 'Kuches Attacked Residents of Miramore District of Daikundi', *8am,* 2022, https://8am.media/a-local-resident-was-killed-and-a-taliban-was-injured-in-the-attack-of-the-nomads-on-the-miramor-daikandi-district/.

79 'Taliban Resumes House-to-House Search Operations in Kabul, 150 Panjshiri Residents Arrested', *8am,* 2022, https://8am.media/eng/taliban-resumes-house-to-house-search-operations-in-kabul-150-panjshiri-residents-arrested/.

80 'Kuches Have Killed Two Local Residents and Displaced Dozens of Families in Takhar', *Etilaatroz,* 2022, http://bit.ly/3javUMT.

Extrajudicial killings and war crimes

The Taliban are carrying out extrajudicial killings and war crimes in an attempt to suppress armed rebellions. After the fall of Kabul, some Hazaras but primarily Panjshiri people of Tajik ethnicity resisted the Taliban government. Based on a report by the United Nations Assistance Mission in Afghanistan (UNAMA), the Taliban authorities are accused of committing a total of 237 extrajudicial killings during the 10 months since August 2021.[81] Eighteen of the reported victims were Tajik affiliates of the NRF.

The number of extrajudicial executions of Tajiks by the Taliban has surged due to the severe resistance by people belonging to this minority group in Panjshir province. In September 2022, three videos were circulated on social media showing the Taliban shooting NRF war prisoners. The Taliban also committed war crimes on arrested NRF members from the Hazara community who were under the command of Mawlavi Mahdi Mujahid, a former commander of the Taliban, in Sar-e-Pol province.[82] The Taliban carried out massive executions during the three days of the war in the Balkhab district of the province.[83]

Genocide of the Hazara

Since the fall of Kabul to the Taliban, the Hazara ethno-religious minority, who are Shia Muslims, are facing increasing attacks by the Taliban and the Islamic State of Khorasan (ISK).[84] In April 2022, British parliamentarians released a research report, stating

81 United Nations Assistance Mission in Afghanistan (UNAMA), *Human Rights in Afghanistan: 15 August 2021-15 June 2022* (UNAMA, 2022), https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf.

82 Ayaz Gul, 'Taliban's Alleged Extrajudicial Killings in Afghan District Worry UN, Rights Groups', *VOA,* June 27, 2022, https://www.voanews.com/a/taliban-s-alleged-extrajudicial-killings-in-afghan-district-worry-un-rights-groups-/6635218.html.

83 'The Taliban Say They Have Killed Their Disgruntled Commander Mawlavi Mahdi', *BBC News Persian,* August 17, 2022, https://www.bbc.com/persian/articles/cyjm908z0ypo.

84 The Islamic State – Khorasan Province (IS-K) is an affiliate of the Daesh militant group. ISK is allegedly active in Afghanistan, Pakistan, and Tajikistan where they claimed attacks.

that Hazaras are at a risk of genocide under the Taliban.[85] Their places of worship, schools, workplaces, and educational centres are not safe. Since August 2021, Human Rights Watch has recorded 16 deadly attacks against this minority group, killing and injuring around 700 people.[86]

Incidents of torture, detentions, killings, marginalisation, and discrimination against Hazaras have been going on historically. Hazaras suffered severe political, social and economic repression from 1890 to 1893 in Afghanistan, culminating 'in a state-backed declaration of *jihad* or holy war against this minority group'.[87] The result was a genocide in which thousands were killed (reportedly 62 per cent of the total population). And, in 1998, the Hazaras were massacred by the Taliban in Mazar-e-Sharif. Given this context, the targeting of the Hazara community by the current Taliban regime is raising grave concerns.

In April 2022, a bomb planted by the ISK in a mosque belonging to Hazaras in the Balkh province killed and injured more than 120 people.[88] The Taliban killed six members of a Hazara family—including a woman and a six-year-old girl—during a night raid in Ghor province in June 2022.[89] And the recent attack on the Kaj Education Centre, located in western Kabul, in September 2021 killed 35 and injured 82 teenagers of this minority group.[90] The

85 Ewelina U. Ochab, 'The Hazara Community at Risk of Genocide in Afghanistan', *Forbes,* September 6, 2022, https://www.forbes.com/sites/ewelinaochab/2022/09/06/the-hazara-community-at-risk-of-genocide-in-afghanistan/?sh=5e26ce55412e.

86 'Afghanistan: ISIS Group Targets Religious Minorities', *Human Rights Watch,* September 6, 2022, https://www.hrw.org/news/2022/09/06/afghanistan-isis-group-targets-religious-minorities.

87 'Afghanistan: Hazaras', World Directory of Minorities and Indigenous Peoples, Minority Rights Group International, https://minorityrights.org/minorities/hazaras/.

88 'The Bloody ISIS Attack on the Shiite Mosque in Balkh and the Attacks in Three Other Provinces Left Dozens Dead and Wounded', *BBC News Persian,* April 21, 2022, https://www.bbc.com/persian/afghanistan-61174799.

89 'Afghanistan: Taliban Torture and Execute Hazaras in Targeted Attack – New Investigation', *Amnesty International,* September 15, 2022, https://www.amnesty.org/en/latest/news/2022/09/afghanistan-taliban-torture-and-execute-hazaras-in-targeted-attack-new-investigation/.

90 'Increase in the Number of Victims of the Attack on the Kaj Education Center', *BBC News Persian,* September 30, 2022, https://www.facebook.com/

education centre was also the target of a bomb explosion back in August 2018 which had killed 48 and injured 67 high school students of Hazara ethnicity.[91]

Violation of the rights of women and girls

Since August 2021, violence against women and girls has escalated. Despite the initial promises by the Taliban in their first press conference,[92] women and girls have been increasingly subjected to violence. There is arguably no minority group more affected by Taliban's restriction of freedoms and its violations of fundamental rights than women and girls. The 2004 Constitution and the EVAW Law that had been enacted to protect women's rights were dissolved. Institutions including MOWA, women's shelters, and AIHRC were dismantled. The specific division in the SC for addressing violence against women is no longer operating.[93]

The Taliban have systematically excluded women from the state structure.[94] Women hold no seats in the cabinet.[95] Their right to political participation is non-existent under the Taliban.[96] They are not permitted to work in the administration. Female employees of the former government have been instructed to send a male family-member to work in their place.[97] Women judges are being dismissed for not observing *hijab* and more conspicuously for allegedly not having knowledge of Sharia law.[98] Women are only

bbcpersian/photos/a.10150584966992713/10160243179462713/?type=3.

91 'Kabul Suicide Bomber Kills 48 in Tuition Centre Attack', *BBC World News,* August 15, 2018, https://www.bbc.com/news/world-asia-45199904.

92 'Transcript of Taliban's First News Conference in Kabul', *Al Jazeera,* August 17, 2021, https://www.aljazeera.com/news/2021/8/17/transcript-of-talibans-first-press-conference-in-kabul.

93 Jurist, 'Afghanistan Dispatches: "Now There Are No Clients for Lawyers"'.

94 'In Focus: Women in Afghanistan One Year After the Taliban Takeover', *UN Women,* August 15, 2022, https://www.unwomen.org/en/news-stories/in-focus/2022/08/in-focus-women-in-afghanistan-one-year-after-the-taliban-takeover.

95 Pal, 'Taliban Replaces Women's Ministry with Ministry of Virtue and Vice'.

96 UN Women, 'Women in Afghanistan One Year after the Taliban Takeover'.

97 Ibrahim Mahdi, 'Do the Taliban Appoint Men from Their Families Instead of Female Employees?', *Deutsche Welle Dari,* 2022, http://bit.ly/3H72ibf.

98 'Ebrahimi: "Lack of Understanding and Non-Observance of Hijab" by Female Judges Prevents Them from Appearing in Court', *8am,* 2022, https://8am.media/ebrahimi-lack-of-understanding-and-non-observance-of-

allowed to work in public healthcare and in primary girls' schools. But they are repeatedly pestered by representatives of the Ministry of Vice and Virtue for the observation of *hijab* by both healthcare employees and patients.[99]

The Taliban have forbidden girls from attending school beyond Grade Six. The Taliban's Ministry of Education justifies restrictions on girls with the argument of deference to the cultural and social norms in the country, saying that people do not want their female children to attend schools.[100] Public universities have reopened but under the condition that gender segregation is enforced.[101] Women and girls are forced to cover their faces in public. Those who disobey are beaten by a whip.[102] In universities, girls are threatened with rifles to wear masks and cover their faces.[103] The Taliban have instructed women and girls to stay at home except when necessary. They are prohibited to travel long distances without a male chaperone. Women not wearing a *hijab* are denied access to essential services in the administration.[104]

The situation of women and girls is such that they are not safe anywhere, deterring them from participating in public life and compelling them to stay in hiding. The Taliban shot a former government employee who had worked in the women's prison of Ghazni province in September 2022.[105] In the same month, the Taliban killed four women in Helmand province during a house

hijab-by-female-judges-prevents-them-from-appearing-in-court/.

99 'Female Doctors Strike in Badakhshan', *BBC News Dari,* 2022, https://www.facebook.com/bbcpersian/posts/10160177658062713.

100 'The Taliban Ministry of Education: Ask People Whether They Want Their Daughters to Attend School', *BBC News Dari,* 2022, https://www.facebook.com/bbcpersian/posts/10160206840462713.

101 'Afghan Public Universities Reopen with Gender Segregated Classes', *Al Jazeera,* February 26, 2022, https://www.aljazeera.com/news/2022/2/26/afghan-main-universities-reopen-but-few-women-return.

102 Viewer discretion is advised while accessing the video provided here; 'Taliban Whips a Girl', Facebook, September 17, 2022, https://www.facebook.com/arifa.fatimi.7/posts/623572719136991.

103 'Banning Girls without a Niqab from Entering Balkh University', *BBC News Dari,* 2022, https://www.facebook.com/bbcdari/videos/629163868593714/.

104 UN Women, 'Women in Afghanistan One Year after the Taliban Takeover'.

105 'The Taliban Shot a Former Employee of the Women's Department of Ghazni Prison', *8am,* 2022, https://8am.media/eng/former-employee-of-ghazni-prisons-women-department-shot-dead-by-taliban/.

search.[106] A Taliban official raped a woman in Takhar province in August 2022.[107] And another Taliban official confessed, in the same month, to forcing a girl into marriage.[108]

In such a dire situation, Afghan women and girls are in need of access to coordinated and comprehensive social, psychological, and health services even local humanitarian service providers are reporting threats to their lives and safety.[109] Women CSAs began protests right after the fall of Kabul. But the Taliban have been subjecting them to harassment, abuse, beatings, detentions, enforced disappearances, torture, and ill-treatment.[110]

Humanitarian crisis

Since the Taliban takeover of Afghanistan, the country has been facing a deadly humanitarian crisis. The entire population is suffering from malnutrition. 95 per cent of the population are lacking sufficient food consumption. A further 55 per cent are at an emergency level of food insecurity.[111] Humanitarian organisations have been repeatedly warning about the worsening of the humanitarian crisis in Afghanistan that could lead to death by starvation of a large percentage of the population and worsen the situation of child labour and child marriage.[112]

According to a United Nations High Commissioner for Refugees

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106 'The Taliban Killed Four Women and Wounded Four Others during House Search in Helmand', *8am,* 2022, https://bit.ly/3Jhvu1L.

107 'A Taliban Commander Has Raped a Woman in Takhar', *8am,* 2022, https://8am.media/eng/taliban-commander-rapes-a-women-in-takhar-province/.

108 "'Forced Marriage" and Torture of Elaha by a Member of the Taliban; Saeed Khosti Confessed Marriage, Denied Torture', *Etilaatroz,* 2022, https://www.etilaatroz.com/152985/?fbclid=IwAR0t2QCIA-xfmhjqAVE8PWyu8HGjRa4ee9rKIvcMZp0h5Jwcm5gYX0IlwLU.

109 United Nations Women, *Women's Rights in Afghanistan: Where Are We Now?* (UN, 2021), https://www.unwomen.org/sites/default/files/2021-12/Gender-alert-Womens-rights-in-Afghanistan-en.pdf.

110 Amnesty International, *Death in Slow Motion: Women and Girls Under Taliban Rule* (London: Amnesty International, 2022), https://www.amnesty.org/en/documents/ASA11/5685/2022/en/.

111 'Afghanistan: Economic Roots of the Humanitarian Crisis', *Human Rights Watch,* March 1, 2022, https://www.hrw.org/news/2022/03/01/afghanistan-economic-roots-humanitarian-crisis.

112 Human Rights Watch, 'Afghanistan: Economic Roots of the Humanitarian Crisis'.

(UNHCR) report, 24 million Afghans are in dire need of immediate humanitarian assistance. Among them, 5.7 million displaced people, primarily due to conflict, are facing the worst conditions of living.[113] They do not have access to healthcare services. Their children have not eaten anything but bread for months. And, having sufficient food to eat three times a day has become a dream for them. [114]

Women and girls have been disproportionately affected by the humanitarian crisis in Afghanistan because they face greater obstacles to obtaining food, access to healthcare and financial resources. Policies enforced by the Taliban that restrict women's public participation, make them stay at home, and violate their right to work have impacted households in which women are the only breadwinners in a devastating manner.[115] Nearly all of the female employees of the former government that the Taliban ousted are facing poor living conditions. Even in the sectors of education and healthcare, where women are allowed to work, the various restrictions imposed by the Taliban have rendered women's involvement difficult.[116]

Conclusion

The fall of Kabul to the Taliban was a monumental setback for the protection and promotion of minority rights in Afghanistan. The Taliban government does not have any regard for international human rights standards and norms. They plan to implement Sharia Law but do not, as yet, have a clear definition of it. There are also no clear policies for human rights protection under Taliban rule. Minority groups are just trying to survive. Their identity, culture, and religion are being attacked and eroded. Their very existence is under threat. The Taliban government has shown complete inability to protect them against deadly attacks.

113 'Afghanistan Emergency', United Nations High Commissioner for Refugees, https://www.unhcr.org/afghanistan-emergency.html.

114 Human Rights Watch, 'Afghanistan: Economic Roots of the Humanitarian Crisis'.

115 Human Rights Watch, 'Afghanistan: Economic Roots of the Humanitarian Crisis'.

116 WFP, 'Afghanistan: Food Security Update', 2022.

Alongside other terrorist groups, the Taliban government itself is accused of committing war crimes, genocide, extrajudicial executions, arbitrary detentions, torture, and forced evictions of minority groups. Discrimination against minorities on the basis of ethnicity and religion is mounting. Ethnic cleansing in public administration by the Taliban has reached a peak and women have been completely marginalised. Protection of the rights of minority groups under Taliban rule appears inconceivable at present.

Recommendations

Under international human rights law, all States parties are required to comply with international norms and standards to protect and promote human rights in their territories. Afghanistan has signed, ratified, and acceded to several international treaties on human rights. Though the Taliban government is not recognised by the UN—it is obligated to comply with international human rights law norms and standards as are all future governments.

To the Taliban government

- Abide by all international human rights obligations of Afghanistan;
- Present a specific interpretation of domestic laws on the protection of the rights of minority groups, women and those belonging to the LGBTIQA+ community;
- Ensure equality of all Afghan citizens including those belonging to the LGBTIQA+ community;
- Create an inclusive government reflecting the representation of all minority groups and women in government bodies;
- Criminalise all forms of violations of the rights of minority groups;
- Prosecute arbitrary detentions, extrajudicial killings, torture, forced displacements, forced redress of past disputes, and discrimination on the bases of ethnicity, language, and religion;
- Establish an effective judicial system to address the cases of minority rights violations;

- Ensure access of minorities to public services including healthcare and humanitarian assistance;
- Respect women's rights to education, to work, their presence in public places, as well as their participation in civil, political, and economic life;
- Resume secondary schools for girls;
- Protect HRDs, CSAs, and related organisations from harassment and attacks;
- Address effectively the current humanitarian crisis to prevent forced marriages, child marriages, child labour, and preventable deaths of people; and
- Ensure freedom of expression and allow the media to document human rights violations.

To the international community

- Intensify pressure on the Taliban to abide by international human rights obligations and to establish an inclusive government;
- Put concrete efforts into advocating for minority, women's, and LGBTIQA+ rights;
- Scale up funding opportunities for civil society and human rights organisations in Afghanistan to continue their work; and
- Provide political support to initiatives that address human rights violations in Afghanistan.

International Human Rights Obligations and Their Implications for Minorities: A Study on Bangladesh

Zakir Hossain and Santa Islam

Background

Although there is no constitutional recognition of 'minorities' as such, Bangladesh has a constitutional mandate of equal treatment under the law for all its citizens.[1] The culture of denial regarding the presence of minorities is so deeply rooted in Bangladesh that minority communities experience multiple forms of violence, which can be broadly categorised as political and social discrimination, legal oppression, cultural and religious suppression, organised mass torture, etc. In recent times, the government of Bangladesh has drawn criticism for its continuing effort to impose a monolithic nationalism. In July 2022, the country's Ministry of Information and Broadcasting issued a directive to 35 television channels asking them not to use the word Adivasi (indigenous people), referring to a provision of the constitution added through the 15th amendment in 2011.[2] Further, the latest national census of the country shows that only 1 per cent of its population belongs to ethnic minority groups, which has raised doubts about its credibility.

1 Gobinda Mandal, 'Rights of the Minorities: The Case of Bangladesh', accessed September 3, 2022, https://www.academia.edu/839044/Rights_of_the_Minorities_The_Case_of_Bangladesh.

2 'Bangladesh Government Instructs TV Channels Not to Use the Word "Indigenous" When Referring to Ethnic Tribes', Global Voices, August 9, 2022, https://globalvoices.org/2022/08/09/bangladesh-government-instructs-tv-channels-not-to-use-the-word-indigenous-when-referring-to-ethnic-tribes/.

The country is a party to almost all international core human rights treaties. Therefore, it has both national and international obligations to protect minorities along with all other citizens. However, in recent decades, the country has witnessed an upsurge in violence against minorities and subsequent forced displacement. This has jeopardised the country's pluralist and secular credentials.

In this context, this chapter examines the status of minorities living in Bangladesh, their alleged gradual decline in number and social status, national and international commitments for the protection of minorities and, finally, provides some few suggestions to improve the situation.

Objectives

The broad objective of this study is to analyse the status of minorities in Bangladesh vis-à-vis international human rights standards. More specifically, the study aims to:

- explore the overall situation of minorities in Bangladesh,
- analyse the country's national and international obligations relating to minorities,
- examine the effectiveness of the institutional frameworks available in the country, and
- recommend possible measures to protect and promote minority rights.

Methodology

This study utilises both primary and secondary sources. Primary sources are original accounts of history, events or topics; they include laws, conventions, and decisions of the courts, government documents, speeches, photographs, video footage, survey reports and news articles.

Secondary literature has been a major source in the preparation of this report. These sources interpret, analyse, and critique the primary sources; for example, books, scholarly articles, journals, maps, law reviews, legal analysis, analytical news reports, criticism, and commentaries have been used.

International Human Rights Treaties: Their Development and Protection of Minority Rights

With the establishment of nation-states in the 18th and 19th centuries, initiatives by non-dominant groups to sustain their cultural, religious or ethnic distinctiveness came into being. A number of 'minority treaties' were adopted by the League of Nations, which marked the beginning of the recognition and protection of minority rights under international law. The successor entity, the UN, has gradually developed a number of norms, practices and mechanisms pertaining to minorities.[3]

Table 1: Bangladesh's adoption status of core human rights treaties

Treaty	Adoption Date (Ratification [r] and Accession [a])
Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	11 June 1979 (a)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	6 November 1984 (a)
Convention on the Rights of the Child (CRC)	3 August 1990 (r)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	5 October 1998 (a)
Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	5 October 1998 (a)
International Covenant on Civil and Political Rights (ICCPR)	6 September 2000 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	30 November 2007 (r)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	24 August 2011 (r)

Source: 'Reporting Status for Bangladesh', UN Treaty Body Database, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=BGD&Lang=EN.

3 United Nations High Commissioner for Refugees, *Minority Rights: International Standards and Guidance for Implementation* (United Nations, 2010), https://www.refworld.org/docid/4db80ca52.html.

From these, Bangladesh has a prodigious list of international human rights obligations with the country having adopted eight core human rights treaties of the UN. It acceded to the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1979, which marked the first human rights treaty adopted by the country. After that, Bangladesh has adopted every core human rights treaty except the Convention for the Protection of All Persons from Enforced Disappearance (CPPED) (Table 1). All rights accorded to those residing within the state's territorial authority are also applicable to minorities with some treaties according special protection and promotion to minorities.

Bangladesh has also adopted two Optional Protocols namely the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of child prostitution and child pornography.

Table 2: Bangladesh's last periodic reports

Treaty	Date of last report	Reporting cycle
CRPD	2022	I
CAT	2019	I
ICESCR	2018	I
ICCPR	2017	I
ICMW	2017	I
CEDAW	2016	VIII
CRC	2015	V
ICERD	2001	VII-XI

Source: OHCHR, 'Reporting Status for Bangladesh'.

Monitoring mechanism

With the adoption of various human rights treaties, obligations arise wherein member states have to comply with not only the principles propagated by the treaties but also procedural requirements. Member states are required to submit periodic reports to the committees which keep track of how state parties are upholding their commitments to human rights provisions of that

particular treaty. Bangladesh has submitted at least one periodic report to each of the committees of the treaties it has adopted although it has not always been punctual in keeping up with its reporting obligations. There have been complaints of delays in submissions of the reports and even when submitted, they are criticised for their generic discussions and ignoring the progress it has made vis-à-vis previous recommendations. Regardless, the dates and reporting cycles of its last periodic report to each of the treaties it has adopted has been provided in Table 2.

Universal Periodic Review mechanism

In last three cycles the Government of Bangladesh has received a total of 588 recommendations out of which 31 is directly concerned to minority rights. Currently, the country is waiting to be reviewed under fourth cycle. As a state driven process, the primary responsibility of the implementation relies on the state itself. The GoB has expressed its commitment towards achieving the targets of the Sustainable Development Goals (SDGs) by 2030. It is to be noted that the promotion and protection of human rights and the implementation of the 2030 agenda are interrelated and mutually reinforcing as already expressed by the Human Rights Council (HRC).[4]

In 2018 under the 13th session of working group on the UPR, the national report of the GoB announced its commitment to protect and promote the rights of the religious and ethnic minorities in the country. The GoB has also declared their 'zero tolerance' policy to any form of violence against religious minorities under any pretext. Again, the country has been vocal about the human rights situation of Myanmar; especially, regarding the protection of the rights of the Rohingya Muslims.

However, in contrary to the government's submission, the stakeholders' reports show multiple incidences of high-level human rights violations against religious and ethnic minorities which were silenced.[5]

4 Tamanna Hoq Riti, 'Time to Act', *Dhaka Tribune,* February 5, 2020, https://archive.dhakatribune.com/opinion/op-ed/2020/02/05/time-to-act.

5 Compilation on Bangladesh, Report of the Office of the United Nations High

Special Procedures

The Special Procedures indicates to independent human rights experts with mandates to investigate, report and advise on human rights from a thematic or country-specific perspective.[6] They can be an individual referring to a 'Special Rapporteur' or an 'Independent Expert' or a working group. Following a visit to Bangladesh in 2015, Heiner Bielefeldt, the-then UN Special Rapporteur on Freedom of Religion or Belief, provided a number of recommendations to protect religious, ethnic and sexual minorities, which included professional journalism and representations of minorities in public spheres.[7] He emphasised the politicisation and abuse of religion as one of the root causes endangering the country's religious harmony.

Though Bangladesh has not issued a standing invitation to Special Procedures mandate-holders, the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally paid a visit to Bangladesh from October 31 to November 9, 2022. In her preliminary observations opined that the prevalence of discrimination and violence against LGBT persons increases risks of trafficking for purposes of sexual exploitation, and limited assistance or protection is provided. She added that Rohingya girls and young women are particularly at risk of trafficking for purposes of child and forced marriage.[8] She called for urgent actions to prevent trafficking.

Gradual Transition of International Commitments into National Legislation

International law, or to be specific, customary international law and the law of treaties do not prescribe how international

Commissioner for Human Rights, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/067/24/PDF/G1806724.pdf?OpenElement.

6 'UPR and Special Procedures', UPR Info, https://www.upr-info.org/en/upr-process/upr-and-other-human-rights-mechanisms/upr-and-special-procedures.

7 'Preliminary Findings of Country Visit to Bangladesh by Heiner Bielefeldt, Special Rapporteur on Freedom of Religion or Belief', OHCHR, accessed September 10, 2022, https://www.ohchr.org/en/statements/2015/09/preliminary-findings-country-visit-bangladesh-heiner-bielefeldt-special.

8 'Bangladesh: Protect Victims of Trafficking, Especially Within The Country, says UN Expert', Reliefweb, November 9, 2022, https://reliefweb.int/report/bangladesh/bangladesh-protect-victims-trafficking-especially-within-country-says-un-expert.

commitments should be incorporated at the national level. In 1971, when the Proclamation of Independence laid the foundation for its constitution, it expressed the interest of the nation in submitting to international law obligations. It declared that elected representatives of the people of Bangladesh would undertake to observe and give effect to all duties and obligations that devolved upon the country as a member of the family of nations and to abide by the Charter of the UN. The preamble declares that the state has a duty to make 'full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind', which is indicative of international law.[9]

The Constitution of Bangladesh did not alter the practice regarding international law that prevailed before independence and provided for the continued operation of the 'law in force' immediately preceding its promulgation. Article 149 of the constitution states that 'Subject to the provisions of this Constitution all existing laws shall continue to have an effect but may be amended or repealed by law made under this constitution'.[10] The purpose of Article 149 is to maintain the continuity of pre-existing laws even after the promulgation of the constitution until they are altered, repealed or amended, provided such laws do not contravene other provisions of the constitution.

Article 25 of the constitution contains certain basic principles of customary international law as a fundamental principle of state policy. It provides that Bangladesh shall base its international relations on the principle of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes and respect for international law, and the principles enunciated in the UN Charter. Article 8(2) declares that the Fundamental Principles of State Policies shall be applied in the making of laws and shall be a guide to the interpretation of the constitution and of the other laws but Fundamental Principles are not judicially enforceable. Therefore,

9 Christine Richardson and Md. Mostafa Hosain, 'Application of International Law in Bangladesh: An Analysis of the Supreme Court Judgments', *Jagannath University Journal of Law* 1, (2015): 1–18.

10 The Constitution of the People's Republic of Bangladesh, 1972.

it is largely at the courts' discretion to decide how it wants to reconcile with international law.

The general perception of the court is expressed through different judicial decisions. In the case of Bangladesh v. Sombon Asavhan (1980), the Appellate Division of the Supreme Court of the country held that, 'It is well settled that where there is municipal law on an international subject the national Court's function is to enforce the municipal law within the plain meaning of the statute'.[11] Again, on a separate issue, in the case of Ershad v. Bangladesh and ors, (2001), Justice B.B. Roy Chowdhury clarified and specified the approach of Bangladesh to applying international treaties in deciding cases. The clarification states, 'Although universal human rights norms, whether given in the UDHR or in the Covenants, are not directly enforceable in national Courts' they are enforceable by domestic Courts if such norms are incorporated into the domestic law'.[12]

Minorities in National Law

According to Article 31 of the Constitution, every citizen of Bangladesh is afforded equal treatment and protection of the law. The Constitution of Bangladesh does not recognise any minority and, therefore, does not allow any special protection or promotion for them. However, the equality clauses lose their appeal when examined through the lens of the gradual Islamisation of the Constitution, having moved away from its secular beginnings.

Article 11 of the constitution states that 'The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed'. Article 28(1) reiterates, 'The State shall not discriminate against any citizen on grounds of religion, race, caste, sex or place of birth'. Under this Article, the state is under obligation not to make an adverse distinction with regard to or distinguishing unfavourably from others.

These commitments are become equivocal when read with Article 2A which states, 'The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in

11 Richardson and Hosain, 'Application of International Law in Bangladesh'.
12 Richardson and Hosain, 'Application of International Law in Bangladesh'.

the practice of the Hindu, Buddhist, Christian and other religions'. Under Article 23, the state is obliged to adopt measures to conserve the cultural traditions and heritage of the people. The same Article ensures the opportunity for people to contribute to and participate in the enrichment of the national culture.

By 'national culture', the text refers to the dominant Bangalee Muslim culture. Consequently, other religious or ethnic minorities can never think that this is to foster and improve the language, literature or arts of their own. No major public step has yet been taken to conserve and protect the cultural traditions and heritage of the minorities of Bangladesh.

Article 6 states that 'the people of Bangladesh shall be known as Bangalees as a nation and citizens of Bangladesh shall be known as Bangladeshies'. Though Article 23A acknowledges the presence of communities other than Bangalees in the land, it underlines that the distinctive cultures of these communities fall outside the 'national culture' (as defined in line with Bangalee nationalism) and the state has the constitutional obligation to promote the 'national culture' under Article 23. The constitution starts in a traditional Islamic way with 'Bismillah-Ar-Rahman-Ar-Rahim', which is translated in the constitution both literally and thematically as 'In the name of Allah, the Beneficent, the Merciful' and also as 'In the name of the Creator, the Merciful'. At the same time, secularism is listed in the preamble as one of the four high ideals that inspired the liberation

movement and have now been granted the status of 'fundamental principles of the Constitution'.[13]

Religious extremism and protection of law

There have been repeated complaints of social exploitation and discrimination based on religious affiliation, belief or practice with statistics suggesting that such incidents have experienced an upward wave over the past two decades. In addition to regular attacks on Hindu, Christian and Buddhist communities, the risk is now spreading to Muslim inter-sect communities such as the Ahmadiyya.[14]

Under the Penal Code, 1860, any person who has a 'deliberate' or 'malicious' intention of hurting religious sentiments is liable to face imprisonment. In addition, the Code of Criminal Procedure states, 'The government may confiscate all copies of a newspaper if it publishes anything that creates enmity and hatred among the citizens or denigrates religious beliefs'. While there are no laws specifically against blasphemy religion-based political parties have pledged to enact such laws should they gain power.[15] The government has not publicly commented on enacting blasphemy laws, but it briefly used elements of blasphemy embedded in its laws by blocking access to social networking sites like Facebook and arresting secular rights activists.[16]

These laws, given the diverse demographic structure of Bangladesh, surpass the constraints permitted under international human rights law. This is particularly crucial given that they are ambiguous and, hence, leave scope for misuse in interpreting what

13 Mohammad Shahabuddin, 'Bangladesh's "Minority Problem"', *Netra News*, November 12, 2021, https://netra.news/2021/bangladeshs-minority-problem/.

14 Sazzadur Rahman Sazzad, '50 Ahmadiyyas Injured in Co-Ordinated Attack on the Community in Panchagarh', *Dhaka Tribune*, February 13, 2019, https://archive.dhakatribune.com/bangladesh/nation/2019/02/13/sunnis-attack-ahmadiyyas-in-panchagarh.

15 'Islami Andolan Demands Blasphemy Law', *New Age*, October 24, 2022, https://www.newagebd.net/article/152508/islami-andolan-demands-blasphemy-law.

16 'Use of Blasphemy Laws and Allegations in Commonwealth Countries', House of Commons Library, accessed December 4, 2022, https://commonslibrary.parliament.uk/research-briefings/cdp-2022-0160/.

is permissible under law and constraining of civil society spaces by the authorities.

Sharia (Islamic law) has a significant impact on civil disputes involving the Muslim population but it is not formally implemented or enforced on non-Muslims. For instance, individuals have access to alternative dispute resolution mechanism to resolve interpersonal conflicts and other civil issues, except land ownership. Arbitrators settle disputes in accordance with Sharia law with the consent of both parties. Muslim family law is driven by Sharia law. The High Court Division of Bangladesh outright prohibits *fatwas*[17] and all associated punishments.[18] After a lengthy judicial review, in 2011, the Appellate Division of the Supreme Court upheld the ban and declared that 'properly educated persons' may dispense *fatwas*, which may be 'accepted only voluntarily'.[19]

Depending on the individuals involved and their religious views, there are modest variations in family laws pertaining to marriage, divorce and adoption. Every religion has its own set of family regulations. For instance, Islam allows polygamy and permits men, under specific circumstances, to have up to four wives at any given time.[20] To regulate polygamy, Bangladesh has introduced Section 6 of the Muslim Family Laws Ordinance, 1961, which requires Muslim men to have the written permission of their first wife to remarry.[21] Polygamy is rarely practised because it is

17 'A fatwa is an opinion; only an expert can give it. A fatwa, even if by an expert is not a decree; it is not binding on the court or the state. The Mufti has no authority to punish or impose punishment. Punishment cannot be imposed privately without lawful authority. The state can ban a fatwa that leads to violence and fitna', - Professor Muhammed Khalid Masud, Editor of Legal Islamic Interpretations. See: Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, ed., *Muftis and Their Fatwas* (Cambridge: Harvard University Press, 1996), https://www.askbd.org/web/wp-content/uploads/2010/11/fatwa_judgement.pdf.

18 'Fatwa Legal, Not Punishment: SC', *bdnews24.com*, May 12, 2011, https://bdnews24.com/bangladesh/fatwa-legal-not-punishment-sc.

19 'Fatwa Legal, Not Punishment: SC'.

20 Zahidul Islam, 'Law and Our Rights', *The Daily Star*, accessed November 2, 2022, https://www.thedailystar.net/law/2007/04/04/index.htm.

21 Justice Md Mozibur Rahman Miah, 'Polygamy: Enabling Law and Its Analysis in Bangladesh Perspective', *The Daily Star*, May 18, 2021, https://www.thedailystar.net/law-our-rights/news/polygamy-enabling-law-and-its-analysis-bangladesh-perspective-2094197.

fiercely prohibited by society.[22] A Christian man, however, is only permitted to marry one woman.[23] Unlimited polygamy by male is authorised under Hindu law, but divorce and formal separation are not allowed. Hindu widows are permitted to remarry only in the case of death of the spouse. Marriage ceremonies and procedures are administered by the family law of the two spouses' respective religions, and marriages are also registered with the state.[24] However, there are no legal limitations on marriage between members of different religious groups administered under the Special Marriage Act, 1872 which requires the parties to declare themselves either as non-believers or to declare to profess any one of the religions as listed, the Hindu, or the Buddhist, or the Sikh or the Jaina in the declaration form while registering the marriage.

Many Hindus have been unable to recover landholdings lost because of discrimination under the now defunct Vested Property Act. Although the Act was repealed in 2001, there was no visible action to reverse the property seizures that occurred under the Act. The Vested Property Act was an East Pakistan-era law that allowed the government to expropriate 'enemy' (in practice Hindu) lands. The government had seized approximately 2.6 million acres of land, affecting almost all Hindus in the country. In April 2001, parliament passed the Vested Property Return Act, stipulating that land remaining under government control seized under the Vested Property Act should be returned to its original owners, provided that the original owners or their heirs remained resident citizens. The law required the government to prepare a list of vested property holdings by October 2001. Claimants had to file claims within 90 days of the publication date. In 2002, parliament passed an amendment to the Act that allowed the government unlimited time to return the vested properties and gave control of the properties, including the right to lease them to local government employees.

22 Miah, 'Polygamy: Enabling Law and Its Analysis in Bangladesh Perspective'.

23 The Christian Marriage Act, 1872.

24 'Bangladesh Hindu Buddhist Christian Unity Council Europe', Fourth Session of the Forum on Minority Issues, accessed November 2, 2022, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/MinorityIssues/Session4/ItemVI/BangladeshHinduBuddhistChristianUnityCouncilUK.pdf.

Again in 2012, a district-wise list of returnable properties was published.[25] However, the Hindu community of Bangladesh is yet to receive any benefit from this Act; rather, they have been victimised and the non-return of land used as a tool to win elections.[26] According to the preliminary report of the Population and Housing Census 2022 conducted by the Bangladesh Bureau of Statistics (BBS), the Hindu population has decreased by 0.59 per cent in the last 11 years.[27] Moreover, compared to those India, the Hindu women of Bangladesh experience unbounded discrimination; they do not inherit the property of their parents and husbands, and even if they do get some share, they receive less than their male counterparts. A woman's inheritance depends on having a male child and the male members of the family get a share of the property acquired by her.[28] Even the registration of Hindu marriages was not an option until the Hindu Marriage Registration Act was introduced in 2012.[29]

Women's rights

Despite a patriarchal social framework, the contribution of women in Bangladesh's Liberation War was noteworthy. Even though the constitution confirms equal opportunities for women in all areas, the suppression of women continues. Considering the special needs, despite having colonial laws like the Penal Code, 1860 and

25 Pranab Panday, 'Politics of Land Grabbing: The Vested Property Act and the Exploitation of Hindu Communities in Bangladesh', *International Journal on Minority and Group Rights* 23 (2016): 382–401, https://doi.org/10.1163/15718115-02303006.

26 Sushmita S. Preetha, 'A Fifteen-Year-Old Wait', *The Daily Star*, January 13, 2016, https://www.thedailystar.net/op-ed/politics/fifteen-year-old-wait-200842.

27 'Population of Minority Religions Decrease Further in Bangladesh', *The Business Standard*, July 27, 2022, https://www.tbsnews.net/bangladesh/hindu-population-bangladesh-decreases-further-466170.

28 Hiren Pandit, 'Equal Rights for Hindu Women in the Inheritance Law', *Prothomalo*, March 8, 2022, https://en.prothomalo.com/opinion/equal-rights-for-hindu-women-in-the-inheritance-law.

29 'Hindu Marriage Registration Act: A Protective Shield for Women', *Dhaka Tribune*, January 31, 2020, https://archive.dhakatribune.com/bangladesh/2020/02/01/hindu-marriage-registration-act-a-protective-shield-for-women.

the Code of Criminal Procedure, 1898, Bangladesh has enacted multiple laws for the protection of women, such as the Prevention of Oppression against Women and Children Act, 2000 which prescribes the death penalty for causing or attempting to cause death after or as a result of rape or demanding dowry. To curb the rise of acid attacks on women, the Acid Crime Prevention Act, 2002 and the Acid Control Act, 2002 were passed by the government. To end violence against women in the demand for dowry, the Dowry Prohibition Act, 1980, and the Domestic Violence (Prevention and Protection) Act, 2010, were enacted.

The country elected its first female Prime Minister in 1991. In the 2018 parliamentary election, 22 women were directly elected from the 300 constituencies, with another 50 seats reserved for women in the 350-member strong parliament. However, that represented only 21 per cent of the seats in parliament.[30]

The practice of discriminatory personal laws in the name of religion has been demeaning the status of women in the family and other socio-economic institutions. The Government of Bangladesh has been rejecting the demand for a uniform family law for more than three decades. Muslim personal laws are discriminatory in their embrace of polygamy for men, their greater barriers to divorce for women than men and their limited provisions on maintenance. Women have very limited power in terms of exercising guardianship. Despite having ratified CEDAW four decades earlier, the country still maintains reservations against Articles 2 and 16—which mostly deal with property rights and rights in marriage—in the name of religious sentiments.

Hindu personal law further discriminates against women by allowing polygamy for men and placing significant obstacles in the way of women receiving maintenance payments. Hindu women can seek judicial separation, but the law does not recognise divorce, which forces women to live in an unhappy marriage. Moreover, Hindu women in Bangladesh can exercise very limited rights over property. The Hindu Women's Right to Property Act

30 'Monthly Ranking of Women in National Parliaments', Parline: the IPU's Open Data Platform, accessed September 8, 2022, https://data.ipu.org/women-ranking.

of 1937 excludes Hindu women from getting a share of their father's or husband's property if there are sons in the family.[31] In the absence of a male heir, only unmarried daughters and married daughters with sons can inherit property, while childless widowed daughters or married daughters without sons inherit nothing.[32] In 2020, the High Court Division of Bangladesh, following a civil revision petition, ruled that Hindu widows are entitled to inherit shares in all properties of their husbands, including agricultural land.[33] Previously, their inheritance rights were limited only to homesteads and non-cultivable land.[34]

In Christian personal law, divorce is allowed on limited grounds for both men and women, but the stipulations being far more restrictive for women. [35] Men can seek a divorce if they allege their wife committed adultery. Wives, on the other hand, must prove adultery plus other acts to secure a divorce. Such acts include: conversion to another religion, bigamy, rape, sodomy, bestiality, desertion for two years or cruelty.

According to a 2019 Oxfam report, the number of men who own land is six times that of women.[36] The Khas Land Settlement Policy of 1997—which is the process of redistributing state-owned land to the agriculture based landless families—is equal on paper in terms of gender, providing joint ownership to both spouses. In terms of selection criteria, only widows and divorced or abandoned women with a son can apply.[37] This is discriminatory as the policy prevents

31 Anupoma Joyeeta Joyee, 'We Must Protect Hindu Women's Right to Inherit Property', *The Daily Star*, September 10, 2020, https://www.thedailystar.net/opinion/news/we-must-protect-hindu-womens-right-inherit-property-1958665.

32 Joyee, 'We Must Protect Hindu Women's Right to Inherit Property'.

33 'High Court Ruling: Hindu Widows to Have Right on Husbands' Land', *The Daily Star*, September 3, 2020, https://www.thedailystar.net/frontpage/news/high-court-ruling-hindu-widows-have-right-husbands-land-1954901.

34 The Daily Star, 'High Court Ruling: Hindu Widows to Have Right on Husbands' Land'.

35 'Bangladesh: Discriminatory Family Laws Fuel Female Poverty', Human Rights Watch, September 16, 2012, https://www.hrw.org/news/2012/09/16/bangladesh-discriminatory-family-laws-fuel-female-poverty.

36 'Land Ownership: Men Possess 6 Times That of Women', *The Daily Star*, January 22, 2019, https://www.thedailystar.net/bangladesh/male-landowners-six-times-higher-women-in-bangladesh-1690681.

37 Aline Herrera, 'Access to Khas Land in Bangladesh', n.d., 29, https://ethz.

single women or widows as well as women with daughters from applying for such land.[38] Again, in case of divorce, both husband and wife loses their rights over the khas land; which increases the chance of remaining in an abusive marriage, especially for women in fear of losing land.

Draconian laws criminalising sexual choice

In Bangladesh, there is a culture of collective denial by society and the government in terms of recognising the presence of gender non-conforming persons and persons with non-normative sexualities. As a postcolonial state, Bangladesh practices the notorious British anti-sodomy law, especially Section 377 of the Penal Code, 1860, which criminalises sexuality against the 'order of nature' and same-sex activity between consenting adults.[39] There are regular reports of discrimination and violence experienced by individuals due to their real or perceived sexual orientation and gender identity in Bangladesh. The sexuality of women is often associated with 'family honour'. Thus, lesbian women fall victim to domestic violence due to the social stigma. In September 2022, four young girls were harassed by the local people, political leaders and the police following their declaration of same-sex marriage at Jamalpur, a district in the north-central part of the country.[40]

However, it is pertinent to mention here that in the last decade, the GoB has started taking some progressive decisions in terms of recognising and developing the living standards of the *hijra* community.[41] The GoB implemented a programme titled

ch/content/dam/ethz/special-interest/gess/nadel-dam/teaching/mas/mas-essays/MAS%20Cycle%202014%20-%202016/Essay_Aline%20Herrera.pdf.

38 Herrera, 'Access to Khas Land in Bangladesh'.

39 The Penal Code, 1860, Section 377, http://bdlaws.minlaw.gov.bd/act-11/section-3233.html.

40 Colin Stewart, 'Bangladesh Activists Protest Same-Sex Wedding Arrests, Face Death Threats', *76 crimes*, September 28, 2022, https://76crimes.com/2022/09/28/bangladesh-advocates-protest-same-sex-wedding-arrests-face-death-threats/.

41 Hijra community refers to one of the many gender-diverse communities; however, 'Hijra' do not conform any biological characteristic or gender identity. See: https://www.blast.org.bd/content/publications/Policy-Brief-Hijra-and-GDC-Rights.pdf.

'Living Standard Development Program for Hijra Community' in 2012/13.[42] Under this programme, GoB provided stipends to educate school-going *hijra* students, arranged special allowances for the elderly (50 years of age and older), disabled, and indigent *hijras* and organised various skill development and training programmes for the capable *hijra* population. Despite different attempts at inclusion, various factors (e.g., the term *hijra* fails to be inclusionary) have widened the scope of using different terms to refer to the gender-diverse population by different government and non-government institutions, which further reflects the lack of understanding of different sexual orientations by these bodies.[43] For example, national identity cards in Bangladesh now have a *hijra* category, along with the 'male' and 'female'.[44] Also, other than 'male' and 'female', the Bangladesh passport features a third category called 'other'. Further, 'third gender' is now an option on several government forms, such as those for opening a bank account at state-run institutions.[45]

For the first time in 2008, *hijras* were allowed to vote in the general election, but as either male or female.[46] As a result of an amendment to the Voter List Act, 2009 and the Voter List Rules 2012, they have been able to vote as *hijras* since April 2019.[47] Again, for the first time, Bangladesh has included *hijras* in its national census and counted 12,629 transgender people in the Population and Housing Census 2022 conducted by the BBS.[48]

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42 'Ministry of Social Welfare', accessed November 2, 2022, https://msw.gov.bd/site/page/a3498c96-c94a-4fba-9518-13497bdfb46f/Transgender-People.

43 Nazifa Raidah, 'The Twisted Plight of Bangladeshi Transgender Community: A Critical Error in Policymaking', *The Daily Star*, June 10, 2022, https://www.thedailystar.net/views/opinion/news/the-twisted-plight-bangladeshi-transgender-community-3043841.

44 Raidah, 'The Twisted Plight of Bangladeshi Transgender Community'.

45 Raidah, 'The Twisted Plight of Bangladeshi Transgender Community'.

46 'Hijras See a Better Tomorrow', *bdnews24.com*, December 30, 2008, https://bdnews24.com/bangladesh/election-2008/hijras-see-a-better-tomorrow.

47 Bilkis Irani, 'Members of the Third Gender Can Vote as "Hijra"', *Dhaka Tribune*, April 19, 2019, https://archive.dhakatribune.com/opinion/special/2019/04/19/members-of-the-third-gender-can-vote-as-hijra.

48 'Bangladesh Includes Transgenders in National Census for First Time', *The Business Standard*, July 27, 2022, https://www.tbsnews.net/bangladesh/bangladesh-includes-transgenders-national-census-first-time-466230.

Linguistic minorities

Although linguistic nationalism was at the centre of the emergence of Bangladesh as an independent nation, there are also various linguistic minorities with distinct languages in the country. However, there is a lack of data regarding the exact numbers of such groups or languages. The Constitution of Bangladesh refers to Bangla as the 'state language' but is silent about the existence of other languages in the territory. Article 23A of the constitution, titled 'The culture of tribes, minor races, ethnic sects and communities', does not refer to any other language.

The National Culture Policy of 2006 refers to 'tribal languages' in a limited capacity but ignores the importance of the promotion of these languages. Further, the National Education Policy 2010 considers the promotion and development of 'languages and cultures of the indigenous and small ethnic groups'. While acknowledging the importance of 'mother tongue' in education, the policy considers assisting indigenous children to 'learn their mother tongue' rather than ensuring education in their own language.[49]

Following the communal riots in Bihar, India in 1946-47, people from Uttar Pradesh, Bihar and Rajasthan were forced to take refuge in the territory of then Pakistan. These Urdu-speaking Muslim people who had migrated to present-day Bangladesh are known as 'Biharis'. Presently, there are around 300,000 Biharis living in 116 slum-like camps across the country.[50] The Bihari community of Bangladesh is identified as a linguistic minority and is different from other minority communities. Initially, there was difficulty regarding the determination of the legal status of these people, i.e., whether they are refugees, voluntary migrants, political asylum-seekers or stateless persons. However, they were granted Pakistani citizenship by the Citizenship Act of 1951, and during the 24 years

49 Prashanta Tripura, 'The Denial of Linguistic Diversity in Bangladesh', *Dhaka Tribune*, February 21, 2018, https://archive.dhakatribune.com/special-supplement/2018/02/21/denial-linguistic-diversity-bangladesh.

50 Geoffrey Macdonald, 'Bangladesh: Urdu-Speaking "Biharis" Seek Recognition, Respect and Rights', International Republican Institute, accessed September 5, 2022, https://www.iri.org/resources/new-bangladesh-report-reveals-priorities-of-the-bihari-minority/.

of Pakistani rule, they were a privileged community both in the social and economic fields.

Because of their active anti-liberation role, the Biharis became subject to widespread political persecution both preceding and during the 1971 Liberation War of Bangladesh as well as in the aftermath of liberation. In 1972, following the creation of Bangladesh, an estimated 1 million Urdu-speakers were living in settlements throughout Bangladesh, awaiting repatriation to Pakistan. In consequence of the tripartite agreements between Pakistan, Bangladesh and India in the period from 1973 to 1993, 178,069 Biharis out of 534,792 who had registered with the International Committee of the Red Cross (ICRC) for repatriation were repatriated from Bangladesh to Pakistan.[51] For several decades, successive governments of Bangladesh have been treating the Biharis who opted for repatriation to Pakistan but are left in Bangladesh as 'refugees', not as 'citizens'.[52]

51 E. Paulsen, 'The Citizenship Status of the Urdu-Speakers/Biharis in Bangladesh', *Refugee Survey Quarterly* 25, no. 3 (2006): 54–69, https://doi.org/10.1093/rsq/hdi0146.

52 Imtiaz Ahmed Sajal, 'The Plight of the Linguistic Minority', *The Daily Star*, December 29, 2015, https://www.thedailystar.net/law-our-rights/the-plight-the-linguistic-minority-193840.

In a landmark case, in 2003, the High Court Division held that the ten Urdu-speaking petitioners, born both before and after 1971, were Bangladeshi nationals pursuant to the Citizenship Act, 1951 and the Bangladesh Citizenship (Temporary Provisions) Order, 1972 and directed the government to register them as voters.[53] Again, in 2008, Bangladesh's Supreme Court reaffirmed Biharis' right to citizenship and called for their inclusion on voter rolls.[54] However, their social, economic and political marginalisation continues.

Peace Accord: A Long-Lost Hope for CHT

Since the colonial period, the indigenous people of Bangladesh have been facing persecution and forced displacement. Denial of basic rights, land grabbing, Bangalee settlement, internal displacements, non-recognition in the constitution of the country, militarisation of the Chittagong Hill Tracts (CHT) and other issues made the indigenous people feel oppressed and pushed them towards demanding autonomy for the CHT. Conflict came to an end after the signing of the Chittagong Hill Tracts Peace Accord in 1997. The core issues in the accord regarding land dispute resolution, demilitarisation, establishing a special administrative system with proper powers and functions and rehabilitation of internally displaced persons and refugees are yet to be implemented, thus creating an atmosphere of mistrust that can trigger conflict in the region.[55]

The 1997 CHT Peace Accord was signed while the party of the present government was in power. Therefore, people's expectations from the existing government on the implementation of the peace accord are high. The government has already taken some initiatives and various commitments for the full implementation

53 Md. Kamrul Hasan Arif, 'The Status of the Bihari Community in Bangladesh under Domestic and International Law', *International Journal on Minority and Group Rights* 25, no. 4 (2018): 664–78, https://doi.org/10.1163/15718115-02503006.

54 Arif, 'The Status of the Bihari Community in Bangladesh'.

55 'Chittagong Hill Tracts: The UN Calls on the Government of Bangladesh to Fully Implement the Peace Accord and Requests Unrestricted Access for Independent Actors to Visit the Area', UNPO, accessed September 4, 2022, https://unpo.org/article/22230.

of the Accord have been declared from different quarters of the government. It was also one of the main commitments made by the party in its election manifesto. It is hoped the government will take necessary steps immediately to protect the Jumma People's (denoting the minority tribal peoples inhabiting the CHT region) right to their ancestral land, right to use its natural resources and for the recognition of their language and incorporating the policy of providing education in their mother tongue. Above all, the hope is the government will take all necessary and effective measures to ensure the full implementation of the CHT Peace Accord. Unfortunately, even after 25 years of the accord, calls have had to be issued for a systematic plan to ensure its proper implementation without compromising the political tranquillity of the terrain.[56]

Rohingya Refugees: Forgotten People of Asia

The Rohingya are one of the most persecuted communities in the world. An ethnic community from Myanmar, they have been subjected to genocide, arson, rape and all kinds of discrimination by Myanmar's security forces. They have fled from their ancestral land to the nearby Cox's Bazar region of Bangladesh multiple times. However, since August 2017, the number of Rohingya refugees in Bangladesh has reached more than a million. Bangladesh is struggling to meet the basic needs of these forcibly displaced Myanmar nationals. The density of refugees in the ecologically critical and small region of Bangladesh has impacted the country's economy, politics, security and environment. In addition, their experiences and grievances make them prime targets of different radical groups, which, if they succeed, has the potential to destabilise the region.

The crisis requires regional attention, but the reluctance of regional powers like India and China has given impunity to Myanmar. Moreover, Bangladesh is not a signatory to the UN Refugee Convention of 1951 and its Additional Protocol of 1967, resulting in the human rights violation of the Rohingya refugees

56 'Road Map Sought for Full Implementation of CHT Accord', *New Age* , December 1, 2022, https://www.newagebd.net/article/187929/article/articlelist/323/article/index.php.

in the hosting community. On different occasions, the GoB has expressed its unwillingness to be a part of the Convention. The GoB planned to restrict the movements of these refugees which would make their repatriation process easier and prevent them from assimilating with the local people.

Union between refugees and Bangalees was restricted through civil orders. Registration of marriage and divorce is mandatory under Bangladeshi laws but the GoB has restricted it in the case of refugees. In 2002, an administrative circular stated that marriages between refugees could not be registered under the 1974 Muslim Marriages and Divorces Registration Act. It was interpreted as being applicable only to Bangladeshi citizens. It stated a different procedure for marriage registration among registered Rohingya refugees. However, it excluded non-registered refugees. As per the circular, marriages between Bangladeshi nationals and refugees from Myanmar were barred and could not be registered. Later circulars from 2014 and 2017 denied the right to marry between citizens and refugees.[57] Registrars were directed to refuse registration the marriages of Bangladeshi citizens and unregistered refugees as well as refugees registered before 2017. In January 2018, the Supreme Court of Bangladesh held that marriage between a Bangladeshi citizen and a Rohingya refugee is a violation of the 2017 circular.[58]

The GoB fears that both refugees and locals can be victims of trafficking and sex work and may get involved in organised crime. There are already reported incidents of human trafficking for drug peddling, sex work, and domestic labour. The coastal zones bordering Myanmar have always been targeted for the production and trafficking of illegal drugs, especially methamphetamines. All these issues may create serious security threats for Bangladesh. More than five years after escaping the brutality of the Myanmar military, Rohingyas confined in camps in Bangladesh are still

57 'Rohingya Refugee Crisis: Registration of the Marriages and Divorces of Refugees - Bangladesh', ReliefWeb, accessed November 16, 2022, https://reliefweb.int/report/bangladesh/rohingya-refugee-crisis-registration-marriages-and-divorces-refugees.

58 ReliefWeb, 'Rohingya Refugee Crisis: Registration of the Marriages and Divorces of Refugees - Bangladesh'.

pleading for safety—from Rohingya insurgents and law enforcers—and the prospect of repatriation seems distant as ever.[59]

Role of NHRCB in Protecting Minorities

Constituted as per the National Human Rights Commission Act, 2009, the National Human Rights Commission of Bangladesh (NHRCB) has the mandate to, among other things, provide training to key stakeholders on human rights protection and to analyse treaties and other international instruments in order to make recommendations to the government on their signature and ratification as well as their effective implementation. The NHRCB has intervened in cases of individual human rights violations from time to time. It has a separate Committee on Dalits, *hijras*, and other Excluded Minorities with representatives from civil society organisations (CSOs), human rights activists, state institutions, academicians, development agencies and inter-governmental agencies. The Committee undertakes joint events, fact-finding missions and research.

In July 2022, the NHRCB condemned the attack on Hindu communities in the country and directed the Home Ministry to probe whether there was negligence on part of the authorities in preventing the situation of an unwanted attack and whether the police played a proper role in controlling the situation.[60] The NHRCB has stated that communal violence in a secular country is not acceptable.[61]

The NHRCB has acknowledged that there are emerging grounds such as disabilities, sexual orientation, ethnicity, political or other opinion or status that provide the basis for discrimination. With a view to addressing all of these as well as ensuring effective remedy by way of compensation or restitution for existing grounds laid

59 Rebecca L. Root, 'What Other Options Are There If Rohingya Refugees Can't Go Home?'.

60 ANI, 'Bangladesh Human Rights Commission Condemns Attack on Hindus, Demands Probe', *Business Standard India*, July 18, 2022, https://www.business-standard.com/Article/international/bangladesh-human-rights-commission-condemns-attack-on-hindus-demands-probe-122071800108_1.html.

61 ANI, 'Bangladesh Human Rights Commission Condemns Attack on Hindus, Demands Probe'.

down in the constitution, the NHRCB prepared a draft law on anti-discrimination and submitted it to the Law Commission in 2014. However, there is no evidence of its being reflected of this in the Anti-Discrimination Bill.

The NHRCB can also take an individual complaint and investigate it. It came into existence after continuing efforts by the civil society to establish an independent body to promote human rights in the country as agreed by the Paris Principles in 1991. However, when measured against those expectations, the NHRCB has a long way to go. Civil society groups have demanded diverse recruitment of staff and effective training to strengthen the role of the NHRCB.

Role of Civil Society in Advancing Minority Rights

Worldwide, civil society has been known for its role in working as a pressure group on the government and for its awareness-raising and advocacy activities at home and abroad. Especially in the case of upholding minority rights, civil society can help national and international bodies with their grassroots engagements by providing relevant information, data analysis and fact-finding in individual cases of human rights violations. CSOs work as a bridge between communities and government bodies. Civil society often challenges the status quo of any given society and this risks growing dissatisfaction among other actors like government bodies. It supports tolerance and openness to create space for constructive criticism, open dialogue and academic debate so as not to create a violent and fearful environment. Though there is no recognised standard for ensuring the growth of civil society, it is understandable that it grows in places where the state does not impose restrictive legislation limiting its activities but rather encourages its participation and values its opinion.[62]

In the case of Bangladesh, there has been a robust growth in the number of CSOs/NGOs and their active role in almost every sphere of governance since the period of independence; however, because of their identification and link with a particular political ideology

62 Robert Watkins, 'Civil Society as the Key to Development', *The Daily Star*, September 15, 2015, https://www.thedailystar.net/op-ed/politics/civil-society-the-key-development-143335.

their intentions have always been in question. Besides, with time, restrictions have been increased and their intervention capacities curtailed by rules and regulations.[63] Civil society groups in Bangladesh have always been vocal about human rights violations, especially minority rights. Rights activists have been demanding a separate commission for minorities for a long time.

The GoB has been criticised for not including a large number of people during 2022 national census. Bangladesh has around 1.6 million ethnic minorities out of a population of 165 million; rights activists claim that the actual number of the former is approximately 3 million.[64] Civil society groups agree that the government has been reluctant to take any effective steps to protect minority rights in the country. In October 2021, during Durga Puja, the biggest annual Hindu festival, there were attacks on at least 80 of the country's 32,000 makeshift temples.[65] More than 3600 attacks on religious minorities took place between 2013 and 2021.[66] It is said that the political and economic interests surrounding elections and eyeing on properties of the religious and ethnic minorities have been fuelling these attacks. Civil society groups in Bangladesh have been calling for the repeal of laws such as the Vested Property Act and have been closely monitoring incidents of violations.

Against this backdrop, civil society groups and NGOs in Bangladesh have played an excellent role in participating in different treaty mechanisms and Special Procedures when the state submits its progress report on the human rights situation of the country. As CSOs/NGOs can also submit their own such reports to serve as check and balance and ensure further accountability of the government, and also suggest useful recommendations for the implementation of mandates of treaties as well as disseminate

63 'Bangladesh: New Law Will Choke Civil Society', Human Rights Watch, October 19, 2016, https://www.hrw.org/news/2016/10/19/bangladesh-new-law-will-choke-civil-society.

64 'Asia's Indigenous People Underline Fight for Justice, Dignity - UCA News', *ucanews*, August 12, 2022, https://www.ucanews.com/news/asias-indigenous-people-underline-fight-for-justice-dignity/98382.

65 Shafi Md Mostofa, 'Minority Rights at Stake in Bangladesh', *East Asia Forum,* December 4, 2021, https://www.eastasiaforum.org/2021/12/04/minority-rights-at-stake-in-bangladesh/.

66 Mostofa, 'Minority Rights at Stake in Bangladesh'.

information among the communities, individual organisations and issue-based coalitions in Bangladesh have been regularly submitting parallel reports to various UN bodies and this has widened the scope for better coordination and cooperation among rights groups, government and international bodies.

Recommendations

Drawing from the above discussion on the status of minorities in Bangladesh based on national and international laws and human rights standards, this study offers recommendations for action to be taken by the Government of Bangladesh, the civil society and the international community.

For the Government of Bangladesh

- Review and amend the proposed Anti-Discrimination Bill based on suggestions of civil society groups and human rights experts;[67]
- Enact an inclusive and comprehensive law with the purpose of eliminating and abolishing all kinds of discrimination without any delay to address discrimination faced by marginalised excluded groups, minorities, Dalits and disadvantaged groups and to protect their economic, social, and cultural rights;
- Withdraw its reservation to Article 2 (policy measures eliminating discrimination against women) and Article 16(1)(c) (equal rights of women in marriage, family relations and divorce) of CEDAW to establish gender equality;[68]
- Further improve the environment to ensure the basic necessities of life (food, clothing, shelter, education and medical care) enshrined in Article 15(a) of the constitution;
- Ensure speedy disposal of vested property return cases;
- Provide constitutional recognition to the indigenous people and take special measures for their economic, social and

67 'The Anti-Discrimination Bill 2022: What Experts Say', *The Daily Star,* May 16, 2022, https://www.thedailystar.net/law-our-rights/news/the-anti-discrimination-bill-2022-what-experts-say-3024531.

68 Maliha Khan, 'CEDAW at a Dead End in Bangladesh?', *The Daily Star,* March 8, 2019, https://www.thedailystar.net/star-weekend/news/cedaw-dead-end-bangladesh-1711840.

cultural development;[69]

- Enact legislation in light of the International Labour Organization (ILO) Convention 107 (Indigenous and Tribal Populations Convention, 1957) and ratify the ILO Convention 169 (Indigenous and Tribal Peoples Convention, 1989);[70]
- Ensure maximum coordination among local government institutions and administration to protect the rights of indigenous people on land, property, natural resources, customary rights, representation at the decision-making levels and language, education and cultural rights;
- Recognise *hijras* and other sexual minorities and ensure that their rights are protected;
- Continue to advance the rights of women in areas linked with property rights and the private sphere to ensure the equality of women in matters of marriage, divorce, child custody and political empowerment;
- Introduce affirmative action initiatives such as quotas for admission to educational institutions, government jobs and social protection schemes for marginalised people;
- Enact laws criminalising sexual harassment of women and girls in public places, workplaces and schools;
- Strengthen measures to ensure effective access to education and guarantee the registration of all refugee children living in Bangladesh, regardless of race, religion, national origin or the citizenship of their parents;
- Continue to advocate for an end to harmful practices such as child marriages by addressing their root causes and raise awareness among parents, teachers, the community and religious leaders about the negative effect of child marriage on the health and well-being of the girl child;
- Be very careful in land acquisition processes and uphold the rights of the people, particularly ethnic and religious minorities and award due compensation;

69 'Recognition through Constitution', *The Daily Star*, January 12, 2022, https://www.thedailystar.net/news/bangladesh/news/recognition-through-constitution-2937496.

70 The Daily Star, 'Recognition through Constitution'.

- Conduct multi-level advocacy programmes to form public opinion in favour of reforming discriminatory religious laws;
- Enact uniform family laws for the protection of women from religious and ethnic minority groups;
- Establish a separate ministry or commission for minorities, empowering the body to investigate and try every incidence of violence against minorities;
- Adopt an effective method to end the culture of impunity and ensure the safety and security of minorities; and
- Ensure the accountability of local representatives, administrative officers and law enforcement agencies in taking action against communal attacks.

For civil society

- Support the GoB in implementing all initiatives taken for the protection of minorities;
- Assist the GoB to better understand its human rights obligations in relation to conflict prevention and minorities and assist it with identifying approaches for the full respect of universal human rights standards;
- Encourage the GoB to facilitate discussions on a variety of issues with participation from representatives of minority communities to ensure protection of their human rights;
- Conduct awareness-raising programmes on human rights through social education;
- Undertake social campaigns to make marginalised communities more aware of their rights and support their participation in economic, social and political spheres;
- Organise a more coordinated response in cases of human rights violations involving minorities;
- Provide legal aid and healthcare to victims of human rights violations;
- Take the initiative to sensitise the media about reporting on cases of human rights violations involving minorities; and
- Study documents relating to international laws and policies relating to minority rights and make recommendations to the GoB on translating them into national legislation.

For the international community

- International organisations, especially the UN, should take on its obligation to establish, monitor and follow up on the issue of equal rights of minority women in Bangladesh;
- Provide technical and financial support to NGOs and national institutions such as the NHRCB to strengthen their capacity;
- Monitor the GoB's progress in compliance to its human rights commitments as expressed in international treaties and conventions and work as a pressure group for the protection of minorities; and
- Work to improve the situation of Rohingya refugees and investigate allegations of abuse and human rights violations against them in accordance with international standards for a sustainable solution.

Rhetoric Vs. Reality: India, International Human Rights, and Minorities

Citizens Against Hate

Introduction

The victory of the Bharatiya Janata Party (BJP) with an absolute majority in the 2014 general elections marked the first time that a single, avowedly majoritarian political party found itself in a position to oversee the government and polity in India, a nation that has prided itself on being the world's largest secular democracy. Since then, and particularly since its re-election in 2019, the BJP government has overseen a wide range of serious violations of internationally recognised and binding human rights provisions. The implications have been grave for dissenters in general but particularly so for Muslim and Christian religious minorities as well as for Dalits, Adivasis and women. A range of international observers have issued a series of warnings and condemnations, with some even flagging India's Muslims as being increasingly at risk of mass atrocities (Table 1).[1]

The BJP government, meanwhile, has continued to portray India as a responsible and leading member of the international community, touting the strength of its secular polity and democratic institutions in ensuring compliance with domestic and international standards.[2]

1 'India: 2022-23 Statistical Risk Assessment for Mass Killing', Early Warning Project, United States Holocaust Memorial Museum, accessed September 1, 2022, https://earlywarningproject.ushmm.org/countries/india.

2 Government of India, 'Voluntary Pledges and Commitments in Accordance with United Nations General Assembly Resolution 60/251'.

The first section of this chapter attempts to verify these claims by reviewing major recent human rights violations against India's religious minorities and to test how India meets its international human rights obligations, either binding or not. It draws on formal communications by United Nations (UN) experts to the Indian government, secondary sources (media and non-governmental organisation [NGO] reports and scholarly works) and analysis of constitutional, other domestic and international provisions. It also specifies definitions and the analytical framework used (Section 2), briefly outlines the context for this study, catalogues India's major international obligations and commitments vis-à-vis civil and political (Section 3) and economic and social (Section 4) rights, the extent of incorporation of these rights into India's domestic constitutional and legal framework, and major, recent violations of these rights that have particularly impacted religious minorities. Section 5 briefly reviews recent trends in India's engagement with international human rights mechanisms, and Section 6 concludes with a set of recommendations.

Framework, Scope, and Context

Framework

International human rights obligations are detailed and codified in two key multilateral treaties—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The legally binding ICCPR and the ICESCR, along with the non-binding Universal Declaration of Human Rights (UDHR), are cumulatively known as the International Bill of Rights. This is complemented by a range of other binding and non-binding international instruments. All apply to religious minorities.

To facilitate cross-country comparisons of human rights protection and fulfilment, the Human Rights Measurement Initiative (HRMI) has identified a limited set of rights from those codified in the ICCPR and ICESCR and further classified them as 'Safety from the State', 'Democratic Empowerment', and 'Quality of Life'

rights.[3] We use the HRMI framework, with minor modifications, to help present the evidence and analysis to better capture India's local dynamics, particularly with respect to religious minorities. To overcome the lack of adequately disaggregated data in India, we expand our focus beyond HRMI indicators where appropriate. Our final classification of India's key rights obligations is, thus, as follows:

i. Safety from the State: Freedoms from (i) arbitrary deprivation of life, (ii) arbitrary detention, (iii) torture and ill-treatment, (iv) enforced disappearance, and (v) incitement to discrimination, hostility, and violence.
ii. Democratic Empowerment: Freedoms of (i) assembly, association, and expression, (ii) religion or belief, and (iii) participation.
iii. Quality of Life: Rights to (i) adequate housing, (ii) work and choice of employment, (iii) health, and (iv) education.

Discrimination, the prohibition of which is a cross-cutting theme across all the international instruments that India is party to, is explored throughout.

Scope

This chapter mainly focuses on India's religious minorities, particularly those adhering to Islam and Christianity, faiths considered 'non-indigenous' by Hindu nationalists and subjected recently to accentuated othering. Intersectionality with Dalits (members of so-called untouchable castes), Adivasis (members of indigenous tribes) and gender minorities is also explored, while retaining the core focus on religious minorities. Geographically, the focus is on developments within the territory of India, which includes Indian-administered Kashmir (now the Union Territory of Jammu and Kashmir). Major states (provinces) like Uttar Pradesh and Assam, both marked by several major instances of violations,

3 'The First Global Initiative to Track the Human Rights Performance of Countries', Human Rights Measurement Initiative (HRMI), accessed August 30, 2022, https://humanrightsmeasurement.org/.

find repeated mention. Temporally, while India has a long history of violence and discrimination against its marginalised groups, including religious minorities, the focus is on developments under the government that has been in power since 2014 and particularly since its re-election in 2019.

Context

The BJP was elected to power at the national level in 2014 under the leadership of Narendra Modi, the-then chief minister of Gujarat who had built an image for himself as a competent, pro-business administrator. Modi's reputation was built despite his having allowed an anti-Muslim pogrom on his watch in 2002, leaving over 1000 dead, mostly Muslims, in addition to mass destruction, rape, and displacements.[4] The BJP's election campaign in 2014 was partly aspirational, while also carefully tapping into long-running Hindu apprehensions about India's Muslim community who have historically faced stigmatisation, discrimination and

4 Amnesty International, 'India: A Pattern of Unlawful Killings by the Gujarat Police: Urgent Need for Effective Investigations', May 24, 2007, https://www.refworld.org/pdfid/465bfbbd2.pdf.

marginalisation. Prime Minister Modi's first tenure was marked by, among other things, a major spike in religiously motivated hate and physical attacks against Muslims, particularly in the form of mob violence by 'cow vigilantes', who also targeted Dalits. In 2019, after a vitriolic election campaign that more directly tapped into Hindu apprehensions over minorities and 'anti-nationals', the BJP was re-elected to power with even more seats in the Lok Sabha, the federal parliament.

Since then, boosted by the apparent endorsement of its messaging by the general public, the BJP has gone about systematically rolling out various elements of its Hindu nationalist agenda—all promised in its election manifesto in advance. Major developments that form crucial elements of the backdrop to the rest of this chapter, include:

- The unilateral revocation in August 2019 of Jammu and Kashmir (J&K) province's special constitutional status that had provided for a form of quasi-autonomy in addition to protections for the state's indigenous population.[5] J&K (and, separately, the Ladakh region of the former state) is now governed directly as a Union Territory by a bureaucrat appointed by India's federal government. Legal changes introduced in the region have, among other things, expanded electoral rolls to include non-locals and also enabled them to purchase land, sparking fears of demographic change.[6]
- The publication of the National Register of Citizens (NRC)[7] in the state of Assam in September 2019, a long-running administrative exercise to strip citizenship from 'illegal' migrants, specifically targeting Bengali-speaking linguistic minorities. The NRC left 1.9 million state residents in a state of citizenship limbo and facing the risk of statelessness and incarceration in prison-like detention centres. The only legal recourse available for those excluded are the quasi-judicial Foreigners' Tribunals, whose procedures have been found

5 AL IND 21/2020, AL IND (21.2020) (ohchr.org).

6 Ibid.

7 OL IND 11/2019, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24614.

Table 2: Status of ratification of major international human rights instruments by India

Instrument	Status of Ratification
Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), 1997	Signed in 1997 not ratified
International Covenant on Civil and Political Rights (ICCPR), 1966	Acceded in 1979 Optional Protocols not accepted
Convention for the Protection of All Persons from Enforced Disappearance (CPPED), 2007	Signed in 2007 not ratified
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979	Ratified in 1993 Optional Protocol not accepted
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965	Ratified in 1968 Optional Protocol not accepted
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	Acceded in 1979 Optional Protocol not accepted
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), 1990	Not signed
Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), 1948	Ratified in 1951
Convention on the Rights of the Child (CRC), 1989	Acceded in 1992 two Optional Protocols accepted in 2005 individual complaints procedure not accepted
Convention on the Rights of Persons with Disabilities (CRPD), 2006	Ratified in 2007 Optional Protocol not accepted

Source: 'United Nations Treaty Collection', accessed September 1, 2022, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en#EndDec.

to be awash with arbitrariness and anti-Muslim prejudice, leaving women and children in particular at heightened risk of exclusion.[8]

8 Talha Abdul Rahman, 'Identifying the "Outsider": An Assessment of Foreigner Tribunals in the Indian State of Assam', *Statelessness & Citizenship*

- The enactment of the 'fundamentally discriminatory' Citizenship (Amendment) Act (CAA) in December 2019, fast-tracking the route to Indian citizenship for persecuted migrants from India's Muslim-majority neighbouring countries, so long as they belong to any faith except Islam.[9] The CAA exacerbates the already-divisive dynamics of the NRC by providing possible relief only to Hindus excluded from it. Combined with a potential nation-wide administration of the NRC—already announced by the BJP—the CAA has the potential to put Muslims across the country at the risk of disenfranchisement.

Civil and Political Rights: Safety from the State, and Democratic Empowerment

India's commitments

International obligations

India is party to six of the nine major international human rights instruments, including the main, legally binding treaty focusing on civil and political rights, the ICCPR. It has also signed the non-binding Universal Declaration on Human Rights (UDHR) and the UN Declaration on the Rights of Minorities (UNDM). It has, however, not ratified the two Optional Protocols to the ICCPR, thus keeping itself out of the purview of the individual complaints procedure and refusing to formally commit to abolishing the death penalty. India has, in fact, refused to be party to any of the United Nations' various individual complaints, inquiry, and interstate communication procedures. India also made several key reservations and declarations at the time it acceded to the ICCPR.[10]

The key international instruments not ratified at all by India are:

Review 2, no. 1 (June 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3723694.

9 IND 2/2019, Internal Communication Clearance Form (ohchr.org).

10 'United Nations Treaty Collection', accessed September 1, 2022, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en#EndDec.

- the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (CAT), 1984, despite signing it in 1997,
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), 1990, and
- the International Convention for the Protection of All Persons from Enforced Disappearance (CPPED), 2006, despite signing it in 2007.

India has signed the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), 1948, but is one of only 13 countries to have made a reservation prohibiting prosecution without the consent of the national government. And while India has signed all four Geneva Conventions relating to international humanitarian law, it has refused to sign any of its Additional Protocols that codify crucial protections for victims of international and non-international armed conflicts. India has also refused to be a state party to the Rome Statute of the International Criminal Court, 2002.

Domestic framework

The ethos and principles of the ICCPR are codified in India to a significant degree by way of constitutional provisions, legislation, case laws, and the establishment of several rights-focused statutory bodies.

Constitutional guarantees

Key civil and political rights guaranteed by the Constitution of India to all Indian citizens as fundamental rights include the rights to: [11]

- Equality and non-discrimination before law (Articles 14-18),
- Life and personal liberty (Article 21),

11 Ministry of Law and Justice, 'The Constitution of India [As on 9th September, 2020]', accessed September 1, 2022. https://legislative.gov.in/sites/default/files/COI.pdf.

- Speech and expression (and to information), assembly, association, and movement (Articles 19-22).

Freedom of religion or belief, too, is guaranteed as a fundamental right (Articles 25-28) and includes:

- Freedom of conscience and to practice and propagate religion (Article 25[1]),
- Right of religious denominations to establish institutions for religious and charitable purposes (Article 26),
- Prohibition on payment of taxes for the promotion of any religion (Article 27),
- Prohibition of religious instruction by the state in educational institutions wholly funded by the state (Article 28).[12]

These fundamental rights, however, are not absolute, with the state empowered to impose 'reasonable restrictions' on them in the interest of public order, morality, health, national security, sovereignty and integrity, among others. The right to remedy for enforcement of all other fundamental rights is guaranteed as a separate fundamental right (Article 32).

Another provision in the Constitution instructs the state to foster respect for international law and treaty obligations (Article 51[c]). While this provision is laid out in the form of a non-justiciable Directive Principles of State Policy, it has been interpreted by the Indian Supreme Court (SC) to mean that international norms consistent with domestic normative principles are enforceable in India's domestic courts even in the absence of specific legislation incorporating the same.[13]

While these constitutional provisions extend to the whole of India's territory, there are certain additional safeguards pertaining to specific states and regions within India.[14]

12 Unless such institution is established under an endowment or trust which requires the imparting of such religious instruction.

13 V.G. Hegde, 'International Law in the Courts of India', *Asian Yearbook of International Law* 19 (2013): 63-87, https://brill.com/display/book/edcoll/9789004379756/BP000003.xml.

14 The constitutional safeguards that extended specifically to the erstwhile

Overview of legal and institutional structure

Domestic institutions to ensure accountability for violations of civil and political rights include the SC at the top along with state-level High Courts. The courts enjoy considerable powers, including reviewing laws for constitutional compatibility and directing the lower courts and public authorities to act or to refrain from acting, while enforcing fundamental rights. They are also empowered to take *suo moto* cognisance of any case even in the absence of a formal petition. India has also established several other rights-focused domestic institutions, such as the National Human Rights Commission (NHRC), the National Commission for Minorities, the National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes. These rights-focused statutory bodies—and the various rights-focused bodies at the state level—also enjoy considerable powers, including to summon and examine witnesses, to discover and produce documents, and to receive evidence and requisition public records. Like the courts, the commissions also enjoy *suo moto* powers. India has pointed to the existence of these 'effective remedies' at the domestic level while reiterating its refusal to become party to the ICCPR's individual complaints procedure.[15]

Key laws in place to guarantee life, security and the rule of law for all citizens include the Indian Penal Code (IPC), 1860 and the Code of Criminal Procedure (CrPC), 1973. The IPC also specifies as punishable offences acts such as promoting enmity between different groups on religious grounds, and the committing of deliberate and malicious acts designed to affront religious feelings by insulting religion or religious beliefs.[16] Apart from some in-built safeguards in the form of provisions within these laws, there are also several extensive court-mandated and other measures, advisories, and guidelines that seek to protect crucial civil and political rights.[17] Notable among these are:

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state of Jammu and Kashmir (Article 370) were notably abrogated in 2019.

15 CCPR/C/IND/4, https://digitallibrary.un.org/record/3975403.

16 Indian Penal Code, Section 153(A); Section 295(A).

17 For more on these, see Kalyani Gollapudi, 'Guidelines of Supreme Court and NHRC on Human Rights', n.d., http://www.wbja.nic.in/wbja_adm/files/Guidelines%20of%20Supreme%20Court%20and%20Human%20Rights%20

- Case law underlining that the death penalty is an exceptional punishment, to be imposed only in the 'rarest of rare' cases, where the crime involved is 'so heinous as to shock the conscience of the nation',[18]
- Case law reiterating that any use of force by police and other law enforcement authorities must respect the principles of reasonableness and proportionality,[19]
- The presumption of innocence being considered a cardinal principle of the domestic legal system, and the SC affirming that any 'procedure established by law' that might be used to deprive a person of their liberty should be one that is 'fair, just and reasonable',[20]
- SC guidelines mandating independent investigation in all cases of 'encounter'[21] killings,[22]
- Extensive SC guidelines to be followed during arrest and detention,[23] which are largely required to be guided by principles of reasonableness, certainty, and necessity as per the CrPC,
- The inadmissibility in court of any confessional statements that may be made to police officers,[24] the NHRC mandating compulsory judicial inquiries into all cases of custodial deaths,[25] and the SC mandating the compulsory installation of

Commission%20on%20Human%20Rights%20by%20Dr.%20G.Kalyani.pdf.

18 Bachan Singh vs. State of Punjab.

19 Anita Thakur vs. State of J&K.

20 Maneka Gandhi vs. Union of India.

21 A term that refers to police shootouts that result in death or serious injury. The common practice of conducting extra-judicial killings by orchestrating 'encounters' has been described by the SC as being akin to 'state-sponsored terrorism'. See Om Prakash & Ors vs State of Jharkhand & Anr, No. 4002/2006 (Supreme Court of India September 26, 2012).

22 V. Venkatesan, 'Debriefed: The Law on Encounter Killings and How the Supreme Court's Guidelines Are Being Flouted', *Bar and Bench,* July 12, 2020, https://www.barandbench.com/columns/debriefed-law-on-encounters-and-where-guidelines-dont-matter.

23 DK Basu vs State of West Bengal.

24 As per the Indian Evidence Act.

25 National Human Rights Commission, 'Guidelines Regarding Conducting of Magisterial Enquiry in Cases of Death in Custody or in the Course of Police Action', n.d., https://nhrc.nic.in/sites/default/files/Guidelines_conducting_Magisterial_Enquiry_in_cases_of_CD_or_police_action.pdf.

close-circuit television (CCTV) cameras in all police stations and offices of other investigative agencies, [26]

- The SC reiterating that extant provisions in the CrPC that allow the imposition of restrictions on assembly in 'urgent cases of nuisance or apprehended danger'[27] may be invoked only in the instances identified as 'imminent threat to peace',[28]
- Extensive guidelines issued by the SC to address the growing menace of religiously motivated hate crimes and mob violence, mandating, inter alia, the compulsory filing of automatic First Information Reports (FIR) by police against individuals who incite hatred/violence and spread false news on social media, fast-tracking of trials with a six-month time limit and the institution of victim compensation schemes in each state.[29]

Key gaps

Despite the presence of clear constitutional guarantees relating to equality and non-discrimination, there are key gaps in India's legal and institutional framework that limit the scope for the enjoyment of key civil and political rights by all. These include:

- The lack of specific constitutional provisions protecting its citizens from torture and other cruel, inhuman or other degrading treatment,[30]
- The lack of specific constitutional provisions protecting its citizens from incitement to discrimination, hostility and violence, and
- The constitutional sanction for India's system of 'preventive' detentions, specified within the provision protecting against arbitrary detention and arrest (Article 22).

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26 Debayan Roy, 'Install CCTV with night vision in police stations, CBI, NIA, ED offices: Supreme Court to Centre, States', *Bar and Bench,* December 2, 2020, https://www.barandbench.com/news/litigation/install-cctv-night-vision-police-stations-cbi-ed-offices-supreme-court-orders.

27 Code of Criminal Procedure (CrPC), Section 144.

28 Anuradha Bhasin vs. Union of India.

29 Tehseen Poonawalla vs. Union of India.

30 No specific provision mentioned in the constitution, but some have interpreted this to be ensconced within the rights to life and personal liberty (Article 21) and freedom from arbitrary detention (Article 22).

These gaps have contributed to major shortfalls in how these issues are addressed in the CrPC and the IPC. India also has several problematic anti-democratic legislations—such as the Unlawful Activities (Prevention) Act (UAPA), 1968; the National Security Act (NSA), 1980; the Jammu & Kashmir Public Safety Act (PSA), 1978; and the Armed Forces (Special Protection) Act, 1958—put in place decades ago, ostensibly to uphold national security and integrity but which have effectively enabled the perpetration of rights violations and perpetuated impunity for the same, particularly in areas marked by violent conflict. Under the BJP, several of these laws have been enhanced, and are invoked more routinely. For instance, the UAPA has been amended to empower the state to designate any individual as a 'terrorist' without trial (the burden of proof is reversed in UAPA), and authorities' investigative and seizure powers strengthened further. Statistics confirm that the UAPA is now increasingly invoked particularly in Kashmir, Uttar Pradesh and Manipur.[31] The NSA, which allows for 'preventive' detention up to a year for reasons for national security, is now routinely invoked even in cases of cow slaughter and religious conversions, particularly in Uttar Pradesh.[32]

India also has constitutional provisions that have had the effect of privileging Hinduism and perpetuating discrimination and violence against religious minorities. Some of these are:

- The Supreme Court's interpretation that the fundamental right to 'propagate' religion (Art. 25) does not mean the right to 'convert' has provided the pretext for much of the violent and state-led targeting that Indian Christians face

31 Gautam Doshi, 'In Seven Years, 10,552 Indians Have Been Arrested under UAPA – but Only 253 Convicted', *Scroll*, November 15, 2021, https://scroll.in/article/1010530/in-seven-years-10552-indians-have-been-arrested-under-uapa-and-253-convicted.

32 Manish Sahu, 'In Uttar Pradesh, More Than Half of NSA Arrests This Year Were for Cow Slaughter', *The Indian Express,* September 11, 2020, https://indianexpress.com/article/india/in-uttar-pradesh-more-than-half-of-nsa-arrests-this-year-were-for-cow-slaughter-6591315/; 'UP Govt: Invoke NSA Against Those Involved in Religious Conversion', *The Indian Express,* June 23, 2021, https://indianexpress.com/article/india/up-govt-invoke-nsa-against-those-involved-in-religious-conversion-7371256/.

today. Twelve Indian states now have statutes prohibiting 'unlawful' conversions, including seven that have been enacted or updated in BJP-governed states since 2017. These statutes vary but broadly make 'forcible' or 'fraudulent' conversions a cognisable[33] and non-bailable offence with reversed burden of proof, punishable by up to 10 years' imprisonment. While these laws rarely lead to conviction, they are routinely used to harass, intimidate, and incarcerate Christian faith leaders. A statute enacted in Uttar Pradesh in 2020 also seeks to regulate conversions through marriage, in effect criminalising inter-faith relationships, and enabling the harassment of Muslim men by the police and Hindu 'vigilante' groups working jointly. Several other BJP-ruled states have since followed suit.

- A provision (Art. 48) urging the state to endeavour to prohibit the slaughter of cattle has directly enabled strict cattle slaughter laws that are now in place in 20 of India's states. These statutes also vary but broadly make cattle slaughter a cognisable and non-bailable offence, providing the police with broad and invasive search and seizure powers. Since 2014, several BJP-governed states have enhanced and expanded these laws, reversing the burden of proof and prescribing stricter punishments—in Uttar Pradesh and Assam, cattle slaughter is now punishable by as many as 10 years' imprisonment. Many of these laws also empower private groups to oversee their implementation, enabling violent cow protection squads to function in a quasi-official manner with impunity, leading to dire consequences for Muslims and Dalits.
- The Constitution enumerates the various 'untouchable'/Dalit caste and indigenous tribal groups that make up the Scheduled Castes (Art. 341) and Scheduled Tribes (Art. 342), respectively, who are guaranteed various forms of affirmative action benefits, and also have the protection of a specific law—the Scheduled Castes and the Scheduled

33 An offence in which the police is empowered to make warrant-less arrests, and initiate investigations without court permission.

> Tribes (Prevention of Atrocities) Act, 1989—that penalises discrimination and hate crimes against them. A Presidential Order in 1950, however, restricted inclusion in the Scheduled Castes list only to Hindu groups. There is no such restriction on inclusion to the Scheduled Tribes list. Cumulatively, these have effectively denied the Dalits among Muslims and Christians the opportunity to avail of affirmative action benefits guaranteed to Scheduled Castes, which could have ensured better access to public education and employment, and preferential treatment in access to other universal services and social security benefits. Long-standing legal efforts to expand the Scheduled Castes list to include Muslim and Christian Dalits have faced resistance from successive governments and yielded no tangible results so far.[34] Muslims and Christians (apart from those who qualify for Scheduled Tribe status) are also denied the protection of the non-discrimination provisions of the 1989 Act.

These contradictions within the purportedly secular legal-constitutional framework have been ripe for appropriation by Hindu nationalists, many of whom continue to swear by the Constitution and justify their pursuit of anti-minority policies as being in line with the constitutional idea of India.[35]

Weakening institutions

Under the BJP, the independence and effectiveness of India's domestic accountability mechanisms have come under severe strain. The higher judiciary's failures to keep a check on executive excess and defend the constitutional framework led a prominent

34 '"Scheduled Caste Status Cannot Be Granted To Dalits Who Have Converted To Christianity, Islam..."' Centre To SC', *Outlook India,* November 10, 2022, https://www.outlookindia.com/national/-schedule-caste-status-cannot-be-granted-to-dalits-who-have-converted-to-christianity-islam-centre-to-sc-news-236341 .

35 One scholar has termed this 'Hindutva constitutionalism'. See Hilal Ahmedl, 'New India, Hindutva Constitutionalism, and Muslim Political Attitudes', *Studies in Indian Politics* 10, no. 1 (1 June 2022): 62–78, https://doi.org/10.1177/23210230221082833.

legal expert to remark that the Supreme Court in particular has been functioning as an 'executive('s) court', complicit in the BJP regime's designs.[36] A sitting SC judge who had publicly hailed PM Modi as a 'versatile genius' now heads the NHRC after retirement.[37] As the NHRC chief, he has extolled the government's recent actions in Kashmir—among the most flagrant examples of India violating its international human rights obligations—as the ushering of a 'new age'.[38]

Continuing violations

Under international human rights law, limitations on key civil and political rights may be imposed only in the pursuit of a legitimate objective. They must be prescribed by law after careful consideration of the circumstances involved and must meet the additional criteria of being reasonable, necessary and proportionate. Rights may not be interfered with arbitrarily, and some absolute rights—such as the right to freedom from torture—are not to be interfered with at all, under any circumstances. States are also required to act proactively to ensure accountability and recourse for violations. In the following section, we highlight the violations of these rights and principles, underlining how India's international obligations and its constitutional promises to its religious minorities are coming undone.

Safety from the state

The most egregious recent instances of physical integrity rights being violated have been reported from Uttar Pradesh, Assam,

36 Gautam Bhatia, 'The Executive('s) Court: Notes on the Legacy of Justice A.M. Khanwilkar', *Indian Constitutional Law and Philosophy (blog),* July 29, 2022, https://indconlawphil.wordpress.com/2022/07/29/the-executives-court-notes-on-the-legacy-of-justice-a-m-khanwilkar/.

37 'Justice Arun Mishra Is New NHRC Chief: First Non-CJI to Hold Post; Ex-SC Judge Had Called Modi "Versatile Genius"', *Firstpost,* June 2, 2021, https://www.firstpost.com/india/justice-arun-mishra-is-new-nhrc-chief-first-non-cji-to-hold-post-ex-sc-judge-had-called-modi-versatile-genius-9679191.html.

38 'Amit Shah Ushered in "New Age" in Jammu and Kashmir, North East: NHRC Chief', *The Times of India,* October 13, 2021, https://timesofindia.indiatimes.com/india/amit-shah-ushered-in-new-age-in-jammu-and-kashmir-north-east-nhrc-chief/articleshow/86980151.cms.

Delhi, and Kashmir. In each of these regions, security forces are under the control of either BJP-led provincial governments, as in Uttar Pradesh and Assam, or directly or indirectly under the control of the BJP-led central government, as in the national capital, Delhi, and Kashmir.

Freedom from arbitrary deprivation of life

In addition to the obligation to take all necessary measures to prevent the arbitrary deprivation of life, India is required to exercise due diligence to protect individuals' right to life from being violated by non-state individuals or entities. BJP rule, however, has been marked by an alarming number of seemingly systematised right-to-life violations, against religious minorities—particularly Muslims—and others seen as opposed to the ruling dispensation.

These violations have most notably taken the form of frequent extra-judicial killings (EJKs) of Muslim civilians in Kashmir, either due to the use of excessive force against protesters by security forces, in 'encounter'[39] shootouts with alleged militants, or by other 'unidentified' gunmen. There was a spike in such killings between 2016 and 2018. While the frequency of such incidences has gone down, such killings still continue on an almost weekly basis. Harassment by government agencies has resulted in the cessation of the collation and publication of such data by local Kashmiri civil society groups. The last such report revealed 32 civilian killings in the first six months of 2020.[40]

Kashmir has also recently seen a spate of targeted killings of Hindu civilians (mostly migrant workers) by armed militants—at least 11 such killings were reported in the first 10 months of 2021, of a total of 32 reported civilian killings

39 Maneka Gandhi vs. Union of India.

40 Association of Parents of Disappeared Persons (APDP) and Jammu Kashmir Coalition of Civil Society (JKCCS), *Annual Review of Human Rights Situation in Indian Administered Jammu and Kashmir (January to December 2019)* (APDP & JKCCS, 2019), https://kashmirscholars.files.wordpress.com/2019/12/jkccs-2019-human-rights-report.pdf; Maktoob Staff, 'Kashmir: 32 Civilians Among 229 Killings in Six Months', *Maktoob,* July 2, 2020, https://maktoobmedia.com/2020/07/02/kashmir-32-civilians-among-229-killings-in-six-months/.

during the same period.[41] These killings have continued since. There has been a spike in 'encounter killings' (effectively extra-judicial killings) against alleged criminals by the police in Uttar Pradesh and Assam since March 2017. In both states, Muslims have disproportionately accounted for the victims, and many may have been innocent civilians. Chief ministers of both the states have openly endorsed the killings. Deaths were also reported in both states during the anti-CAA protests in December 2019 due to the use of excessive force against protesters by the police.

Deprivation of life by non-state actors

Since 2014, India has also seen a spike in religiously motivated hate crimes by non-state actors and this has most notably manifested in the form of a spate of mob violence. The primary targets have been Muslims, Dalits and Christians while the main perpetrators have been militant 'vigilante' groups, carrying out acts of violence in the apparent pursuit of Hindu nationalist causes such as the protection of cows. Existing laws and rhetoric have encouraged this anti-minority behaviour as well as impunity against perpetrators.

Numerous civil society efforts to track and quantify this phenomenon have reportedly been scuttled by the government. One such database recorded 212 incidents of hate crime between 2014 and 2020, resulting in 63 deaths, of which over 80 per cent of the victims were Muslims.[42] Over two-thirds of all incidents took place in BJP-ruled states and the perpetrators in three-quarters of the cases were identified as belonging to right-wing Hindu nationalist groups with close links to the BJP.

Freedom from arbitrary detention

There have been several major instances of individual and mass arbitrary detention in India. Human rights experts have noted that the victims were primarily targeted for their perceived

41 '3 More Non-Locals Shot by Terrorists in Kashmir', *The Hindustan Times*, October 17, 2021, https://www.hindustantimes.com/india-news/3-more-non-locals-shot-by-terrorists-in-kashmir-101634493383939.html.

42 Rachel Chitra, *How to Cover Hate Crimes and Violence When Government Sources Fail* (Reuters Institute and University of Oxford, 2021).

political opinion and/or religious belief.[43] They have included peaceful protesters—students, activists, lawyers—and journalists, particularly those who have sought to oppose and mobilise against the BJP government and its recent discriminatory actions. Legal experts who have examined many of these cases have noted that many of the arrests lacked legal and factual basis and were in contravention of basic due process rights.[44]

The use of arbitrary detention—and criminalisation using anti-terror laws, among others—to silence dissent, particularly by Muslims and HRDs, is not a new phenomenon. Official statistics of India's prison population, available up to the end of 2020, provide some confirmation of how this trend has accelerated, particularly in BJP-ruled states like Uttar Pradesh. Muslims account for 31 per cent of India's overall detenue population and almost 50 per cent in Uttar Pradesh, a significant jump from only 20 per cent and 34 per cent, respectively, in 2014.

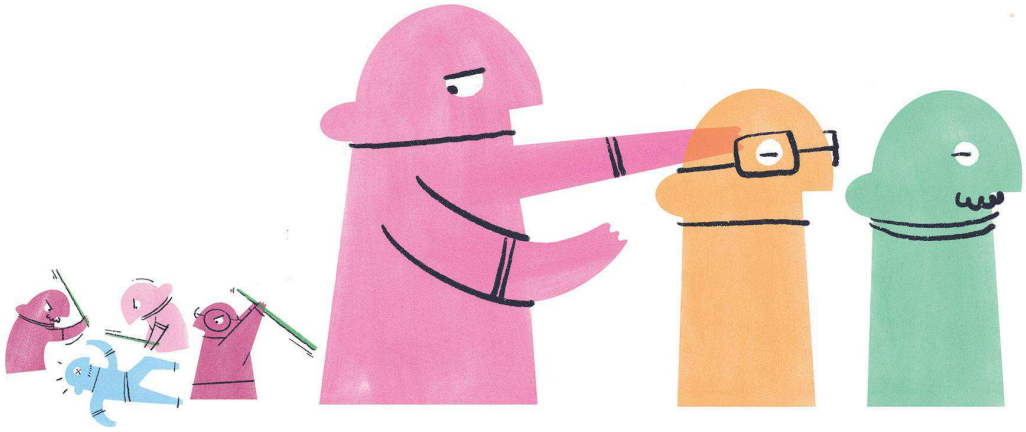
Freedom from torture and other forms of cruel, inhuman or degrading treatment

While India has signed but not ratified the CAT, the prohibition on torture is considered a peremptory norm of international law. As a signatory, India is also obligated to refrain from actions contrary to the objects and purposes of the CAT. However, many of the instances of arbitrary detention highlighted in the earlier section were also marked by serious allegations of custodial torture and other forms of cruel, inhuman and degrading treatment.

Victims include minors, some of whom reportedly faced sexual abuse as well. The perpetrators are usually police officers or, in Kashmir, personnel of the Indian army and other paramilitary forces. Extremist non-state actors, too, have been reported, on many occasions, to have meted out cruel, inhuman, or degrading treatment to civilians—Muslims as well as non-Muslims. Custodial torture has continued in India at a systemic level, even in areas not marked by conflict. This is confirmed by key findings

43 For instance, 'India: Events of 2020', *Human Rights Watch*, https://www.hrw.org/world-report/2021/country-chapters/india.

44 Biserko, Darusman and Rapp, *Report of the Panel,* 26.



from the latest annual report published by the Campaign Against Torture.[45]

Freedom from enforced disappearance

India has not ratified the CPPED but, as a signatory, is obligated to act to prevent future instances of enforced disappearance, and to ensure accountability and reparations for past instances. However, the existence of laws like the Armed Forces (Special Powers) Act (AFSPA) continues to ensure impunity for perpetrators of disappearances.

Freedom from incitement to discrimination, hostility, violence and genocide

While much of what may be termed as hate speech in regular parlance is protected under the right to free expression, 'top-level' hate speech—incitement to hostility, discrimination or violence and incitement to genocide—is prohibited under international law.[46] As such, India is obligated to act to restrict these. However, the preponderance of 'top-level' hate speech in India has reached such an extent that it has prompted the UN Special Adviser on

45 National Campaign Against Torture, *India: Annual Report on Torture 2020* (New Delhi: National Campaign Against Torture, 2021), http://www.uncat.org/wp-content/uploads/2021/03/IndiaTortureReport2020.pdf.

46 ICCPR, Article 20(2); Genocide Convention, Article 3(c); See United Nations, *Strategy and Plan of Action on Hate Speech* (UN, 2020), https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf.

Prevention of Genocide to express concern.[47] Multiple other international agencies have also cited this to flag India as being at risk of potential mass killing[48] and genocide.[49]

While Christians and Sikhs are also routinely vilified, the primary targets of 'top-level' hate speech incitement are Muslims. The perpetrators of 'top-level' offences have included several popular Hindu religious figures and BJP politicians. They may have been emboldened by the continuing use of dehumanising language, particularly against Muslims, by some of the most powerful figures within India's government apparatus, including the prime minister, the home minister and chief ministers of states like Uttar Pradesh and Assam. [50]

Other everyday attempts to dehumanise minorities, particularly Muslims and Dalits, are particularly pronounced against women. On multiple occasions, hundreds of prominent Muslim women were reported to have been 'auctioned'[51] online by young college students subscribing to extreme Hindu nationalist ideology.[52]

Democratic empowerment rights

Freedoms of association, assembly and expression

The freedoms of association, assembly and expression are considered to be the three core rights that constitute the state of civic space

47 United Nations Special Adviser on the Prevention of Genocide, 'Note to Media on India', May 18, 2020, https://www.un.org/en/genocideprevention/documents/18052020_SA%20note%20to%20media%20on%20India_final.pdf.

48 United States Holocaust Memorial Museum, 'India: 2022-23 Statistical Risk Assessment for Mass Killing'.

49 'India', Genocide Watch, accessed September 1, 2022, https://www.genocidewatch.com/india.

50 For more on the preponderance and dynamics of anti-minority hate and incitement in India, see our 2021 report: Citizens Against Hate, 'India's Other Pandemic: Anti-Minority Disinformation, Hate, and Incitement to Violence and Discrimination', in *Hate Speech Against Minorities: South Asia State of Minorities Report* (2021), https://thesouthasiacollective.org/wp-content/uploads/2022/01/SASM2021.pdf.

51 Geeta Pandey, 'Sulli Deals: The Indian Muslim Women "up for sale" on an App', *BBC News,* July 10, 2021, https://www.bbc.com/news/world-asia-india-57764271.

52 'Trads: The Extreme Hindu Nationalists Inspired by Alt-Right Memes', *BBC News,* May 28, 2022, https://www.bbc.co.uk/news/av/stories-61610891.

in a country. While they are not absolute, India is obligated to refrain from arbitrarily interfering in its citizens' enjoyment of these rights. It also has a positive obligation to protect civil society. However, India has seen a systematic shrinking of civic space in recent years, as detailed in our 2020 report.[53]

Freedom of religion or belief

The prohibition of discrimination, including on the basis of religion, is one of the central tenets of the international human rights framework that India is bound by. Additionally, India is also obligated to uphold the freedom of religion, which encompasses the rights to freely adopt/renounce religion, to freely manifest it and to be free of religious coercion. The current BJP government and its allies, however, have violated the religious rights of Muslims and Christians, while openly privileging Hinduism.

Since 2017, seven BJP-governed states have either enacted new laws or added more stringent provisions to extant laws that ostensibly seek to regulate all religious conversions but have in effect been used to penalise conversions out of Hinduism.

Parallel to the targeting of conversions out of Hinduism, BJP affiliates have conducted dozens of mass 'purification' ceremonies to 'reconvert' Muslims and Christians—many, if not most, of whom are Dalits or Adivasis—across the country. Numerous instances of violence, coercion, and other forms of inducements being offered to enable these conversions have been reported.[54]

Freedom to participate in government and in public life

According to experts surveyed by the HRMI, India performs well above the global average at respecting the right to effective participation in government. This is likely by virtue of its reasonably robust electoral system and its system of affirmative action which provides reservations for Dalits, Adivasis and other

53 Citizens Against Hate, 'Closing Civic Space in India', https://thesouthasiacollective.org/wp-content/uploads/2022/01/SASM2021.pdf.

54 Yashasvini Rajeshwar and Roy C. Amore, 'Coming Home (Ghar Wapsi) and Going Away: Politics and the Mass Conversion Controversy in India', *Religions* 10, no. 5 (n.d.): 133.

designated 'Backward Classes' (OBCs) in access to public education and employment. However, religious minorities—and particularly Muslims among them—are largely side-lined in this regime. This has resulted in poor performance, historically, in indicators such as representation in national- and provincial-level elected bodies and in other crucial public institutions such as the bureaucracy, police and judiciary.

With the BJP dominating the electoral and political landscape, minority participation in public life is perhaps at its lowest. A few statistics illustrate this point:

- The BJP's electoral dominance has had consequences for minority representation in the national parliament and in state-level legislative assemblies. At the national level, there is no Muslim or Christian BJP member of parliament in the lower house, to which direct elections are held. The BJP also does not have a single Muslim state-level legislator anywhere in the country, despite being in power in 18 (of 28) states.[55]
- The higher judiciary, including the SC in particular, is dominated by 'upper-caste' Hindus. It has never had an Adivasi judge.
- India does not have a single Muslim minister at the national level for the first time ever. There are one Christian (a junior minister of state), one Sikh (a senior cabinet minister), and two Buddhist (one senior and one junior) ministers in the Council of Ministers.[56]
- Muslims are reported to account for only around 3 per cent of the officers in the top-level civil bureaucracy (Indian Administrative Service) and around 4 per cent in the top-level police machinery (Indian Police Service). The number of Muslims accepted into these services has stagnated at

55 Gaurav Vivek Bhatnagar, 'From July 7, BJP Will Have No Muslim Representatives in Parliament, Assemblies', *The Wire,* July 7, 2022, https://thewire.in/government/in-one-months-time-bjp-will-have-no-muslim-representatives-in-parliament-assemblies.

56 'Council of Ministers', National Portal of India, accessed August 29, 2022, https://www.india.gov.in/my-government/whos-who/council-ministers.

around 3-4 per cent every year.[57]

- Muslims are also poorly represented in the lower and middle levels of the police machinery, which could have particularly influenced some of the civil and political rights violations mentioned in earlier sections.[58]

It is difficult to determine exactly how much of today's state of affairs can be attributed exclusively to the recent hardening of Hindu nationalist majoritarian impulses under the BJP's rule. But a few recent examples illustrate how the BJP government has sought to further exacerbate the already weak level of minority (and particularly Muslim) participation in government.

- In Kashmir, which has been without any meaningful form of popular representation since June 2018, Kashmiri and particularly Kashmiri Muslim officers are reportedly being side-lined in the local bureaucracy, with non-locals and non-Muslims being preferred for key positions.[59] The recent move to expand electoral rolls to include non-locals as well is likely to have adverse consequences for Muslim representation in any future elections.
- The elevation of a senior Muslim judge to the SC was reportedly scuttled at the insistence of the BJP-led central government.[60] Earlier, the same judge's appointment as chief justice of the Madhya Pradesh High Court was also reportedly blocked.[61]

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57 Sameer Khan, 'Is Performance of Muslim Candidates in UPSC Civil Services Exam Satisfactory?', *The Siasat Daily,* September 27, 2021, https://www.siasat.com/is-performance-of-muslim-candidates-in-upsc-civil-services-exam-satisfactory-2197998/.

58 Commonwealth Human Rights Initiative (CHRI) and Quill Foundation, *Muslim Voices: Perceptions of Policing in India* (New Delhi: CHRI & Quill Foundation, 2018), https://www.humanrightsinitiative.org/download/1548414445Muslim%20Voices%20Perceptions%20of%20Policing%20Jan%202019.pdf.

59 Irfan Amin Malik, 'As Fewer Locals Get Key Admin Posts, Kashmiri Muslims Fear Planned Demographic Change', *The Wire,* October 8, 2020, https://thewire.in/government/kashmir-administrative-posts-non-local-muslims.

60 Supreme Court and High Court judges are appointed by the central government upon the recommendation of a collegium of sitting SC judges.

61 Apurva Vishwanath and Sohini Ghosh, 'Akil Kureshi: A Justice, Denied',

Weak participation in government has contributed to weak outcomes, historically, for religious minorities in socio-economic realms. This has likely worsened further due to the wide-ranging attacks on civil and political rights detailed above. This is explored further in the next section.

Economic and Social Rights: Quality of Life

India's commitments and efforts

International obligations and commitments

India has ratified the ICESCR, the main international instrument focusing on economic and social rights, as well as other major instruments with economic and social rights implications, such as the ICERD, ICMW, CRC, CRPD, and the UN Minority Rights Declaration. India is thus bound by both positive and negative obligations to respect, protect, and fulfil the realisation of these rights, to the maximum of its available resources. India is also obligated to ensure non-discrimination, including in the private sphere.

India has not, however, ratified the Optional Protocol to the ICESCR or accepted any of the various individual complaints or inquiries procedures with economic and social rights implications. The key reservations and declarations made by India at the time it acceded to the ICESCR included assertions that:

- Limitations that economic and social rights may be subject to (Article 4) would be in consonance with the principle of 'reasonable restrictions' laid out in India's constitution (Article 19), and
- The right to equal opportunity for promotion in employment (Article 7[c]) would be in conformity with India's provisions for affirmative action in matters of public employment (Article 16).

The Indian Express, August 29, 2021, https://indianexpress.com/article/india/a-justice-denied-7475880/.

Domestic framework

Constitutional guarantees

While India's constitution guarantees equality before law and prohibits discrimination, only the rights to education (Article 21[a]) and to practice or carry on any profession/occupation/trade/business (Article 19[g]) are specifically guaranteed as fundamental rights among the economic and social rights. The incorporation of the rest is in the form of non-justiciable Directive Principles of State Policy, meant only to act as guidance for government policy (Table 11). However, India's higher judiciary has transformed, inter alia, the rights to basic education, health, food, shelter, and equal wages for equal work into legally enforceable rights.[62] Additionally, the Constitution enjoins upon the state to eliminate inequalities (Article 38[2]) and to promote the educational and economic rights of Scheduled Castes, Scheduled Tribes, and other weaker sections (Article 46). The state is also authorised to make special provisions for the economic advancement of socially and educationally backward classes (Article 15[4]) and to make reservations in appointments for backward sections.

Overview of legal and institutional structure

Despite the lack of clear-cut constitutional guarantees, there is an impressive array of socio-economic rights written into domestic law, all enacted by previous governments. There are also several active large-scale government schemes and programmes aimed at improving socio-economic rights which are not written into law. These laws and programmes apply universally to all citizens, including minorities, albeit with specific eligibility qualifications. Additionally, there are several smaller-scale schemes administered by the federal Ministry of Minority Affairs, focusing specifically on the socio-economic empowerment of India's six recognised religious minority communities.[63] Apart from these, much of the

62 Varun Gauri and Daniel M. Brinks, eds, *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge University Press, 2009).

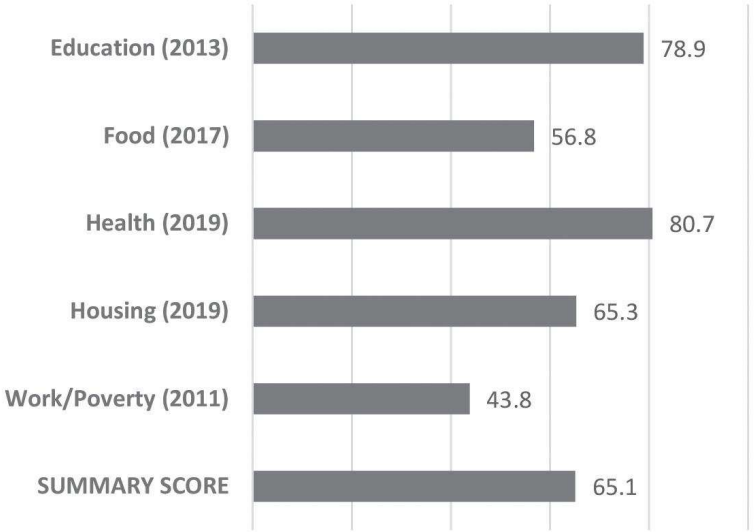
63 See 'Schemes for Upliftment of Minorities', Press Information Bureau,

provisioning—both focused on socio-economic rights and those targeting minorities—takes place at the provincial level.

Historically poor outcomes, particularly for minorities

India's record at ensuring a broad spectrum of these universally recognised rights—in general to all citizens—is rated as 'very bad', even after adjusting for its current level of income.

Chart 1: India's performance in economic and social rights (per cent of income-adjusted benchmark achieved)



Source: Human Rights Measurement Initiative, 2022.
0-75 per cent = very bad; 75-85 per cent = bad; 85-95 per cent = fair; 95-100 per cent = good.

The magnitude of India's failure in this regard is further underlined by HRMI's estimates that had India fully utilised its current level of income, it would have had:

13.8 million more children enrolled in primary school and 40 million more children in secondary school	34.6 million more children under the age of five able to grow well and not be stunted	2.7 million more children reaching their fifth birthday and 84.6 million more adults their 60th birthday
91.6 million more women using modern contraceptives	432 million more people with access to basic sanitation and water	613.6 million more people out of absolute poverty

Source: Human Rights Measurement Initiative, 2022.

https://pib.gov.in/newsite/PrintRelease.aspx?relid=231405.

While standardised and up-to-date data disaggregated by religious group is hard to come by, human rights experts surveyed by the HRMI noted that Dalits, Adivasis, OBCs, Muslims and other religious minorities, especially women and children from these groups, face the highest risk of having their economic and social rights violated. Despite the gradual improvement and convergence of trends vis-à-vis the national average in several indicators, India's historical failure at ensuring the equal enjoyment of economic and social rights for minorities is evident in the following indicators.

Education

The literacy rate among Dalits, Adivasis and Muslims is particularly low, while it is highest among Jains and Christians.[64] Adivasi, Dalit and Muslim women are among the least literate sections in society. Muslims, Adivasis and Dalits also have the highest proportion of youth (aged 3-35) who have never enrolled in any form of formal schooling. The gross attendance ratio at higher levels (upper primary and above) is the lowest among Muslim girls. Adivasi and Muslim women also lag far behind other groups in attendance at the college level (aged 18-23), despite major gains made between 2008 and 2018 (Charts 2, 3, 4).[65]

Health

The proportion of children who have been fully vaccinated[66] is lowest among Muslims and Adivasis, significantly lower than other groups, including Dalits. The percentage of live births delivered in a health facility is lowest among Adivasi and Muslim women, far lower than other groups, including Dalits. The fertility rate of Muslims, while declining fastest among all communities, remains the highest in the country (Charts 5, 6, 7).[67]

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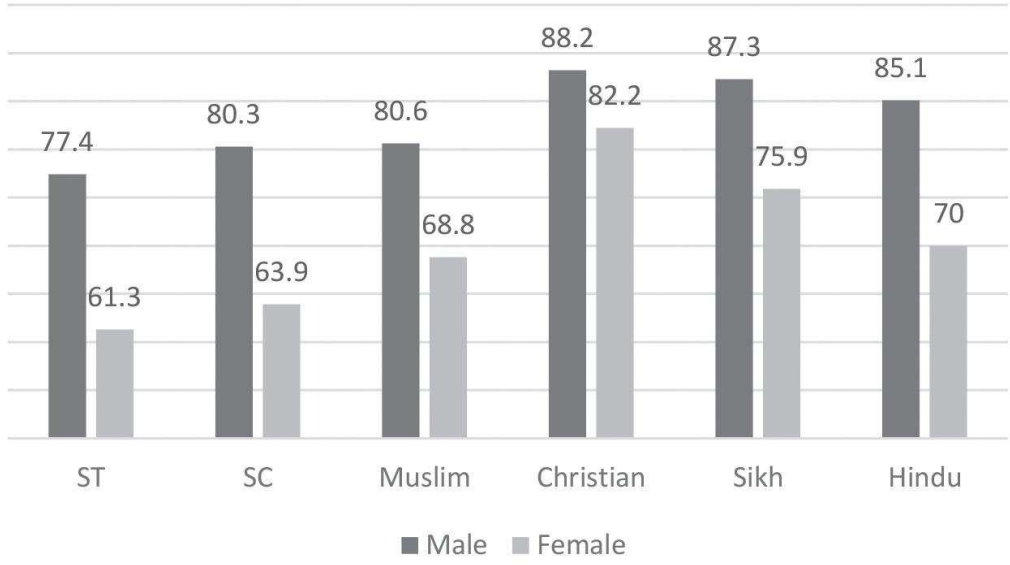
64 Distribution of Population by Religions, Drop-in-Article on Census – No. 4, https://censusindia.gov.in/nada/index.php/catalog/40443/download/44077/DROP_IN_ARTICLE-04.pdf.

65 Sourav Roy Barman, 'Steady Uptick in Muslim Girls Going to Schools, Colleges', *The Indian Express,* February 13, 2022, https://indianexpress.com/article/india/steady-uptick-in-muslim-girls-going-to-schools-colleges-7769897/.

66 BCG, polio, DPT, measles, rotavirus, and hepatitis B.

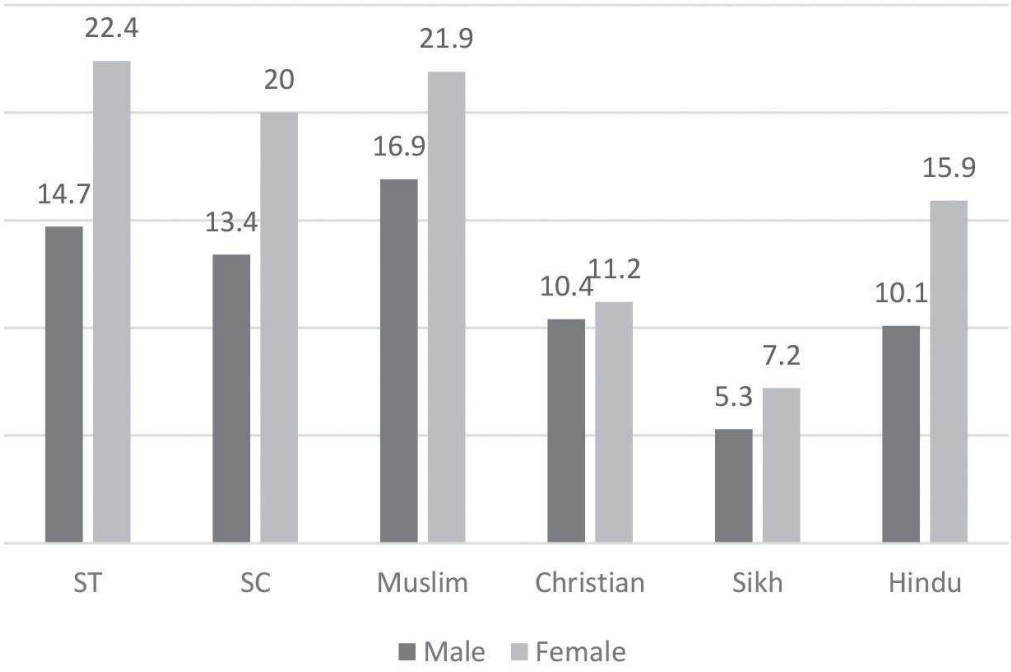
67 'Muslims' Fertility Rate Sees Sharpest Decline over Two Decades, Shows

Charts 2: Literates as a proportion of population by religious and social group (%)



Source: Household Social Consumption: Education, NSS 75th Round, Schedule-25.2: June 2017-June 2018.

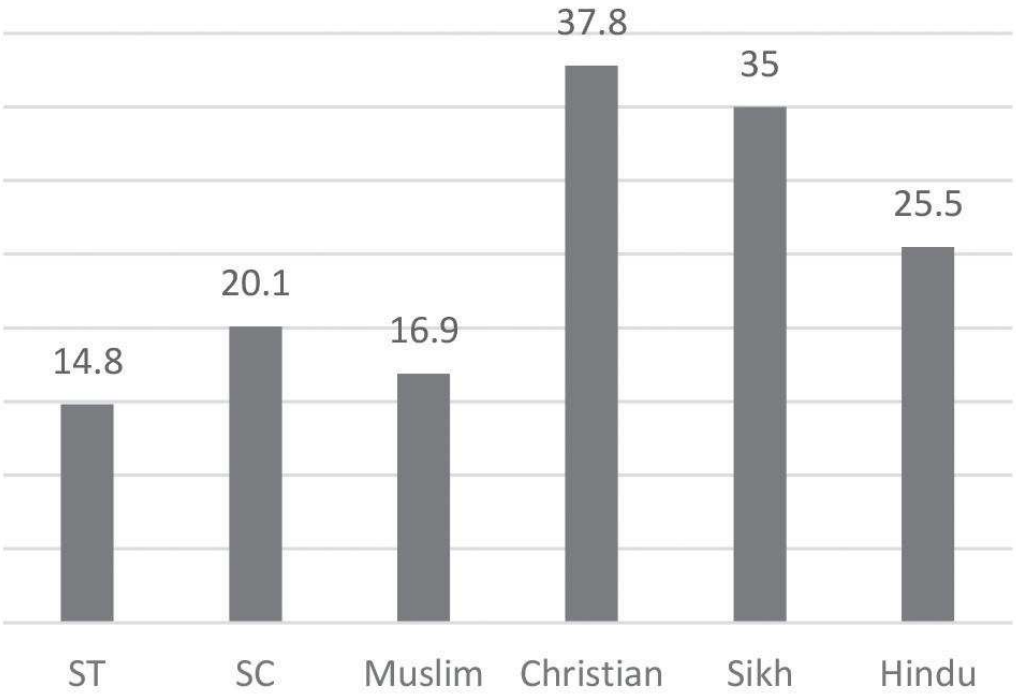
Chart 3: Persons (aged 3-35) who have never enrolled in formal education by religious and social group (%)



Source: Household Social Consumption: Education, NSS 75th Round, Schedule-25.2: June 2017-June 2018.

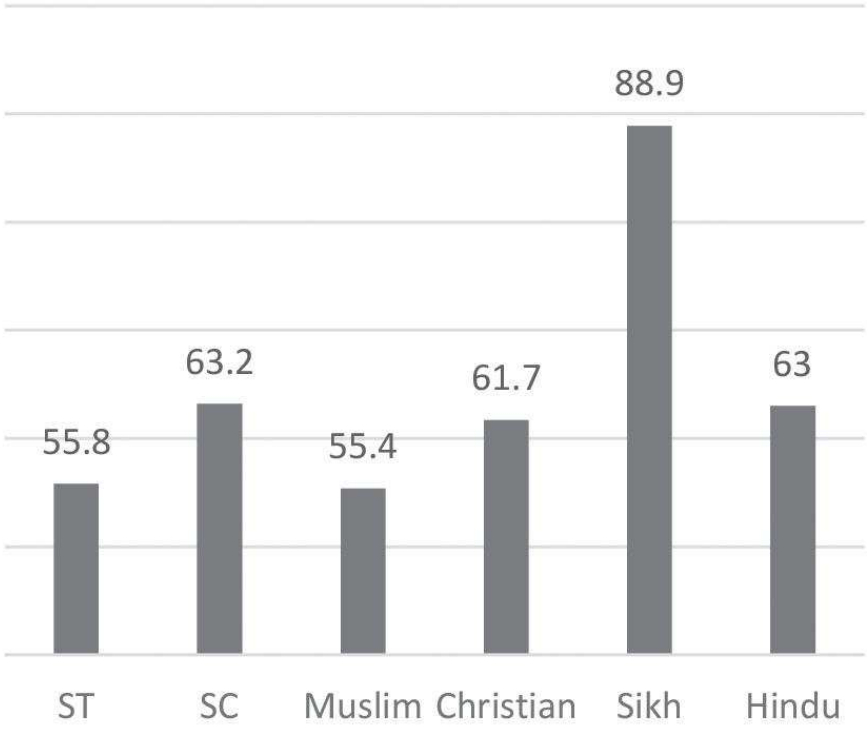
Health Ministry Survey', *Scroll.in*, May 9, 2022, https://scroll.in/latest/1023559/muslims-fertility-rate-sees-sharpest-decline-over-two-decades-shows-health-ministry-survey.

Chart 4: Age-specific attendance ratio (ASAR) among women aged 18-23 by religious and social group (%)



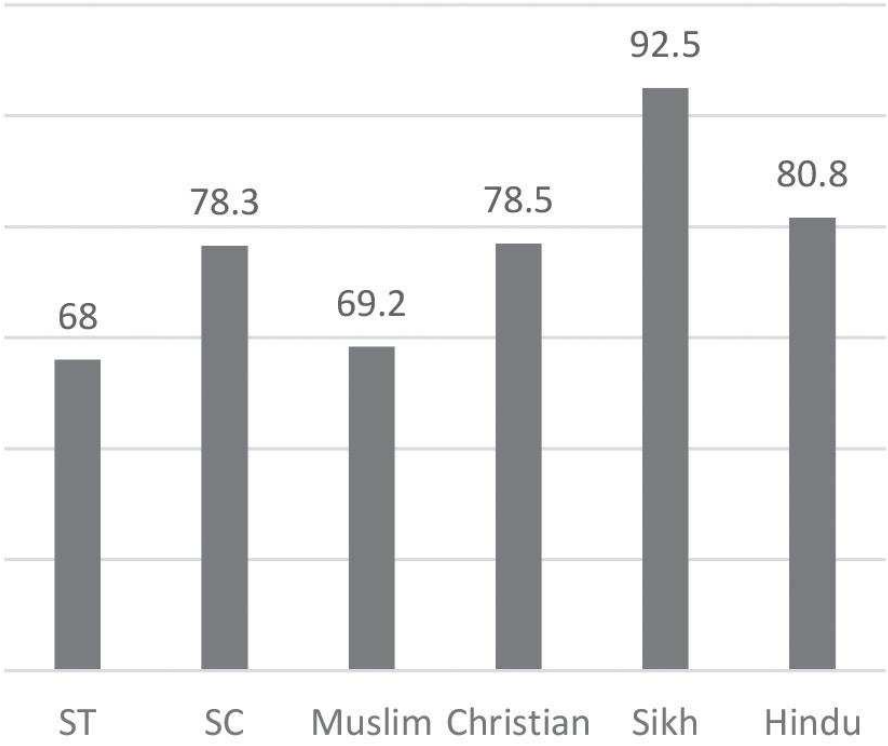
Source: Household Social Consumption: Education, NSS 75th Round, Schedule-25.2: June 2017-June 2018.

Chart 5: Children (12-23 months) fully vaccinated by religious and social group (%)



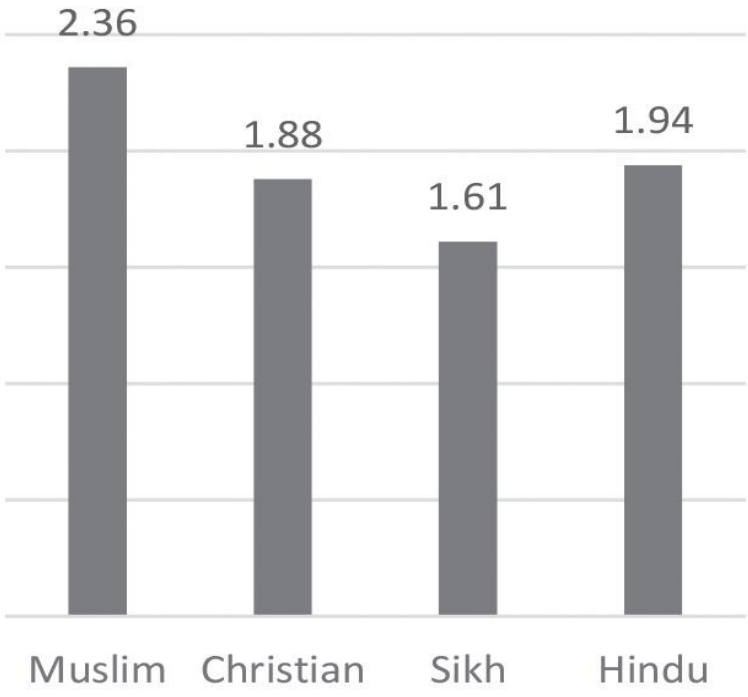
Source: National Family Health Survey (NFHS)-4.

Chart 6: Live births delivered in a health facility (women aged 15-49 years) by religious and social group (%)



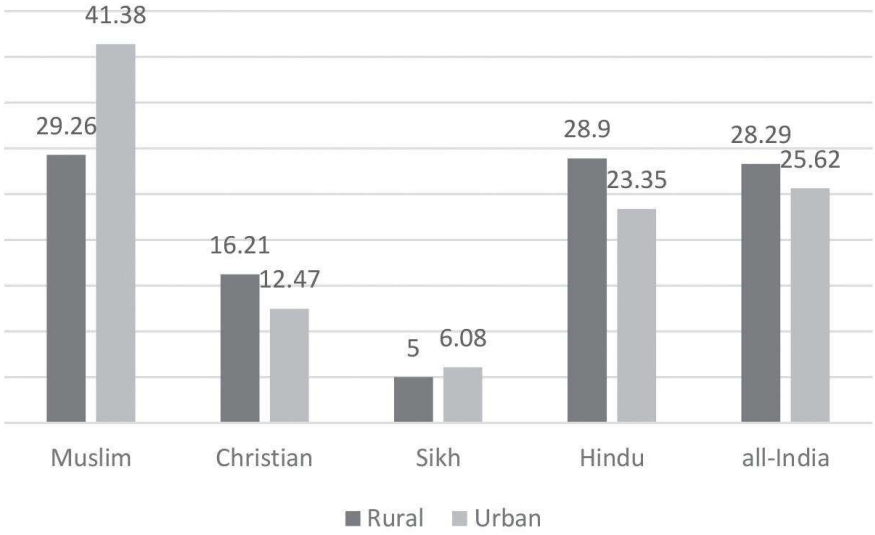
Source: National Family Health Survey (NFHS)-4.

Chart 7: Total fertility rate (children per woman)



Source: National Family Health Survey (NFHS)-5.

Chart 8: Incidence of income poverty by religious group (%)



Source: Thorat (2013), based on NSSO Consumer Expenditure (2004-05).

Poverty

While all religious minorities are disproportionately poor (in economic terms) and there are variations between urban and rural areas, the income poverty rate among Muslims in urban areas is strikingly high (Chart 8).

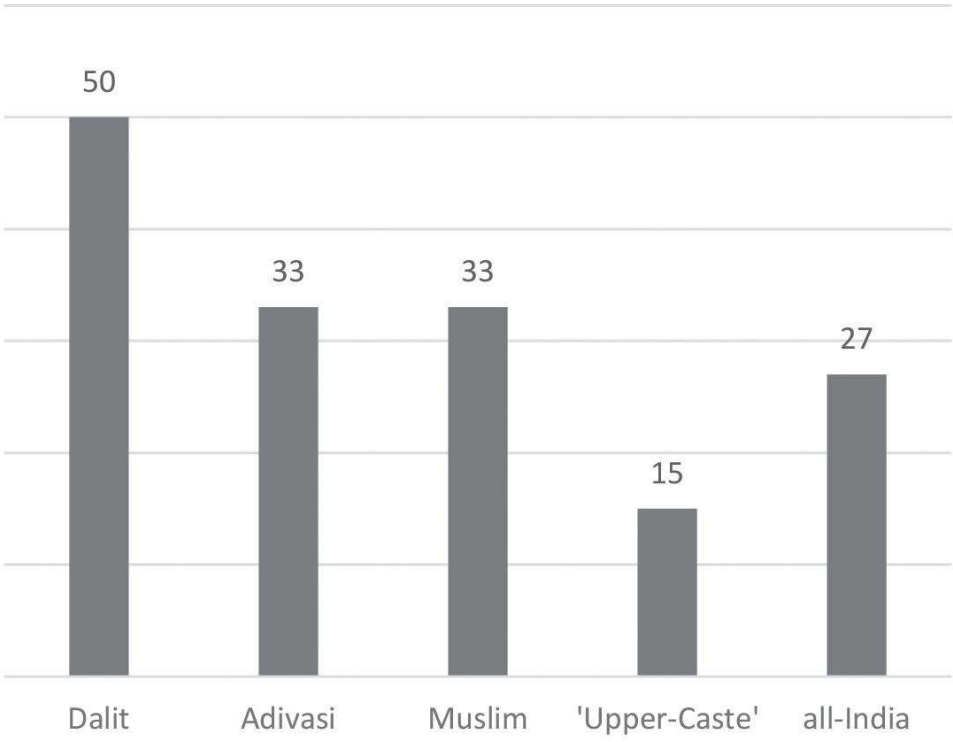
While the overall rate of multi-dimensional poverty[68] fell significantly between 2006 and 2016, half of all Dalits and a third of all Muslims and Adivasis were still estimated to be multi-dimensionally poor as of 2018. Meanwhile, only 15 per cent of 'upper-caste' Hindus were poor by this measure.[69]

These figures all pertain to the period before the COVID-19 pandemic. How much of India's gains on the economic and social fronts have been reversed since and how much the outcomes for India's minorities, in particular, have been exacerbated by the pandemic is still being studied. But there is already statistical evidence to prove that minorities have been disproportionately impacted. For instance, the proportion of Muslims who are

68 Multi-dimensional poverty takes into account income, nutrition, health, education, living standards and assets.

69 Ruhi Tewari and Abhishek Mishra, 'Every Second ST, Every Third Dalit & Muslim in India Poor, Not Just Financially: UN Report', *The Print*, July 12, 2019, https://theprint.in/india/every-second-st-every-third-dalit-muslim-in-india-poor-not-just-financially-un-report/262270/.

Chart 9: Multi-dimensionally poor in India by social and religious group (%)



Source: Global Multi-Dimensional Poverty Index, 2018.

'regular/salaried employees'[70] was reported to have shrunk from 22.1 per cent in 2018-19 to 17.5 per cent in 2020-21, a much sharper decline than in the case of other religious groups.[71]

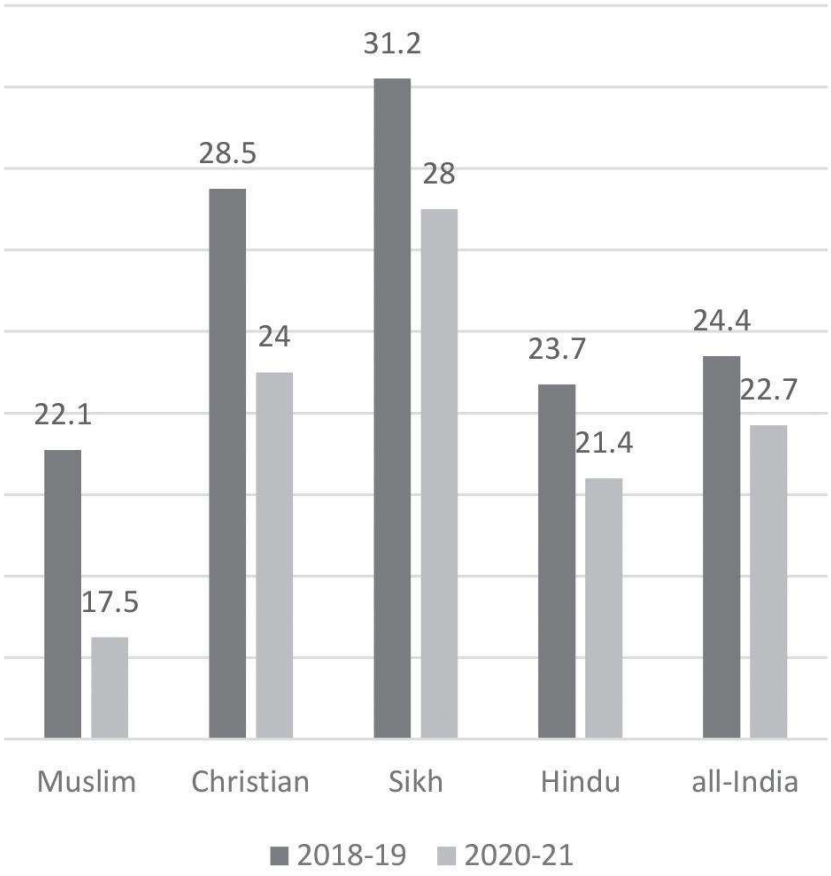
Exacerbation of historically poor efforts at minority upliftment

The poor economic and social situation of religious minorities highlighted in the previous section is not surprising given the absence of any significant targeted state-led action to ensure better outcomes for them for several decades after independence. A prime ministerial committee instituted in 2005 to study deprivations experienced by the Muslim community was the

70 Defined as persons who worked in others' farm or non-farm enterprises and received salary or wages on a regular basis—this definition is reported to include jobs that don't offer social security or formal contracts.

71 Nikhil Rampal, 'India's "Salaried Class" Shrank during Covid, Muslims Hit Hardest, Govt Data Suggests', *The Print,* August 16, 2022, https://theprint.in/india/indias-salaried-class-shrank-during-covid-muslims-hit-hardest-govt-data-suggests/1077850/.

Chart 10: Percentage of those employed earning a regular salary or wage by religious group



Source: Periodic Labour Force Survey, various rounds.

first major instance of religious minorities being treated as a legitimate target for development policy.[72]

The committee's findings led to the announcement of a range of measures targeted at religious minorities—and not just Muslims—encompassing, inter alia, limited affirmative action policies, special development initiatives, enhanced access to credit and education, and social inclusion. While well-intentioned, subsequent analyses of the working of these programmes revealed:[73]

72 Government of India, *Report of Prime Minister's High Level Committee on Social, Economic and Educational Status of Muslim Community in India* (New Delhi: Cabinet Secretariat, 2006).

73 Government of India, *Report of the Post-Sachar Evaluation Committee* (New Delhi: Cabinet Secretariat, 2014).

- Poor design: with the coverage limited mainly to basic services and programmes aimed at livelihoods and education attainment in particular and being mostly token in nature;
- Little targeted focus: few federal ministries earmarked outlays and physical targets for religious minorities as mandated;
- Poor resourcing: modest financial allocations relative to the actual deprivation experienced by minorities; and
- Weak institutional environment: weak and ad-hoc structures, processes, and implementation capacity at all levels.

There is some evidence to suggest that, under the BJP, some of these limited gains are at risk of being reversed. At the state level, financial allocation for minority-specific schemes have been the lowest in traditional BJP bastions like Gujarat, Haryana and Uttar Pradesh. One report in September 2020 revealed that the BJP government in Uttar Pradesh had utilised only around 10 per cent of central funds allotted to it for minority-targeted programmes.[74] At the federal level, the BJP government has ended or slashed funding to several key, minority-focused school, higher education, and foreign study schemes.[75]

Major recent violations

Apart from the above-enumerated weaknesses in provisioning for minorities, there is also a recent trend of increased direct targeting and undermining of the rights and opportunities for minorities in the socio-economic sphere.

74 Vasudha Venugopal, 'Uttar Pradesh Spends Less than 10% of Centre's Scheme in Minority Areas; State MPs Raise Concerns', *The Economic Times,* September 19, 2020, https://economictimes.indiatimes.com/news/politics-and-nation/uttar-pradesh-government-spends-less-than-10-in-minority-areas/articleshow/78198170.cms.

75 Arshi Qureshi and Quratulain Rehbar, 'How Modi Govt Ended Or Slashed Financial Aid To Minority School, Higher Education & Foreign Study Schemes', *Article 14*, January 20, 2023, https://article-14.com/post/-how-modi-govt-ended-or-slashed-financial-aid-to-minority-school-higher-education-foreign-study-schemes--63ca053b22ae2.

Right to adequate housing

Forced evictions of those residing in so-called 'illegal encroachments' is an endemic phenomenon in India. There were over 200 recorded instances in the first 16 months of the pandemic affecting around 250,000 people—the overwhelming majority of whom were rendered homeless.[76] The majority of these are likely to have been Adivasis and Dalits.[77] Recently, forced evictions have also been used as a form of collective punishment against Muslims (Table 3). These evictions and demolitions have continued despite the UN Special Rapporteur for Housing calling for a national moratorium on evictions after her country visit in 2016—a demand she reiterated to all state parties in April 2020 as an obligation in the context of the COVID-19 pandemic. The UN Committee on Economic, Social

Table 3: Major recent violations of the right to adequate housing

Type of Violation	Details
Forced evictions and demolitions as collective punishment against Muslims*	- Historical trend of Indian security forces in Kashmir using demolitions, arson and ransacking of civilian property as tools of collective punishment against civilians seen as aiding insurgents has continued; in 2020 alone, 114 civilian homes were estimated to have been destroyed † - Similar collective punishment measures via demolition drives now seen across the country, most notably in Madhya Pradesh, Gujarat, Delhi and Uttar Pradesh; victims, exclusively Muslims, were from mostly low-income areas, shortly after localised episodes of alleged inter-communal violence - In Assam, over 2500 Bengali-Muslim families reported to have been driven out of their homes between 2019 and 2021

76 Housing and Land Rights Network (HLRN), *Forced Evictions in India 2020 - A Grave Human Rights Crisis During the Pandemic* (New Delhi: HLRN, 2021), https://www.hlrn.org.in/documents/Forced_Evictions_2020.pdf.

77 A previous study estimated that of the total persons displaced/affected by development projects between 1947 and 2004, 40 per cent were tribals, while Dalits and OBCs accounted for around 20 per cent each. Cited in Standing Committee on Rural Development, Ministry of Rural Development, *The Land Acquisition, Rehabilitation and Resettlement Bill* (New Delhi: Cabinet Secretariat, 2012), https://eparlib.nic.in/bitstream/123456789/64751/1/15_Rural_Development_31.pdf.

Other forced evictions	- Other forced evictions of those residing in so-called 'illegal encroachments' have remained widespread—around 150 housing units estimated to be targeted every day; Dalits and Adivasis estimated to account for around 60 per cent of those displaced - Emblematic case #1: Hundreds of nomadic Gujjar Muslim tribals evicted and left homeless and jobless in several locations in Jammu in late 2021. - Emblematic case #2: Multiple massive demolition drives in 2021 in Khori Gaon settlement in Faridabad—inhabited mostly by Dalits, OBCs and Muslim quarry-worker families; thousands left homeless amid the second wave of the pandemic and a heat wave.[¶]

[*] AL IND 5/2022, AL IND (5.2022) (ohchr.org).
[†] Nusrat Sidiq, 'Military Operations Rendering People Homeless, Hopeless in Kashmir', Anadolu Agency, June 22, 2021, https://www.aa.com.tr/en/asia-pacific/military-operations-rendering-people-homeless-hopeless-in-kashmir/2281499.
[¶] UA IND 13/2021, UA IND (13.2021) (ohchr.org).

and Cultural Rights has previously found forced evictions per se as being prima facie incompatible with the ICESCR.[78]

Punitive and communal nature of demolitions evident from several public statements by government officials (Table 4). After the targeted violence in Delhi in February 2020, Muslims were reported to have sold their property to Hindus en masse at below market price and fled to safer locations.[79]

Table 4: Statements by government officials demonstrating the punitive nature of recent demolition/eviction drives

The houses from where stones were pelted, we will turn those houses into piles of stone.[*] —Narottam Singh, home minister of Madhya Pradesh, before dozens of Muslim-owned houses and businesses were razed following inter-communal violence in Khargone disrict	***Finding out culprits is a time-taking process, so we looked at all the areas where rioting took place and demolished all the illegal constructions to teach the rioters a lesson.***[†] —Anugraha P., district magistrate of Khargone, after the demolition drive was completed

78 UN Committee on Economic, Social and Cultural Rights, 'General Comment 7: The Right to Adequate Housing (Art.11.1): Forced Evictions', May 20, 1997.

79 Flavia Lopes, 'A Year After Delhi Riots, Muslim Families Are Selling Homes and Moving Out', *The Wire*, April 7, 2021, https://thewire.in/communalism/a-year-after-delhi-riots-muslim-families-are-selling-homes-and-moving-out.

Unruly elements remember, every Friday is followed by a Saturday.[¶] —Mrityunjay Kumar, media adviser to chief minister of Uttar Pradesh, in a tweet along with a photo of bulldozers razing the homes of Muslims accused of leading protests in June 2022	***People were killed here in 1983. People have been killed here recently too. We can't leave Assam to encroachers. They have encroached on temples too.***[**] —Himanta Biswa Sarma, chief minister of Assam, after being questioned about a forced eviction drive that left two dead and over 1200, mostly-Muslim families, homeless in September 2021

[*] AL IND 5/2022, AL IND (5.2022) (ohchr.org).
[†] Ibid.
[¶] Shikha Salaria, '"After Every Friday, Comes Saturday": Day after Clashes over Prophet Row, Bulldozers in 2 UP Cities', The Print, June 11, 2022, https://theprint.in/india/after-every-friday-comes-saturday-day-after-clashes-over-prophet-row-bulldozers-in-2-up-cities/993027/.
[**] Arunabh Saikia, 'Why Evictions in Assam under Himanta Sarma Have Left Bengali Muslims More Fearful than Ever Before', Scroll.in, October 3, 2021, https://scroll.in/article/1006718/why-evictions-in-assam-under-himanta-sarma-have-left-bengali-muslims-more-fearful-than-ever-before.

Inherent discrimination in the general housing market

Anti-minority discrimination remains deeply rooted in the Indian housing market, marked by unwritten pacts among brokers and landlords to prevent Muslims in particular—and also Dalits, Adivasis and single women—from finding a place to stay.[80] Such discrimination has led to spatial segregation and ghettoization and to the stigmatisation of Muslim-concentrated areas in particular as dens of crime and terrorism.[81] A particularly troubling law in Gujarat, the Disturbed Areas Act, in existence since the 1980s, prevents the sale of property between people of different religious groups in areas affected by communal violence and perpetuates this problem. It is still reported being used to

80 'Housing Discrimination Project', Centre For Post Graduate Legal Studies, accessed August 29, 2022, https://jgu.edu.in/cpgls/housing-discrimination-project/; 'End-of-Visit Press Statement, New Delhi, India, 22 April, 2016', OHCHR, accessed August 29, 2022, https://www.ohchr.org/en/statements/2016/04/end-visit-press-statement-new-delhi-india-22-april-2016.

81 Rowena Robinson, 'Indian Muslims: The Varied Dimensions of Marginality', *Economic and Political Weekly* 42, no. 10 (2007): 839-43, http://www.jstor.org/stable/4419333.

drive Muslims away from mixed-population areas. A probe recently ordered by the government of Uttarakhand into 'illegal land deals' in the state could have a similar impact.[82]

Right to work, and to free choice of employment

The collective punishment through demolitions and other evictions highlighted in the previous section have had major impacts on the right to livelihood, with minority-owned shops and other business establishments being targeted as well, along with houses and other dwelling places. Other recent instances of state-led targeting of Muslim livelihoods include:

- In Kashmir, movement and communications restrictions imposed in the backdrop of the revocation of its semi-autonomous status;[83]
- In Uttar Pradesh, soon after assuming power in 2017, the Yogi Adityanath government began a 'clean-up' of 'illegal' slaughterhouses in the state—shutting down hundreds of Muslim-owned businesses without providing them a court hearing;[84]
- Cow protection laws and the threat of vigilante violence have driven thousands of Muslims and Dalits out of meat, leather, and animal husbandry sectors;[85]
- Temporary bans on the operation of meat shops are routinely imposed across the country during Hindu and Jain festivals;

82 Alishan Jafri, 'Is Uttarakhand Govt's "Demographic" Probe of Property Deals a Play on "Land Jihad" Bogey?', *The Wire,* December 5, 2021, https://thewire.in/government/uttarakhand-demographic-probe-property-deals-land-jihad.

83 Ejaz Ayoub, 'With One Lockdown After Another, J&K's Economy Is Shuttered and Shattered', *The Wire,* May 27, 2020, https://thewire.in/economy/with-one-lockdown-after-another-jks-economy-is-shuttered-and-shattered.

84 Suhasini Raj and Ellen Barry, 'Modi's Push for a Hindu Revival Imperils India's Meat Industry', *The New York Times,* June 5, 2017, https://www.nytimes.com/2017/06/05/world/asia/india-uttar-pradesh-meat-slaughterhouses-cows-buffalo.html.

85 'Violent Cow Protection in India', *Human Rights Watch,* February 18, 2019, https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities#1955.

in Uttar Pradesh[86] and Uttarakhand[87] a complete ban has been imposed on the sale of meat and liquor near areas considered holy by Hindus.

Other forms of targeting of minority livelihoods by non-state actors:

- Muslim-owned businesses in north-east Delhi were selectively targeted during the violence in February 2020; a few months later, Kapil Mishra, the BJP leader accused of inciting and participating in the violence, was reported to be leading a boycott campaign against Muslim street vendors in other parts of Delhi; [88]
- In March 2020, the campaign to portray Muslims as willing spreaders of COVID-19 led to several instances of Muslim vendors across the country being economically boycotted, harassed and, on several occasions, assaulted.[89] Since then, calls for the economic boycott of Muslims have been common across the country; targets have included Muslim fruit sellers and other street vendors, meat shop owners, cab drivers and, recently, even industrial houses and Bollywood actors;[90]
- In Karnataka, a suspended law that prohibited leasing of land near Hindu places of worship to non-Hindus was

86 'UP Bans Liquor, Meat in 10 Square Km Area of Mathura-Vrindavan', *Livemint,* September 10, 2021, https://www.livemint.com/news/india/up-bans-liquor-meat-in-this-much-area-of-mathuravrindavan-11631265601889.html.

87 '"Uttarakhand's Special Status": HC Rules Ban on Meat Shops Within 500m of Ganga Is Constitutional', *The Wire,* August 3, 2022, https://thewire.in/law/uttarakhand-high-court-upholds-ban-on-meat-shops-near-ganga.

88 Alishan Jafri, 'The "Hindutva Ecosystem" Has a New Anti-Muslim Narrative. This Time Street Vendors Are the Target', *The Wire,* June 28, 2021, https://thewire.in/communalism/hindutva-ecosystem-muslim-fruit-sellers-threat-india.

89 Shweta Desai and Amarnath Amarasingam, *#CoronaJihad: COVID-19, Misinformation, and Anti-Muslim Violence in India* (ISD & SCN, 2020), https://strongcitiesnetwork.org/en/coronajihad-covid-19-misinformation-and-anti-muslim-violence-in-india/.

90 Suparna Sharma, '"Anti-Muslim in Its Soul": A Boycott Hurts Bollywood's Aamir Khan', *Al Jazeera,* August 31, 2022, https://www.aljazeera.com/news/2022/8/31/india-bollywood-aamir-khan-rightwing-boycott.

used to justify evicting Muslim traders from temple fairs in March 2022;[91]

- Christians too face regular, localised social and economic boycott campaigns, particularly in rural areas where co-villagers often use the tactic to coerce them into converting to Hinduism;[92]
- Studies have confirmed that anti-minority discrimination is rife in the broader labour market in India with Muslims and Dalits (and especially women among them) being particularly discriminated against.[93]

Right to health

- The militarised lockdown imposed in Kashmir in August 2019 led to dire shortages of essential and life-saving drugs and contributed to at least one preventable death;[94] The lockdown also exacerbated an already-dire mental health crisis;[95]
- A third of all Muslims and over a fifth of all Dalits and Adivasis across the country were found to have experienced discrimination in accessing healthcare during the pandemic;[96]

91 Kiran Parashar, 'Explained: Why Are Muslim Vendors Being Banned from Karnataka Temple Fairs?', *The Indian Express,* April 3, 2022, https://indianexpress.com/article/explained/explained-muslim-vendors-banned-karnataka-temple-fairs-7850357/.

92 Jeffrey Gettleman and Suhasini Raj, 'Arrests, Beatings and Secret Prayers: Inside the Persecution of India's Christians', *The New York Times,* December 23, 2021, https://www.nytimes.com/2021/12/22/world/asia/india-christians-attacked.html.

93 Zubair Amin, 'Muslim Women in India Allege Bias in Hiring for Jobs', *Al Jazeera,* August 3, 2022, https://www.aljazeera.com/news/2022/8/3/muslim-women-in-india-allege-bias-in-hiring-for-jobs.

94 Mudasir Ahmad, 'Kashmir Running Short of Life Saving Drugs as Clampdown Continues', *The Wire,* August 22, 2019, https://thewire.in/rights/kashmir-life-saving-drugs-clampdown-continues.

95 Sameer Yasir, 'Kashmir, Under Siege and Lockdown, Faces a Mental Health Crisis', *The New York Times,* April 26, 2020, https://www.nytimes.com/2020/04/26/world/asia/kasmir-india-mental-health-coronavirus.html.

96 'Securing Rights of Patients in India', Oxfam India, November 18, 2021, https://www.oxfamindia.org/knowledgehub/oxfaminaction/securing-rights-patients-india.

- Despite SC directions to decongest prisons, HRDs and other political prisoners, including senior citizens, suffering from serious ailments, continued to be held in overcrowded jails even during the peak of the pandemic; many, if not most, of them contracted the virus.

Right to education

- The militarised lockdown in Kashmir in August 2019 (and later the COVID-19 lockdown) also severely impaired access to education; schools remained shut for nearly two years, during which slow internet speeds imposed by the government made remote education difficult for most.[97]
- A recent ban on girls wearing 'hijab' while attending government-funded schools and colleges in Karnataka has reportedly led to over 1,000 Muslim girls dropping out.[98]
- Islamic madrassas, a crucial avenue of primary education for poor Muslim children across the country, have faced increased scrutiny by BJP-led state governments, particularly in Assam,[99] Uttar Pradesh,[100] and Uttarakhand;[101] senior BJP leaders have continued to vilify madrassas as dens of terrorism and 'anti-national' activity;[102]

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97 'Kashmiri Children Return to Schools after Two Years of Lockdowns', *Al Jazeera,* March 16, 2021, https://www.aljazeera.com/news/2021/3/16/kashmir-students-return-to-schools-after-two-years-of-lockdowns.

98 'Over 1,000 Muslim Girls Dropped out of PU Colleges in Karnataka during Hijab Controversy: PUCL Report', *The Indian Express,* January 10, 2023, https://indianexpress.com/article/cities/bangalore/pucl-releases-report-on-impact-of-hijab-ban-on-muslim-girl-students-in-karnataka-8371485/.

99 Tora Agarwala, 'HC Upholds Assam Law to Abolish State-Funded Madrasas', *The Indian Express,* February 5, 2022, https://indianexpress.com/article/north-east-india/assam/gauhati-high-court-assam-law-abolish-state-funded-madrasas-7757606/.

100 Abhishek Mishra, 'UP Govt Orders Probe into Functioning of Madrasas, Oppn Says Wrong to Target One Group', *India Today,* April 28, 2022, https://www.indiatoday.in/india/story/uttar-pradesh-government-probe-madrasas-opposition-wrong-target-community-1943187-2022-04-28.

101 Gaurav Vivek Bhatnagar, 'After "Migration" and UCC, Uttarakhand's BJP Govt Targets Mazars and Madrasas', *The Wire,* June 8, 2022, https://thewire.in/government/after-migration-and-ucc-mazars-and-madrasas-are-targets-for-bjp-govt-in-uttarakhand.

102 Ratnadip Choudhury, '"Madrassas Being Used As Terror Hub": Assam

- Jamia Milia Islamia and Aligarh Muslim University, two elite Muslim universities, saw their campuses being arbitrarily stormed by police forces in December 2019 during student-led protests against the CAA; students were brutalised by police, causing dozens of serious injuries;[103] both universities have also since faced potentially discriminatory budget cuts;[104]
- Multiple Christian schools, too, have faced violent attacks and vandalism by Hindu extremist groups.[105]

Worsening Cooperation with International Human Rights Mechanisms

A key aspect of India's poor implementation is its worsening engagement with the international human rights regime, including key UN institutions and actors. This is particularly noteworthy as India had contributed significantly to the text of the UDHR. It had actively sought to influence from inception the structure of the UN, to enable it to act as a global body representing the international rules-based order, and as a force championing the emancipation of oppressed people across the world.[106] It has regularly pledged to uphold the rules-based order, including in the sphere of human rights and minorities.[107] Yet, India has historically been resistant to engaging constructively with the same UN and its human rights mechanisms. The reservations it made at the time it adopted the ICCPR and the ICESCR and its refusal to accept any of the UN's various inquiry

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Chief Minister On Demolitions', *NDTV,* August 29, 2022, https://www.ndtv.com/india-news/madrassa-demolished-in-assams-barpeta-district-chief-minister-himanta-biswa-sarma-confirms-3296413.

103 'India Police Storm Jamia, AMU to Break Citizenship Law Protests', *Al Jazeera,* December 16, 2019. https://www.aljazeera.com/news/2019/12/16/india-police-storm-jamia-amu-to-break-citizenship-law-protests.

104 'Funds to JMI, AMU Reduced Sharply; Budget for BHU Doubled; Allocation for JNU Stagnant', *The Wire,* July 19, 2022, https://thewire.in/education/funds-to-jmu-amu-reduced-sharply-budget-for-bhu-doubled-allocation-for-jnu-stagnant.

105 Gettleman and Raj, 'Arrests, Beatings and Secret Prayers'.

106 Miloon Kothari, 'Remembering India's Contributions to the Universal Declaration of Human Rights', *The Wire,* December 20, 2018, https://thewire.in/rights/indias-important-contributions-to-the-universal-declaration-of-human-rights.

107 A/73/394, https://undocs.org/en/A/73/394.

and individual complaints procedures are instructive. India's attempts to scuttle the international community's attempts to recognise caste under the ambit of racial discrimination further underline this aversion.[108]

The BJP government has, whilst largely following this historical trend, further worsened the poor engagement. Ahead of its re-election to the UNHRC in 2019—which it secured with an overwhelming majority—it once again extolled the quality of its domestic institutions and promised to continue to engage constructively with the UN's various human rights mechanisms.[109] A closer examination belies India's claims of being a responsible global power.

For instance, at its Universal Periodic Review (UPR) Cycle in 2017, India 'supported' only 25 per cent of the recommendations it received seeking specific actions, particularly as they pertained to key civil and political rights issues like impunity for state actors, shrinking democratic freedoms including religious freedom, and the persistence of hate crimes.[110] The one specific action on which it did 'support' recommendations, the ratification of the UN Convention Against Torture—raised by over 30 countries—has seen little progress since then. At its latest UPR round in November 2022, 21 state parties raised various issues impacting freedom of religion or belief (FoRB) and the rights of religious minorities, while 20 highlighted concerns regarding the freedoms of expression and assembly.[111]

Despite previously issuing a standing invitation to all of the UN's Special Procedures, the BJP government has facilitated only two in-country visits by UN special rapporteurs (SR) since assuming

108 Devirupa Mitra, 'Stung by UN Report on Caste Discrimination, India Cries Foul', *The Wire*, March 25, 2016, https://thewire.in/diplomacy/stung-by-un-report-on-caste-discrimination-india-hits-back.

109 A/73/394, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/306/97/PDF/N1830697.pdf?OpenElement.

110 'Library – UPR Info', UPR Info, accessed November 23, 2022, https://bit.ly/3DCT1Xs.

111 Human Rights Watch, 'India: Serious Concerns Raised at UN Rights Review', November 18, 2022, https://www.hrw.org/news/2022/11/18/india-serious-concerns-raised-un-rights-review.

power.[112] This is in the face of over 25 pending requests, and over 15 reminders. India has responded to less than a third of the nearly 150 written communications it has received from the Special Procedures highlighting various violations recorded since 2014.

There have also been instances of open belligerence and hostility by India, particularly when confronted with its recent treatment of Muslims. This is most evident in the case of Kashmir, on which the OHCHR published two detailed reports in 2017 and 2018, in addition to dozens of written communications since then. India dismissed the OHCHR reports as 'false' and 'prejudiced', and since then has also accused the High Commissioner of having a history of indifference to terrorism.[113] After the SR on FoRB highlighted several key violations in India, India accused him—a Muslim himself—of being biased towards 'one community' that was 'unleashing horrors' against other minorities in South Asia.[114]

Rather than embrace internationalism and assume leadership at the UN to protect and promote human rights and champion the causes of the oppressed, India has sought to push back against questions raised about its own human rights record in these fora as 'interference' in its internal affairs, often responding with clichés and platitudes about democracy and independence of judiciary and free press.

Conclusion

How can international cooperation be improved? Considering India's extreme sensitivity to external criticism even on allegations of serious human rights violations, and its prioritising sovereign jurisdiction—despite avowed claims to promoting the international rules-based order and promises to continue to engage constructively

112 The Special Rapporteur on Housing in 2016, and the Special Rapporteur on Water & Sanitation in 2017.

113 Human Rights Watch, 'India Should Not Reject UN Report on Kashmir', June 14, 2018, https://www.hrw.org/news/2018/06/14/india-should-not-reject-un-report-kashmir.

114 'India Slams UN Expert for Bias towards "Community" Unleashing Horror on Minorities in Its Neighbourhood', *Deccan Herald,* October 21, 2020, https://www.deccanherald.com/national/india-slams-un-expert-for-bias-towards-community-unleashing-horror-on-minorities-in-its-neighbourhood-905302.html.

with the UN's human rights mechanisms—a great deal of this will require attitudinal change. As commentators have noted, public and political opinion needs to be educated to recognise that the erstwhile international system of exclusive national jurisdiction over domestic affairs has been overtaken, at least in the field of human rights, by the UN Charter, the Bill of Rights, customary international laws and conventions, which India has herself participated in formulating.[115]

Refusing to ratify the Convention on Torture (1984), the Convention on Migrant Workers (1990), and the Convention on Enforced Disappearance (2006), refusing to be party to any of the individual complaints procedures and to formally commit to abolishing the death penalty and the several reservations it has made to ICCPR and Genocide Convention, do India's image no good. The same is the case with its refusal to be state party to conventions on the status of refugees (1951), and the status of stateless persons (1954), and that on the reduction of statelessness (1961), and to the Rome Statute of the International Criminal Court. Similarly, India's stonewalling communications from special procedures holders, as well as to their requests for visits, will scarcely brush the allegations of human rights violations under the carpet. Nor will it prevent the extensive reporting on happenings in these areas by the media and reputable Indian and foreign NGOs. The more India stakes a place at the global stage—which it deserves, considering its size and influence—it is natural that it will increasingly be held up to scrutiny, including for human rights violations.

A better approach, to one of denial, evasion and belligerence, would be for India to proactively improve implementation of the commitments it has made, and where gaps exist in ratification of key human rights treaties and instruments, fill those up, so as to fully align its policies and practices to international human rights. Addressing these shortcomings will also give India the moral authority to reclaim its position as the 'beacon of hope' for democracy in the post-colonial world, assume leadership at the UN to protect and

115 Dilip Lahiri, 'International Human Rights Standards: How does India Measure Up?', ORF Issuer Brief, issue number 13, May 2008, https://www.orfonline.org/wp-content/uploads/2008/05/IssueBrief_13.pdf;

promote human rights and champion the causes of the oppressed, indeed to protect and promote the rules-based order—a role it had played to its great credit during the formation of the United Nations and the crafting of the Universal Declaration of Human Rights.

Recommendations

For Government of India

a. Engagement with international human rights framework

Commitment to international obligations[116]

- Abolish the death penalty.
- Ratify:
  - Convention on prohibition of torture and other cruel, inhuman and degrading treatment and punishment (CAT, 1984);
  - Convention against enforced disappearance (CPPED, 2006);
  - Convention on the status of refugees (CRSR, 1951, and its 1967 Optional Protocol), status of stateless persons (CRSSP, 1954), and reduction of statelessness (CRS, 1961);
  - Convention on the rights of all migrant workers and members of their families (ICMW, 1990).

- Undo reservations on:
  - ICCPR, including the right to self-determination (Article 1), right against arbitrary detention (Article 9) and right against arbitrary expulsion of aliens (Article 13);
  - Genocide convention (CPPCG, 1948), prohibiting prosecution without the consent of the national government.
  - Make itself party to UN's individual complaints, inquiry, and interstate communication procedures—notably, optional Protocols to the ICCPR, to include individual complaints.

116 'United Nations Treaty Collection', accessed September 1, 2022, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en#EndDec.

- Sign additional protocols of the Geneva Conventions relating to international humanitarian law to codify protections for victims of international and non-international armed conflicts.
- Sign and ratify the Rome Statute of the International Criminal Court.

Better engage with UN entities and international human rights framework

- Use the Universal Periodic Review (UPR) as an opportunity to improve India's commitment and delivery on human rights, by 'supporting' key recommendations made by reviewing states, especially those concerning religious minorities.
- Make timely reports to committees on ICCPR, ICESCR, CRC, CEDAW, among other treaty bodies.
- Respond to communications by UN mandate holders and allow in-country visits by them so as to undo the large backlog in responses to communications and request for visits.

b. Implementation of human rights commitments and obligations

- Address lacunae in laws and policies, including:
  - 'Freedom of Religion' laws that have discriminatory provisions against minorities;
  - The Citizenship Amendment Act 2019, that has discriminatory provisions;
  - National Register of Citizens (NRC) in Assam to allow for appeal against exclusion;
  - Abrogation of autonomous status Jammu and Kashmir, including taking away rights of indigenous communities and also to representation;
  - 'Scheduled Caste' Constitutional Order 1950, excluding Muslims, Christians from its ambit;
  - Laws that aid in the denial of right to life and liberty and impunity of perpetrators:
    - Terrorism and preventive detention laws and procedures (including UAPA, NSA, Public Safety Act (PSA), and sedition under IPC) to bring them in

line with international laws and standards;
  - Section 197 of the Code of Criminal Procedure, 1973 (CrPC) and the Armed Forces (Special Powers) Act that provide immunity to state actors.
- Address the absence of effective legal framework on inciteful speech;
- Foreign Contribution (Regulation) Act that impedes the right to freedom of association.

- Ensure justice and accountability for discriminations and abuses against religious minorities, including by the Supreme Court, the National Human Rights Commission, high courts and lower courts, where appropriate, and independent, effective, and expedient resolution of cases challenging the constitutional validity of laws impacting religious minorities through independent investigation and prosecution of serious human rights violations.

For UN and the international community

- Proactive documentation, vocal reporting and discussion on violations of rights against minorities in India at the Human Rights Council and its organs and greater demand by UN entities for responses from Indian authorities;
- More proactive raising of issues of concern of abuses and discriminations against religious minorities in India by states in bilateral dialogues, demanding India abide by its obligations and writing of human rights clauses into bilateral strategic, trade and investment agreements and their enforcements, including role of civil society groups in the monitoring of those provisions.

For NGOs and civil society groups

- More coordinated action by international non-governmental organisations (INGOs) and local NGOs, CSOs on international advocacy at UN and other multilateral and bilateral fora;
- Greater visible reporting on human rights violations internationally to raise public awareness and engender debate and discussion.

State of Implementation of International Human Rights Standards in Nepal and the Implications for Minorities

Apurwa Baral, Sanjit Shrestha and Sudeshna Thapa

Background

Of the nine core international human rights treaties, Nepal has ratified seven.[1] Five of those followed in the immediate aftermath of the restoration of democracy in 1990, foreshadowing a decade that saw the ratification of or accession to a slew of international human rights treaties, followed by the gradual progress in institutionalising human rights protection and promotion in the subsequent ones.

The Constitution of 1990 included the guarantee of human rights in its preamble, a first for Nepal. The Interim Constitution of 2007 featured a range of both civil-political and economic, social and cultural rights, many of which were enshrined as fundamental rights, and extended special protection to various minority groups, thereby demonstrating a growing acceptance of international human rights standards.[2] The Constitution of 2015 recognised an

1 'Ratification Status for Nepal', United Nations Human Rights Treaty Bodies, accessed May 9, 2020, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN; Ministry of Law, Justice and Parliamentary Affairs, *List of Multilateral Treaties to Which Nepal Is a Party and a Signatory* (Kathmandu: Government of Nepal, 2018), https://moljpa.gov.np/wp-content/uploads/2019/04/List-of-Multilateral-Treaties-Signed-by-Nepal.pdf.

2 National Human Rights Commission (NHRC), *National Human Rights Commission Annual Report Synopsis 2020-2021* (Lalitpur: NHRC, 2021), https://www.nhrcnepal.org/uploads/publication/Annual_Report_Synopsis_2020-21_compressed.pdf?EsetProtoscanCtx=249bc8d5e50.

even wider gamut of fundamental rights, with 32 such rights listed as opposed to 20 in the 2007 Interim Constitution, including the rights to food, health, language and culture and housing along with the rights of Dalits and senior citizens as prominent additions.[3] Similarly, the scope of the 'right to equality' was also expanded in the 2015 constitution to include more groups.[4]

Despite the safeguards enshrined in the 2015 Constitution, recognising the ethnic, cultural and religious diversity of Nepal and paving the path for structural and legal changes, minority groups in the country, namely, Madhesis,[5] Adibasi Janajatis (indigenous groups), Dalits and religious minorities (mainly, Muslims and Christians), besides women, continue to suffer from human rights violations.[6] Almost all instances of *de jure* discrimination have been eliminated but *de facto* discrimination persists in the country.[7] As such, Nepal's human rights performance, particularly in relation to minorities, has been criticised on many occasions.[8] Freedom House, in its 2022 report, rates Nepal as 'partly free' with a score of 57 out of 100, scored in terms of different political rights and civil liberties—higher than other South Asian countries but lower than India (66) and Bhutan (61), both countries with a worse record of discrimination against minorities.[9]

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3 Bipin Adhikari, Deepak Thapa, Bandita Sijapati, and Sudeshna Thapa with Rakshya Chalise and Pooja Chaudhary, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal* (Kathmandu: Social Science Baha & Himal Books, 2022), https://soscbaha.org/publication/from-exclusion-to-inclusion-crafting-a-new-legal-regime-in-nepal/.

4 See Adhikari et.al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal.*

5 Literally meaning 'people of the Madhes', 'Madhesi' is a term used for several ethnic groups living in the Tarai region of Nepal.

6 National Human Rights Commission (NHRC), *The NHRI Nepal Joint Submission for The Third Cycle Universal Periodic Review of Nepal* (Lalitpur: NHRC, 2020), https://bit.ly/3jFNuse.

7 Human Rights Treaty Monitoring Coordination Center, Shadow Report: Fifth and Sixth Periodic Reports of the Government of Nepal on Measures Taken to Give Effect to the International Covenant on Civil and Political Rights (ICCPR), January, 2021, http://hrtmcc.org/wpcontent/uploads/2021/08/International-Covenant-on-Civil-and-Political-Rights-ICCPR-SHADOW-REPORT-1.pdf.

8 National Human Rights Commission of Nepal (NHRC), *National Human Rights Commission Annual Report Synopsis 2020-2021.*

9 'Global Freedom Scores', Freedom House, accessed May 12, 2022, https://

Minorities in Nepal

Nepal is home to 125 different caste/ethnic groups, each with a distinct set of cultural practices, traditions and values, a total of 123 different languages are spoken and at least 10 different religions practised across the country's three distinct ecological zones—mountains, hills and Tarai.[10] Owing to its rich diversity, Nepal is commonly known as a country of minorities with no ethnic/caste or lingual group in the majority.[11] While a majority (81 per cent) of the population is Hindu,[12] there is tremendous diversity in terms of caste/ethnic and linguistic identity within the Hindu population.

The Khas Arya—the hill-origin, 'upper-caste' Hindus comprising 31 per cent of the population—are the politically dominant minority in the country.[13] All the others, namely, Dalits, Adibasi Janajatis, and Madhesis, have been long subordinated and historically marginalised, with the last even treated as second-class citizens.[14] Likewise, due to the Hindu-centric narrative of the Nepali identity historically propagated by the monarchic regime, religious minorities like Muslims and Christians continue to face exclusion and are labelled 'anti-nationalist'. The 2015 Constitution did explicitly recognise minorities[15] but the state defined them

freedomhouse.org/countries/freedom-world/score.

10 Pitamber Sharma, *Some Aspects of Nepal's Social Democracy: Census 2011 Update* (Kathmandu: Social Science Baha & Himal Books, 2014), https://soscbaha.org/wp-content/uploads/2019/11/some-aspects-on-nepals-social-demography.pdf.

11 Sambriddhi Kharel, Deepak Thapa, and Bandita Sijapati with Kalpana Jha, Manoj Suji, Tashi Tshering Ghale, Mohammad Ayub, and Jeevan Baniya, 'A Country of Minorities', in *South Asia State of Minorities Report 2016: Mapping the Terrain* (The South Asia Collective, 2016), https://thesouthasiacollective.org/wp-content/uploads/2022/01/SASM2016.pdf.

12 Central Bureau of Statistics (CBS), *National Population and Housing Census 2011 (National Report)* (Kathmandu: Government of Nepal, 2012).

13 The term refers to communally differentiated ruling groups who are able to govern majorities despite being demographically outnumbered. See Eric Kaufmann and Oded Haklai, 'Dominant ethnicity: from minority to majority', *Nations and Nationalism* 14, no. 4 (2008); 746.

14 Department of International Development (DFID) and the World Bank, *Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal (Summary)* (Kathmandu: DFID, 2006); Manish Gyawali, 'The Madhes and the Future of Nepal', *The Diplomat*, December 30, 2013, https://thediplomat.com/2013/12/the-madhes-and-the-future-of-nepal/.

15 The Constitution of Nepal 2015, Article 30(1)(a) defined minorities as 'ethnic, linguistic and religious groups whose population is less than the

purely in a numerical sense to only mean groups that make up 0.5 per cent of the national population.[16] This chapter analyses Nepal's human rights commitments vis-à-vis the international human rights regime, efforts made at realising them, and the related implications for minorities in the country wherein the latter refer to all non-Khas Arya, non-Hindu groups.

Nepal's Obligations under International Human Rights Treaties

The re-establishment of multiparty democracy in 1990 prompted the ratification/accession of a spate of human rights treaties[17] in an attempt to undergird the transition and assert Nepal's commitment to realising international human rights standards. The nascent democracy acceded to a number of core international human rights treaties in quick succession. Nepal has ratified seven of the nine core human rights treaties till date, without any declarations or reservations for the most part (Table 1).[18]

Nepal also ratified the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) in 2007. and voted in favour for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in the same year.[19] Nepal has accepted the individual complaints procedure for ICCPR, CEDAW and the CRPD but is yet to ratify the Optional Protocol to the CRC on

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percentage specified by the Federal Law, and includes groups that have their distinct ethnic, religious or linguistic characteristics, aspirations to protect such features and are subjected to discrimination and oppression'.

16 Government of Nepal, 'Notice from the Ministry of Home Affairs', *Nepal Gazette* 67, no. 2 (2017): 2, https://mofald.gov.np/sites/default/files/News_Notices/alpasankhyalist-detail.pdf.

17 Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. Both have the same legal effect. See: https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml#accession.

18 Reservation submitted on article 22 and Declaration submitted on article 4 of ICERD.

19 'United Nations Declaration on the Rights of Indigenous Peoples: Resolution/Adopted by the General Assembly', United Nations Digital Library, accessed February 7, 2023, https://digitallibrary.un.org/record/609197?ln=en.

Table 1: Ratification of core international human rights treaties by Nepal

Treaty	Date of Ratification (R)/Accession (A)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	1971 (A)
Convention on the Rights of the Child (CRC)	1990 (R)
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC)	2006 (R)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC)	2007 (R)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1991 (R)
International Covenant on Civil and Political Rights (ICCPR)	1991 (A)
Optional Protocol to the International Covenant on Civil and Political Rights	1991 (A)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (ICCPR-OP2-DP)	1998 (A)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1991 (A)
Convention Against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment (CAT)	1991 (A)
Convention on the Rights of Persons with Disabilities (CRPD)	2010 (R)

Source: 'United Nations Human Rights Treaty Bodies', United Nations Human Rights Office of the High Commissioner, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN.

a communications procedure.[20] The country is also yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) although Nepal remains a major country of origin for migrant

20 The individual complaints procedures for ICERD and CAT are included in the respective treaties themselves.

workers.[21] Similarly, Nepal is also yet to ratify the Convention for the Protection of All Persons from Enforced Disappearance (ICED), particularly relevant in providing a guiding framework for strengthening the country's transitional justice mechanism. There is also pressure from civil society to ratify the Statute of the International Criminal Court (Rome Statute).[22]

Treaty body reporting

Nepal has demonstrated a somewhat weak commitment to reporting on the treaties it has ratified up to. The country's compliance to reporting requirements set by the Committee on Economic, Social, and Cultural Rights (CESCR), the Human Rights Committee, and the Committee Against Torture in particular has been abysmal. Nepal last reported to the Human Rights Committee and the CESCR in 2012 and 2011, respectively, and to the Committee Against Torture in 2004.

The delay in reporting to the CESCR and the Human Rights Committee (Table 2) has raised concerns about the state's political will to implement the norms and principles enshrined in the treaties while the failure to submit reports to the Committee against Torture indicates not just a lack of commitment to enforce a robust transitional justice framework for the crimes committed during the period of the Maoist insurgency (1996-2006) but also a refusal to eliminate the routine and systematic practice of torture by law enforcement authorities. Research indicates that Dalits are significantly more likely to endure torture at the hands of the police as are juveniles belonging to minority ethnic groups.[23] Allegations

21 Ministry of Labour, Employment and Social Security, *Nepal Labour Migration Report 2022* (Kathmandu: MoLESS, 2022), https://moless.gov.np/np/post/show/501?utm_source=newsletter&utm_medium=email&utm_campaign=social_science_baha_publications_july_december_2022&utm_term=2023-01-16.

22 Amielle Del Rosario, 'Nepal: Start a new chapter by joining the ICC', Coalition for the International Criminal Court, February 4, 2015, https://www.coalitionfortheicc.org/news/20150204/nepal-start-new-chapter-joining-icc.

23 Advocacy Forum, *Rise of Torture in 2018: Challenges Old and New Facing Nepal* (Kathmandu: Advocacy Forum, 2019) 23, http://www.advocacyforum.org/downloads/pdf/publications/torture/june-2019-report.pdf; Report on Nepal adopted by the Committee against Torture under article 20 of the Convention

of extra-judicial killings and excessive use of force have also been brought to the government's attention, with three UN special rapporteurs issuing a joint communique in 2019 concerning allegations of extra-judicial judicial killings and excessive use of force by police officers against people from ethnic Tharu and Madhesi backgrounds.[24]

The reports submitted to the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women in 2017 are the last two reports submitted by Nepal.[25] The former includes a detailing of a number of policies and local level programmes in an attempt to meet its obligations under ICERD.[26] In particular, the government calls attention to the seven constitutional commissions—the National Women Commission, the National Dalit Commission, the Indigenous Nationalities Commission, the Madhesi Commission, the Tharu Commission, the Muslim Commission and the National Inclusion Commission—and their respective mandates to protect the rights of the groups the commissions have been mandated to. The report also presents the purported functional autonomy of the National Human Rights Commission (NHRC) as a clear indication of Nepal's commitment to enforcing the Paris Principles.

The concurrent 'Alternative Civil Society Report to the Committee on the Elimination of Racial Discrimination', however, sheds light on the caste-based discrimination and inequality still pervasive in Nepali society. As the report states, although the forms of discrimination may have changed, people's prejudicial

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and comments and observations by the State party (2011), https://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf.

24 Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on minority issues (2018), https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24902.

25 In February 2021, the GoN presented a follow-up report to CEDAW's concluding observations, highlighting, among other things, the guarantees of citizenship and the right to name for all Nepalis nationals.

26 Committee on the Elimination of Racial Discrimination Consideration of reports submitted by States parties under Article 9 of the Convention, seventeen to twenty-third periodic reports of States parties due in 2008: Nepal (January 2017).

attitudes towards 'low-caste communities' remain the same. Marriage segregation, inter-caste marriage related violence, denial of entry into temples, religious and cultural spaces and restrictions on accessing public utilities and educational facilities are some disconcerting practices that still persist.[27] Further, the report highlights the lack of political will on the part of the government towards 'monitoring/tracking of propaganda and organisational activities' that propagate theories of racial and caste-based superiority. It emphasises on the scant coverage of Dalit history and rights in the national educational curriculum.

The recommendations made by the Committee on the Elimination of Racial Discrimination are focused on the criminalisation of caste-based discrimination and the advancement of marginalised communities through occupational mobility.[28] Also recognised are issues concerning indigenous peoples, with recommendations to recognise all Janajati groups in the law, ensure their participation in the state structure and provide autonomy to such groups in accessing lands and resources they consider ancestral.[29]

Nepal's last submission to the Committee for the Elimination of Discrimination Against Women in 2017 highlighted the positive outcomes achieved through its poverty reduction programmes.[30] The government programmes are reported to have benefited hundreds of thousands of poor households, mostly of Janajatis, Dalits and women.

Contrary to the government report, the concurrent shadow report submitted by the National Alliance of Women Human Rights Defenders, which included more than 100 non-governmental organisations (NGOs) from all seven provinces of Nepal, delves into the nuances of intersectionality within minority groups

27 Nepal's Civil Society Alternative Report to the UN Committee, 11.

28 Committee on the Elimination of Racial Discrimination, *Concluding Observations on the combined seventeenth to twenty third periodic reports of Nepal* (2018).

29 Committee on the Elimination of Racial Discrimination, *Concluding Observations*.

30 Committee on the Elimination of Discrimination against Women Consideration of reports submitted by States parties under article 18 of the Convention, Sixth periodic reports of States parties due in 2015, Nepal, (April 2017), 21.

Table 2: Submission of periodic reports to treaty bodies

Treaty body	Reporting requirements		Reports submitted by Nepal*
	Preliminary report	Periodic review	
Committee on the Elimination of Racial Discrimination	Within 1 year of ratification	Every 2 years	1972 (I)
			1974 (II)
			1977 (III)
			1981 (IV and V)
			1987 (VI – VIII)
			1997 (IX – XIII)
			1999 (XIV)
			2003 (XV and XVI)
			2017 (XVII – XXIII)
Committee on the Rights of the Child	Within 2 years of ratification	Every 5 years	1995 (I)
			2003 (II)
			2012 (III – V)
			2022 (VI – VII)
Committee for the Elimination of Discrimination against Women	Within 1 year of ratification	Every 4 years	1998 (I)
			2002 (II and III)
			2009 (IV and V)
			2017 (VI)
Committee on Economic, Social and Cultural Rights	Within 2 years of ratification	Every 5 years	1999 (I)
			2006 (II)
			2011 (III)
Committee Against Torture	Within 1 year of ratification	Every 4 years	1993 (I)
			2004 (II)
Human Rights Committee	Within 1 year of ratification	Every 4 years	1994 (I)
			2012 (II)
Committee on the Rights of Persons with Disabilities	Within 2 years of ratification	Every 4 years	2014 (I)

Source: Tabulated from the UN Treaty Body Database. See, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=NPL&Lang=EN.

*The Roman numerals in parentheses indicate the reporting cycle for which the reports were submitted.

and notes that Dalits and Janajati communities in particular are afflicted by discriminatory practices from both government bodies and society.[31]

Reporting under the Universal Periodic Review process

The Universal Periodic Review (UPR) process allows for an assessment of a country's human rights performance over time. So far, Nepal has undergone three reporting cycles under the process (Table 3).

Table 3: Reporting under UPR by the Government of Nepal

Cycle	Reporting Period
First	2011
Second	2015
Third	2021

Nepal's first UPR cycle was concluded in the aftermath of the end of the armed conflict and the country's transition from a monarchy to a federal republic whereby the new regime promised to correct the exclusionary state-building that characterised the old one, to establish a robust justice delivery mechanism, and to provide redressal for the human rights violations committed during the Maoist conflict. Thus, the UPR process provided an opportunity for the new regime to showcase its efforts at ensuring inclusion in the state structure as well as report on the mass atrocities committed during the conflict period and the steps taken to bring those responsible to justice.

Nepal's national report during the first UPR cycle elaborated extensively on the steps taken by the government in developing a national jurisprudence that honours the rule of law and towards uplifting minorities through positive discrimination to ensure their representation in the state structure.[32] The report also highlighted

31 National Alliance of Women Human Rights Defenders in collaboration with more than 100 NGOs/CBOs, *Nepal CEDAW Shadow Report* (2018), 6.

32 HRC, 10th Session, National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Nepal, 2011.

the laws formulated to ban discrimination and those in the process of formulation at the time, in particular the Caste-Based Discrimination and Untouchability (Offense and Punishment) Bill, 2010 in response to recommendations made by other countries during Nepal's review in June of 2010.[33] Furthermore, the report highlighted the ratification of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), steps taken to translate international human rights treaty obligations into national law, and the mainstreaming of human rights in national plans and policies such as the National Plan of Action for the Year against Gender-Based Violence, 2010.[34]

The issue of transitional justice was given little to no attention in the government's submission with subsequent recommendations focused on exhorting Nepal to enforce transitional justice mechanisms that meet international standards.[35] In response, the government mentioned the drafting of the Enforced Disappearance (Offence and Punishment) Bill, 2010 then under consideration (The bill was not passed and the law never came into effect).[36]

Besides condemning Nepal's progress vis-à-vis transitional justice, the concurrent stakeholders' reports call attention to the *de facto* discrimination still rampant in the country and the poor representation of minorities in the civil service, police and other public institutions despite affirmative action measures initiated by the government.[37]

Nepal's submission under the second UPR cycle in 2015 allowed for a review of the state of implementation of the recommendations from the previous cycle. Notably, a plan of action was formulated

33 HRC, 17th Session, Report of the Working Group on the Universal Periodic Review, Nepal, Addendum, 2011.

34 HRC, 10th Session, National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Nepal, 2011.

35 HRC, 17th Session, Report of the Working Group on the Universal Periodic Review, Nepal, 2011.

36 HRC, 17th Session, Report of the Working Group on the Universal Periodic Review, Nepal, Addendum, 2011.

37 HRC, 10th Session, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, Nepal, 2011.

for the implementation of the same although it did not gain much traction.[38] Reporting under the second cycle took place soon after the promulgation of the 2015 Constitution that featured an expansive list of fundamental rights including both civil, political and economic, cultural and social rights and accorded added protection to minorities, including through the establishment of thematic commissions mandated to protect the rights of specific minority groups and the enactment of the Caste Based Discrimination and Untouchability (Offense and Punishment) Act in 2011.[39] Despite these developments, some contraventions in Nepal's domestic law remained, particularly with the Constitution alluding to Hinduism as the national religion with the usage of the term *sanatana* (meaning, 'practised since ancient times' but generally given to mean Hinduism), and the restrictions placed on proselytisation and conversion severely curbing religious freedom.[40] In addition, as with the first cycle, the country's feeble transitional justice mechanism was severely condemned. While the government established the Truth and Reconciliation Commission and the Commission on Investigation of Enforced Disappeared Persons to facilitate the delivery of transitional justice, the Acts governing the commissions provided discretionary power to the Commissions to recommend amnesties even for those charged with grave human rights violations.[41] In 2015, the Supreme Court (SC) struck down this provision on the grounds that the consent of the victims is necessary for any reconciliation.[42] However, the related Act is yet to be amended to reflect this court order. Many of the exhortations in 2015 were directed at enforcing a transitional justice framework in line with international standards.[43] As with the first UPR reporting cycle, stakeholders' reports submitted in

38 HRC, 23rd Session, National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Nepal, 2015.

39 The Constitution of Nepal, 2015, Article 248 and Article 252; Adhikari et.al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal.*

40 The Constitution of Nepal, 2015, Articles 4 and 26(3).

41 The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014, Section 26.

42 Supreme Court order 069-WS-0057.

43 HRC, 31st Session, Report of the Working Group on the Universal Periodic Review, Nepal, 2015.

the second cycle highlight the persistent *de facto* discrimination in the country and the ineffective accountability and redressal mechanisms for human rights violations.[44]

In the review under the third UPR cycle concluded in 2021, the government's report stated that Nepal had accepted and implemented 152 recommendations from the second cycle.[45] For the record, the recommendations had been criticised for being too general, unmeasurable and repetitive.[46] It appeared that the recommendations that tend to align with Nepal's political environment had been accepted more easily while those likely to spark controversy—such as those relating to the enforcement of a transitional justice framework—continued to be ignored. The recommendations in the third cycle denounced some of the regressive laws the government was seeking to enforce at the

44 HRC, 23rd Session, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, Nepal, 2015.

45 HRC, 37th session, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Nepal, 2021, 2.

46 NGO Statement on Item 6 at the Human Rights Council's 28th session, March 20, 2015.

time—such as the proposed amendment to the National Human Rights Commission Act, which would shift the discretionary power of the constitutional body to the Office of the Attorney General (OAG), and the Media Council and Mass Communications Bills that sought to impose strict punishments on journalists under vague stipulations open to interpretation[47]—in addition to highlighting the need to ensure the independence of the two transitional justice commissions and the effective functioning of the National Human Rights Commission in accordance with the Paris Principles.[48]

UN Special Procedures

Special Procedures of the Human Rights Council refer to independent human rights experts mandated to report and advise on thematic or country-specific human rights situations.[49] The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples was one of the first special procedures mandate-holders to visit Nepal. After his visit in 2009, he noted that the state was discriminating against the Janajatis and suppressing the group's ability to meaningfully participate in social life.[50] The Special Rapporteur also noted the insufficient representation of Janajatis in the constitution-making process and reiterated the demands made by them, Dalits and other minority groups 'for the decentralisation of political power and restructuring of the state into some sort of federal system'.[51]

Against the backdrop of the changing political scenario in 2017, Nepal extended an invitation to host three Special Rapporteurs—

47 Ritika Singh, Shambhawi Paudel, Sudeshna Thapa and Jeevan Baniya, 'Civic Space in Nepal', in *South Asia State of Minorities Report 2020: Minorities and Shrinking Civic Space* (South Asia Collective, 2020), https://thesouthasiacollective.org/wp-content/uploads/2022/01/SASM2020.pdf.

48 HRC, 47th session, Report of the Working Group on the Universal Periodic Review, Nepal, 2021.

49 'Special Procedures of the Human Rights Council', Office of the High Commissioner for Human Rights, United Nations, accessed August 19, 2022, https://www.ohchr.org/en/special-procedures-human-rights-council.

50 James Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, on the Situation of Indigenous Peoples in Nepal* (2009).

51 Anaya, *Report by the Special Rapporteur on the situation of human rights*, paragraph 59.

on the right to food, violence against women, and migrant rights. In the same year, when the Special Rapporteur on Freedom of Religion and Belief sent a request for an invitation for a visit, Nepal did not accept his request, evidencing the country's discomfort in discussing the state of religious freedom in the country.

More recently, in 2018, the Special Rapporteur on violence against women and girls also visited the country. In particular, she called attention to intersecting factors predisposing women to violence and discrimination. As elaborated in the report, despite legal and constitutional guarantees, Dalit women continue to be subjected to patriarchal attitudes and gender-based discrimination.[52] Her report also exposed the dire situation of Janajati women. It revealed that they are more likely to experience family violence, marginalising them further and are also at risk of class-based discrimination.[53] These findings exposed the lack of intersectional considerations in Nepal's legal framework and the exacerbated deprivations and discriminations women belonging to specific minority groups face.

The Special Rapporteur on the human rights of migrants also visited Nepal in 2018.[54] Labour migration has surged in recent years with an ever-increasing number of Nepalis, including those belonging to minority groups, moving across borders in search of work. Dalits, in particular, are partaking in labour migration not only for added income but also to escape the oppression they face at home.[55] While acknowledging Nepal's significant progress in protecting the rights of its citizens who have migrated abroad for work through various legislations, policies and programmes, the Special Rapporteur asserted that certain challenges remain, noting that migrants were being denied fundamental rights such as voting, and that new laws and policies must ensure that migrant workers are able to exercise all rights granted to Nepali citizens. The report

52 Dubravka Šimonović, *Report of the Special Rapporteur on violence against women, its causes and consequence*, (July 2019), 7.

53 Šimonović, *Report of the Special Rapporteur on violence against women*, 14.

54 Felipe Gonzalez Morales, *Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal from 29 January to 5 February 2018* (2018).

55 Krishna P. Adhikari and David N. Gellner, *International Labour Migration from Nepal and Changes in Inter-Caste Relations* (ESRC), https://bit.ly/3YoL0xo.

also highlighted the gaps in the recruitment process as well as the inadequacies of Nepali diplomatic missions in destination countries in assisting migrant workers. Further, the recommendations include decentralisation of services related to labour migration and ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) and other relevant ILO conventions.

In December of 2020, the United Nations Special Rapporteur on extreme poverty and human rights paid an official visit to Nepal. His report recognised Nepal's constitution as one of 'the most progressive' in the world.[56] However, the Special Rapporteur also highlighted the persistent discrimination and inequality, noting that while limited employment opportunities and lack of access to education and land are immediate causes of socio-economic disparity, the major driver of poverty is discrimination. The report particularly highlighted the plight of Janajatis, Dalits and Madhesis and identified them as the most at-risk group. It mentioned an empirical study on harmful practices found that nearly 97 per cent of interviewees answered affirmatively when asked if caste-based discrimination is prevalent in their community. Further, the Special Rapporteur provided a thorough critique of Nepal's economic policies on poverty reduction, emphasising the lack of intersectional considerations. Among the recommendations were the need to consider multiple identities when developing reservation policies as well as the inclusion of socio-economic status as a criterion while remaining cognisant of the fact that positive discrimination cannot replace the state's obligation to improve a group's ability to compete on an equal footing.

With regard to the rights of Janajatis, the Special Rapporteur on extreme poverty and human rights noted that not much has changed since the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples visited Nepal in 2009. As such, he called attention to how national parks and other protected areas have occupied lands that ancestrally

56 Olivier De Schutter, *Report of the Special Rapporteur on extreme poverty and human rights*, (May 2022), 6.

belonged to the indigenous population, many of whom have now been ousted from the area.[57]

Minority Rights in the Domestic Legal Framework

Having ratified a series of international human rights treaties, Nepal is obliged to abide by the principles enshrined in the conventions and uphold the values of fundamental human rights.[58] According to Nepal's Treaty Act of 1990, a treaty ratified/acceded to by the state is as enforceable as domestic law and even invalidates laws that contradict the provisions of international treaties.[59]

Obligations under international human rights treaties

Article 18 of the ICCPR: This article deals with freedom of thought, conscience, religion and the right to manifest one's religion or belief in worship, observance, practice and teaching.

Although the 2015 Constitution provides a broad set of human rights guarantees, it has been argued that the existing system of protection is incompatible with Article 18 of the ICCPR and thus insufficient in protecting religious freedom. The Constitution declares Nepal a secular country but defines secularism as 'protection of religion and culture being practised since ancient times and religious and cultural freedom', according special status to 'ancient' religions while excluding all those that do not qualify as such.[60] Specifically, the usage of the term, *sanatana*, in the original Nepali text can be commonly interpreted as evidencing legislative intent to promote Hinduism.[61]

Article 26 of the constitution enshrines the right to profess, practice and protect religious beliefs without interference. Almost immediately, however, the guarantee is undercut by stipulations that place a restriction on engaging in any act considered contrary to public health, decency and morality, or likely to breach public

57 Schutter, *Report of the Special Rapporteur on extreme poverty*, 9.

58 UN Charter, Preamble.

59 Nepal Treaty Act, 1990, Section 9.

60 Adhikari et.al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal.*

61 Adhikari et.al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal.*

peace or jeopardise another's religion. Further, Article 26(3) prohibits proselytisation, in violation of Nepal's legally binding obligations following ratification of the ICCPR.

Recommendations from the second UPR cycle in 2015 urged Nepal to 'strike provisions that appear to curtail religious freedoms' and 'eliminate the prohibition of conversion to another religion, which undermines freedom of religion'.[62] In response to the recommendations, the government emphasised how the law prohibits only 'proselytism by force or undue influence or inducement'[63] in an attempt to seemingly justify the provision. The government has consistently couched its discriminatory intent in assertions that the absence of a regulatory framework would likely embolden unscrupulous religious actors to engage in forcible conversions.

A careful reading of Article 26, however, reveals that restrictions on proselytisation are not only limited to forcible conversion but, in fact, crystallises a blanket ban on all conversions as it stipulates that no one can 'convert a person of one religion to another religion'. This prohibition forms the legal basis for sanctions in the National Criminal Code of 2017. Section 156 of the Code prohibits the 'outraging of religious feelings', Section 157 prohibits 'causing obstruction to religious rites and rituals' while, in tandem with Article 26 of the Constitution, Section 158 prohibits against converting 'any one from one religion to another' or abetting the same.

Article 27 of the ICCPR, Article 15(a) of the ICESCR, Article 5(e) of ICERD

Article 27 of the ICCPR stipulates that ethnic, religious or linguistic minorities shall not be denied the enjoyment of their own culture, language or practices.[64] Similarly, Article 15(a) of the ICESCR provides that everyone has a right to participate in cultural

62 Christian Solidarity Worldwide, 'Stakeholder Submission Nepal', Universal Periodic Review, 37th session, (July 2018), 2.

63 HRC, 31st Session, Report of the Working Group on the Universal Periodic Review, Nepal, 2015.

64 The International Covenant on Civil and Political Rights, Article 27.

life.[65] Article 5(e) of the ICERD obligates states to prohibit and to eliminate racial discrimination in all its forms and to guarantee the enjoyment of economic, social and cultural rights for everyone.

Nepal has been partially successful in introducing legal protections in fulfilment of its obligations under these provisions. Article 32 of the Constitution recognises one's right to practise, participate in, use and promote one's own culture and language.[66] Article 50(2), under 'Directive Principles', commits to eliminating all forms of discrimination and exploitation based on religion, culture and cultural practices.[67] Under 'Policies Regarding Social

65 The International Covenant on Economic, Social, and Cultural Rights, Article 15(a).

66 The Constitution of Nepal, 2015, Article 32.

67 The Constitution of Nepal, 2015, Article 50(2).

and Cultural Transformation', Article 51(c)(5) echoes similar sentiments while Article 51(6) obligates the state to pursue policies to protect and develop the languages, scripts, cultures and heritages of various castes, ethnic groups and communities.[68] This guarantee also finds place in Section 20(2)(i) of the National Civil Code of 2017 in the form of the right to preserve and promote one's script, language and culture.[69] In contrast, however, the National Civil Code also includes a provision prohibiting the practice of tradition and culture that are 'contrary to the law',[70] indicating how enjoyment of the right to culture may be subject to arbitrary limitations enforced by the government.

Articles 2 and 7 of the ICERD

Article 2 of the ICERD obligates all state parties to 'condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races' while Article 7 requires the introduction of measures to combat prejudices and foster an environment of tolerance.[71] It must be noted that while the ICERD defines racial discrimination as, 'distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin'[72] with no explicit mention of caste-based discrimination, the Concluding Observations of the Committee on the Elimination of Racial Discrimination on India's 9th to 14th State report in 1996 stated that the term 'descent' did not solely refer to race but also included 'scheduled castes'.[73] Elaborating further, the General Recommendation 29 of the Committee stated 'descent based communities are those who suffer from discrimination, especially on the basis of caste and analogous systems of inherited status'.

68 The Constitution of Nepal, 2015, Article50(c)(5) and 50(c)(6).

69 The National Civil (Code) Act, 2017, Section 20(2)(i).

70 The National Civil (Code) Act, 2017, Section 15.

71 The Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 7.

72 International Convention on the Elimination of All Forms of Racial Discrimination, 1969, Article 1.

73 UN Doc. A/51/18, 1996, paragraph 352.

In line with Article 2 of the ICERD, Article 18 of the Nepal's constitution prohibits discrimination of citizens on the grounds of origin, religion, race, caste, ethnicity, sex, economic condition, language and region, among others, while Articles 24 and 40, respectively, enshrine the right against untouchability and the rights of Dalits, with the latter according special protection to Dalits including ensuring their participation in all bodies of the state on the basis of the principle of proportional representation.[74] Under rights against exploitation, Article 29(2) of the Constitution prohibits exploitation in the name of culture and religion, among others.[75]

The National Civil Code of 2017 also prohibits against discrimination on the grounds of origin, religion, colour, caste and race, among others.[76] Section 19 expressly states that any special provisions introduced for the upliftment of Dalits, Janajatis and minorities shall not be considered discrimination, thus allowing for adopting affirmative action measures in favour of minority groups.[77] Further, the National Criminal Code of 2017 prohibits discriminatory treatment, discrimination in the purchasing, selling or distributing of goods or service and untouchability or discriminatory treatment on the ground of caste.[78]

The Caste-Based Discrimination and Untouchability (Offense and Punishment) Act, 2011 prohibits, in absolute terms, caste-based discrimination and untouchability and imposes penalties to offenders, making discrimination based on caste a crime against the state. The Act sets a three-month time limit for filing cases[79] and necessitates proactive involvement of the police in the filing and investigation of cases. In the case of refusal to register a formal complaint on the part of law enforcement authorities, individuals can file an appeal with local bodies or the National Dalit Commission to have their complaints registered by law

74 The Constitution of Nepal, 2015, Article 24 and Article 40.

75 The Constitution of Nepal, 2015, 255, 257, 248, 249, 258, and 259.

76 The National Civil (Code) Act, 2017, Section 18.

77 The National Civil (Code) Act, 2017, Section, 19.

78 The National Penal (Code) Act, 2017, Sections 160, 161, and 166.

79 The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, Section 10.

enforcement officials.[80] However, under the Act, neither local bodies nor the Dalit Commission have the jurisdiction to initiate a 'hearing or action' against the official in question for failing to file a complaint.[81] Furthermore, because police officers cannot be held liable for failing to register an first information report (FIR), they have little incentive to perform their duties diligently, thus impeding access to justice for victims.[82]

Rule 4 of the 2009 Code of Conduct for Public Employees and Other Professionals calls for fair and consistent treatment of all without regard to caste, creed, religion or gender.[83] However, some other legislations and policy documents such as the Civil Service Act, 1993, the Code of Conduct for Lawyers 1994,[84] and the fairly recent Code of Conduct for Prosecutors 2018 make no reference to caste-based discrimination. In addition to the express prohibition on discrimination in the laws detailed above, constitutional bodies such as the various constitutional commissions are also tasked with eliminating discrimination against minorities, among other responsibilities (see the section on 'Role of constitutional bodies' below).[85]

UNDRIP and ILO Convention 169

UNDRIP elaborates on existing human rights norms and fundamental freedoms as they pertain to the particular situation of indigenous peoples and sets a universal framework of minimum standards for the survival, dignity, and well-being of the world's indigenous peoples. Similarly, the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention 169) is a major international treaty guaranteeing the rights of indigenous and tribal peoples. As a key feature, the Convention supports the principle of

80 The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, Section 5(3); Nepal's Civil Society Alternative Report to the UN Committee on the Elimination of All Forms of Racial Discrimination in addition to the Government of Nepal periodic reports 17 to 23, to be reviewed at the 95th (2018), 19.

81 Nepal's Civil Society Alternative Report to the UN Committee.

82 Nepal's Civil Society Alternative Report to the UN Committee.

83 Code of Conduct for Public Employees and Other Professionals, 2009, Rule 4.

84 Nepal's Civil Society Alternative Report to the UN Committee, 21.

85 The Constitution of Nepal, 2015, Article 24 and Article 40.

self-management and guarantees indigenous peoples' right to consultation and participation in issues affecting them. It also guarantees their right to equal treatment and access to state services and includes specific provisions for protecting and promoting cultures and communities of indigenous groups.

While Nepal was the first country in South Asia to ratify the Convention,[86] its effective implementation has remained a challenge. A government committee formulated a National Action Plan on the Implementation of ILO Convention 169 and it was submitted to the cabinet in 2009 but it was never sanctioned.[87] As a result, although some of the provisions mentioned in the plan materialised into actual laws, like reserved quotas for Janajatis in government service and education as well as the promotion of Janajati languages, a key objective of revising the national legal framework to align with ILO 169 remains unfulfilled.[88]

The protection accorded to Janajatis in the Constitution is more subdued in comparison to that accorded to other minority groups such as Dalits. While there is no separate provision dedicated to protecting their rights under the section on fundamental rights, Article 51(j) introduces as 'State Policy' the requirement to make special arrangements for protecting the rights of Janajatis and ensuring their progressive participation in preserving and maintaining traditional skills and knowledge. The Constitution also fails to outline the need to obtain the free, prior and informed consent of Janajatis when formulating and revising laws, policies and programmes affecting them as stipulated by ILO 169.

In addition, some of the provisions scattered across various laws also contravene Nepal's treaty obligations under ILO 169. The National Park and Wildlife Conservation Act, 1973, is a case in point. The Act authorises the declaration of an area (including

86 ILO 'Nepal Ratifies ILO Convention on Indigenous and Tribal Peoples' Rights', September 19, 2007, https://www.ilo.org/kathmandu/info/public/pr/WCMS_116904/lang--en/index.htm#:~:text=ILO%20in%201989.-,Nepal%20thus%20becomes%20the%20first%20country%20in%20South%20Asia%20to,Gurung.

87 Adhikari et.al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal.*

88 Adhikari et.al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal.*

those where Janajati communities reside) as a national park 'by publishing a notice in the Nepal Gazette and indicating the boundary thereof'.[89] The Act has no provision for compensating the affected communities.

Although the constitution guarantees participation of minorities, including Janajatis, in the House of Representatives,[90] the Political Party Act, 2017 creates barriers for their participation in parliament. It mandates that each political party must garner 3 per cent of total valid votes under the proportional representation (PR) system and at least one seat in the first-past-the-post (FPTP) system to be recognised as a national party.[91] This provision excludes smaller political parties specifically formed to serve Janajati interests, a situation that did not exist in the previous legislative body before the introduction of the threshold.[92]

Role of Constitutional Bodies

Considered the 'fourth branch' of government,[93] constitutional bodies are viewed as 'guarantor institutions' mandated to 'provide a credible and enduring guarantee to a specific non-self enforcing constitutional norm'.[94] These 'guarantor' bodies are mandated to ensure the protection and nourishment of such norms and ensure that they are not weakened by political powerplay and partisanship.[95] As the checks and balances provided by the three traditional branches of the government may not always be sufficient to guarantee these norms, this necessitates the presence of such guarantor institutions to proactively protect and nourish

89 National Park and Wildlife Conservation Act, 1973, Section 3(1).

90 The Constitution of Nepal, Article 84(2).

91 Political Party Act, 2017, Article 52.

92 Alternative Report of the Indigenous Peoples of Nepal to the State Report Submitted by the Government of Nepal to the Committee on the Elimination of Racial Discrimination (Kathmandu, 2018).

93 Tarunabh Khaitan, 'Guarantor Institutions', *Asian Journal of Comparative Law* (January 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3766137.

94 Khaitan, 'Guarantor Institutions'.

95 Elliot Bulmer, *Independent Regulatory and Oversight (Fourth-Branch) Institutions*, International IDEA Constitution-Building Primer 19 (Stockholm: International Institute for Democracy and Electoral Assistance, 2019).

the norms.[96] The ability of such institutions to act as a conduit for people to interact with state bodies, particularly in nascent democracies marred by historical inequalities and atrocities such as Nepal, has tremendous value.[97]

The Constitution of 2015 provides for the formation of several independent commissions mandated to protect and promote the rights of marginalised and underprivileged communities, namely, the National Human Rights Commission (NHRC) and those lumped together as 'Other Commissions'—the National Women's Commission (NWC), the National Dalit Commission (NDC), the National Inclusion Commission, the Adibasi Janajati Commission, the Madhesi Commission, the Muslim Commission and the Tharu Commission. The latter four not prefixed with 'national' were created in response to widespread demands from marginalised communities towards the end of the constitution-drafting process in 2015 because the then Constituent Assembly could not come to an agreement on an all-encompassing national inclusion commission with exhaustive jurisdiction dealing with all the constituencies.[98] As a result, details pertaining to the functioning of these commissions are only briefly mentioned in the Constitution while the functions, duties and powers of the 'national' commissions are dealt with at length.

All the commissions have the constitutional mandate to identify areas of necessary policy, legal and institutional reform and provide recommendations to the government, conduct research, conduct awareness campaigns and monitor the implementation of commitments under various international human rights treaties. The independence of these constitutional bodies has been established through different provisions in the constitution. Among others, the commissioners are appointed by the President on the recommendation of the Constitutional Council,[99] the appointment

96 Khaitan, 'Guarantor Institutions'.

97 Christina Murray, 'The Human Rights Commission Et. Al: What is the Role of South Africa's Chapter 9 Institutions?', *Potchefstroom Electronic Law Journal/ Potchefstroomse Elektroniese Regsblad* 122, (2009).

98 Adhikari et.al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal.*

99 The Constitution of Nepal 2015, Article 238(2), 240(2), 242(2), 245(2), 248(2),

of the commissioners is for a fixed term,[100] the eligibility criteria is explicated in the constitution[101] and the remuneration and conditions of services cannot be altered to the disadvantage of the commissioners.[102]

Further, the 'national' commissions with the exception of the National Inclusion Commission, i.e., the NHRC, the NWC and the NDC, are authorised to receive complaints and adjudicate cases concerning violations of human rights in general, women's rights and the rights of Dalits, respectively. Pursuant to this mandate, the NHRC reported having received 186 complaints about human rights violations, monitored 212 human rights issues and investigated 261 complaints, including both recent cases and backlogged ones, in the fiscal year 2020/21.[103] Similarly, the NDC reported that it conveyed 36 cases of discrimination against Dalits to the concerned authorities in the fiscal year 2020/21–2021/22,[104] while the NWC received 1570 complaints regarding various types of violence against women during the same period, of which 900 were resolved.[105] Although the exact number of complaints filed with the Adibasi Janajati Commission has not been specified, the commission reported to have investigated all complaints individually and alerted authorities to the potential deterioration of historic, religious and archaeological sites during the same period.[106]

250(2), 252(2), 255(2), 258(2), 261(2), 262(2), 263(2), and 264(2).

100 The Constitution of Nepal 2015, Article 238(3), 240(3), 242(4), 245(3), 248(3), 250(3), 252(3), 255(3), 258(3), 261(3), 262(3), 263(3), and 264(3).

101 The Constitution of Nepal 2015, Article 238(6), 240(6), 242(7), 245(6), 248(6), 250(6), 252(6), 255(6), and 258(6).

102 The Constitution of Nepal 2015, Article 238(7), 240(7), 242(8), 245(7), 248(7), 250(7), 252(7), 255(7), and 258(7).

103 National Human Rights Commission of Nepal, *National Human Rights Commission Annual Report Synopsis 2020-2021 A.D.*

104 Nepal Dalit Commission, *Barshik Pratibedhan 2077/78 (Yearly Report 2077/78)* (Kathmandu: Nepal Dalit Commission, 2021).

105 Nepal Women Commission, *Chauthau Barshik Pratibedan 2077 Shrawan - 2078 Ashad (Fourth Annual Report)* (Kathmandu: National Women Commission, 2021).

106 Indigenous Nationalities Commission, *Barshik Pratibedan Arthik Barsha 2077/78 (Annual Report for Fiscal Year 2077/78)* (Lalitpur: Indigenous Nationalities Commission, 2021).

However, the 'Other Commissions' have been largely non-functional owing to lack of human resources and the necessary infrastructure for much of the period since the promulgation of the constitution.[107] The government proposed a draft bill in 2019 to amend the National Human Rights Commission Act, 2012.[108] The amendment would attenuate the role of the constitutional bodies by allowing the Office of the Attorney General (OAG) to make the final call on whether prosecution against alleged perpetrators of human rights violations is to be pursued. At present, the role of NHRC and the 'Other Commissions' is restricted to creating an impact 'through influence rather than enforcement',[109] whereby they are limited to providing recommendations to the government and are unable to take concrete action unilaterally and coercively.[110] Further, the state of implementation of the recommendations provided by these bodies is also grim with less than 14 per cent of the total recommendations of the NHRC in the period between July 2020 and July 2022 fully implemented.[111] Recently, the Global Alliance of National Human Rights Institution downgraded the NHRC's status to 'B' citing questions regarding the legality of the appointment of officials and poor work performance.[112]

107 'Why this Delay?', *MyRepublica*, July 1, 2019, https://myrepublica.nagariknetwork.com/news/why-this-delay/.

108 Ram Kumar Kamat, 'Bid to Render National Rights Body Toothless', *The Himalayan Times*, April 15, 2019, https://thehimalayantimes.com/nepal/bid-to-render-national-rights-body-toothless.

109 Murray, 'The Human Rights Commission Et. Al: What is the Role of South Africa's Chapter 9 Institutions?'.

110 Niti Foundation and Social Science Baha, *Why Nepal's 'Other' Commissions Matter for Justice and Inclusion: Strengthening Constitutionalism in Nepal* (Kathmandu: Niti Foundation and Social Science Baha, 2022), https://soscbaha.org/publication/strengthening-constitutionalism-in-nepal/.

111 National Human Rights Commission of Nepal, *Annual Report Synopsis 2020-2021 A.D.*

112 'NHRC's Status Downgraded, Credibility at Stake', *The Himalayan Times*, November 14, 2022, https://thehimalayantimes.com/nepal/nhrcs-status-downgraded-credibility-at-stake.

State of Implementation of Minority Rights

Religious minorities

Ever since Nepal was first declared a secular country, with the promulgation of the Interim Constitution of 2007, there has been strong opposition from both public and private actors.[113] Specifically, Hindu nationalist forces have perceived the transition to secularism as an attempt to dismantle the '*sanatana dharma*'. And, it is of no help that the state continues its association with symbols and rituals that have been legitimised by the monarch when Nepal was Hindu kingdom.[114] In fact, the President, a secular head of state, has replaced the monarch at Hindu rituals. Activists argue that the enduring presence of religion in the political sphere undermines Nepal's quest for plurality and religious equality.

In a misguided attempt to preserve Hindu identity, extremists are seen resorting to violence against religious minorities. It has been noted on multiple occasions that individuals belonging to religious minority groups, especially those adhering to the Christian faith, have increasingly been at the receiving end of animosity from Hindu extremists. There has also been increasing reports of cases of arbitrary arrests and detentions of the former.[115] Most notably, in May of 2018, a number of churches were bombed across Nepal, killing several individuals.[116] To date, no one has been held accountable for these attacks.

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113 Santosh Sharma Poudel, 'In Nepal, Calls Grow for the Restoration of a Hindu State', *The Diplomat*, December 9, 2021, https://thediplomat.com/2021/12/growing-calls-for-restoring-hindu-state-in-nepal/; Kamal Dev Bhattarai, 'Is Nepal's Secularism Under Threat?: Growing calls for a Hindu state underline popular dissatisfaction with Nepal's long stretch of political instability', September 1, 2021, https://thediplomat.com/2021/09/is-nepals-secularism-under-threat/.

114 Chiara Letizia, 'Secularism and Statebuilding in Nepal', in *Two Steps Forward One Step Back: The Nepal Peace Process,* eds. D. Thapa and A. Ramsbotham (London: Conciliation Resources, 2017).

115 Christian Solidarity Worldwide, *Stakeholder Submission Nepal, 2*; 'Nepal: Pastor Sentenced to One Year in Prison for Missionary Activities', HRWF, accessed February 4, 2023, https://hrwf.eu/nepal-pastor-imprisoned-for-missionary-activities/.

116 'Nepal: Four Churches Targeted in Arson Attacks', *CSW Everyone Free to Believe,* May 15, 2018, https://www.csw.org.uk/2018/05/15/press/3974/article.htm.

Christian and Muslim communities also face additional impediments in exercising their burial rights in Nepal. Notably, the ability to exercise funeral rites is believed to 'considerably impact the identity of a religious group'.[117] Following the decision of Pashupati Area Development Trust in December 2010 to prohibit burials in the Shlesmantak area within the Pashupatinath Temple, arguably the most important Hindu place of worship in the Kathmandu Valley, Christians and Muslims have found their religious space shrinking.[118] The decision gained wider legitimacy through the Chirbahadur Gahatraj[119] judgement, in which the Supreme Court concluded that designating the Shleshmantak forest as a burial site would encroach upon Hindu sacred practices.[120] In the same decision, the court directed the Christian community to cease using the forest for last rites and stated that protecting ancient religion is well within the state's constitutional authority. A small reprieve came in the form of a decree instructing relevant government agencies to arrange alternate burial sites for Muslims and Christians.[121] Tulasi Simkhada vs. The Government of Nepal, a recent decision, echoed similar sentiments. However, both the rulings have failed to recognise the role of the state in protecting minority groups' right to religious freedom. The lack of a well-defined law on burial rites has also contributed to the selective enforcement of cultural norms.

With regard to Nepal's electoral system, although the introduction of a mixed system that also included proportional representation was meant to ensure the presence of people from marginalised and underrepresented communities in elected bodies, this has not been the case. Christians were grossly underrepresented in both the 2018 House of Representatives and provincial assemblies despite constituting 1.5 per cent of the population.[122]

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117 ICJ, *Challenges to Freedom of Religion or Belief in Nepal a Briefing Paper* (July 2018), 22.

118 Christian Solidarity Worldwide, 'Stakeholder Submission Nepal', 4.

119 See Chirbahadur Gahatraj et. al. vs. Prime Minister and the Council of Ministers et. al. (2011).

120 ICJ, *Challenges to Freedom of Religion or Belief*, 22.

121 ICJ, *Challenges to Freedom of Religion or Belief*, 22-23.

122 *Nepal: Freedom of Religion or Belief art. 18,* (January 2021), 5, file:///C:/

Furthermore, in 2018, the National Integrity and Ethics Policy was proposed with the specific objective of creating 'improved standards' for regulating the activities of (I)NGOs in the country.[123] Among other things, the proposed policy attempted to introduce guidelines that prevented (I)NGOs from advocating for religious agendas and limited their ability to assist religious missions.[124]

Alongside those practising the Christian faith, individuals from the Muslim community in Nepal have also been facing serious impediments in exercising their right to practise and profess their religion[125] in addition to other socio-economic rights. They are often poor, barely literate and landless.[126] According to the United Nations Human Development Report 2014, the group scored 0.422 in the Human Development Index.[127] In fact, in Rautahat, one of the districts with a large Muslim population, only 57 per cent of female children from the Muslim community were found to be attending school, with high dropout rates.[128] As such, early school dropout and lack of formal education have exacerbated women's inequality within the Muslim community.

Negligible political representation has periodically contributed to broader marginalisation of individuals belonging to the community rendering them unable to access socio-economic resources. Nepal Muslim Women Welfare Society (NMWWS)[129]

Users/Sanjit/Downloads/INT_CCPR_ICS_NPL_43960_E.pdf.

123 'Nepal: New NGO Law Should Protect Rights', Human Rights Watch, November 14, 2019, https://www.hrw.org/news/2019/11/14/nepal-new-ngo-law-should-protect-rights.

124 National Integrity and Ethics Policy (Proposed), 2018, paragraph 9.2.4. (15), https://www.documentcloud.org/documents/4501069-National-Integrity-Policy.html.

125 ICJ, *Challenges to Freedom of Religion or Belief,* 2 and 12.

126 Musawa and Nepal Muslim Women Welfare Society, *Joint Report on Muslim Women's Rights in Nepal* (Geneva: 2018), 5-7.

127 Government of Nepal and UNDP, *Nepal Human Development Report 2014* (Kathmandu: GON & UNDP, 2014).

128 Musawa and Nepal Muslim Women Welfare Society, *Joint Report on Muslim Women's Rights,* 7.

129 NMWWS, an NGO, was established in 2006 by a group of Muslim women to work for the poor, marginalised and disadvantaged women of Nepal. See: https://nmwws.org/our-story/.

reports that derogatory practices such as triple *talaq*[130] and *halala*[131] that discriminate against women are still commonly practised in some Tarai districts of Nepal, especially among less-educated families.[132] Additionally, although Muslim marriages are recognised by the law, a large section of the population still do not register their marriage.[133] Non-compliance with legal requirements is reinforced through cultural practices like the Shariah that encourage the belief that only religious authorities can lend legitimacy to a marriage. Even where marriages are registered, divorce cases are lengthy and expensive and families themselves attach a lot of stigma to divorce. Further, a lack of a comprehensive national strategy targeted at the Muslim community has hindered the group's socio-economic and political upliftment.

Dalits

Dalits are among the most marginalised groups in Nepal. Dubbed 'untouchables' in the Muluki Ain (Country Code), 1854,[134] they were denigrated by the state itself as impure by birth. Although the Government of Nepal abolished the caste system and criminalised caste-based discrimination, including 'untouchability' in 1963, and subsequent legislation reinforced the prohibition on caste-based discrimination, a real reckoning for the rights of Dalits came after the conclusion of the armed conflict. In July 2001, the then government issued a declaration that '[e]ffective from this moment, the practice of social discrimination and untouchability

130 The practice of triple talaq entails the husband pronouncing 'talaq' or 'I divorce you' to his wife three times in a single setting rendering the wife divorced in the eyes of the community.

131 Halala is a practice associated with triple talaq whereby if the husband regrets his decision to divorce and wants reconciliation then the wife needs to wait for three months, contract and marry another man and consummate that marriage, divorce him and wait another three months to reconcile with her original husband.

132 Musawa and Nepal Muslim Women Welfare Society, *Joint Report on Muslim Women's Rights,* 7.

133 Musawa and Nepal Muslim Women Welfare Society, *Joint Report on Muslim Women's Rights,* 5.

134 During his reign Prime Minister Jung Bahadur Rana enacted a comprehensive civil and criminal code that crystalised the popular legal standards of the time.

are declared to be grave and punishable crimes' and announced the formation of a national commission for Dalits. In 2007, quotas were first introduced to improve Dalits' representation in the civil service and in the parliament. The Caste Based Discrimination and Untouchability (Offense and Punishment) Act was enacted in 2011. Subsequently, the 2015 Constitution afforded the group a variety of protections including priority based quotas in public services.[135] Despite such legislative measures, Dalit representation in the civil services has remained significantly low, at just 2 per cent.[136] Over the years, the government has supported efforts to conduct research and bring marginalised Dalit groups such as Mushahar, Dom, Badi, Gandharbha and others under the purview of the state apparatus.[137] Apart from conducting legal awareness programmes, the government has also provided free legal aid to Dalits who are economically disadvantaged.[138]

The legacy of the systemic discrimination faced by Dalits lives on though. Even today, they are unable to freely marry into the 'upper castes' without fear of retribution. In 2009, the government introduced a monetary scheme to encourage inter-caste marriage. The government awarded such marriages NPR 100,000.[139] However, a few years down the line, the programme was abruptly discontinued.[140] Despite being a priority group in development activities, Nepal's Dalits remain one of the poorest communities in the country. Moreover, in spite of the promises made in the 2015 Constitution to provide land to landless Dalits,[141] the government has not yet launched a land restructuring and distribution initiative.

135 Adhikari et. al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal.*

136 Schutter, *Report of the Special Rapporteur on extreme poverty,* 7.

137 Committee on the Elimination of Racial Discrimination Consideration of reports submitted by States parties under article 9 of the Convention (February 2017), 12.

138 Committee on the Elimination of Racial Discrimination Consideration of reports, 12.

139 'Nepal introduces grants for inter-caste marriages', *Hindustan Times*, July 13, 2009, https://www.hindustantimes.com/world/nepal-introduces-grants-for-inter-caste-marriages/story-gbzqaK8RvVKXrHhi8ldInI.html.

140 Rabina Luitel, 'Caste No Bar', *The Nepali Times*, June 7, 2022, https://www.nepalitimes.com/opinion/caste-no-bar/.

141 The Constitution of Nepal, 2015, Article 40(5).

Dalits' rights have not been adequately presented in national educational curricula, and there is weak participation of Dalits in the Curriculum Development Centre.[142] Further, Dalits continue to face a lack of income opportunities and obstructions in earning a livelihood.[143]

In addition to socio-economic vulnerability, access to justice for Dalits remains a cause for concern. As such, they are faced with refusal to register first information reports (FIRs) and non-initiation of criminal investigation by law enforcement officials, particularly in rural areas.[144] After the enactment of the Caste-Based Discrimination and Untouchability Act in 2011, 14 Dalit homicides were recorded until March 2019 with 62 cases of Dalit-related violence having occurred in 2019 alone.[145] Due to insufficient legal resources, many of these cases were dropped during trial and even in cases where the court pronounced sentences, perpetrators were only punished with minimum fines even for grave crimes such as infringing access to water and threatening freedom of religion.[146]

Adibasi Janajatis

The indigenous people of Nepal have been marginalised by the state for centuries. Historically, the promotion of 'one language, one religion, one dress', and the mono-cultural nationalism the monarchy employed for 'state building' not only imposed a dominant homogenous cultural hierarchy on the indigenous communities but also hurt their economic, political and social standing.[147] With

142 Samata Foundation, *Benchmarking the Draft UN Principles and Guidelines on the Elimination of (Caste) Discrimination based on Work and Descent: Nepal Report* (Kathmandu: Samata Foundation, 2014).

143 See Nepal's Civil Society's Alternative Report to the UN Committee on the Elimination of All Forms of Racial Discrimination, 2018.

144 Nepal's Civil Society's Alternative Report to the UN Committee on the Elimination of All Forms of Racial Discrimination, 2018.

145 Dalit NGO Federation (DNF), 'Joint Stakeholder Submission of Non-governmental Organization on Universal Periodic Review (UPR)', 4.

146 Yam Bahadur Kisan, Ram Bahadur Charmakar, and Prakash Nepali, *Nepal: Access to Justice for Dalits* (Lalitpur: Samata Foundation, 2015).

147 Mahendra Lawoti, *Racial Discrimination Toward the Indigenous People in Nepal: Non-government Report for the Third World Conference Against Racism (WCAR)* (Kathmandu: 2001).

the introduction of multiparty democracy in 1990, the tendency to label anyone advocating for Janajati concerns as 'divisive' and 'anti-national' began to fade.[148] Subsequently, the Nepal Federation of Indigenous Nationalities (NEFIN) was established in 1991 and the government set up the National Foundation for Development of Indigenous Nationalities in 2002.

The constitution drafting process in the first and second constituent assemblies following the promulgation of the Interim Constitution in 2007 was exclusionary to Janajati groups, whereby the major political parties quelled their appeals by enforcing a strict prohibition on the formation of a Janajati caucus in the Constituent Assembly (CA) and threatening Janajati CA members from raising their concerns during deliberations.[149] Subsequently, the 2015 Constitution was adopted with the state deploying the army to quash any protests against it, including by Tarai Janajati groups, mainly Tharus. Twenty-six Tharu leaders and protesters were taken into judicial custody, with 300 more facing criminal charges.[150]

In contravention to obligations under UNDRIP and ILO Convention 169, the Nepali government has been engaged in conspicuous violations of the rights of Janajatis, particularly those pertaining to land, livelihood and natural resources. The historical migration of Hill Khas Arya migrants to the Tarai is well documented, whereby non-registered lands belonging to the indigenous Tharus were passed to these migrants, resulting in the latter losing their lands and livelihoods and eventually being forced to work as Kamaiyas.[151] Furthermore, with the advent of wildlife and forest conservation efforts and the establishment of the Chitwan National Park in 1973, indigenous communities

148 Lynn Bennet, Bandita Sijapati, and Deepak Thapa, *Gender and Social Exclusion in Nepal* (Kathmandu: Himal Books, 2013), 77.

149 Alternative Report of the Indigenous Peoples of Nepal to the State Report Submitted by the Government of Nepal to the Committee on the Elimination of Racial Discrimination (Kathmandu, 2018).

150 'Alternative Report of the Indigenous Peoples of Nepal'.

151 Jagannath Adhikari and Hari Dhungana, 'The State and Forest Resources: An Historical Analysis of Policies Affecting Forest Management in the Nepalese in the Nepalese Terai', *HIMALAYA* 29, no. 1 (2010); Kaimaiyas refers to bonded labourers.

were again forcefully relocated and stripped of their right to access natural resources in the forest areas they traditionally inhabited. Today, there are 12 national parks, one wildlife reserve, one hunting reserve, six conservation areas, and 13 buffer zones in Nepal,[152] all built on lands that previously belonged to Janajati communities and which were taken from them without free and prior consent.[153] A 2015 estimate states that about 65 per cent of lands formerly owned by indigenous people have been converted into reserves and parks.[154]Amnesty International identified multiple cases of forced eviction of indigenous people from national park areas, with the victims being provided neither adequate compensation nor alternative housing.[155] Manifold cases of arbitrary arrests and detentions have also been reported.[156] Not only does such forceful eviction divest victims of their right to food and livelihood, it also strips them of their right to 'develop and transmit to future generations their histories, languages, oral traditions, philosophies'.[157]

Conclusion

There is little controversy over the fact that Nepal has shown increased acceptance of international human rights standards over time and made tremendous strides in protecting and promoting human rights of its citizens. In a little more than three decades, the country has ratified/acceded to seven of the nine core international human rights treaties and made efforts to translate their

152 'Protected Area', Department of National Parks and Wildlife Conservation, Ministry of Forest and Environment, accessed August 11, 2022, https://dnpwc.gov.np/en/.

153 Stan Stevens, Neema Pathak Broome, and Tilman Jaegar , *Recognising and Respecting ICCAs Overlapped by Protected Areas,* A Report for the ICCA Consortium (2006), https://www.iccaconsortium.org/wp-content/uploads/2016/11/publication-Recognising-and-Respecting-ICCAs-Overlapped-by-PAs-Stevens-et-al-2016-en.pdf.

154 Schutter, *Report of the Special Rapporteur on extreme poverty and human rights,* 9.

155 Amnesty International, *Violations in the Name of Conservation: What Crime Had I Committed by Putting My Feet on the Land that I Own?* (London: Amnesty International, 2021).

156 Amnesty International, *Violations in the Name of Conservation.*

157 UNDRIP, Article 13.

provisions into domestic legal framework. As such, despite some inconsistencies, Nepal's constitution is widely considered to be extremely progressive, particularly with regard to the protection of the rights of minorities. There remains a need, however, to amend some national laws having unwarranted implications on specific minority groups, such as indigenous people, to ensure alignment with the country's obligations vis-à-vis the international human rights regime.

Despite the express prohibition on discrimination against minority groups and affirmative action measures aimed at uplifting their socio-economic status and improving their representation in the state structure, the legacy of the systemic marginalisation and discrimination historically endured by such groups lives on in practice. Further, while the establishment of the various constitutional bodies for the protection and promotion of the rights of minority groups are noteworthy, the recent backsliding with attempts to inhibit the independent functioning of these bodies hints at tokenism on the part of the government.

The government's failure to ensure timely submission of periodic reports to all treaty bodies and to clear the backlog in submissions to the Committee Against Torture, the Committee on Economic, Social, and Cultural Rights and the Human Rights Committee in particular evidence a lack of commitment to uphold fundamental human rights norms and principles on the part of the government. Another glaring omission is the non-ratification of the Convention for the Protection of All Persons from Enforced Disappearance that has posed impediments in ensuring effective delivery of transitional justice for those affected by the armed conflict, many of whom were individuals belonging to minority groups. It is paramount that Nepal takes its binding obligations vis-à-vis the international human rights regime seriously and ensures effective monitoring of the implementation of the same. Focused effort towards the protection and promotion of human rights, particularly that of minority groups, is essential for strengthening democratic state-building in the country particularly in the context of the federal restructuring of the state.

Recommendations

For the government

- Ratify the Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Accept the individual complaints, inquiry, and interstate communication procedures under all nine core human rights treaties;
- Engage constructively with UN Special Procedures to support their mandate by responding to communications and requesting in-country visits;
- Ensure timely submission of periodic reports to all treaty bodies clearing, in particular, the backlog in submissions to the Committee Against Torture, the Committee on Economic, Social, and Cultural Rights, and the Human Rights Committee;
- Eliminate all inconsistencies between international obligations and domestic law by amending existing laws and enacting new ones;
- Amend exclusionary provisions in domestic legislation such as the Political Party Act, 2017 that create barriers for the political participation of indigenous communities;
- Strengthen remedies and redressal mechanisms for human rights violations in the domestic legal framework;
- Monitor the status of implementation of laws and bridge the schism between policy and practice;
- Conduct awareness raising campaigns aimed at eliminating discrimination against minority groups;
- Enable independent and effective functioning of constitutional bodies. In particular, retract the proposed amendment to the mandate of the NHRC that would shift its discretionary power to the Office of the Attorney General (OAG) and severely undermine the commission's autonomy, independence and legitimacy.
- Implement recommendations put forth by the NHRC and other commissions;

- Create an enabling civic space and amend any laws that impede the functioning of civil society including the National Integrity and Ethics Policy 2018;
- Amend the Truth and Reconciliation Commission Act, 2014 as directed by the Supreme Court by repealing the provision that allows granting of amnesty for grave human rights violations without consultation with the victims; and
- Ensure obtaining of free, prior and informed consent of indigenous communities in matters that affect them.

For civil society organisations

- Demand and encourage the state to ratify key international human rights instruments and accept individual complaints, inquiry and interstate communication procedures;
- Conduct awareness raising campaigns aimed at eliminating discrimination against minority groups;
- Ensure effective documentation and reporting of the human rights situation of minorities and efforts (or lack thereof) by the state towards the same; and
- Focus on and refer to international standards and obligations when documenting and reporting on the performance of the government on matters related to human rights.

Obligations to International Human Rights Standards and Their Implications for Minorities: Pakistan

Elaine Alam

Background

Overview

The utility of international commitments to human rights can be divisive: some point towards its political economy,[1] decrying it as a relic and a tool of Western imperialism.[2] Others offer jaded analysis, steeped in historicity, of the obligations' lack of enforceability being an ever-perpetual Achilles' heel.[3] Others begrudgingly acknowledge their limited utility, and simultaneously highlight their incomparable usefulness as a global platform to raise issues,[4]

1 James Raymond Vreeland, 'Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture', *International Organization* 62, no. 1 (2008): 65-101; James Raymond Vreeland and Axel Dreher, *The Political Economy of the United Nations Security Council: Money and Influence* (Cambridge University Press, 2014); John O McGinnis, 'The Political Economy of Global Multilateralism', *Chi. J. Int'l* 1 (2000): 381.

2 Guyora Binder, 'Cultural Relativism and Cultural Imperialism in Human Rights Law', *Buff. Hum. Rts. L. Rev* 5 (1999): 211; Jean Bricmont, *Humanitarian Imperialism: Using Human Rights to Sell War* (Aakar Books, 2007).

3 Erika De Wet, 'Human Rights Limitations to Economic Enforcement Measures under Article 41 of the United Nations Charter and the Iraqi Sanctions Regime', *Leiden Journal of International Law* 14, no. 2 (2001): 277-300; Christof Heyns and Frans Viljoen, eds., *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Brill, 2021).

4 Zdzislaw Kedzia, 'Mainstreaming Human Rights in The United Nations', in *International Human Rights Monitoring Mechanisms* (Brill, 2009), 231-238; Frédéric

arguing that human rights obligations set minimum standards, rally opposition to abuses and can be effective within certain foreign policy contexts.

These arguments are ever more important for Pakistan, a country unable to sustain itself financially without continued International Monetary Fund bailouts[5] and extremely reliant on the European Union's (EU) Generalised Scheme of Preferences Plus (GSP+)[6] status.[7] International human rights commitments should thus be of primary concern to Pakistan. Yet, its religious minorities are lynched, murdered, casually used as political fodder to incite hatred, and restricted to deeply discriminatory access to education, work, housing and other aspects that ensure quality of life.

This report aims to address the following questions:

- What are the international human rights conventions that Pakistan has adopted? How does the state perform on commitments to these standards and how does it deliver across civil, political social and economic rights?
- How does the state engage with the United Nations (UN) and the international human rights mechanism?
- How does Pakistan's relationship with its minorities and adherence to international human rights conventions reflect on the questions of accountability, rule of law and democracy?

This report comprises multiple sections, of which the first outlines the international human rights commitments adopted by Pakistan. The second details the status of religious minorities within the country, mindfully adopting an intersectional approach that

Mégret and Philip Alston, eds., *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, 2013).

5 Kunwar Khuldune Shahid, 'The IMF Takeover of Pakistan', *The Diplomat,* July 22, 2019, https://thediplomat.com/2019/07/the-imf-takeover-of-pakistan/.

6 EU's GSP+ status gives developing countries a special incentive to pursue sustainable development and good governance. In exchange, the EU cuts the country's import duties to zero on more than two thirds of the tariff lines of its exports. See: http://bit.ly/3wvA3hA.

7 Muhammad Riaz Shad, 'The GSP+ Status of Pakistan in the European Union: Challenges and Prospects', *Global Political Review* 6, no. 2 (2021): 1-8, https://www.gprjournal.com/jadmin/Auther/31rvIolA2LALJouq9hkR/M6K2SEwJ0T.pdf.

accounts for other identities like gender and ethnicity. The section that follows delves into the translation of treaty commitments to national legislation and outlines the role of national institutions responsible for protecting and promoting minority rights. It details domestic institutional frameworks governing reporting mechanisms and involves a literature review that applies existing critiques of this particular issue. It analyses factors within the bureaucracy, exploring whether different governments prioritise the agreements differently and the motivations behind the differing approaches.

The fourth section explicates whether Pakistan has faced any repercussions for non-compliance on human rights issues, delving into the nature and impact of these repercussions, thereby looking at how the state engages internationally on the subject of human rights.

This is followed by an examination of the operation space of non-governmental organisations (NGOs), primarily responsible for reporting whether member states are upholding international human rights obligations or not. The penultimate section comments on what Pakistan's adoption of and adherence to human rights commitments and its treatment of minorities within the country demonstrates about matters of accountability, democracy and the rule of law as important elements within state proceedings and actions. The chapter ends with a set of recommendations, mainly for the Pakistan government.

International Human Rights Commitments Made by Pakistan

Pakistan's relationship with the subject of human rights and the many international human rights conventions is a longstanding one. A country that was conceived as a consequence of mass human rights violations due to Hindu-Muslim riots and the unrelenting British rule in the sub-continent, the Islamic Republic of Pakistan was created as a homeland for the subcontinent's Muslims where they could live in harmony with other religious minorities.

Over its 75-year long history, Pakistan has engaged with various international human rights commitments. It was one of the first

few countries to join the United Nations in 1947 and accept the Universal Declaration of Human Rights (UDHR). Of the nine core treaties under the UN's human rights regime, Pakistan has ratified seven, namely:[8]

- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD),
- Convention on the Rights of the Child (CRC),
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),
- International Covenant on Economic, Social and Cultural Rights (ICESCR),
- International Covenant on Civil and Political Rights (ICCPR),
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and
- Convention on the Rights of Persons with Disabilities (CRPD).

Of the optional protocols, Pakistan has ratified two, namely the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of child prostitution and child pornography.[9]

Status of Minorities and Vulnerable Groups within Pakistan

Pakistan is composed of diverse religious, sectarian and ethno-linguistic groups. Muslims are in a majority but there are different sects within the Muslim population that face persecutions at different levels. For instance, in 1974, the National Assembly of Pakistan declared the Ahmadiyya a non-Muslim minority.[10] There are also several other non-Muslim minority groups such

8 'Ratification Status for Pakistan', UN Treaty Body Database, United Nations Human Rights Treaty Bodies, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN.

9 United Nations Human Rights Treaty Bodies, 'Ratification Status for Pakistan'.

10 Nadeem F. Paracha, 'The 1974 Ouster of the Heretics: What Really Happened?', *Dawn,* November 21, 2013, https://www.dawn.com/news/1057427.

as Christians, Hindus, Sikhs, Kalashis and Parsis. According to the 2017 census, Muslims make up 96.2 per cent of Pakistan's population, Hindus 1.6 per cent, Christians 1.59 per cent, Scheduled Castes 0.25 per cent, Ahmadis 0.22 per cent, and other minorities 0.07 per cent.[11] Most Christians live in Punjab, while Hindus and Scheduled Castes are overwhelmingly concentrated in Sindh and parts of southern Punjab. Ahmadis are evenly spread throughout the country, with some concentration in Islamabad.[12] Pakistan's Shia community, which is not counted as a religious minority in the census, makes up around 20 per cent of the total population, with estimates varying widely from 15 to 25 per cent.[13]

Religious minorities face widespread persecution, unable to publicly or privately practise their faith without fear, despite the fact that the Constitution of the Islamic Republic of Pakistan, 1973 entrenches freedom to profess and practise religion as a fundamental right. The Human Rights Commission of Pakistan's (HRCP) extensive annual reports detail developments in the treatment of religious minorities, and the 2021 report succinctly summarises their status.[14]

The enactment of blasphemy laws served as the major step that further pushed minority rights into an abyss. The law-ordained punishment for a blasphemy charge is the death penalty. The major issue with the present blasphemy laws is that intention, a crucial element to establish a criminal case, is not accorded any importance in the text of these laws. Moreover, 'the most damning aspect of this hegemonic design is that the controversial blasphemy law permits any Muslim (read Sunni Muslim in this context) to accuse a person of insulting Islam without having to produce evidence'.[15] Yet,

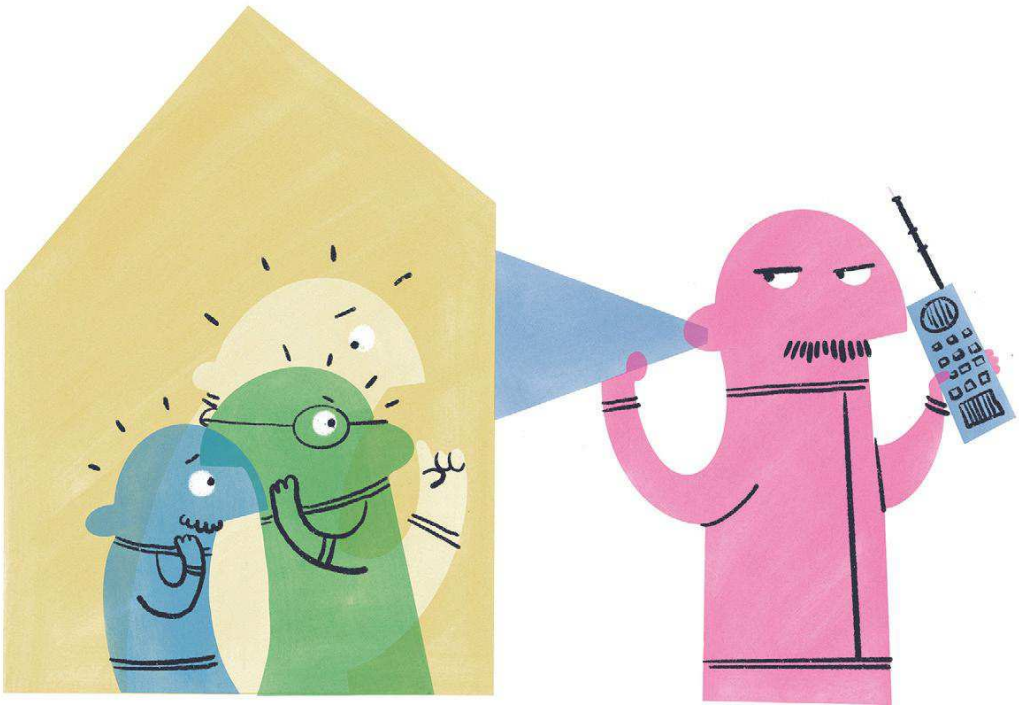
11 Maria-Magdalena Fuchs and Simon Wolfgang, 'Religious Minorities in Pakistan: Identities, Citizenship and Social Belonging', *South Asia: Journal of South Asian Studies* 43, no. 1 (2019): 52–67, https://doi.org/10.1080/00856401.2020.1695075.

12 Fuchs and Wolfgang, 'Religious Minorities in Pakistan'.

13 Fuchs and Wolfgang, 'Religious Minorities in Pakistan'.

14 Human Rights Commission of Pakistan, *State of Human Rights in 2021* (Lahore: HRCP, 2022), https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2022-State-of-human-rights-in-2021.pdf.

15 Saima Mohsin, 'Tackling Religious Intolerance and Violence in Pakistan', *CNN*, September 24, 2013, https://edition.cnn.com/2013/09/24/world/asia/pakistan-christians-mohsin/index.html.



Pakistan has failed to amend its blasphemy laws which have been a long-standing source of persecution and oppression in the country. Pakistan's short history has seen numerous people sentenced to death under this law. Blasphemy laws have significantly perpetuated minority injustice and instigated societal intolerance. Tahir Naseem Ahmad, an Ahmadiyya man arrested in 2018 over blasphemy charges, was shot and killed by an assailant who had snuck a weapon into Peshawar courtroom. Although the assailant was later arrested, there was no widespread condemnation of the incident either in political or media circles.

Even though no executions have been carried out since 2021, an anti-terrorism court issued death sentences to three people for having shared allegedly blasphemous content on social media platforms in January 2021. Blasphemy allegations and subsequent arrests remain rampant. At least 585 persons were booked on charges of blasphemy in 2021, an overwhelming majority of whom were from Punjab. Over 100 cases were registered against Ahmadiyya Muslims alone in 2021. Persons accused of blasphemy included a Hindu boy as young as eight in the city of Rahim Yar Khan.[16] Recently, in July 2022, a Christian bicycle mechanic was

16 Haroon Janjua, 'Eight Year Old Becomes Youngest Person Charged with Blasphemy in Pakistan', *The Guardian,* August 9, 2021, https://www.theguardian.

sentenced to death, five years after he was arrested on blasphemy charges for refusing to give a discount to a Muslim man.[17]

Forced conversions are often described as a 'human rights catastrophe' in Pakistan. In Paragraph 23 of the Lahore High Court judgment in Writ Petition no. 45156 of 2019, the court reiterated that the Supreme Court (SC) has held that Article 20 grants citizens the right to propagate their faith but this right does not extend so as to allow the conversion of a person to another religion by coercion or inducement.[18] Despite this, the HRCP documented at least 27 alleged forced conversions in Sindh in 2021, seven of which involved minors. In Punjab, the number of forced conversions increased from 13 cases in 2020 to 36 in 2021.[19] These highlight how forced conversions have steadily increased in recent times and hints at the cataclysmic failure of the state to implement and reform legislation aimed at curtailing the violation.

Abductions and forced conversions of girls from minority communities remain a grave concern for human rights organisations and policy-makers. Reportedly, over 1000 girls belonging to Hindu, Christian and Sikh communities are forcibly converted every year.[20] Once the girls are abducted, they are forcibly married to their captors, sexually exploited, raped, converted and subjected to coercive measures with restrictions on outside contact. In some cases, *nikanama*[21] and free will affidavits are executed bearing the date of abduction and disappearance.

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com/global-development/2021/aug/09/eight-year-old-becomes-youngest-person-charged-with-blasphemy-in-pakistan.

17 'Pakistan Court Sentences Christian Mechanic to Death for Blasphemy', *Daily Pakistan,* July 21, 2022, https://en.dailypakistan.com.pk/21-Jul-2022/pakistan-court-sentences-christian-mechanic-to-death-for-blasphemy.

18 Nasira vs. Judicial Magistrate and Five Others, https://sys.lhc.gov.pk/appjudgments/2019LHC4414.pdf.

19 'Blasphemy, Forced Conversions, Education System: The Weak Points for the Rights of Religious Minorities', *Agenzia Fides,* February 23, 2022, http://www.fides.org/en/news/71696-ASIA_PAKISTAN_Blasphemy_forced_conversions_education_system_the_weak_points_for_the_rights_of_religious_minorities.

20 'Each Year, 1,000 Pakistani Girls Forcibly Converted to Islam', *VOA,* December 29, 2020, https://www.voanews.com/a/south-central-asia_each-year-1000-pakistani-girls-forcibly-converted-islam/6200096.html.

21 *Nikanama* refers to a binding contract of an Islamic marriage.

Islam sets the minimum age for marriage according to physical maturity. According to Sharia law, a girl can enter into marriage upon reaching the age of puberty. Kidnappers use religion to sexually abuse girls from minority communities and escape charges of rape and abduction. Section 498(B) was inserted in the Pakistan Penal Code (PPC) to criminalise forced marriages but the offence was made non-cognisable.[22] In 2017, the relevant provision was amended to incorporate higher penalties. The proviso to Section 498(B) states that forced marriage with a child or a non-Muslim shall be punishable with imprisonment of up to 10 years and no less than five.

The police are often unwilling to register First Information Reports (FIRs) and even if FIRs are registered, the relevant laws are not invoked and allegations of forced conversions are not investigated.[23] Often, the statements recorded and compiled in the charge sheet by the police are not in conformity with the statements of the victim, particularly when people from influential families are accused.[24] This discourages families of victims to proceed with the case. For example, in 2005, a Hindu girl was allegedly converted to Islam in Mirpurkhas but the court validated the marriage and deemed it consensual because the police had not investigated the case willingly.[25] In 2020, a case involving a 13-year-old girl forcibly converted and married to a 44-year-old man in District South, Sindh, came into the limelight.[26] The girl's family had been harassed by the police after they had filed a complaint before the Sindh High Court.[27]

22 Police officers do not have the authority to make an arrest on non-cognisable offences without a warrant and a court order is required to initiate an investigation.

23 Jennifer Jag Jivan and Peter Jacob, *Life on the Margins: A Study on the Minority Women in Pakistan* (Lahore: National Commission for Justice and Peace, 2012).

24 Movement for Solidarity and Peace, *Forced Marriages and Forced Conversions in the Christian Community of Pakistan* (2014).

25 Mahmood Ahmad, 'Dealing with Forced Conversion', *The News,* January 1, 2023, https://www.thenews.com.pk/tns/detail/1025440-dealing-with-forced-conversion.

26 Madeeha Syed, 'The Case of Missing Arzoo', *Dawn,* December 27, 2020, https://www.dawn.com/news/1598113.

27 'This Should Have Never Happened to Her—The Story of Arzoo Raja',

Personal bias and beliefs of the members of the judiciary also hamper the dispensation of justice. As mentioned above, Islam sets the minimum age for marriage according to physical maturity. According to Sharia law, a girl can enter into marriage upon reaching the age of puberty. This results in the selective application of law. Often, forced marriages are validated based on consent pursuant to the concept of puberty in Islam and affidavits of free will are executed by victims under duress.

Even though Pakistan is a signatory to the CRC there is no uniform or coherent definition of a child in its legislation. Following the 18th amendment to the Constitution, child rights has become a provincial subject. The minimum age for marriage for a girl has been set at 16 in all provinces. The Sindh Child Marriage Restraint Act was progressively legislated to set the minimum age for marriage at 18. However, the inconsistency between provincial and federal laws on child marriage is used by captors as a defence against forced conversions and to evade punishment. In the abduction case of one girl from Sindh province, for example, the *nikkah*[28] was performed in Punjab.[29] It remains a serious challenge for legislative bodies and courts to decide when a person becomes capable of consenting to marriage.

Despite the growing rate of forced conversions, Pakistan has failed to legislate against it. The Sindh Criminal Law (Protection of Minorities) Bill was an attempt to tackle forced conversions but severe pressure was exerted on the Government of Sindh by religious extremists and various quarters. The bill was retracted for reconsideration and never made it to the provincial assembly.

In 2021, the Anti-Forced Conversion Bill was rejected by the Parliamentary Committee.[30] The Bill stated that if a minor desires to convert their religion, they will have to apply for a certificate

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Freedom of Religion or Belief in full, February 15, 2022, https://forbinfull.org/2022/02/15/this-should-never-have-happened-to-her-the-story-of-arzoo-raja/.

28 *Nikkah* refers to the ceremony that makes a marriage official in Islam.

29 Rana Bilal, 'Dua Zehra Moved Back to Karachi from Lahore, Placed in Child Protection Centre', *Dawn,* July 24, 2022, https://www.dawn.com/news/1701330.

30 Nadir Gurmani, 'Parliamentary Panel Rejects Anti-Forced Conversion Bill Amid Protest by Minorities', *Dawn,* October 13, 2021, https://www.dawn.com/news/1651813.

through a judge. In reference to the Bill, the Religious Affairs Minister remarked that 'forming law on forced conversions will deteriorate peace in the country and create further problems for minorities'. The Bill has languished since.

In 2009, the Government of Pakistan directed all government offices—federal and provincial—to reserve a 5 per cent of the jobs for minorities in the BPS-01 to BPS-22[31] categories of government jobs.[32] However, evidence shows that almost half of the positions reserved for minorities remain vacant, and that 80 per cent of workers belonging to minority communities are in low-paid ranks from BPS-01 to BPS-04.[33] Advertisements for government jobs extracted from the majority of newspapers demonstrate that workers belonging to minority communities are mostly employed for sanitation work. The advertisements often contain the clause, 'only non-Muslims can apply'. The discriminatory advertisements have been labelled a result of 'bureaucratic inefficiency'.[34] Sanitation workers are exposed to dangerous working conditions, work without proper protective equipment, and are often forced to unclog gutters with bare hands. Between 2011 to 2021, the majority of the sanitation workers who lost their lives due to hazardous work conditions were non-Muslims.[35] In 2019, members of the District Council of Swabi adopted a resolution whereby sweeper jobs would only be given to Christians.[36] The Pakistani Buddhist community continues to be excluded as a distinct religious group in the national census and from educational and government job quotas.

In August 2021, the then Prime Minister, Imran Khan, officially

31 BPS refers to Basic Pay Scale Structure used to rank government officials in Pakistan. BPS-01 is the lowest rank with BPS-22 being the highest.

32 Notification No. 4/15/94-R-2 dated May 26, 2009. See: https://fst.gov.pk/fst-panel/uploads/tribunal_act/file_1597991806.pdf.

33 National Commission for Human Rights, *Unequal Citizens: Ending Systemic Discrimination Against Minorities* (NCHR, 2022), https://www.nchr.gov.pk/wp-content/uploads/2022/05/Minority-Report.pdf.

34 Dr. Shoaib Suddle in an interview.

35 Asif Aqeel and Mary Gill, *Shame and Stigma in Sanitization: Competing Faiths and Compromised Dignity, Safety and Employment Security of Sanitation Workers in Pakistan* (Lahore: Center for Law and Justice, 2019).

36 'Swabi Councillors Want Christians Appointed on Sweeper Posts', *Dawn,* January 18, 2019, https://www.dawn.com/news/1458212.

launched the controversial Single National Curriculum (SNC) for primary schools and religious seminaries. One of the aspects of the curriculum is to teach the *Quran* in schools to students from pre-primary level to Grade 5. A Lahore-based public policy expert and a team of educationalists found that 9 per cent of the content of Grade 3 English textbooks was in violation of Article 22 of the Constitution of Pakistan, 1973.[37] Textbooks of the SNC quote Islamic examples in other subjects as well. Moreover, the fact that only Muslim names have been used for characters in the textbooks was castigated for promoting the idea that social acceptance only comes with a Muslim identity. It was feared that students with non-Muslim names would be discriminated against. In its report on the assessment of core minorities' issues, the National Commission for Human Rights (NCHR) has mentioned that there are many instances where non-Muslims have been labelled as 'infidels' in Islamic and Pakistan Studies books, as if they are outsiders and a burden on the majority population, implying that they should leave the country.

Although the SNC was strongly opposed for its lack of inclusivity and over-emphasis on Islamic religious content at the expense of religious minorities, it has been implemented in various provinces of Pakistan, especially Punjab. In Punjab, a petition was filed before the Lahore High Court challenging the content of the SNC.[38] Consequently, the Court issued notices regarding the same to the Punjab School Education Department, which is mandated to prepare the syllabus for education in the province, and the Federation of Pakistan pursuant to the order in November 2022.

Teaching of Islamic content as a compulsory subject to children of minority communities has been a contentious issue. The promulgation of the Compulsory Teaching of Quran Act, 2017 has made it mandatory to teach Quran as a scheme of studies. This legislation was unanimously approved by all legislative bodies including the National Assembly and the Senate. Section 3(2) of

37 Benazir Shah, 'Government's Single National Curriculum is Like Martial Law', *Geo.tv,* May 3, 2021, https://www.geo.tv/latest/348462-governments-single-national-curriculum-is-like-martial-law.

38 Writ Petition no. 73200 of 2022.

the Punjab Compulsory Education Act, 2018 provides that the government shall ensure the implementation of the Act.

Recently, the Punjab government has formulated a policy making it mandatory to declare ones' faith in order to sit for matriculation exams. Consequently, five Ahmadiyya students were expelled by a leading private school in Attock on the basis of their Qadaniat religion when they declared themselves to be Ahmadiyya in order to register for the matric exams. The National Commission on the Rights of Child (NCRC) directed the Deputy Commissioner of Attock to resolve the matter and also urged the Punjab government to revisit the policy seeking the declaration of faith by students because it highlights and endangers them.[39] However, the Ahmadiyya students refused to be reinstated in the same school, citing concerns over their lives.[40]

Interestingly, the Islamabad Bar Council's form for enrolment as an advocate requires a declaration on the finality of prophethood from fresh law graduates. Although numerous human rights lawyers rigorously advocate for the rights of minorities, that requirement has not been scrapped. Likewise, a non-Muslim

39 Ikram Junaidi, 'NCRC May Get Policy Seeking Declaration of Students' Faith Reversed', *Dawn,* November 22, 2022, https://www.dawn.com/news/1722402.

40 'NCRC Holds Hearing of Expulsion of Students Based on Religion', *The News,* November 1, 2022, https://www.thenews.com.pk/print/1005459-ncrc-holds-hearing-of-expulsion-of-students-based-on-religion.

lawyer cannot appear before the Federal Shariat Court except in cases where one of the parties is non-Muslim.[41]

The Hazara community has been suffering from persecution and targeted discrimination based on their ethnicity and Shia faith in a country where Sunnis are an overwhelming majority.[42] In January 2021, 11 men of the Hazara community were mercilessly murdered by Islamic State militants. The Hazara community widely protested and refused to bury the bodies of the victims. The then Prime Minister, Imran Khan, refused to visit the grieving families and called them 'blackmailers' for which he received severe backlash. Eventually, he acquiesced and also promised compensation for the families of the victims.[43]

Enforced disappearances of Pashtuns and Balochs evidence chronic violation of human rights in Pakistan. The HRCP reported that victims of enforced disappearances have either been targeted for their political or religious affiliation or for defending human rights. In May 2020, the leader of the Pashtun Tahafuz Movement, Arif Wazir, who had strongly advocated for an end to extrajudicial killings and abductions, was shot dead.[44] In 2019, 2472 cases of missing persons were registered. In 2022, the Missing Persons Bill was passed by the National Assembly and sent to the Senate for approval. However, the Bill went missing. The then minister for human rights, Shireen Mazari, informed the media that the Bill had gone missing from the Senate Committee on Human Rights.[45]

In April 2021, three people were killed and hundreds injured

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41 The Federal Shariat Court of Pakistan, 'Procedure Rules', federalshariatcourt.gov.pk/wp-content/uploads/2018/Procedure%20Rules/Procedure-Rules.pdf.

42 'Persecution and Perseverance: Survival Stories from the Hazara Community', *UNHCR,* July 24, 2020, https://www.unhcr.ca/news/persecution-perseverance-survival-stories-hazara-community/.

43 'Who are the Hazaras, the Minority Community Persecuted in Pakistan?', *Times Now Digital,* January 13, 2021, https://www.timesnownews.com/international/article/who-are-the-hazaras-the-minority-community-persecuted-in-pakistan/706816.

44 Sirajuddin, 'PTM's Arif Wazir Dies in Islamabad Hospital After Gun Attack in Wana', *Dawn,* May 2, 2020, https://www.dawn.com/news/1553964.

45 'Bill on Missing Persons Has Gone Missing: Shireen Mazari', *The News,* February 2, 2022, https://www.thenews.com.pk/print/930136-bill-on-missing-persons-has-gone-missing-mazari.

in a clash between Tehreek e Labbaik Pakistan (TLP) activists and the police in Lahore. The government's agreement with the TLP on October 2021 resulted in a Punjab Assembly resolution in September seeking the display of Quranic verses and hadith on the finality of prophethood in provincial government offices. It also passed a resolution on the inclusion of an oath of *khatm-i-nabuwat* (finality of prophethood) in *nikkah* documents in October, discriminating against the Ahmadiyya community. Finally, citing the religious extremism being promoted by the TLP, the federal government imposed a ban on the party under the anti-terrorism law in April 2021.[46]

The lynching of Priyantha Diyawadana, a Sri Lankan national, a manager in a factory in Sialkot, December 2021 shocked the world. Diyawadana was accused of having committed blasphemy for allegedly taking down posters containing religious messages. According to reports, he was tortured and killed and his body set on fire.[47]

The Ahmadiyya community has also complained about the shutting down of their welfare programmes in different districts of the region by the government. An assistant cleric working in the Ismaili community's place of worship in the city of Gilgit was attacked when unidentified people opened fire on him. Recently, in July 2022, the police in Faisalabad arrested three individuals belonging to the Ahmadiyya community for performing the Islamic ritual of animal sacrifice in their homes during Eid Ul Azha.[48] According to the FIR, their actions 'hurt Muslim sentiments', and therefore the 'culprits' were arrested and charged under Section 298(C) of the PPC. These arrests were alarming in the sense that although the country's draconian laws prohibit public expression of faith, the animal sacrifices were done privately within the confines

46 'Government Bans Tehreek-e-Labaik Pakistan', *GNN,* April 16, 2021, https://gnnhd.tv/news/2026/government-bans-tehreek-e-labaik-pakistan.

47 'Man Tortured and Killed in Pakistan Over "Blasphemy"', *The Guardian,* December 3, 2021, https://www.theguardian.com/world/2021/dec/03/pakistan-sri-lankan-man-priyantha-diyawadana-tortured-killed-alleged-blasphemy-sialkot.

48 Section 298(c) prohibits any person of the Ahmadi sect from calling themselves a Muslim or preaching or propagating their faith.

of the homes of those arrested.[49] More recently, Ahmadiyyas were excluded from the National Commission for Minorities, a body set up to ensure that the rights of minorities are safeguarded. It is noteworthy that even as minorities suffer in the country, Pakistan has been vocal on the Kashmir issue, urging the UN and other international actors to intervene and free the Kashmiri people from India-sanctioned grave mistreatments.[50]

Although women and girls are not considered a minority group in Pakistan, they are widely regarded to be vulnerable and disadvantaged in many respects. Rape, domestic violence, honour killings, forced marriages, murders, acid attacks and sexual assaults and harassment are some of the crimes committed against women and girls in Pakistan on a daily basis in addition to the obstacles they face in accessing education and work. With hundreds of thousands of women affected, the consequences of female oppression and persecution in Pakistan is devastating. An estimated 1000 women die every year as a result of honour killings and according to data gathered from national domestic violence helplines the cases of domestic violence increased by 200 per cent over a three-month period from January to March 2020.[51] The COVID-19 lockdowns further exacerbated these numbers.

In fact, it is the women themselves who are often scrutinised and held at fault when they are mistreated or victimised. A prominent instance of this was the motorway gang rape of September 2020 after which a statement was issued by the Lahore police chief stating that the woman should not have been travelling without her husband and so had herself to blame.[52] In August of the same year, a report by the Ministry of Human Rights found that female prisoners do not have access to proper medical facilities and spend

49 Raza Habib Raja, 'The Right to Have Rights: The Intense Hatred Towards a Religious Community', *Tribune,* July 15, 2022, https://tribune.com.pk/article/97609/the-right-to-have-rights-the-intense-hatred-towards-a-religious-community.

50 'Pakistan: Events of 2020', Human Rights Watch, accessed December 14, 2022, https://www.hrw.org/world-report/2021/country-chapters/pakistan.

51 Human Rights Watch, 'Pakistan: Events of 2020'.

52 Xari Jalil, "'Victim Blaming": Civil Society, Rights Activists Demand Removal of Lahore CCPO', *Dawn,* September 11, 2020, https://www.dawn.com/news/1579034/victim-blaming-civil-society-rights-activists-demand-removal-of-lahore-ccpo.

their time in prison in dire conditions.[53] The report further stated that Pakistan's prison laws were well below international standards and there was a pattern of not implementing laws created for the protection of female prisoners.[54]

Women in Pakistan are also subjected to child marriage, with girls from religious minority communities most commonly victimised. It is estimated that 21 per cent of the girls in Pakistan are married before the age of 18, of which 3 per cent are married before they turn 15. Despite these shockingly high numbers, the government has done little to combat this issue.[55]

The transgender community is also a marginalised segment of Pakistani society. They are socially disadvantaged and not accepted in public places. There are barely any educational institutions or vocational training centres for them. Even the right to issuance of a Computerized National Identity Card (CNIC) for transgenders was only recognised in 2009. Recently, the Transgenders (Protection of Rights) Act, 2018 was met with severe backlash from religious clerics because it seeks to protect the right to self-perceived identity.[56] Religious extremists protested that the law serves as a gateway to homosexuality and should therefore be annulled. Moreover, an amendment in the law was severely resisted and was challenged in the Federal Shariat Court for discreetly legalising same-sex marriages.

Translation of Treaty Commitments into National Legislation and Initiatives

Pakistan has adopted multiple international treaties on the subject of human rights protection, and these treaty commitments have been translated to national legislation, including those governing

53 Ministry of Human Rights, *Plight of Women in Pakistan's Prisons* (Government of Pakistan, 2020), https://mohr.gov.pk/SiteImage/Misc/files/Prison%20Report_acknowledgment.pdf.

54 Ministry of Human Rights, *Plight of Women in Pakistan's Prisons.*

55 Saroop Ijaz, 'Pakistan Should End Child Marriage: Regressive Step by Parliament on International Day of the Girl', *Human Rights Watch,* October 12, 2017, https://www.hrw.org/news/2017/10/12/pakistan-should-end-child-marriage.

56 Kalbe Ali, 'Religious Parties' Opposition to Rights Act Concerns Transgender Community', *Dawn,* September 24, 2022, https://www.dawn.com/news/1711634.

national commissions. Three independent national institutions have been set up in accordance with the Paris Principles: the National Commission for Human Rights (NCHR) (2012), the National Commission on the Status of Women (NCSW) (2012) and the National Commission on the Rights of Child (NCRC) (2017). The NCHR Act, 2012 provides that one member of the commission shall be from the minority community, the NCSW Act, 2012 designates an independent seat for minorities, while the NCRC Act, 2017 mentions minorities in the constitution of the commission but does not provide for an independent seat for them. The presence of an independent seat for minorities in the NCRC is essential for effective protection of the rights of children from minority communities, especially when they have the primary objective of stopping forced conversions.

The constitution of Pakistan also provides several human rights-related injunctions under the rubric of fundamental rights.[57] Article 21 of the constitution provides that every citizen shall have the right to profess, practise and propagate his/her religion. It further provides that every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions. Likewise, Article 22 provides 'safeguards as to educational institutions in respect of religion'. While these laws are varying and scattered, they can be encompassed under the freedom of religion and belief, freedom of expression, freedom of the press, freedom of thought and freedom of assembly. In addition to these fundamental rights, Pakistan has also introduced several laws that would also grant protection to minority groups, namely, the Juvenile Justice System Act, 2018, the Prevention of Trafficking Persons Act, 2018, the Transgender Persons Act, 2018, the Khyber Pakhtunkhwa Elimination of the Custom of Ghag Act, 2013, the Sindh Child Marriages Restraint Act, 2013 and the Zainab Alert Recovery and Response Act, 2020.[58]

57 National Assembly of Pakistan, *The Constitution of the Islamic Republic of Pakistan,* https://na.gov.pk/uploads/documents/1333523681_951.pdf.

58 Government of Pakistan, *Pakistan's Domestic Implementation of its International Human Rights Obligations: Summary of Findings* (Government of Pakistan), pc.gov.pk/uploads/report/Domestic.pdf.

While these are recent additions to Pakistan's legal system, there are numerous laws—both federal and provincial—that deal with human rights in the country. Some 400 laws are directly connected to human rights injunctions that meet international and national legislative standards. In addition, Pakistan also has several federal and provincial bodies that work on the rights of people, particularly children and women. These include child protection and welfare bureaus, treaty implementation cells, and social welfare departments, with the most prominent being the NCHR.

In July of 2020, Pakistan's SC instructed the federal and provincial governments to take steps towards 'ensuring the rights of people with disabilities are safeguarded and upheld' ratified by Pakistan in 2011.[59] Although exact data on the number of people with disabilities in Pakistan is not available, it is estimated that there are somewhere between three to 27 million of them. Pakistan's law requires that the disabled constitute at least 2 per cent of the workforce in all organisations so they have the opportunity to work and to live a fair life.

It is also important to note that several laws already part of the constitution that are in contravention of human rights commitments have not been repealed, legalising many human rights injustices happening in the country. National laws such as the Zina and Hadood ordinances and the Diyat and Qiyas ordinances remain a part of the national legal framework despite recommendations for their annulment. Both the NCSW and the Commission on the Status of Women (CSW) have asked for the annulment of these laws based on the fact that they are discriminatory and unjust towards women.[60]

Similarly, the Anti-Terrorism Act, 1997 remains in place. Under this Act, the accused is presumed to be guilty, mental torture is not regarded as torture, and statements made by the accused in

59 Supreme Court of Pakistan, Civil Petition No. 140-L of 2015, https://www.supremecourt.gov.pk/downloads_judgements/c.p._140_l_2015.pdf.

60 Non-Governmental Organizations Report on Pakistan for the Universal Periodic Review under the United Nations Human Rights Council Session of May 2008, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session2/PK/NCJP_PAK_UPR_S2_2008_NationalCommissionforJusticeandPeace_uprsubmission_JOINT.pdf.

front of the police are considered as evidence. Another ordinance, the Maintenance of Public Order Ordinance, violates the rights of detainees under the ICCPR and the UDHR. As a result, thousands of detainees have been kept in custody for months on end. The Ordinance has not only been enforced in actual criminal cases but has also been widely misused and applied to arrest human rights defenders and political workers to smother dissent.[61]

Repercussions for Non-compliance on Human Rights Issues

Despite Pakistan being party to international human rights conventions and its domestic translation of the same, mass violations of human rights still persist throughout the country. Minority and disadvantaged groups such as religious minorities, transgender groups, and women continue to face discrimination in their everyday lives. And many a time, lawyers, journalists and other human rights defenders have been persecuted for supporting the unjustly treated and raising their voice against perpetrators. Journalists often have to resort to self-censorship in a bid to protect themselves and media houses also face external pressure to hue to a specific narrative.

The Government of Pakistan has often ignored recommendations made by human rights bodies. For instance, it did not heed almost any of the 18 recommendations made by the United Nations Special Rapporteur on freedom of belief or religion in 1995. Similarly, it also ignored the recommendations provided by the United Nations Special Rapporteur on violence against women.[62] This repeated ignoring of recommendations by special procedures mandate-holders, coupled with transgressions of treaties, have also impacted Pakistan's international affairs negatively.

Pakistan's ties with many countries depend on the state of its human rights performance. Pakistan's relationship with the United States (US) is a volatile one. The US ambassador-designate recently said that his primary goal within Pakistan was to work on the expansion of human rights, especially those affecting

61 'Non-Governmental Organizations Report on Pakistan'.
62 'Non-Governmental Organizations Report on Pakistan'.

religious minorities, and the freedom of expression.[63]

Similarly, the 2020 report on the European Union's GSP+ programme—a programme which provides first access to countries that ratify and implement specific human rights conventions—stated that there was inadequate work being done in Pakistan on a range of human rights issues. These included enforced disappearances, torture and labour rights as well as growing intolerance of civil society and expression of dissent.

While human rights violations have occurred consistently in Pakistan, the year 2021 was comparatively worse with mass violations across the country. Citizens were robbed of their fundamental rights and civil liberties, and while state institutions often failed to help victims, in many cases they went a step further by barring victims from expressing dissent and creating obstacles for them in accessing justice.

Although Pakistan has accepted the UDHR, the country has been violating many, if not all, of its 30 Articles. Both the government and armed forces have continuously repressed citizens throughout despite a change in regimes. Fundamental rights such as those of expression, freedom, access to information, assembly and association have not been awarded to citizens; forced conversions of religious minorities, rampant violence against women, and enforced disappearances are everyday occurrences for Pakistan's citizens.[64]

These widespread human rights violations have not just resulted in suffering for victims but have also led to condemnations and sanctions imposed on the country by other states. In July 2022, international delegates at a conference for the prevention of Freedom of Religion or Belief (FORB) violations highlighted the human rights violations in Pakistan. Among those highlighted were the fact that Pakistani textbooks often portray Christianity and other minority religions as being inferior, thus propagating inequality and exclusion in society.[65]

63 Human Rights Watch, 'Pakistan: Events of 2020'.

64 Marvi Sirmed, 'Pakistan in 2021: Human Rights Violations Worsened in the Outgoing Year', *The Friday Times,* December 30, 2021, https://www.thefridaytimes.com/2021/12/30/pakistan-in-2021-human-rights-violations-worsened-in-the-outgoing-year/.

65 'International Delegates Condemn Pakistan, China Human Rights

In 2019, Pakistan faced sanctions from the US over gross human rights violations taking place in the country, stating that it refuses to accept incidents of torture, sexual violence, kidnapping, murder and brutality against the vulnerable and minorities. The US Treasury Department imposed economic sanctions on a police official because of his reported role in staging fake police encounters: 190 of those in which more than 400 people were executed. And apart from these incidents of police encounters, the official was also reportedly leading a network of thugs that partook in illegal activities such as land grabbing, extortion and murder.[66]

The US-imposed sanctions on Pakistan have a long history, and while these have been mainly for geopolitical and military reasons, quite a few of them have been due to human rights violations. Back in 1971 when Bangladesh was part of Pakistan, the US took executive action and removed all military aid to Pakistan due to mass human rights violations in what was then East Pakistan.

One of the most conspicuous areas where Pakistan has not complied with the international human rights regime is in its judicial system. It has not upheld international conventions meant to safeguard the independence of and separation of judges and lawyers in the legal system. These, along with other principles that are held in the UN's Basic Principles on the Role of Lawyers and the Basic Principles of the Independence of the Judiciary, have been disregarded by Pakistan. Judicial independence is universally regarded as paramount and acts as the basic foundation for all domestic and international human rights conventions as well as humanitarian law. It has also secured under the four Geneva conventions on the conduct of war.[67]

The country has experienced a number of instances where the judiciary has been undermined, including:

Violations', *The Print,* July 17, 2022, https://theprint.in/world/intl-delegates-condemn-pakistan-china-human-rights-violations/1043160/.

66 'U.S. Hits "Gross" Human Rights Violators in Russia, Pakistan with Sanctions', *Radio Free Europe/Radio Liberty,* December 10, 2019, https://www.rferl.org/a/u-s-sanctions-human-rights-violators-russia-pakistan-/30318703.html.

67 'Non-Governmental Organizations Report on Pakistan'.

- The unconstitutional suspension of the Chief Justice of the SC in 2007;
- The tempering of the judicial system to create an Islamabad High Court without parliamentary approval, by using unconstitutional presidential powers;
- Civil officers regularly disregarding court orders; and
- The dismissal of more than 50 per cent of the superior and higher judiciary in 2007 under the guise of an emergency situation.
- As a result, the judiciary has been unable to perform its proper role, and, consequently, pushed the country into an even more deplorable state.[68]

Role of NGOs in Upholding Human Rights in Pakistan and Their Critique

For a country where many live below the poverty line, Pakistan has many NGOs. Pakistan has somewhere between 100,000 and 150,000 NGOs working in the country. In addition to local organisations, Pakistan is also a hotspot for international NGOs. Unfortunately, in working to protect and promote human rights, NGOs themselves have been targeted and become the victims of human rights injustices. In 2007, there were three bomb and grenade attacks on NGOs in Pakistan, targeting both their members and their buildings. Both organisations targeted suffered heavy losses, halting their operations and further worsening the condition of the people that they were working with.[69]

In 2018, the Pakistan Tehreek-e-Insaf government started a crackdown on NGOs as soon as it came to power.[70] Reportedly, 18 international organisations were asked to close their operations in Pakistan. Rights groups and activists alleged that it was a part of the government's plan to silence dissent whereas the government had retorted that the monitoring of NGOs was imperative to balance

68 'Non-Governmental Organizations Report on Pakistan'.

69 'Non-Governmental Organizations Report on Pakistan'.

70 Haroon Janjua, 'Why is the Pakistani Government Cracking Down on NGOs?', *DW,* November 2, 2021, https://www.dw.com/en/why-is-the-pakistani-government-cracking-down-on-ngos/a-56537755.

its international obligations. Laws were amended to ensure that the movement of funds followed proper legal channels and the funding received was utilised for the right purposes. Consequently, the Economic Affairs Division (EAD) was given the mandate for the registration of NGOs.

In 2021, the federal government revised the policy for the regulation of NGOs and non-profitable organisations (NPOs) through the 'Policy for Regulation of NGOs/NPOs Receiving Foreign Contribution-2021' whereby the approval process for registration was to be completed within 60 days through online submission of applications, thus replacing manual processing of the same.[71] However, the policy to regulate NGOs through the EAD has been criticised for being too stringent and requiring extensive documentation. Many civil society organisations have criticised the measures imposed because NGOs already operating in the country before the introduction of the policy also had to go through extensive documentation and the funding they were receiving from foreign donors was stopped until the acquisition of a permit from the EAD.

Pakistan's Human Rights Status and Its Reflection on Accountability, Democracy and Rule of Law

Pakistan has a less than ideal history of protecting human rights and this is reflected in certain aspects of society—such as those of accountability, democracy and the rule of law. Due to the repeated human rights violations transpiring in Pakistan and the state's subsequent failure to hold perpetrators of these injustices liable, the issue of accountability is highly debated in Pakistani society. There is a clear hierarchy, with those with financial and social power—mainly those that belong to the majoritarian religious group and to the more favoured gender—being awarded leniency for their actions, further worsening conditions for the victims who are then not even awarded compensatory measures.

71 Imran Ali Kundi, 'Govt Approves New Policy for Regulation of NGOs/NPOs Receiving Foreign Funds', *The Nation,* July 1, 2021, https://www.nation.com.pk/01-Jul-2021/govt-approves-new-policy-for-regulation-of-ngos-npos-receiving-foreign-funds.

As for democracy, Pakistan has a history of government crackdowns on dissent, thus barring the public's freedom of expression. As discussed, there exist several laws that are directly in opposition to human rights commitments such as the Hudood and Zina ordinances. Besides, barriers put on media houses and journalists also create obstacles in the manifestation of a true democracy.

By definition, the rule of law, when properly implemented, guarantees the protection of human rights as well as results in laws that are publicised, clear and evenly applied. While Pakistan does have a working constitution, many of its laws are in contravention with human rights conventions it has signed and ratified, making the national jurisprudence unclear and the application of international human rights commitments questionable. For instance, in early 2022, the Prevention of Electronic Crimes Act (PECA) Ordinance was introduced in an attempt to curb 'fake news'.[72] Media bodies challenged the law as 'draconian and an attempt to silence dissent'. Although declared 'unconstitutional' by the Islamabad High Court,[73] such attempts significantly hamper media freedom and seek to prevent institutional accountability.

On the whole, Pakistan's poor performance vis-à-vis protection of human rights of everyone in general and of minorities in particular makes it increasingly difficult for citizens to enjoy the elements of democracy, accountability and the rule of law.

Recommendations

In 2022, the 30th year of existence, the HRCP compiled a report on the state of human rights in the country.[74] The report corroborated much of what has been discussed here—the state of human rights in Pakistan is deplorable, and has steadily worsened over time. Everything from violence against women and transgenders, enforced disappearances and missing persons to crackdown on

72 Naveed Siddiqui, 'President Promulgates Ordinance to Regulate Social Media as Minister Warns Against Indulging in "Fake News"', *Dawn,* February 20, 2022, https://www.dawn.com/news/1676116.

73 Tahir Naseer, 'IHC Strikes Down PECA Ordinance, Terms it "Unconstitutional"', *Dawn,* April 8, 2022, https://www.dawn.com/news/1684032.

74 Human Rights Commission of Pakistan, *State of Human Rights.*

dissent has meant that life for the average Pakistani citizen is without access to many of the fundamental rights considered universal and enshrined in treaties Pakistan has ratified.

The HRCP also made several recommendations pertaining to how human rights in the country should be ensured and their access and implementation made fair and inclusive.[75] The report placed great emphasis on the role of the government in upholding human rights and called on the government to give due attention to human rights issues in the country. There were recommendations made on the safeguarding of media freedom and the need to not pass any more legislation barring the rights of journalists to openly and freely do their jobs. Attention was also given to the crucial role of human rights activists in acting as guides for the government on how to better ensure the protection of the human rights of their citizens.

Following the HRCP report, this chapter makes the following recommendations to improve the human rights situation in Pakistan.

- The promulgation of a national human rights policy created to ratify and implement UN human right conventions with a proper progress monitoring system in place;
- A visit by the UN High Commissioner on Human Rights for fact-finding and recommendatory purposes;
- The judiciary be allowed to maintain its distance from the government, with the ability to implement just laws that aim to uphold human rights conventions;
- Stop crackdowns on journalists and media houses and the freedom of expression be fully protected—both of individual citizens and the media;
- Complete recognition and acceptance of religious, gender and other minorities, awarding them the full status of citizens and equality before the law and implementation of laws that uphold and protect their fundamental human rights;
- Urgently outlaw enforced disappearances with the

75 Human Rights Commission of Pakistan, *State of Human Rights.*

intelligence services held accountable for their role in enforced disappearances in the past and provide adequate aid and support for the families of the victims;
- Protection by law of NGOs and their workers while perpetrators of past violations against them be made accountable;
- Creation of a special inquiry force to assess the impact of blasphemy laws on civil society and particularly its religious minorities;
- Amendment, with the utmost priority, of all laws that are in contradiction of international human rights treaties signed and ratified by Pakistan;
- Legislation against forced conversions and setting up of a national minority rights commission with a national mandate in accordance with the Paris Principles;
- Legislation for the uniformity of age to govern child marriages with high penalty for transgressions and the offence made a cognisable offence in order to effectively curtail forced marriages of minor girls;
- Increase of educational quota for minorities from the current 2 per cent to 5 per cent along with the revision of discriminatory educational policies to promote social acceptance and tolerance and the reconsideration of policies requiring the declaration of faith to sit for matriculation exams and the compulsory teaching of the *Quran*. Anonymity of faith should be maintained where the minority population faces risk as in the case of Ahmadiyya students;
- Design of the education syllabus to promote social tolerance, non-discrimination and acceptance of others; and
- End all discriminatory advertisements relating to government appointments.

While Pakistan's history with human rights is riddled with violations and inaccessibility, it is also important to remember the young nation's resilience. In its 75-year history, Pakistan has adopted numerous human rights commitments and treaties but due to obstacles such as a lack of resources, absence of proper

developmental leadership and its colonial past, progress has not been up to the mark. However, with the right support and framework, Pakistan has the ability to build itself into a just country where fundamental human rights are upheld.

For this, there needs to be both an internal and external restructuring with regard to the human rights regime of the country. Pakistan's governing bodies must take a step back and re-evaluate the ongoing human rights condition and plan the necessary steps needed to rectify the situation. Externally, Pakistan needs support from international human rights bodies in order to assess, better strategise and then actualise the protection of human rights in the country. This support needs to come in various forms—including expertise, personnel, financial aid, equipment and strategic planning and implementation training and workshops. That said, Pakistan must adopt the right measures in the very near future so that it can embark on the very long journey to ensure fundamental rights for all of its citizens regardless of demography.

Sri Lanka: The Extent of Compliance with International Human Rights Obligations

Sakuntala Kadirgamar

Introduction[1]

Minorities are specifically understood as groups that are politically, economically and socially underrepresented in positions that can exert influence in society. Such groups are identified by ethnicity, religion, gender, sexuality, (dis)ability, place of residence (urban vs. rural) and more. This paper examines the state of minorities in Sri Lankan society in recent years and their interactions with the state. Specifically, this chapter explores Sri Lanka's compliance with international human rights obligations and the extent to which its domestic laws and institutions are aligned with those obligations, particularly in relation to the protection of minority rights. The paper further also examines the state of minorities in Sri Lanka in recent years, highlighting the impact of COVID-19 and the country's economic collapse on minority communities. The objective of this analysis is to assess how international laws can be used to hold the state accountable for its treatment of minorities and provide recommendations to better implement protection and support for minorities. It notes the particular role of the state in relation to Tamils, Muslims, Christians, women, queer communities and other marginalised people across these intersectional identities in Sri Lanka.

1 Research for this paper was undertaken by Kassandra Neranjan (she/her), BCL/JD Candidate, Faculty of Law, McGill University, Canada.

Human Rights Obligations

International human rights treaties

Nine core international human rights treaties can be broadly classified as international covenants protecting the fullest range of human rights of all people. Presented in the table below are the major human rights treaties, including optional protocols, that Sri Lanka has acceded to and ratified.

Ratification of International Human Rights Treaties by Sri Lanka

International Bill of Human Rights	Signature	Ratification	Accession
International Covenant on Economic, Social and Cultural Rights, 1966			June 11, 1980
International Covenant on Civil and Political Rights, 1966			June 11, 1980
Optional Protocol to the International Covenant on Civil and Political Rights, 1966			October 3, 1997
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989	Not signed		
Prevention of Discrimination on the Basis of Race, Religion, or Belief; and Protection of Minorities	**Signature**	**Ratification**	**Accession**
International Convention on the Elimination of All Forms of Racial Discrimination, 1965			February 18, 1982
Women's Human Rights	**Signature**	**Ratification**	**Accession**
Convention on the Elimination of All Forms of Discrimination against Women, 1979	July 17, 1980	October 5, 1981	
Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999			October 15, 2002
United Nations Convention against Transnational Organized Crime, 2000	December 13, 2000		
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000	December 13, 2000		

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime, 2000	December, 13, 2000		
Slavery and Slavery-Like Practices	**Signature**	**Ratification**	**Accession**
Slavery Convention, 1926	Not signed		
Protocol amending the Slavery Convention, 1953	Not signed		
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	June 5, 1957	March 21, 1958	
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949			April 15, 1958
Protection from Torture, Ill-Treatment and Disappearance	**Signature**	**Ratification**	**Accession**
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984		February 2, 1994	
Rights of the Child	**Signature**	**Ratification**	**Accession**
Convention on the Rights of the Child, 1989	January 26, 1990	July 12, 1991	
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, 2000	Not signed		
C182- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ((No. 182), 1999		March 1, 2001	
Freedom of Association	**Signature**	**Ratification**	**Accession**
Freedom of Association and Protection of the Right to Organise Convention ((No. 87), 1948	September 15, 1995		
Right to Organise and Collective Bargaining Convention (No. 98), 1949		December 13, 1972	

Employment and Forced Labour	**Signature**	**Ratification**	**Accession**
Convention concerning Forced or Compulsory Labour (No. 29), 1930		April 5, 1950	
Equal Remuneration Convention (No.100), 1951		April 1, 1993	
Abolition of Forced Labour Convention (No. 105), 1957		January 7, 2003	
Discrimination (Employment and Occupation) Convention (No. 111), 1958		November 27, 1998	
Employment Policy Convention (No. 122), 1964	Not signed		
Convention concerning Occupational Safety and Health and the Working Environment (155), 1981	Not signed		
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990			March 11, 1996
Education	**Signature**	**Ratification**	**Accession**
Convention against Discrimination in Education, 1960		August 10, 1983	
Refugees and Asylum	**Signature**	**Ratification**	**Accession**
Convention Relating to the Status of Refugees, 1951	Not signed		
Protocol Relating to the Status of Refugees, 1966	Not signed		
Nationality, Statelessness, and the Rights of Aliens	**Signature**	**Ratification**	**Accession**
Convention on the Reduction of Statelessness, 1961	Not signed		
Convention relating to the Status of Stateless Persons, 1954	Not signed		
War Crimes and Crimes Against Humanity, Genocide, and Terrorism	**Signature**	**Ratification**	**Accession**
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968	Not signed		
Convention on the Prevention and Punishment of the Crime of Genocide, 1948			October 12, 1950
Rome Statute of the International Criminal Court, 1998	Not signed		

Law of Armed Conflict	Signature	Ratification	Accession
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949	December 8, 1949	February 28, 1959	
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea , 1949	December 8, 1949	February 28, 1959	
Geneva Convention relative to the Treatment of Prisoners of War, 1949	December 8, 1949	February 28, 1959	
Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949	December 8, 1949	February 28, 1959	
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977	Not signed		
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II), 1977	Not signed		
Terrorism and Human Rights	**Signature**	**Ratification**	**Accession**
International Convention Against the Taking of Hostages, 1979			September 8, 2000
International Convention for the Suppression of Terrorist Bombing, 1997	January 12, 1998	March 23, 1999	
International Convention for the Suppression of the Financing of Terrorism, 1999	January 10, 2000	September 8, 2000	
International Convention for the Suppression of Unlawful Seizure of Aircraft, 1970			May 30, 1978
International Convention on the Prevention and Punishment of Crimes Against International Protected Persons, 1973			February 27, 1991

Source: University of Minnesota, Human Rights Library, http://hrlibrary.umn.edu/research/ratification-srilanka.html.

Impact of the treaties on minority rights

Sri Lanka's ratification of key international human rights treaties obligates the country to uphold and implement international human rights law; thus citizens of Sri Lanka may rely on state compliance.

Sri Lanka is a party to the International Covenant on Civil and Political Rights (ICCPR). But although it has not filed reservations to the ICCPR, Sri Lanka frequently derogates from the ICCPR,[2] notifying UN entities that the state is undergoing a national emergency stemming from threats of terrorism. The state has frequently declared a state of emergency and suspended some of its obligations under the ICCPR.[3] The state filed such notices in 1984, 1989, 1994, 2000, 2010 and 2015.[4] It came under fire for failing to provide notice in 2022, when emergency regulations were used to allow for the vesting of increased powers in state security forces.[5]

Sri Lanka ratified the Convention Ending All Forms of Discrimination against Women (CEDAW) in 1998 and its Optional Protocol in 2002.[6] The latter seeks to protect and promote the rights and equality of women with others, including by passing legislation to ensure women's rights are codified in domestic law.[7] However, as will be discussed later, Sri Lanka recognises personal laws of the minority communities, many of which discriminate against women in the areas of marriage, divorce, custody of children and inheritance. The 'culture card' is often raised to constrain the behaviour of women and deny them autonomy and agency in the private sphere. While the recognition of personal laws may appear

2 Emilie M. Hafner-Burton, Laurence R. Helfer and Christopher J. Fariss, 'Emergency and Escape: Explaining Derogations from Human Rights Treaties,' *International Organization* 65, no. 4 (2011): 673–707.

3 Hafner-Burton, Helfer and Fariss,'Emergency and Escape'.

4 OHCHR, 'UN Treaty Body Database Ratification Status for Sri Lanka', OHCHR, accessed September 10, 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN.

5 Asser Khattab, 'Sri Lanka: Emergency Regulations Must Be Immediately Revoked', International Commission of Jurists, May 11, 2022, https://www.icj.org/sri-lanka-emergency-regulations-must-be-immediately-revoked/.

6 OHCHR, 'UN Treaty Body Database'; United Nations, 'Optional Protocol to the International Covenant on Civil and Political Rights', December 19, 1966, https://www.refworld.org/docid/3ae6b3bf0.html.

7 CEDAW, 1979.

to be a respectful recognition of minority identity, it disadvantages women. Sri Lanka perpetuates this discrimination against minority women, ensuring that even the constitutional provisions of equality do not protect women from the inequalities meted out through the pre-existing personal laws. The Government of Sri Lanka has not engaged with minority communities in meaningful ways for progressive reform. When law reforms impacting minorities are proposed, it is done in a negative spirit—to deny the rights of minorities to a distinct identity and to impose homogeneity. In this context, even women from minority communities oppose reforms that undermine their identity, even if they stand to personally benefit from progressive reforms.

Sri Lanka has been a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) since 1982.[8] Sri Lanka's application of ICERD is of particular relevance to this chapter, specifically because the discrimination different ethno-religious groups in the country face is both direct and nuanced. ICERD has been used in other countries where there have been historic distinctions and discrimination against caste groups such as Dalits, and in Sri Lanka in the context of Tamils living in plantations, now referred to as Malaiyaha Tamil workers. Tomoya Obokata, UN Special Rapporteur on contemporary forms of slavery, concluded his 2021 visit to Sri Lanka by noting, 'Contemporary forms of slavery have an ethnic dimension. In particular, Malaiyaha Tamil—who were brought from India to work in the plantation sector 200 years ago—continue to face multiple forms of discrimination based on their origin.'

Despite the fact that their workers in tea plantations earns the country valuable foreign exchange, they live in 'inhumane and degrading' conditions.[9] This indicates that Sri Lanka is in violation of rights protected by ICERD and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and

8 OHCHR, 'UN Treaty Body Database'.

9 Meera Srinivasan, 'Sri Lanka's Malaiyaha Tamils living in inhumane, degrading conditions: U.N. expert', *The Hindu*, December 4, 2021, https://www.thehindu.com/news/international/sri-lankas-malaiyaha-tamils-living-in-inhumane-degrading-conditions-un-expert/article37836807.ece.

Practices Similar to Slavery.[10]

Sri Lanka has been party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 1980.[11] However, Sri Lanka has not signed on to any external oversight body to ensure its implementation and protection of the rights codified in ICESCR.[12] For many years, Sri Lanka ranked high in human development indicators. However, Tamils living in tea plantations have always had significantly reduced indicators in terms of health and education. This community has been disenfranchised since 1948 when the Ceylon Citizenship Act was passed to deny citizenship to Malaiyaha Tamil Tamils, who made up 11.7 per cent of the population. Their lack of political representation left them vulnerable to exploitation, and they became the responsibility of the plantation companies and not the state. To date, they suffer from the effects of this historic deprivation.

In the Northern and Eastern provinces, the impact of the thirty-year civil war has been brutal and has left deep scars on the community. A once prosperous community, they have suffered social, economic and cultural deprivation on many fronts as a consequence of the war. The high rate of female-headed households is evidence that people in the war-affected areas have not enjoyed their right to family and family life. Educational institutions were destroyed and the children have lost the right to education. Many families lost their lands and were displaced. They struggled for decades to regain a level of normalcy. The government did not prepare its post war development strategy in consultation with the affected stakeholders but it was a unilateral and top-down plan heavily dependent on the military to implement agriculture and other businesses.

Sri Lanka ratified the Convention on the Rights of the Child (CRC) in 1991, obligating itself to uphold children's rights to education and non-discrimination.[13] The extent to which Sri

10 The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1957, http://hrlibrary.umn.edu/instree/f3scas.htm.

11 OHCHR, 'UN Treaty Body Database'.

12 OHCHR, 'UN Treaty Body Database'.

13 OHCHR, 'UN Treaty Body Database'.

Lanka prioritises the welfare of children is best indicated through expenditure on health, education and maternal and child welfare schemes. The cost of the war has been high, but to date, the biggest governmental expenditure is still on defence—maintaining the armed forces—with health and education together receiving less than the defence budget. Sri Lanka has prioritised a development strategy that depends on remittances from migrant workers, but little attention is paid to the impact of such a strategy on families and communities.

Sri Lanka acceded to the Convention against Torture (CAT) in 1994 and ratified the Convention for the Protection of All Persons from Enforced Disappearance (CPPED) in 2016.[14] These two conventions are important for the realisation of human rights in general and minority rights in particular. Sri Lanka has an abysmal record on this score, and many reports have outlined the routine use of torture to extract confessions, be they for petty crimes or, more significantly, in cases where persons are accused of terrorism, largely targeting members of the Tamil and now Muslim communities. Sri Lankan authorities have been repeatedly and persistently accused of torturing and propagating a culture

14 OHCHR, 'UN Treaty Body Database'.

of enforced disappearances of those from minority backgrounds or those advocating for human rights including minority rights. These include ordinary citizens from minority backgrounds such as Tamils and Muslims as well as activists, and journalists irrespective of their ethnicity.[15]

During the period March 2020-June 2021, there were reports of six cases of encounter killings, 27 cases of police violence, eight deaths in police custody, four deaths in prison, one case of torture in prison and two instances of prison riots precipitated by fears about the spread of COVID-19 that led to the deaths of 13 persons. Around 117 people were injured in the second riot. Eleven incidents of violence by members of the armed forces, one of which resulted in death, and six incidents of violence by other state officials were also reported.[16]

These cases are testimony that torture is systemic and embedded within Sri Lanka's institutional structures. The Supreme Court has also found that torture is systemic. The Human Rights Commission of Sri Lanka (HRCSL) too has stated that torture is systemic. However, the Government of Sri Lanka and the international community is yet to acknowledge that torture is systemic.

Sri Lanka has also attempted to codify CAT into its domestic legislation with the passing of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 (CAT Act), in 1994.[17] Torture, however, remains an accepted tool to extract confessions as per the Prevention of Terrorism Act, 1979. The CAT Act provides legal loopholes for public emergencies and other legislation that may permit the use of torture (see section on the Prevention of Terrorism Act, 1979 below).

Sri Lanka acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) in March 1996.[18] A large number of Sri

15 Samindika Elkaduwem, 'Criminalising Enforced Disappearances in Sri Lanka: A Framework for the Path Forward', *Sri Lanka J. Int'l L.* 25, (2016): 129.

16 Ambhika Satkunanathan, 'The "Punishment Bureaucracy" and the Normalization of Torture and Impunity', *Groundviews Journalism for Citizens*, June 26, 2021, http://bit.ly/3RBKrht.

17 CAT, 1984.

18 OHCHR, 'UN Treaty Body Database'.

Lankans go overseas to work and the country depends on their remittances, which amounts to 9 per cent of the state's Gross Domestic Product (GDP). A majority of these workers are from rural areas and are low-skilled.[19] Women make up 49 per cent of these migrant workers.[20] These workers are often subjected to gross human rights violations.[21] Paradoxically, many migrant workers come to Sri Lanka to work in its growing construction industry, as there is a labour shortage in this sector and international contractors prefer to bring in workers on contract. These workers are also unprotected and subject to discrimination.[22]

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted in 2006, and Sri Lanka ratified it in 2016. Besides promoting the rights of the disabled, it prohibits discrimination against persons with disabilities. In the context of Sri Lanka's long civil war, which left many people injured and disabled, this convention is very significant.

However, to understand whether the Government of Sri Lanka is committed to operationalising the conventions and treaties that it has signed, it is necessary to track its legislative history, the resources it allocates to implementing agencies, and the signals that the government sends to state authorities—the bureaucracy, the armed forces and the police.

Non-binding international human rights commitments

Treaties are considered binding instruments. Notwithstanding reservations, margins of appreciation and other disclaimers of full

19 'Labour Migration in Sri Lanka and the Maldives', International Labour Organization, accessed August 11, 2022, https://www.ilo.org/colombo/areasofwork/labour-migration/lang--en/index.htm; 'Empowering Sri Lanka's Migrant Workers through Language Training', IOM accessed August 1, 2022, https://www.iom.int/news/empowering-sri-lankas-migrant-workers-through-language-training.

20 OHCHR, 'Committee on the Protection of the Rights of Migrant Workers Considers the Report of Sri Lanka', OHCHR, September 2, 2016, https://www.ohchr.org/en/press-releases/2016/09/committee-protection-rights-migrant-workers-considers-report-sri-lanka.

21 IOM, 'Empowering Sri Lanka's Migrant Workers'.

22 Nayana Niroshana, Chandana Siriwardana, and Ravindu Jayasekara, 'The impact of COVID-19 on the construction industry and lessons learned: a case of Sri Lanka', *International Journal of Construction Management*, (2022): 1-18.

compliance, when states announce their cooperation with treaties, they are held accountable for compliance. This includes their accountability to other states that are parties to the treaty and to their people, who depend on human rights protection.

There are, however, other mechanisms that are not necessarily justiciable and therefore do not bind states to treaties, but they are important in setting internationally recognised norms and values. These include declarations and UN resolutions that 'are formal expressions of the opinion or will of UN organs'.[23] Sri Lanka has expressed its commitment to protecting human rights, specifically the rights of minorities, among others, by referencing these declarations and engaging with these mechanisms.

The most significant of these is the Universal Declaration of Human Rights (UDHR).[24] The UDHR affirms values relating to human rights, but it is non-binding. This is not to say that these documents cannot be used to provide meaning to national legislation or to assist courts in their interpretation of the law. Of relevance to this discussion are UDHR provisions that convey values of minority rights protection. Article 2 of this document entrenches the values of non-discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.[25] Article 7 ensures equality and non-discrimination before the law, while Articles 10 through 12 provide due process provisions regardless of minority status.[26]

Similarly, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities passed by the General Assembly in 1992 spells out the rights of minorities to self-identify as minorities and to be protected from harmful actions by the state and majority

23 'Editorial Manual | Resolutions and other formal decisions of United Nations organs', United Nations, January 10, 2022, https://www.un.org/dgacm/en/content/editorial-manual/res-dec-index#:~:text=United%20Nations%20resolutions%20are%20formal,preamble%20and%20an%20operative%20part.

24 UDHR, 1948.

25 UDHR, 1948, Article 2 and 10.

26 UDHR, 1948.

groups.[27] It is noteworthy that in the course of this research Sri Lanka's engagement with this declaration was found to be limited, although global non-governmental organisations (NGOs) have recommended its use in monitoring the Sri Lankan state's interactions with minorities.[28]

Salient Domestic Laws and Institutions Impacting Human Rights

Constitution

Sri Lanka's national constitution is a critical document shaping the country's legal framework and core values. The principles of representative democracy, freedom, equality, justice, fundamental human rights and the independence of the judiciary are articulated throughout the constitution.[29] It also ensures freedom from arbitrary arrest, detention and punishment, unless there is a procedure established by law.[30] This particular caveat is important and is flagged because it is undermined by subsequent laws and these contradictions will be highlighted and explored in this chapter.

The constitution guarantees a range of fundamental rights, but many may be restricted in times of national emergency, in the interest of racial and religious harmony and/or to protect public health and morals. The only absolute rights are: the freedom of conscience and religion, including the freedom to have or to adopt a religion or belief of one's choice, and the right to freedom from torture or cruel, inhuman or degrading treatment or punishment.

27 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992; 'Know Your Rights: A Community Guide to the UN Declaration on Minorities', Minority Rights Group International, August 1, 2022, https://minorityrights.org/publications/know-your-rights-a-community-guide-to-the-un-declaration-on-minorities-november-2012/.

28 'No War, No Peace: The Denial of Minority Rights and Justice in Sri Lanka', Minority Rights Group International, August 1, 2022, https://www.refworld.org/pdfid/4d3d5a892.pdf.

29 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Chapter III.

30 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Chapter III.

Religious rights of minorities

Although the constitution guarantees freedom of worship and equality without distinction on the grounds of ethnicity, language and religion, it also recognises the supremacy of Buddhism.[31] This provision is caveated by an assurance of religious freedoms for all but the supremacy afforded to Buddhism poses both a symbolic and legal hurdle for Sri Lankan minorities seeking to assert their rights on the basis of equality.[32] Scholars have argued that the public's perception of this provision is one that emboldens Buddhist supremacists.[33] This provision is also said to reflect historic perspectives that Buddhist and Sinhalese communities have primary rights to the island and its governance.[34]

Although there is a school of thought that there is no clear legal jurisprudence that particularly privileges or creates a precedent for Buddhism in the provisions in the Constitution of Sri Lanka,[35] there is another noting that when the state has a constitutional duty to protect and foster the Buddha Sasana, i.e., the teaching, practice and discipline of Buddhist thought, the state is literally duty-bound to invest its time and resources to advance that particular belief system.[36]

In 2021, once again, there were moves to introduce legislation to prevent religious conversions, with Buddhist and Hindu clergy expressing resentment at the rise and influence of charismatic

31 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Chapter II.

32 It is to be noted that this has historically empowered Tamils to also seek their own independent state 'Tamil Eelam' in the North as a result of this provision; Benjamin Schonthal, 'Securing the Sasana through Law: Buddhist constitutionalism and Buddhist-interest litigation in Sri Lanka', *Modern Asian Studies* 50, no. 6 (2016): 1966-2008.

33 Mohamed Zacky, Mohamed Fouz and M. Moniruzzaman, 'The Muslim Minority-Phobia in Context: A Critical Study on Majoritarian Ideology and the Structural Roots of Anti-Muslim Phenomenon in the Post-War Sri Lanka', *Journal of Muslim Minority Affairs* 41, no. 4 (2021): 719-729.

34 Tessa Bartholomeusz, 'First Among Equals: Buddhism and the Sri Lankan State' in *Buddhism and Politics in Twentieth Century Asia*, ed. Ian Harris (1999: London, Continuum), 173.

35 Schonthal, 'Securing the Sasana through Law', 1974.

36 Gehan Gunatilleke, Twitter, https://twitter.com/GehanDG/status/1137489615735185409.

Christian churches seen to be enticing Buddhists and Hindus.[37] There was also increased resentment against Muslims and the funds they received for mosques and madrassas from the Middle East. This legislation was dropped as it was evident that it would not withstand a challenge in the courts. As previously stated, there is ample evidence that, despite the prohibition against it, torture is widely practised by members of the police and armed forces, with little done to restrain or punish the offenders.

Women's rights: Intersectionality of gender, religion and ethnicity

There is a lacuna in the constitution with respect to the protection of the rights of women from minority groups. Despite provisions providing equality before the law for all persons, personal laws, which discriminate against women, continue to regulate marriage, divorce, inheritance and custody of children in Muslim and Tamil communities. Personal[38] or family law in Sri Lanka varies for these communities.[39] Consequently, laws harmful for women's property rights, rights in marriage and right to divorce and other family and marriage-related laws are not held to account to ensure the equality of women.

In Sri Lanka, this poses an intersectional concern as 'personal laws apply to the Muslim community and to certain persons of Tamil and Sinhalese ethnicity'.[40] Accordingly, Tamil women in the north are allowed to bring into marriage property to which only she has claim and allows for equal division of certain matrimonial assets, it also 'denies a married woman *locus standi*

37 'SRI LANKA: Over 20 NGOs against the re-introduction of the anti-conversion law', HRWF, accessed February 5, 2022, https://hrwf.eu/sri-lanka-over-20-ngos-against-the-re-introduction-of-the-anti-conversion-law/.

38 To learn more about 'personal' law and its origins as a term and its indeterminacy in different national legislation see JL Halpérin, 'Personal Laws: Undetermined Norms and Undetermined Concept?', *Liverpool Law Review* 40, no. 4 (2019): 253-270.

39 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.

40 Dinusha Panditaratne, 'Towards Gender Equity in a Developing Asia: Reforming Personal Laws within a Pluralist Framework', *NYU Review of Law & Society 'CHANGE'* 32, (2007): 88.

with regard to matters of property unless accompanied by the husband's approval'.[41] As per the Muslim Marriage and Divorce Act (MMDA), in Sri Lanka polygamy and underage marriage are legal, and although reform efforts have been underway to change this there has been no headway as of yet.[42] Kandyan Sinhalese communities also have personal laws that require women to move to their partner's home, and if her father dies 'intestate, she does not receive any share of his ancestral property'.[43]

The presence of personal laws and initiatives to reform them remain sensitive and contested. The debate around this has led to the weaponisation of the law, pitting women's rights to equality against the rights of minorities.

Fundamental rights

Article 13 of the constitution ensures the right to due process for people who are arrested and detained but the right is subject to restrictions as may be prescribed by law in the interests of national security, public order and so on. These rights have been severely restricted during prolonged periods of national emergency and the operation of the Prevention of Terrorism Act, which has been routinely used to target members of minority communities.[44]

Various other constitutional guarantees such as freedom of speech, expression and publication; peaceful assembly; association; form and join a trade union, to manifest one's religion or belief in worship; to enjoy and promote one's own culture and to use one's own language; etc., were restricted during the 30-year civil war as well as during the post-war period. The Sixth Amendment to the Constitution proscribed advocacy of secession, and the Prevention of Terrorism Act was a draconian law used to target the Tamil and later Muslim minorities.

41 Guruparan, 'Customary law of stateless nations'.

42 'Human Rights Watch Submission to the UN Human Rights Committee in Advance of Its Review of Sri Lanka', HRW, May 2022, https://bit.ly/40ugLXB.

43 Panditaratne, 'Towards Gender Equity in a Developing Asia: Reforming Personal Laws within a Pluralist Framework'.

44 Ermiza Tegal, 'Understanding Rule of Law, Human Security and Prevention of Terrorism in Sri Lanka', *Law and Society Trust* (Colombo: Law and Society Trust, 2021), https://bit.ly/3Y88KWD.

Although the right to information is assured and laws and Right to Information Commission are in place, these rights are subject to restrictions 'prescribed by law in the interests of racial and religious harmony'.[45] There is a complex process to follow to secure information from public authorities, and in many instances, requests remain unaddressed.[46] Sri Lanka is described as one of the most unsafe countries for journalists and this challenges the notion that freedoms of speech and publication are guaranteed.

Minorities and language rights

The struggle over language rights precipitated minority consciousness regarding their vulnerability to discrimination particularly after the Sinhala Only Act, introduced in 1956. As part of the reforms introduced in 1987 with the 13th Amendment to the constitution, the Sri Lankan constitution identified Sinhala as the 'official' language of the state and conceded that Tamil is 'also an official language' and 'English shall be the link language'.[47] Language rights remain contentious in practice, as the implementation of policies that institutionalise Tamil as an official language of equal status has not been fully realised.[48] Official documents and communications are rarely issued in all three languages, and there is a reliance on public service officials who are multilingual to manage communications.[49] This gap and the inequities it has created were visible during the pandemic, when information relating to the vaccination process and other public health information was not made available in all three languages.[50]

45 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Section 15.

46 Sabrina Esufally and William Ferroggiaro, *Right to Information: Discourse and Compliance in Sri Lanka* (Verité Research, 2017).

47 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Chapter IV.

48 Menik Ranmal Wakkumbura, 'Language pluralism through the administrative service: The use of the official languages policy in Sri Lanka, ' *Journal of Public Administration and Policy Research* 8, no. 4 (2016) 33-44.

49 Wakkumbura, 'Language pluralism through the administrative service'; Sreemali Herath, 'Language policy, ethnic tensions and linguistic rights in post war Sri Lanka', *Language policy* 14, no. 3 (2015): 245-261.

50 'Let's talk about the vaccine: the need for strategy, clarity and equality', Law & Society Trust, 2021.

The present Constitution of Sri Lanka was promulgated in 1978 and has already been subjected to 21 amendments, many of them designed to address the political whims and challenges of the government in office. The most egregious was the 20th Amendment, which allows for 'expansive powers and greater immunity for the Executive President'.[51] This amendment was widely criticised for its executive over-reach and for undermining the rule of law. The independence of key constitutional commissions was questioned, as appointments were governed by the Parliamentary Council 'whose observations the president is not bound to implement'.[52] The 20th Amendment was repealed by the 21st Amendment, passed in October 2022, which has mitigated the worst effects of the 20th Amendment, especially by replacing the Parliamentary Council with a constitutional council that includes civil society representation. However, these frequent amendments and the instrumental use and abuse of the constitution have undermined its status as the foundational law that inspires confidence among people; but it is indeed the foundational law, defining fundamental rights.

Penal Code

Same-sex relationships are illegal in Sri Lanka under the Penal Code, which describes these relations as 'carnal' and 'against the order of nature', using homophobic and dehumanising language to describe queer communities.[53] This offence is also grouped with bestiality, further enshrining institutional discrimination in the language and sentiment of the law.[54]

This targeting of queer minorities violates the human rights principle of non-discrimination on the basis of sexual orientation. The threat of imprisonment exists and can be manipulated as a tool

51 Meera Srinivasan, 'Sri Lanka: Controversial 20th Amendment Passed', *The Hindu*, October 22, 2020, https://www.thehindu.com/news/international/sri-lanka-controversial-20th-amendment-passed/article32921800.ece.

52 'Sri Lanka Parliament Votes to Strengthen Presidential Power', *Al Jazeera*, October 22, 2020, https://www.aljazeera.com/news/2020/10/22/sri-lanka-parliament-votes-to-strengthen-presidential-power.

53 The Penal Code, Section 365 and Section 365A.

54 The Penal Code, Section 365 and Section 365A.

to harass people. It creates an uneven power dynamic in situations of familial abuse, workplace violence and more.[55] Although the ICCPR does not explicitly include sexual orientation, the HRC identifies an obligation to prevent discrimination on the basis of sexual orientation.[56] Reform efforts have been proposed but these have not progressed, leaving minority queer communities in peril.[57] Promises to amend the law were made in 2017, but they did not materialise, and in 2022, there were again murmurings that the law criminalising homosexuality would be amended.[58] However, lesbian, gay, bisexual, transgender, queer, intersex and asexual (LGBTQIA+) activists demand that the law be repealed rather than be amended, thereby maintaining prejudicial attitudes towards the LGBTQIA+ community.

Prevention of Terrorism Act, 1979

The Prevention of Terrorism Act, 1979 (PTA) has a notorious reputation both within Sri Lanka and among its global critics. It has been weaponised to crush dissent and mobilisation among young Tamils and Muslims and generally inspire fear among minorities. While the PTA was most frequently used against the minority communities, it has also been used against Sinhalese protestors as well. For instance, it was also used to crush the insurrection led by the Janatha Vimukthi Peramuna (JVP) in 1987 and again in March 2022, in the aftermath of the protest movement against the rule of President Gotabaya Rajapaksa in the face of the economic crisis. The PTA specifically legislates that those apprehended for committing the offence of terrorism or even suspicion of terrorism

55 Shermal Wijewardene and Nehama Jayewardene, 'Law and LGBTIQ People in Sri Lanka: Developments and Narrative Possibilities', *Australian Journal of Asian Law* 20, no. 2 (2019): 135-150; Helen Pausacker and Amanda Whiting, 'Special Issue: Legal Regimes of Sexual Orientation and Gender Identity in Asia', *Australian Journal of Asian Law* 20, no. 1 (2019): 1-6.

56 Human Rights Committee, *Toonen v Australia*, Communication No. 488/1992, UN Doc CCPR/C/50/D/488/92.

57 Wijewardene and Jayewardene, 'Law and LGBTIQ People in Sri Lanka'.

58 'Decriminalising Consensual Same-sex Sexual Relations: Amendments Versus Repeal', Groundviews Journalism for Citizens, August 31, 2022, https://groundviews.org/2022/08/31/decriminalising-consensual-same-sex-sexual-relations-amendments-versus-repeal/.

can be arrested without warrant and can be detained 'for an initial period of 72 hours without the person being produced before the court, and thereafter for up to 18 months on the basis of a detention order issued by the Minister of Defence' [59] The legality of this detention order cannot be contested in court.[60]

Under pressure from international human rights groups, and in particular the European Union (EU), which has threatened to reconsider its Generalised Scheme of Preferences (GSP) Plus concession,[61] the government amended the PTA in March 2022, reducing the period of detention on the basis of a Detention Order to 12 months and permitting the courts to grant bail. The definition of what constitutes terrorism or 'unlawful activities' per the PTA remains vague, overbroad and undefined legally.[62] A person can even be detained 'until the conclusion of the trial, where the Magistrate makes an order to such effect'.[63] Confessions made to security forces under PTA arrests are permitted in court, but these confessions are often found to be the outcome of torture and are therefore unreliable. However, this is not taken into account by the courts in Sri Lanka.[64] The HRC has found that in 2020, 15 per cent of those in remand under the PTA had been there for 10-15 years and 41 per cent for between five and 10 years.[65]

Although meant to be a temporary measure when first enacted,[66]

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59 Ambika Satkunanathan, 'The Executive and the Shadow State in Sri Lanka', in *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects,* ed. A. Welikala (Colombo: Centre for Policy Alternatives, 2015), 372.

60 Satkunanathan, 'The Executive and the Shadow State in Sri Lanka', 374.

61 EU's GSP+ status gives developing countries a special incentive to pursue sustainable development and good governance. In exchange, the EU cuts the country's import duties to zero on more than two thirds of the tariff lines of its exports. See: https://bit.ly/3JJzcSm.

62 Tegal, 'Understanding Rule of Law, Human Security and Prevention of Terrorism in Sri Lanka'.

63 Tegal, 'Understanding Rule of Law, Human Security and Prevention of Terrorism in Sri Lanka'.

64 Tegal, 'Understanding Rule of Law, Human Security and Prevention of Terrorism in Sri Lanka'.

65 Tegal, 'Understanding Rule of Law, Human Security and Prevention of Terrorism in Sri Lanka'.

66 Myooran Thevarajah, 'Terrorism Redefined: The Place of the Prevention of Terrorism Act of 1979 in Post-War Sri Lanka', *SSRN* (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3595720.

the PTA has been employed by the state for more than 40 years 'to enable prolonged arbitrary detention [for years at a time], to extract false confessions through torture, and to target minority communities and civil society groups'.[67] The PTA was also extensively used during the period 1988-89, when the Sinhalese JVP, a communist uprising, engaged in widespread violence against the state and mainstream political parties. After the 2019 Easter bombings of several churches and hotels, the PTA has now included arbitrary detention of Muslims. After amendments were made to de-radicalise religious extremists, the PTA effectively expanded its targets to include Muslims.[68]

Sri Lanka currently finds itself in economic collapse and desperate in its diplomatic negotiations with other states for aid packages. Some have agreed to support Sri Lanka on the condition that certain terms be met, including amending the PTA.[69] Legal experts and the international community have urged that the PTA must:

i. Employ definitions of terrorism that comply with international norms;
ii. Ensure precision and legal certainty, especially when this legislation may impact the rights to freedom of expression, opinion, association and religion or belief;

iii. Institute provisions and measures to prevent and prohibit arbitrary deprivation of liberty;
iv. Ensure the enforcement of measures to prevent torture and

67 '"In a Legal Black Hole" Sri Lanka's Failure to Reform the Prevention of Terrorism Act', HRW, February 7, 2022, https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act; 'Under New PTA Regulations, 11 Muslim Groups Banned in Sri Lanka', Justice for All, April 28, 2021, https://www.justiceforall.org/sri-lanka-task-force/under-new-pta-regulations-11-muslim-groups-banned-in-sri-lanka/.

68 Justice for All, 'Under New PTA Regulations, 11 Muslim Groups Banned in Sri Lanka'.

69 'Sri Lanka: UN Experts Call for Swift Suspension of Prevention of Terrorism Act and Reform of Counter-Terrorism Law', OHCHR, March 2, 2022, https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and.

enforced disappearance and adhere to their absolute and non-derogable prohibition; and

v. Enable overarching due process and fair trial guarantees, including judicial oversight of detainees and access to legal counsel.[70]

Although the Sri Lankan government amended the PTA in March 2022, these amendments have been disparaged for excluding the essential changes required to align the PTA with international norms respecting human rights and the rule of law. The amendment continued to allow for confessions extracted through torture and without following due process to be deemed admissible evidence. It continued to permit arbitrary detention and arrest and did not require a trial to be conducted within a reasonable time or mandate the release of individuals pending trial, while allowing the detention of suspects without trial or charge for up to a year.[71]

The PTA violates due process rights as well as the protections of non-discrimination and the right to free expression afforded by the ICCPR.[72] Sri Lanka has codified the ICCPR into its own domestic legislation, is party to the Optional Protocol of the ICCPR and is held accountable by the HRC for ICCPR violations. Nevertheless, its domestic legislation violates the human rights and the minority rights that the state claims to champion. The PTA has recently gained even more notoriety for its arbitrary application during the country-wide protests. Now a broader community recognises the dangers of abuses under the PTA, which they ignored when it was largely applied to minority communities.

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70 OHCHR, Sri Lanka: UN Experts Call for Swift Suspension of Prevention of Terrorism Act'*;* Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism et al., *Joint Communication OL LKA* (2021), https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26863.

71 'Amnesty International Commentary on the Prevention of Terrorism Act Amendment Bill', Amnesty International, March 18, 2022, https://www.amnesty.org/en/documents/asa37/5372/2022/en/.

72 ICCPR, 1966, Article 2, 7, 9, 10, 14, 15, 17, 18, 19, 21, 22, 25, 26 and 27.

ICCPR Act

Sri Lanka passed the International Covenant on Civil and Political Rights Act, No. 56 (ICCPR Act) in 2007.[73] But it is a minimalist law when compared to the spirit of the covenant from which it purports to draw inspiration; only a select few provisions of the ICCPR have been incorporated in the Act. However, in the application of the Act, it has not provided equality for women, who continue to be disadvantaged through the overriding application of discriminatory personal laws, or protection for minorities, who have been penalised for raising issues of their discrimination on the grounds that criticism of state actions or the actions of members of the majority community in effect amount to stirring racial or religious hatred.

The ICCPR Act has been criticised as an example of 'weaponisation of the law' to actively harm minorities.[74] This has been evidenced by the Act's denunciation of activists for pointing out the differential impact of government policies, state institutions and their practices on Tamil and Muslim communities, insinuating that this is in some way 'stoking hatred among communities' and is harmful to 'social harmony'. The references to religious hatred to empower members of the Buddhist majority and to ostracise and punish Muslim Sri Lankans 'with accusations of inciting violence while remaining immune from prosecution when violence is incited by Buddhist Sinhalese citizens against Muslims' have been noted by the UN Special Rapporteur on freedom of religion.[75]

Notwithstanding the ICCPR and the ICCPR Act, the equality provisions in relation to religion and gender are undermined in the constitution of Sri Lanka itself through provisions providing a

73 Parliament of the Democratic Socialist Republic of Sri Lanka, International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007, November 16, 2007, LD O 30/2007.

74 Ambika Satkunanathan, twitter, https://twitter.com/ambikasat/status/1493203801305542656.

75 Human Rights Litigation and International Advocacy Clinic, *Submission for the List of Issues: Sri Lanka, 128th Session of UN Human Rights Committee Geneva* (2020), https://allsurvivorsproject.org/submission-to-the-un-human-rights-committee-on-sri-lanka-128th-session-2-27-march-2020/.

special status for Buddhism[76] and enabling pre-existing laws—aka personal laws—that violate the gender equality provisions of the constitution to remain valid.[77] The ICCPR Act and the convention itself must be viewed in the context of Sri Lanka's polarised society and its history of ethnic conflict and animosity. The implementation record of the ICCPR Act has done little to instill confidence in the minorities.

Vagrants Ordinance

Sri Lanka's Vagrants Ordinance is weaponised to criminalise the existence and public presence of many minorities. This law prohibits individuals from behaving 'in a riotous or disorderly manner in any public street or highway' and allows for arrest without warrant.[78] This has often been used to target transgender people, along with those living in extreme poverty and without homes.[79] The lack of protection for queer communities' rights allows this law to be manipulated to discriminate against transgender people. Reports refer to the repeated harassment of this community by the police.[80]

Office of Missing Persons

Since the 1980s, Sri Lanka has gained notoriety for its status as a hub for enforced disappearances, with an 'estimated 65,000 enforced disappearances reported from this period, affecting Sinhalese, Tamil, and Muslim communities'.[81]

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76 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Article 9.

77 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Article 16 (1).

78 Vagrants Ordinance, Cap 32, http://hrlibrary.umn.edu/research/srilanka/statutes/Vagrants_Ordinance.pdf.

79 Ambika Satkunanathan, 'Call for Input: Decriminalization of Homelessness and Extreme Poverty Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal Special Rapporteur on extreme poverty and human rights, Olivier de Schutter', OHCHR, November 29, 2021 https://www.ohchr.org/sites/default/files/2022-03/AmbikaSatkunanathan.docx.

80 '"All Five Fingers Are Not the Same" Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka', HRW, August 15, 2016, https://www.hrw.org/report/2016/08/16/all-five-fingers-are-not-same/discrimination-grounds-gender-identity-and-sexual.

81 Vindhya Buthpitiya, 'Absence in technicolour: protesting enforced

After the end of Sri Lanka's civil war, a large number of persons were reported as 'missing'. That number ranges from 16,000 to 20,000.[82] A vast majority of these people are from the Tamil minority group, and their disappearances have been linked to the moment of their surrender to the state in cases that have been termed 'mass disappearances', while others were detained or abducted in the aftermath of the fighting due to alleged involvements with 'Tamil militancy, political activism or criticism of the government'.[83]

In 2016, as a result of international pressure, Sri Lanka established the Office of Missing Persons (OMP) to investigate these claims. It was recognised that this was necessary to restore trust in the government through accountability measures and enable reconciliation between Sinhala and Tamil communities who believe in conflicting narratives around the war. The OMP's mandate is to:

i. Search for and trace missing persons, identify appropriate mechanisms for the same and clarify the circumstances under which they went missing;
ii. Make recommendations to the relevant authorities regarding issues involving missing persons;
iii. Protect the rights and interests of missing persons and their relatives as provided for in this Act;
iv. Identify avenues of redress to which missing persons and relatives of missing persons are entitled, and to inform the missing person (if found alive) or relative of such a missing person of the same;
v. Collate data related to missing persons obtained by processes that are being carried out or that were previously carried out by other institutions, organisations, government

disappearances in northern Sri Lanka', *Journal of the Royal Anthropological Institute* 28, no. 1 (2022): 118-134.

82 Vishakha Wijenayake, 'The office on Missing Persons in Sri Lanka: The importance of a primarily humanitarian mandate' *International Review of the Red Cross* 99, no. 2 (2017): 641-662; Kate Cronin-Furman and Roxani Krystalli, 'The things they carry: Victims' documentation of forced disappearance in Colombia and Sri Lanka', *European Journal of International Relations* 27, no. 1 (2020): 79-101.

83 Buthpitiya, 'Absence in technicolour: protesting enforced disappearances in northern Sri Lanka'; Furman and Krystalli, 'The things they carry: Victims'.

> departments and Commissions of Inquiry and the Special Presidential Commission of Inquiry, and centralise all available data within the database established under this Act.[84]

Although Sri Lanka claims it is vigorously conducting investigations, the UN High Commissioner for Human Rights has expressed concern 'that the verification process seems to be aimed at reducing the caseload and closing files, rather than a comprehensive approach to establishing the truth and ensuring justice and redress for the families'.[85] Amnesty International reports that over 6000 cases have been dropped in recent years with no clear reason as to why this was done.[86]

Human Rights Commission of Sri Lanka

The Human Rights Commission of Sri Lanka (HRCSL) was first established in 1996.[87] The HRCSL, constituted in 2015 on the basis of recommendations from the constitutional commissions, was esteemed and vocal on many issues, including issues such as arbitrary arrests, prison reforms and the arbitrary use of the PTA.[88] During this period, the Global Alliance of National Human Rights Institutions (GANHRI) upgraded the commission, recognising its independence and credibility.

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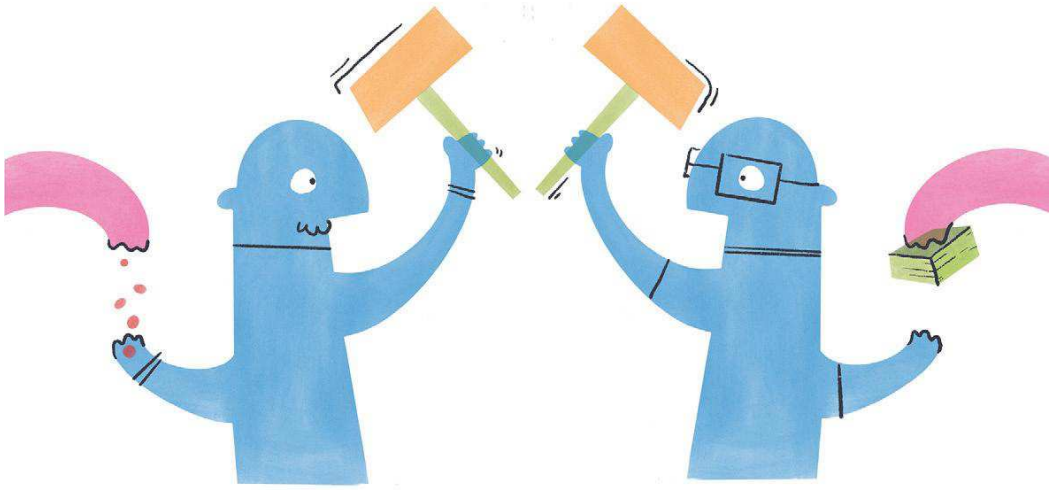
84 Dayanath Jayasuriya, 'Missing Persons in Sri Lanka: New Legislation', *The Round Table* 106, no. 6 (2017): 687-689.

85 United Nations High Commissioner for Human Rights, *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promoting reconciliation, accountability and human rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights,* A/HRC/49/9 p 10.

86 'Sri Lanka 2021', Amnesty International, accessed August1, 2022, https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/sri-lanka/report-sri-lanka/.

87 'History', Human Rights Commission of Sri Lanka, accessed August 1, 2020, https://www.hrcsl.lk/about/history/#:~:text=The%20Human%20Rights%20Commission%20of,operational%20principles%20of%20the%20HRCSL.

88 'Sri Lankan Human Rights Commission calls for abolition of anti-terror law PTA', *The Hindu*, February 16, 2022, https://www.thehindu.com/news/international/sri-lankan-human-rights-commission-calls-for-abolition-of-anti-terror-law-pta/article65055210.ece.



However, in the aftermath of the 20th Amendment to the Constitution, the independence of the HRCSL was compromised by appointments being made by the President. Since then, the HRCSL has been criticised globally, with the GANHRI downgrading it in rankings due to the commission's 'lack of a transparent and independent appointment process; the lack of plurality and diversity; and the commission's failure to independently and effectively exercise its human rights mandate'.[89] The HRCSL is also known to be underfunded and under-resourced, with many staff members drawn from the bureaucracy but without a specific calling for human rights.[90] Despite these limitations, the HRCSL has been taking highly critical stances against the government, especially on its crackdown on the protest movement and curtailment of the right to public protest.

COVID-19 and the economic collapse

Sri Lanka is currently amid an unprecedented economic crisis. Many factors contributed to this. The Easter Sunday bombings undermined the tourist industry; COVID-19 further undermined

89 'Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promoting reconciliation, accountability and human rights in Sri Lanka', Report of the United Nations High Commissioner for Human Rights, 10, A/HRC/49/9.

90 International Movement Against All Forms of Discrimination and Racism, *Arbitrary Detention in Sri Lanka, Human Rights Council Submission*, HRC39/2018/WS, 2018, https://imadr.org/wordpress/wp-content/uploads/2018/09/HRC39-Written-Statement_Arbitrary-Detention-in-Sri-Lanka_footnotes.pdf.

tourism, remittances from migrant workers and local businesses; the unilateral policy of the President to ban the import of all fertilisers and move to organic farming ruined the agriculture sector; and the war in Ukraine further undermined food security. As a result of the crisis, the country has suffered from drastic inflation and shortages of essentials including fuel, medicines and food.[91]

This crisis has severely affected 'daily-wage earners, those dependent on micro, small, and medium enterprises, the urban working poor, along with communities already marginalised on the basis of ethnic, religious, caste, gender and sexual identities'.[92] Many of these communities were already in conflict with the state for decades and experienced the impact of harsh policies during the civil war, in the aftermath of the 2004 tsunami and through laws that criminalised their identities and discriminated against them on the basis of ethnicity, religion, gender, sexual orientation and class. The impact of structural violence committed against intersectional minorities through government policy and lawmaking has been deep and pervasive.

The economic crisis highlights international human rights standards the state has failed to uphold. Sri Lanka has ratified the ICESCR, which prioritises the right to food, health, housing and work for all Sri Lankans. However, government spending has not been strategically focused on these goals. Instead of maximising funds and efforts to ensure the progressive realisation of socioeconomic rights in Sri Lanka, government spending has been mismanaged and is rife with corruption. It highlights the government's priorities, which are not aligned with people's interests. Economic development is biased towards urban areas, and poverty and economic marginalisation in the periphery and among the minority communities are marked.[93]

The economic crisis has exacerbated the specific plights of

91 Ayehsea Perera, 'Sri Lanka: Why is the country in an economic crisis?', *BBC News*, July 14, 2022,

92 Meera Srinivasan, 'Sri Lankan feminists seek urgent response to economic crisis', *The Hindu*, April 6, 2022, https://www.bbc.com/news/world-61028138.

93 Nishan Sakalasooriya, 'Regional Development Disparities in Sri Lanka', *Open Journal of Social Sciences* 9, no. 7 (2021).

Malayaha Tamils. They have struggled to receive higher daily wages—a campaign for SLR 1000 per day was promised but not met. Amidst the pandemic and the lockdowns, they lost their daily wage labour jobs and with the economic crisis with food inflation, their circumstances deteriorated. These Tamils continue to protest for a living wage, especially women who face both ethnic, economic and gender-based discrimination. They have faced reprisals for their protests, including the firing of employees and the withholding of pay, but they persist.[94] The living circumstances of this Tamil community violate numerous international human rights instruments, including the ICESCR and CEDAW, as their labour rights and access to adequate health care, housing and education are violated. Women's rights to work and equality in pay, alongside provisions ensuring adequate health care and shelter, are not met in the plantations.[95] CEDAW specifically protects rights of rural women through Article 14, which requires states to ensure accessibility to adequate living conditions.[96]

The ICCPR guarantees a right to non-discrimination on the basis of gender, as does the Sri Lankan constitution,[97] and CEDAW guarantees the women's right to work and the right to social security.[98] Yet, women labourers are faced with gender-specific difficulties across the country in different ways. During the COVID-19 pandemic, garment factories—which predominantly employ women—were ordered to stay open as this sector is a key contributor to Sri Lanka's economy. It attracts western investments in free trade zones.[99] However, this created a host of concerns for the rights of the women concerned. The pandemic persisted, with clusters of outbreaks in these factories spreading to other areas,

94 Harsha Senanayake, 'Fear of Small Numbers and Political Behaviour of Ethnocentric Majority of Sri Lanka: Undeclared War against Upcountry Tamil Females', *Open Political Science*, no. 4 (2021): 120–125.

95 ICESCR, 1966.

96 ICERD, 1965, Article 14.

97 ICCPR, 1966, Article 3 and 26; The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Section 12.

98 CEDAW, 1979, Article 11.

99 Roth, 'Sri Lanka Events of 2021'; Sandya Hewamanne, 'Pandemic, Lockdown and Modern Slavery among Sri Lanka's Global Assembly Line Workers', *Journal of International Women's Studies* 22, no. 1 (2021): 54-69.

too, putting the lives of these women and their families at risk from COVID-19. Human Rights Watch (HRW) reported labour rights activists' allegations that employers were 'under-testing and under-reporting cases to maintain production levels' while workers 'reported lost pay and benefits when they fell sick or needed to quarantine and that the police or military personnel intimidated them to stop them from speaking out'.[100] These challenges were on top of numerous other difficulties many women faced during the COVID-19 pandemic. These difficulties included increased rates of domestic violence and increased expectations for managing childcare and home care while balancing family accounts, among others.[101]

Prior to the COVID-19 pandemic, Muslims were intensely targeted by the state. Some of these sentiments had arisen arose even prior to the 2019 Easter bombings but they intensified with the bombings.[102] Proposals to ban madrasas and face veils were discussed with the latter restriction being legislated.[103] The Ministry of Defence also sought to analyse and review Islamic books in the country to ensure they did not incite terrorism.[104] Discussions to repeal Muslim personal law with a campaign of 'One Law: One Country' were rampant. During the COVID-19 pandemic, Muslims' right to religious freedom was violated under emergency measures, with the government insisting that the traditional Muslim practice of burying their dead could not be continued as it propagated the virus and that health measures during the pandemic required cremations or burials in distant and often inaccessible areas.[105]

100 Roth, 'Sri Lanka Events of 2021'.

101 Thilini N. K. Meegaswatta, 'The Balancing Act: Employed Women Navigating the COVID-19 Lockdown in Sri Lanka', *South Asian Survey* 28, no. 1 (2021): 157-171.

102 'Sri Lanka indicts ISIL "mastermind" over Easter Sunday bombings', *Al Jazeera*, October 5, 2021, https://www.aljazeera.com/news/2021/10/5/sri-lanka-isil-mastermind-easter-sunday-bombings.

103 Bharatha Mallwarachi, 'Sri Lankan Cabinet approves proposed ban on burqas in public', *AP News*, April 27, 2021, https://apnews.com/article/asia-pacific-religion-sri-lanka-51deeb417aefac8780291799382 5d9a6.

104 Amnesty International, 'Sri Lanka 2021'.

105 'Sri Lanka is forcibly cremating Muslims who die of Covid-19', *The Economist*, January 2, 2021, https://www.economist.com/asia/2021/01/02/sri-lanka-is-forcibly-cremating-muslims-who-die-of-covid-19.

The World Health Organization and many UN entities, along with NGOs and foreign governments, decried these measures as a blatant violation of the ICCPR provision guaranteeing freedom of religious expression and the right to non-discrimination.[106] Eventually, this ban was lifted, but it caused anguish for many families and the Muslim community at large for a very long time.

Both international human rights law and domestic constitutional law ensure that ethnic minorities, along with the rest of the population, theoretically possess the right to protest and exercise free speech. However, the reality of Sri Lankan politics is such that the legal system has been manipulated and legislation such as the PTA and ICCPR Act target dissent under the guise of combatting hate speech and terrorism. The state and its institutions are dominated by the majority ethnicity and this gives the majority community greater structural and institutional power than minority communities. Minority groups' calls for justice challenge this power dynamic and societal balance is perceived as an incitement of hatred or racism. These are the arguments that the Sri Lankan state uses to dismantle minority community protests.

The consequences of stifling the right to protest were starkly visible when the current protests, or *aragalaya,* exploded in Sri Lanka's capital. People from all walks of life took to the streets and even raided the President's home and offices to protest Sri Lanka's economic governance and to demand free and fair elections.[107] It was noteworthy that many Tamils did not participate in these protests. A former councillor from the northern town of Mullaitivu, Ravikaran Thurairajah, stated: 'If we staged a protest here like they are doing … they would shoot us dead'.[108] In the early days of

106 'Sri Lanka: Ending of forced cremations for COVID-19 victims restores dignity of Muslim burials', Amnesty International, February 26, 2021, https://www.amnesty.org/en/latest/press-release/2021/02/sri-lanka-ending-of-forced-cremations-for-covid-19-victims-restores-dignity-of-muslim-burials/.

107 Emily Schmall and Austin Ramzy, 'As they took over the president's house, Sri Lankan protesters stopped to savor its luxuries', *The New York Times*, July 10, 2022, https://www.nytimes.com/2022/07/10/world/asia/sri-lanka-president-pool.html.

108 Hannah Ellis-Petersen and Rubatheesan Sandran, '"We want justice, not fuel": Sri Lanka's Tamils on north-south divide', *The Guardian*, June 22, 2020, https://www.theguardian.com/world/2022/jun/22/sri-lanka-tamils-protests-economic-crisis.

the *aragalaya*, state authorities did not use violence to crush the protests. This unequal treatment is pervasive and highlights the dissonance in majority-minority relations in Sri Lanka.[109]

Accountability Mechanisms: The Weak Link in Minority Protection

This section will explore international mechanisms of accountability, special procedures, and UN interactions in critically appraising Sri Lanka's fulfillment of human rights—or lack thereof.

Engagement with and accountability to international human rights mechanisms and forums

Sri Lanka purports to engage with international human rights mechanisms by often ratifying global treaties championing the rights of minorities, but this track record is paradoxical when considering the contradictory social and political climate in which these ratifications were made and continue to exist.[110] The state's failure to implement many of these conventions by operationalising access to these rights has catalysed the international community to engage directly with the Sri Lankan government and to hold it accountable.

Human Rights Council

In September 2022, the HRC released an advance, unedited report on the human rights and minority rights situation in Sri Lanka prior to the upcoming HRC session. It addressed the recent economic crisis and the human rights violations that followed through emergency regulations, the crackdown on dissent, corruption allegations and the lack of necessary resources to ensure Sri Lankans had access to

109 Niro Kandasamy, 'Sri Lanka's crisis is not just about the economy, but a long history of discrimination against minority groups', The Conversation, July 14, 2022, https://theconversation.com/sri-lankas-crisis-is-not-just-about-the-economy-but-a-long-history-of-discrimination-against-minority-groups-186747.

110 Deepika Udagama, 'The Politics of Domestic Implementation of International Human Rights Law', *Asia-Pacific Journal on Human Rights and the Law* 16, (2015): 104-149.

fuel, healthcare, shelter and food.[111] Sri Lanka rejected the report,[112] but it has not been able to persuade the international community of its efforts to address the concerns raised by the numerous UN resolutions that focused on Sri Lanka.

This report followed the recommendations set forth in HRC Resolution 46/1 passed in 2021 with the objective of 'promoting reconciliation, accountability and human rights in Sri Lanka'.[113] Critical to the discussion here is the expression of concern 'at the trends emerging over the past year, which represent a clear early warning sign of a deteriorating situation of human rights in Sri Lanka' bolstered by 'policies that adversely affect the right to freedom of religion or belief; [and] increased marginalization of persons belonging to the Tamil and Muslim communities'.[114] The disproportionate effect of human rights violations upon particular minority groups has raised alarm in the international arena, enough for the UN to take specific actions to attempt to hold the state accountable.

It is noteworthy that Resolution 46/1 recognised the harm inflicted on Sri Lankan civilians, largely from the Tamil minority, during the civil war. The resolution thus signalled the international community's recognition that minority rights in Sri Lanka are fragile and require the support of international mechanisms. The Sri Lankan government's withdrawal from Human Rights Council resolution 30/1 in 2020 attracted more international concern and commitment, as evidenced by the timing of this resolution.[115] This earlier resolution had sought to promote reconciliation,

111 UN High Commission for Human Rights, *Situation of human rights in Sri Lanka- Comprehensive report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/51/5.

112 'Sri Lanka Rejects Resolution At The Un Human Rights Council', Sri Lanka Embassy Rome, accessed August 1, 2022, https://srilankaembassyrome.org/2022/10/sri-lanka-rejects-resolution-at-the-un-human-rights-council/.

113 UN General Assembly, *Resolution adopted by the Human Rights Council on 23 March 2021: 46/1. Promoting reconciliation, accountability and human rights in Sri Lanka,* 22 February – 24 March 2021, HRC Session 46, A/HRC/Res/46/1.

114 UN General Assembly, *Resolution adopted by the Human Rights Council.*

115 'Sri Lanka: Withdrawal from UN commitments requires robust response by Human Rights Council', Amnesty International, February 27, 2020, https://www.amnesty.org/en/latest/news/2020/02/sri-lanka-withdrawal-from-un-commitments-requires-robust-response-by-human-rights-council/.

accountability and human rights in the country.[116] The Human Rights Council's approach has now shifted, employing a tougher tactic to provide greater international oversight, recognising that the state failed to create its own domestically designed mechanisms to promote human and minority rights. Sri Lanka 'vigorously opposed' the 2021 resolution.[117] The new elements of Resolution 51/1 of 2022 are to bring the concept of economic crimes into focus, strengthen the evidence gathering mechanism in Geneva, and more proactively offer to provide information and evidence to pursue the principle of universal jurisdiction.

A report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in March 2022[118] specifically addressed 'continuing trends towards militarization and ethno-religious nationalism that undermine democratic institutions, increase the anxiety of minorities and impede reconciliation'.[119] This includes trends whereby the government is provoking land disputes with minority communities, specifically in the Eastern Province, claiming to preserve the majority Buddhist heritage by erecting Buddhist statues and monuments on 'the site of an ancient Hindu temple', harassment of Christian pastors by public officials[120] and establishing military-led archeological task forces to identify and preserve Buddhist heritage sites in the Eastern Province.[121]

The HRC continues to express concern over minority rights in Sri Lanka, but the state has rejected such findings. In a letter to the High Commissioner for Human Rights, Sri Lanka vociferously rejected the evidence-gathering authority established in Resolution

116 Amnesty International, 'Sri Lanka: Withdrawal from UN commitments'.

117 'Sri Lanka: Landmark UN Resolution Promotes Justice', HRW, March 25, 2021, https://www.hrw.org/news/2021/03/25/sri-lanka-landmark-un-resolution-promotes-justice.

118 UN High Commissioner for Human Rights, *Promoting reconciliation, accountability and human rights in Sri Lanka*, Human Rights Council, March 18, 2022, A/HRC/49/9.

119 UN High Commissioner for Human Rights, *Promoting reconciliation, accountability.*

120 UN High Commissioner for Human Rights, *Promoting reconciliation, accountability*, para. 17 and 26.

121 UN High Commissioner for Human Rights, *Promoting reconciliation, accountability.*

46/1 and denounced allegations of human rights and minority rights violations as 'unsubstantiated allegations' that 'exceed the mandate of the Office'.[122] Although Sri Lanka reiterates its cooperation with international human rights bodies in this letter, it denounces most of the findings and strategies proposed by the HRC.[123] Furthermore, at the 48th session of the HRC, Sri Lanka stated it rejected 'the proposal for any external initiatives purportedly established by Resolution 46/1 while domestic processes are vigorously addressing the relevant matters'.[124]

Universal Periodic Review

Sri Lanka has consistently participated in the Universal Periodic Review (UPR),[125] with the last report submitted in 2017. The report was put together by gathering and synthesising data from among its government agencies and entities, while consulting with non-governmental stakeholders to further ameliorate the report to reflect the issues pressing for its citizenry.[126] It addressed the translation of international law into domestic legislation, including the ICCPR Act and the Convention Against Torture Act.[127] It also outlined the steps it would take to incorporate a National Human Rights Action Plan (NHRAP) to strengthen the rule of law, pass a right to information, increase access to justice by reducing bureaucratic delays and more.[128] Prima facie, many of these objectives are

122 UN High Commissioner for Human Rights, *Promoting reconciliation, accountability,* para. 6.

123 'Letter dated 11 March 2022 from the Permanent Mission of Sri Lanka to the United Nations Office at Geneva addressed to the President of the Human Rights Council', March 14, 2022, A/HRC/49/G/17.

124 'Opposed to UNHRC initiatives: Sri Lanka', *Indian Express*, September 14, 2021, https://indianexpress.com/article/world/unhrc-initiatives-sri-lanka-7508919/.

125 It is to be noted that as this chapter is written more organisations may submit to the UPR for Sri Lanka's record. More information will become available to learn more about Sri Lanka's engagement with minority rights.

126 Sri Lanka, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21,* Human Rights Council, Working Group on the Universal Periodic Review, August 24, 2017, A/HRc/WG.6/28/LKA/1, https://www.ohchr.org/en/documents/country-reports/national-report-submitted-accordance-paragraph-5-annex-human-rights.

127 Sri Lanka, *National report submitted in accordance with paragraph.*

128 Sri Lanka, *National report submitted in accordance with paragraph.*

laudable and promising, but more than four years have passed since these were originally articulated and NGO submissions for the next UPR cycle denounce Sri Lanka's regression and ineptitude in meeting these targets.

As of 2022, many organisations have challenged Sri Lanka's follow through on its 2017 UPR goals. HRW, in its official submission on Sri Lanka's UPR status, writes critically of Sri Lanka's failure to protect minority rights. The organisation denounced the 20th Amendment to the Constitution passed in 2020 for undermining the independence of the HRCSL, an entity the government endorsed in its own submissions to the UPR submission process.[129] HRW also denounced the government's 'rhetoric and … policies that are hostile and discriminatory towards ethnic and religious minorities'.[130] HRW also accused the government of weaponising laws it had passed to purportedly further international human rights such as the ICCPR Act to instead 'target members of minority communities, accusing them of 'advocat[ing] national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence'.[131]

These claims are echoed by other organisations submitting reports to the UPR on Sri Lanka's human rights compliance. The International Federation for Human Rights and the Center for Human Rights and Development claim that in particular, those minority communities 'working on ending impunity and seeking accountability for past crimes' are at particular risk of harassment and intimidation by the state.[132] Amnesty International, in its submission, specifically notes 'anti-Muslim discrimination' as 'fast forming a part of state policy'.[133] They also note the repeated

129 'Submission to the Universal Periodic Review of Sri Lanka', HRW, July 2022, https://www.hrw.org/sites/default/files/media_2022/07/HRW_UPR42_LKA_E_Main.pdf.

130 HRW, 'Submission to the Universal Periodic Review of Sri Lanka'.

131 HRW, 'Submission to the Universal Periodic Review of Sri Lanka'.

132 Center for Human Rights and Development and International Federation for Human Rights, *UN Human Rights Council SRI LANKA Joint submission*, July 14, 2022, https://www.fidh.org/IMG/pdf/20220714_sri_lanka_upr_js_en.pdf.

133 'Impunity entrenched: Submission to the UN Universal Periodic Review', Amnesty International, Aug 1, 2022, https://www.amnesty.org/en/documents/asa37/5904/2022/en/.

restrictions upon the Tamil community in Northern Province from commemorating or memorialising the impacts and losses of the civil war—of 'loved ones forcibly disappeared or killed'.[134] The targeting of minorities as state policy is a resounding theme across all major human rights organisations' appraisals of Sri Lanka's conduct in the past years.

The right to information in Sri Lanka is weak. It was noted that the Right to Information Commission has been undermined 'following the appointment of retired Supreme Court Justice, Upali Abeyratne, as the Chair' as he had previously 'served as Chair of the Presidential Commission of Inquiry on Alleged Political Victimization, which obstructed and intervened in judicial proceedings in several 'emblematic' human rights cases'.[135] The Right to Information Commission was or has the potential to be accessed by activists to gain information on governance and other matters to further their cause. Hence, undermining its independence and integrity compromises its ability to support human rights.

Treaty bodies

Sri Lanka is assessed by numerous treaty bodies, including committees overseeing the ICCPR, the ICESCR, CEDAW, the CRC and others. Although these bodies investigate and document key concerns relating to the practices of the Sri Lankan state and while they call for accountability, they are not able to ensure accountability. However, they provide further grounds on which individual complaints may be made, under special procedures, to hold the state accountable.

Treaty committees often issue reports that outline ways in which countries can improve their human rights record. These committee assessments often overlap, but the reforms proposed require a stronger foundation to ensure minority rights protection. For example, in the case of Sri Lanka the CEDAW committee has

134 Amnesty International, 'Impunity entrenched: Submission to the UN Universal Periodic Review'.

135 United Nations High Commissioner for Human Rights, *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promoting reconciliation, accountability and human rights in Sri Lanka*, A/HRC/49/9.

recommended incorporating into legislation legal safeguards that ensure and increase access to justice for women.[136] This includes a conception of the rule of law that goes beyond the traditional concept of negative rights. It requires programming that substantiates a culture of access and support, including, for example, gender-sensitive training for law enforcement personnel and members of the judiciary.[137] Similarly, the ICESCR committee recommendations call for the strengthening of an independent judiciary so that individuals can reliably assert rights claims that allow for the flourishing of cultures that are supportive of economic, social and cultural rights. This also requires an expansive concept and foundation of the rule of law.[138]

Establishing the rule of law thus becomes a critical foundation from which minority rights can flourish and shape the institutions necessary for minorities to seek redress and support. These treaty committees have outlined the larger systemic gaps the Sri Lankan government must grapple with if it truly wishes to fulfil its human rights obligations and have also outlined how intersectional minorities may benefit from such reform. The treaty bodies often highlight concerns in their assessments that foreshadow greater social dilemmas that disproportionately affect minorities.

The efficacy of these international instruments is questioned when we note the gaps between Sri Lanka's international commitments and the objectives outlined in its UPR submissions against treaty committee evaluations of its performance in protecting minority rights. There is clearly evidence of Sri Lanka backsliding on this score. Scholars have attributed Sri Lanka's continued engagement with these institutions as an exercise in building its own social capital by way of strengthening its legitimacy. International human rights norms shape a culture of discourse and behaviour that is expected of states and Sri Lanka follows suit by adopting this

136 Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of Sri Lanka* (2017).

137 Committee on the Elimination of Discrimination against Women, *Concluding observations.*

138 Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Sri Lanka* (2017).

language.[139] Sri Lanka continues to engage in international legal forums and defend its human rights records through established procedures because the 'social camouflage' that comes with this performance allows for a reduced 'increment of criticism that can be directed at any particular country'.[140] This creates a conundrum of a persistent gap between human rights commitments and human rights fulfilment, with minorities bearing the brunt of the state's failures to protect them adequately.

Civil society and domestic accountability

In the discussion of Sri Lanka's domestic laws, it is evident that the legal framework enables the executive to extend its powers and there are many existing legal loopholes that undermine democratic and human rights-driven safeguards for minority communities. However, there is much to be said about the domestic accountability canvassed through the role of civil society.

Recently, in March 2022, the *janatha aragalaya* (people's struggle) began and gained traction over the following months, leading to Prime Minister Mahinda Rajapaksa's resignation and President Gotabaya Rajapaksa's hurried departure and then resignation via email.[141] During the *aragalaya*, there were citizen initiatives to bring different communities together and expressions of amity and understanding that have rarely been expressed in the past. Nonetheless, the unwillingness of Tamils and other communities to participate in these protests highlights the need for more meaningful conversations about the intersectional traumas experienced by minority communities.[142] Protest is not

139 Thamil Venthan Ananthavinayagan, 'Sri Lanka, Human Rights and the United Nations A Scrutiny into the International Human Rights Engagement with a Third World State', https://link.springer.com/book/10.1007/978-981-13-7350-3.

140 Ananthavinayagan, 'Sri Lanka, Human Rights and the United Nations', 240.

141 Philip Wen, 'Sri Lanka's President Resigns Over Email After Fleeing Country', *Wall Street Journal*, July 14, 2022, https://www.wsj.com/articles/sri-lankas-president-misses-resignation-deadline-after-fleeing-country-11657792519.

142 Pallavi Pundir and Kumanan Kanapathipilla, 'Why These Women Aren't Joining Sri Lanka's Massive Anti-Government Protests', *Vice News*, May 25, 2022, https://www.vice.com/en/article/n7n8jx/tamils-sri-lanka-protest-rajapaksa-crisis.

a new phenomenon in Sri Lanka. Tamils have protested under hyper-surveillance and militarisation in the north. However, the Tamil community is persistent in its demands that accountability be required, and this calls for a relationship based on empathy amongst the Sri Lankan people that enables them to address and acknowledge past and ongoing harms against minority groups. Only this approach will sustain human rights.

Civil society organisations have been at the forefront of minority rights protection in Sri Lanka. Up-country Tamils, and especially women, have fought for fair wages and labour rights for decades through organisations such as the Christian Workers' Fellowship, alongside more grassroots labour organising and community advocacy.[143] The Secretariat for Muslims recorded incidents of Islamophobic violence, including 600 incidents against Muslims between 2013 and 2015.[144] A study of Sri Lankan civil society institutions found that trust levels amongst Sinhalese and ethnic minority Tamils were high for NGOs across the country, and at some places Tamils had more trust in local organisations.[145] It is possible that the levels of trust for NGOs are influenced by a corresponding decline in trust on government and public authorities. It is important that these organisations continue to build trust and advocate for community needs. Successive governments denied allegations of human rights violations, but civil society organisations provided a pivotal counter-narrative that highlighted many minority groups' struggles. Their work is essential in shaping the discourse on minority rights and the accountability of Sri Lanka, both in the national and international arenas.

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143 Mythri Jegathesan, *Tea and Solidarity: Tamil Women and Work in Postwar Sri Lanka* (Washington: University of Washington Press, 2019).

144 Mohamed Zacky Mohamed Fouz and M. Moniruzzaman, 'The Muslim Minority-Phobia in Context: A Critical Study on Majoritarian Ideology and the Structural Roots of Anti-Muslim Phenomenon in the Post-War Sri Lanka', *Journal of Muslim Minority Affairs* 41, no. 4 (2021): 719-729.

145 Ramesh Ramasamy and Hasan Muhammad Baniamin, 'Institutional trust paradox: understanding the dynamics of trust among different ethnic groups in Sri Lanka', *Contemporary South Asia* 30, no. 4 (2022): 481-495.

Conclusion and Recommendations

Based on a review of Sri Lanka's adoption of international law and its engagement with international treaty bodies, several key recommendations are made.

- **Repeal of the PTA**: The incalculable harm meted out to individuals and communities by the PTA is well documented and it has been resoundingly denounced by national and international human rights organisations. Its existence has undermined the rule of law, national unity and trust in the government. The PTA must be repealed, and those arrested and detained under it must be released. Independent inquiries and investigations should be conducted to document, understand and hold the state accountable for the arrest, detention and imprisonment of Sri Lankan minorities on the basis of their minority status.
- **Amendment of the ICCPR Act and the CAT Act**: Sri Lanka's incorporation of the ICCPR and CAT into domestic law and its approaches to adopting international agreements are piecemeal. As they do not codify the spirit and language of the major provisions of these international treaties, they fail in the objectives of protection. The ICCPR and CAT must be codified in their entirety into Sri Lankan domestic law.
- **Constitutional changes**: Sri Lanka's Constitution must be amended to ensure explicit protections for those who are currently excluded, including gender and sexual minorities. The Constitution must uphold equality under the law and stand as the supreme law instead of being subordinate to colonial-era laws, including the personal laws regulating the lives of Muslim, Kandyan and northern Tamil women. Furthermore, sections of the Penal Code, which outlaw same-sex relationships, must be repealed. The Constitution must also ensure the rule of law by ensuring that there are no amendments or procedures that allow for executive overreach and undermine institutions that minorities rely upon. Independent judiciaries and commissions exploring

and investigating minority rights are critical to this recommendation.

- **Implementation of provisions of the 13th Amendment**: Sri Lanka must implement constitutional provisions introduced through the 13th Amendment pertaining to the devolution of power and the establishment of provincial councils. There is a need to strengthen the devolution of power and implement it. The 13th Amendment was regarded as the lynchpin of minority rights and protection. Elections to the provincial councils have not been held for the past four to five years, and this is in violation of the constitution.
- **Acknowledgement of HRC resolutions**: Sri Lanka must acknowledge HRC Resolution 46/1 (and now 51/1) and cooperate with international organisations to ensure that justice is done and is seen to be done on behalf of the minority Sri Lankans. The government must cooperate to allow for efficient and comprehensive investigation, documentation and fact-finding and ensure the proper procedures of following sanctions, trials or other forms of justice.
- **Support for freedom of religion and culture**: Sri Lanka must take greater initiative to meaningfully support freedom of religion and culture. This includes permitting minorities to commemorate and celebrate their histories and for the state to foster reconciliation. This is substantiated by allowing greater independence and resources for commissions established to carry out this work, such as the OMP.
- **Addressing concerns of the most affected by the economic collapse:** In addressing the fallout of the economic collapse, the state must prioritise the rights and needs of Sri Lankans most affected by the crisis and this includes women, the poor and those whose intersectional identities cut across ethnicity, gender, place of origin and residence.

State of South Asian Minorities 2022

Manesh Shrestha

Afghanistan

The Taliban's swift takeover of Afghanistan in August 2021 pushed Afghans, especially those from minority groups, into a precarious situation. This continued during the period under review. Alongside other extremist groups like the Islamic State Khorasan Province (ISKP), the Taliban are accused of subjecting minorities to brutal attacks, casting serious doubts about the protection of minority groups from violence and terror in Afghanistan.[1] Despite Taliban officials' initial statements that they had reformed elements of their 1990s ideology and pledged moderation,[2] the future for minority groups appears bleak. One year after the Taliban came to power, minority groups are struggling to survive. The United Nations Assistance Mission in Afghanistan 2022 mid-year report recorded 2106 civilian casualties,[3] with a considerable proportion of them being from minority groups. Their physical existence is in danger because of their identity since they are not recognised as equal to Pashtun

1 Ellen Ioanes, 'Deadly attacks on Afghan minorities show the Taliban isn't keeping its promises', *VOX*, April 23, 2021, https://www.vox.com/2022/4/23/23038561/afghanistan-terror-attacks-targeted-afghan-minorities.

2 Riyaz Khaliq, 'Afghanistan is home for all, Taliban assure minorities', *Anadolu Agency*, December 12, 2021, https://www.aa.com.tr/en/asia-pacific/afghanistan-is-home-for-all-taliban-assure-minorities/2455823#.

3 United Nations Assistance Mission in Afghanistan, 'UN Releases Report on Human Rights in Afghanistan since the Taliban Takeover', The United Nations Assistance Mission in Afghanistan, 2022, https://unama.unmissions.org/un-releases-report-human-rights- afghanistan-taliban-takeover.

citizens. They are not represented in the cabinet and in public administration either.[4]

Less than a month after the fall of Kabul, the Taliban announced their interim government, declaring the country an 'Islamic Emirate' aiming to enforce Sharia law.[5] In September 2021, they introduced their cabinet with no representation from ethno-religious minority groups or women.[6] The judicial system was replaced with field courts in provinces and the verdicts of former courts were invalidated. Forced displacement in non-Pashtun resident areas began to increase.[7] Forced redress of already resolved disputes are being implemented either by the Taliban or by their affiliates in the north and central areas of the country.[8] The humanitarian crisis in the country has exacerbated the suffering of minority groups, especially of civilians displaced due to internal strife.[9]

Despite having lived in the country for centuries, some minority groups like the Afghan Kyrgyz, Sikhs and Hindus are trying to leave the country.[10] Of the estimated 100,000 Sikhs and Hindus

4 Ellen Ioanes, 'Deadly attacks on Afghan minorities show the Taliban isn't keeping its promises', *VOX*, April 23, 2021, https://www.vox.com/2022/4/23/23038561/afghanistan-terror-attacks-targeted-afghan-minorities.

5 'Hardliners get key posts in new Taliban government', *BBC*, 2021, https://www.bbc.com/news/world-asia- 58479750.

6 'Taliban name their deputy ministers, doubling down on an all-male team', *NPR*, September 21, 2021, https://www.npr.org/2021/09/21/1039232797/taliban-women-all-male-government-cabinet-ministers.

7 Ifra Asad, 'MRG deeply concerned by the situation of ethnic and religious or belief minorities in Afghanistan', Minority Rights Group, 2021, https://minorityrights.org/2021/09/27/afghanistan-minorities-36179/.

8 HRW, 'Afghanistan: Taliban Forcibly Evict Minority Shia', 2021, https://www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia.

9 'Afghanistan suffering "one of the world's worst humanitarian crises" under Taliban', *France 24 Newspaper*, 2022, https://www.france24.com/en/asia-pacific/20220815-afghanistan-suffering-one-of-the-world-s- worst-humanitarian-crises-under-taliban.

10 Mahabat Sadyrbek, 'The Situation of the Pamir Kyrgyz after the Taliban's Takeover of Afghanistan', Centre for East European and International Studies, 2021, https://www.zois-berlin.de/en/publications/the-situation-of-the- pamir-kyrgyz-after-the-talibans-takeover-of-afghanistan; Visakh Mathews and Sukanya Bali, 'Taliban 2.0: The end game for Afghan Sikhs and Hindus?', *The Diplomat*, July 18, 2022, https://thediplomat.com/2022/07/taliban-2-0-the-end-game-for-afghan-sikhs-and-hindus/.

in 1970, only 140 remain[11] and their lives are under threat.[12] A deadly explosion at a Sikh prayer site in Kabul in June 2022 left one worshiper dead and several injured.[13] Marginalisation of the Hazara religious minority of Shia Muslims is also steadily mounting. Ashura,[14] a commemoration day for Shia Muslims, was a national holiday under the former government but not anymore under the Taliban.[15] Additionally, several deadly attacks on this minority group has put them at risk of genocide since the Taliban takeover.[16]

The displacement of religious and ethnic minority groups, lack of access to social services such as health care, shelter, education, welfare, and humanitarian aid in Afghanistan is another major concern. Thousands of Uzbeks and Turkmens in Faryab province displaced during the conflict between the Taliban and the former government in northern areas of the country are still suffering. Their shelters were destroyed, and they do not have even enough food to eat.[17] Hazaras who lost their everything in recent floods

11 Leo Sands and Patrick Jackson, 'Afghanistan: Deadly explosion rocks Sikh site in Kabul', *BBC*, June 18, 2022, https://www.bbc.com/news/world-asia-61850021.

12 'India Evacuates 30 Sikhs from Kabul', *The Hindu*, August 3, 2022, https://www.thehindu.com/news/national/india- evacuates-30-afghan-sikhs-from-kabul/article65722623.ece.

13 Leo Sands and Patrick Jackson, 'Afghanistan: Deadly explosion rocks Sikh site in Kabul', *BBC*, June 18, 2022, https://www.bbc.com/news/world-asia-61850021.

14 Ashura is a day of commemoration for Shia Muslims. It occurs annually on the 10th day of Muharram, the first month of the Islamic calendar. Among Shia Muslims, Ashura is observed through large demonstrations of high- scale mourning as it marks the death of Husayn ibn Ali, the grandson of Prophet Mohammed, who was beheaded during the Battle of Karbala in 680 CE.

15 'The Taliban "removed" Nowruz and Ashura from the official Afghan calendar', Radio Farda, 2022, https://www.radiofarda.com/a/31975627.html.

16 Ewelina U. Ochab, 'The Hazara community at risk of genocide in Afghanistan', *Forbes*, 2022, https://www.forbes.com/sites/ewelinaochab/2022/09/06/the-hazara-community-at-risk-of-genocide-in-afghanistan/?sh=704e50db412e.

17 'The dire situation of displaced people in Faryab', *Etilaatroz*, 2022, https://bit.ly/3wT3rOX.

in Ghazni, instead of receiving immediate assistance for living, are being forced to pay *ushur*[18] and *zakat*[19].[20]

The Taliban takeover also resulted in the dominance of one minority group over others. Since August 2021, Kochi nomads, who enjoy support from the Taliban, have violated the rights of other minority groups. In Hazara-dominated areas of Ghazni province, they have turned school buildings into cattle sheds while students do not have classrooms.[21] In Takhar, Kochi nomads live in the homes of local Tajik ethnic group under orders of the Taliban.[22] In August, armed Kochi nomads attacked Hazaras in Daikundi province to grab their lands.[23]

The larger minority groups, Tajiks and Hazaras, who have resisted the Taliban, have been discriminated against by the Taliban. Several cases show that civilians belonging to these two minority groups have been subjected to incommunicado detentions, torture, extrajudicial killings and forced displacement. In August, the Taliban set on fire Tajik homes in Panjshir province.[24] They arbitrarily arrested 25 civilians[25] and have forcibly displaced people in Abdullah Khil district of this province.[26]

Afghans belonging to the LGBTQIA+ community who do not

18 Ushur in Islam is 10 percent for irrigated lands or non-irrigated lands levy on agriculture produce and trade.

19 Zakat is a charity God obligates Muslims to pay yearly on their money and property. Its payment is made to the poor, vulnerable, and deserving as their divinely established right. It is one of the five pillars of Islam.

20 'Taliban battered people in Ghazni to pay Ushur and Zakat', *8am*, 2022, https://bit.ly/3YiarAy .

21 'Kochi nomads have turned school buildings to cattle shed', *8am*, 2022, https://bit.ly/3DF5OZr .

22 'The Taliban in Takhar are moving the nomads to the places of local residents', *8am*, 2022, https://8am.af/the-taliban-in-takhar-are-moving-the-nomads-to-the-places-of-local- residents/?fbclid=IwAR3OqVR4xhObstmWoGenRs04ZUkSRf0R9tGMw7Sigf6e-EFgxtMvjHNyL9s.

23 'Kochis attacked residents of Miramore district of Daikandi', *8am*, 2022, https://bit.ly/3l9Tn1d .

24 'The Taliban set people's houses on fire in Panjshir', *8am*, 2022, https://bit.ly/3wR8CyP .

25 'Taliban have arrested 25 civilians in Panjshir', *8am*, 2022, https://bit.ly/3jqnwsI .

26 'Taliban warning the residents of Abdullah Khel Panjshir: By Friday, either surrender the resistance front or move', *8am*, 2022, https://bit.ly/3DzEuMk .

conform to rigid gender norms in Afghanistan are also deprived of their rights. The Taliban Sharia law does not recognise LGBTQIA+ rights.[27] The group has increasingly reported grave threats to their lives and safety. They fled their homes from attacks and threats from the Taliban after the fall of Kabul.[28]

Bangladesh

The rights of minority groups in Bangladesh continued to be violated with their often facing violence in Bangladesh during the period under review. As has been the case over the past decade,[29] in July 2022, shops and several houses owned by Hindus were vandalised in Narail district in south-western Bangladesh after a Facebook post allegedly defamed Islam. A temple with furniture inside was also vandalised.[30] As has been common, social media posts from fake profiles with Hindu identities are often used to trigger violence against Hindus.[31] The violence led a hundred Hindu families, especially women, to escape the area, feeling particularly vulnerable with their 'honour at stake'.[32] The incident took place while memories of wide-scale violence against Hindus following a similar allegation which resulted in the deaths of 11,

27 Amnesty International, 'Afghanistan 2021', Amnesty International, 2021, https://www.amnesty.org/en/location/asia-and-the-%20pacific/south-asia/afghanistan/report-afghanistan/.

28 Human Rights Watch, 'Afghanistan: Taliban Target LGBT Afghans', Human Rights Watch, 2022, https://www.hrw.org/news/2022/01/26/afghanistan-taliban-target-lgbt-afghans.

29 Mubashar Hussain 'Minorities under Attack in Bangladesh', *The Interpreter*, 2021, https://www.lowyinstitute.org/the-interpreter/minorities-under-attack-bangladesh.

30 'Hindu temple, homes vandalized in Bangladesh over Facebook post: reports', *The Hindu*, 2022, https://www.thehindu.com/news/international/hindu-temple-homes-vandalised-in-bangladesh-over-facebook-post-reports/article65650637.ece.

31 Subir Bhaumik, 'The violence against minorities is a headache for India', *The Federal*, 2022, https://thefederal.com/opinion/violence-against-minorities-in-bangladesh-is-a-headache-for-india/.

32 'Bangladesh government '"failing to protect minorities"', *Union of Catholic Asian News*, 2022 https://www.ucanews.com/news/bangladesh-government-failing-to-protect-minorities/98082.

seven Muslims and four Hindus, in October 2021 were still fresh. [33]

Hindu leaders and activists allege that violence against Hindus in Bangladesh is a ploy by radical Islamists to grab their property, including land. During the violence in July, the mob also took money and valuables from the houses of Hindus.[34] Despite the view that the latest violence directed at Hindus is in retaliation for the Hindu cultural assertiveness in neighbouring India, as evidenced by the violent clashes during Indian Prime Minister Narendra Modi's visit in March 2021, resulting in the deaths of 12 people, the targeting of Hindus has a long history in Bangladesh.[35]

But it is not only Hindus who fear that their land is under threat. Indigenous groups in the Chittagong Hill Tracts from the southwest of the country and nearby plains 'facing violence, evictions and deaths centring on their land'.[36] It has been claimed that people from minority communities have also been killed.[37]

Since August 2017, Bangladesh has been hosting more than a million Rohingya refugees, following their large-scale persecution in neighbouring Myanmar. The Rohingya was another minority group that continued to face discrimination in Bangladesh during the period under review. The government started putting up fences around the refugee camps in 2019 under the guise of security. Again, in 2022, more than 3000 shops run by the refugees were demolished in refugee camps. The bulldozing of shops has threatened the livelihoods of families who were dependent on the shops, further exacerbating the already precarious situation of the refugees. While authorities claimed that the shops were 'illegal', refugee leaders claimed since the rations provided to them is not enough, families were relying on income from the shops.[38]

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33 Ibid.

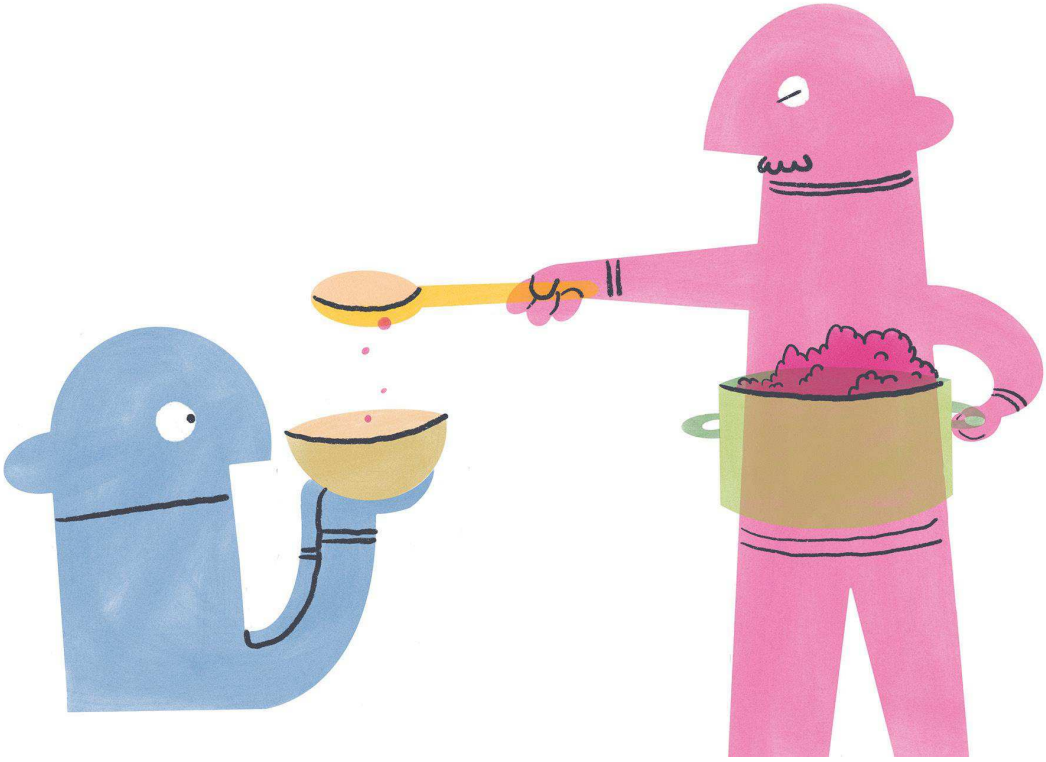
34 Ibid.

35 'Report on the Hearing on Human Rights Violations in Bangladesh', International Commission for Human Rights and Religious Freedom, 2022, https://drive.google.com/file/d/1-DHJ34RAwm2aoKORFQjSIp-M51Y2W_W6/view.

36 'National minorities' rights to land grossly violated', *New Age Bangladesh*, October 10, 2022, https://www.newagebd.net/article/183298/national-minorities-rights-to-land-grossly-violated-discussion.

37 Ibid.

38 'Thousands of Rohingya shops demolished in Bangladesh, leaving refugees desperate', *The Guardian*, January 5, 2022, https://www.theguardian.com/



Homosexuality remains illegal in Bangladesh and is punishable with up to life imprisonment, as per the Penal Code 1870. The provision is, however, not widely enforced and rather used as a tool for harassment.[39] Meanwhile, as in India and Pakistan, *hijras* (generally transgender women) are traditionally accepted by society at large but discrimination against them continues despite their being recognised as a 'third gender' since 2013.[40] A 2022 study conducted among *hijras* living in five urban cities of Bangladesh, found that members of the community face widespread human rights violations in the spheres of economic, employment, health, education, social, civic and political rights.[41]

world/2022/jan/05/thousands-of-rohingya-shops-demolished-in-bangladesh-leaving-refugees-desperate.

39 Geoffrey Macdonald, 'Understanding the Lives of Bangladesh's LGBTI Community', International Republican Institute, 2021, https://www.iri.org/resources/iri-conducts-innovative-mixed-method-lgbti-study-in-bangladesh/.

40 A. S. M. Amanullah et al., 'Human rights violations and associated factors of the Hijaras of Bangladesh – A cross-sectional study', *PLOS*, (2022), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0269375.

41 Ibid.

India

India's religious minorities, in particular Muslims and Christians, continued to face violence, including murder, during the period under review. Ever since the coming to power of the Hindu-nationalist Bharatiya Janata Party (BJP) in 2014 and its even stronger showing in the 2019 elections, targeted violence against Muslims both by authorities and Hindu vigilante groups have escalated.

Authorities increasingly resorted to 'summary and abusive' punishment for deemed infringement of the law.[42] In October in Kheda district of Gujarat state, the police arrested 13 people for allegedly throwing stones at a Hindu ceremonial dance. A police officer was seen publicly flogging several Muslim men with a stick, as a crowd of men and women cheered on. In Mandsaur district of the Madhya Pradesh state, the police filed a case of attempted murder against 19 men accused of throwing stones at a Hindu religious event. Seven of them were detained and the homes of three were demolished, claiming they were illegal constructions. Over a dozen Muslim-owned business establishments, too, were razed. The demolition of dozens of Muslim houses also took place in the states of Delhi, Uttar Pradesh, Gujarat and Madhya Pradesh.[43]

In June, the Uttar Pradesh government ordered the demolition of supposedly 'illegal' houses of Muslims accused of being involved in protests against derogatory remarks made by BJP leaders against the Prophet Muhammad. The house of the alleged leader of the protests (and father of a prominent woman Muslim activist) was among several demolished.[44] The remarks also led to violence in Jharkhand state during which two persons died and 10 were injured.[45]

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42 Human Rights Watch, 'India: Surge in Summary Punishment for Muslims', Human Rights Watch, 2022, https://www.hrw.org/news/2022/10/07/india-surge-summary-punishments-muslims.

43 Ibid.

44 'Indian state razes Muslim homes after riots over Prophet remarks', *The Guardian*, 2022, https://www.theguardian.com/world/2022/jun/12/indian-state-demolish-muslim-homes-riots-prophet-remarks.

45 Manish Kumar, 'Prophet comments row: Two dead in violence in

Besides state violence, private individuals belonging to groups associated with the ruling BJP and the wider Hindu nationalist networks also targeted Muslims. In July, a 23-year-old daily wage worker was hacked to death inside a shopping complex in Dakshin Kannada district, Karnataka, by assailants with alleged links to the BJP. Also, in July, an 18-year-old Muslim man died in an attack by members of a group associated with a Hindu nationalist group in Karnataka's Dakshin Kannada district[46] and a 35-year-old man was beaten to death for allegedly trying to steal cattle in Bihar's Samastipur district.[47] In August, a 50-year-old cattle trader was beaten to death by a group of 50 to 60 people in Narmadapuram district, Madhya Pradesh. In September, a 19-year-old labourer was shot to dead by a Hindu mob in Uttar Pradesh, accusing him of being a thief, an accusation his family denied, and a vegetable vendor was beaten to death in Bhadoi district allegedly by a BJP leader and 21 others after his goat entered the leader's premises.[48] There were also violent attacks on Muslims for various reasons like talking to a Hindu girl, posting a video of a girl in social media, or simply because of their Muslim identity.[49] These violent attacks are said to be reflective of weakening law enforcement, worsening impunity, and emboldening of violent groups.

The period under review also saw incidents of communal violence. In April, in the evening of Hanuman Jayanti, a Hindu festival, Hindu nationalists brandishing swords and guns threw

Jharkhand's Ranchi', *NDTV*, June 11, 2022, https://www.ndtv.com/india-news/2-dead-10-injured-in-violence-in-ranchi-over-bjp-leaders-remarks-on-prophet-muhammad-3057482.

46 Mohammed Irshad, 'Karnataka: Muslim Teenager Dies 2 Days After "Brutal Assault" by Hindutva Group Members', *The Wire*, July 23, 2022, https://thewire.in/communalism/karnataka-vhp-bajrang-dal-muslim-injuries.

47 Avinash Kumar, 'Man thrashed to death in Bihar for attempting to "steal" cattle', *Hindustan Times*, August 1, 2022, https://www.hindustantimes.com/india-news/man-thrashed-to-death-in-bihar-for-attempting-to-steal-cattle-101659342419161.html.

48 'Arbitrary deprivation of life: killings and grievous attacks by state actors and private groups', Panel of Independent International Experts To Examine Information About Alleged Violations of International Law Committed Against Muslims in India', 2022, https://piieindia.wordpress.com/bulletin-1-1-20-september-2022/.

49 Ibid.

beer bottles at a mosque in New Delhi. In the ensuing violence, many people were injured, including six police officers. Both groups blamed each other for instigating the violence.[50] There were similar clashes between Hindus and Muslims as well, particularly during the Ram Nawami festival in April, in different parts of the country, including Gujarat, Madhya Pradesh, West Bengal and Jharkhand states. The body of a 65-year-old man was recovered from where clashes between Hindus and Muslims took place in Anand district of Gujarat state.[51]

Christians, too, were the victims of violent attacks during the period under review. According to data compiled by the United Christian Forum, there were 313 attacks on Christians up to mid-October 2022 in eight states of India—Uttar Pradesh, Tamil Nadu, Chhattisgarh, Karnataka, Jharkhand, Telangana, Maharashtra and Andhra Pradesh, with Uttar Pradesh topping the list with 121 attacks.[52]

In July, a Christian pastor in the northern state of Haryana was dragged out during birthday celebration of a girl, where he was invited, and beaten by members of Bajrang Dal, a Hindu nationalist group associated with the BJP. His *Bible* was snatched and burnt.[53] Another pastor was tied to a pole and beaten in New Delhi, after being accused of proselytisation. In August, the Indian government, meanwhile, said that there had been no 'targeted' attacks on Christians, in response a public interest litigation filed

50 Hannah Ellis-Petersen and Aakash Hassan, '"Hatred, bigotry, untruth": communal violence grips India', *The Guardian*, April 18, 2022, https://www.theguardian.com/world/2022/apr/18/hatred-bigotry-and-untruth-communal-violence-grips-india.

51 Anurag Dwary, 'Communal clashes during Ram Nawami rallies in 4 states, 2 killed: 10 points', *NDTV*, April 11, 2022, https://www.ndtv.com/india-news/communal-clashes-during-ram-navami-rallies-in-4-states-1-dead-in-gujarat-2876894.

52 Nithya Pandiyan, 'The systematic attack on Christians in Tamil Nadu's Hindutva laboratory', *The News Minute*, October 17, 2022, https://www.thenewsminute.com/article/systematic-attack-christians-tamil-nadu-s-hindutva-aboratory-168941.

53 Naila Khan, 'In India's BJP-ruled states Christians under attack for alleged forced conversions', *Religion Unplugged*, August 29, 2022, https://religionunplugged.com/news/2022/8/29/in-indias-bjp-ruled-states-christians-under-attack-for-alleged-forced-conversions.

in the Supreme Court.[54] Ahead of state elections, in August, the state of Himachal Pradesh passed a law that would entail a prison sentence of 10 years for mass conversions, defined as two people converting their religion at the same time. Similar laws have been passed in other states ruled by the BJP, namely, Haryana, Madhya Pradesh, Uttar Pradesh and Gujarat.[55]

In Jammu and Kashmir states, the Muslim-majority region from which the Indian government revoked nominal autonomy in August 2019, repression of the freedoms of expression and movement and other human rights violations continued. An Amnesty International investigation in July and August 2022 found 'at least 60 instances in which journalists and human rights defenders have been subjected to interrogations, criminal investigations, arbitrary arrest, detention, and surveillance since August 2019'. The number of habeas corpus cases filed in the Jammu and Kashmir High Court was found to have gone up by 32 per cent. In 2022 (up to 4 August), 585 such cases were filed, of which only 14 petitions had been disposed. Journalists continued to be detained, questioned and arrested as well as barred from leaving the state in the period under review after the Kashmir Press Club was shut down in January.[56]

54 Ibid.

55 Ibid.

56 Amnesty International, "'We are Being Punished by the Law": Three Years of Abrogation of Article 370 in Jammu and Kashmir', Amnesty International,

Atrocities against Dalits, too, continued during the period under review. Murders, rapes, kidnapping and abductions and other instances of human rights abuses of Dalits documented by civil society groups numbered 51 during this period.[57] A nine-year-old Dalit boy was beaten to death by his teacher in Rajasthan state after he drank water from a pot meant for 'upper caste boys'.[58] Sexual violence against Dalit girls and women have also continued. Two Dalit sisters, 15 and 17, were raped, strangled and hanged from a tree in Lakhimpur Kheri district of Uttar Pradesh state in September. Six men were subsequently arrested, but nearly 71,000 crimes against Dalits were pending investigation at the end of 2021, according to data from the National Crime Records Bureau.[59]

Nepal

Although known to be more tolerant towards minorities compared to other South Asian countries, incidents of discrimination against Dalits continued in Nepal during the period under review. Despite discrimination on the basis of caste being a criminal offence and provisions of inclusion mandated by law, neither has been implemented in full. The situation led to the Supreme Court, ruling on writ petition demanding provisions for equality, non-discrimination, equity, inclusion, right to participation and social justice for members of the Dalit community, ordering the government in February to make short-, medium- and long-term plans within three months to ensure their rights and implement

2022, https://www.amnesty.org/en/documents/asa20/5959/2022/en/.

57 National Coalition for Strengthening SC & ST PoA Act and National Dalit Movement for Justice, 'Atrocity Tracking and Monitoring System', http://annihilatecaste.in/reports/all/all/all/all//2022/off/, accessed November 23, 2022.

58 Hannan Jaffar, 'Violence Against Marginalised Castes Increases in India', *Fair Planet*, September 18, 2022, https://www.fairplanet.org/editors-pick/violence-against-marginalised-castes-increases-in-india/.

59 Murali Krishnan, 'India: Will sexual violence against Dalits ever end?', *DW*, September 19, 2022, https://www.dw.com/en/india-will-sexual-violence-against-dalits-ever-end/a-63167654.

them as per provisions of the constitution.[60] The government is yet to announce any such plan.

Dalits not only face discrimination and inequality, they continue to face human rights abuses as well. In June, a Dalit woman was barred from entering a temple in Kathmandu district although Dalits claimed that they had contributed in the building of the temple.[61] A report released in September found that between mid-April 2021 and mid-April 2022 (the Nepali calendar year) Dalits faced 88 instances of human rights violations. including five deaths because of their caste status. A total of 25 Dalit women and girls were raped during this period. Other forms of violations and discrimination included attempted rape, non-renting of rooms and barring of entry into temples. Of these, only 10 cases were settled through the courts while 16 were settled through mutual negotiation.[62]

The number of cases of human rights violations against Dalits is on the rise and that is evidenced by government reports. The Nepal Police registered 39 cases of caste-based discrimination between mid-July 2020 and mid-July 2021, compared to 29 in the corresponding period in the previous year.[63] Between mid-April and mid-June 2022, there were 10 incidents of caste-based discrimination against Dalits in Nepal. These included death in prison, accusations of witchcraft, physical assaults and murders, among others.[64]

The extent of discrimination and maltreatment Dalits in Nepal have faced and the deep-seated prejudice against the community

60 'Supreme Court To Implement Rights to Dalits', *Nepalnews*, February 1, 2022, https://nepalnews.com/s/nation/supreme-court-to-implement-rights-for-dalits.

61 'Caste discrimination continues in a rural community', *Nepalnews*, June 7, 2022, https://nepalnews.com/s/issues/caste-discrimination-continues-in-a-rural-community.

62 'Caste discrimination still a major concern in Nepal', *Nepalnews*, September 15, 2022, https://nepalnews.com/s/issues/caste-discrimination-still-a-major-concern-in-nepal.

63 '39 cases of caste-based discrimination', *The Himalayan Times*, March 28, 2022, https://thehimalayantimes.com/nepal/39-cases-of-caste-based-discrimination.

64 Samata Foundation, 'Incidents of Caste-based Human Rights Violations', accessed November 23, 2022, https://samatafoundation.org/factsheets/.

was highlighted in August when it was revealed that authorities had issued Dalits citizenship certificates with first names like Kukur (dog in Nepali), Kukurni (bitch), Fyauro (fox), Singane (snotty), Chor (thief) and Thug (cheat). After an uproar, the Ministry of Home Affairs directed local administrations across the country to change the names. Cases of such derogatory names were more prevalent in Karnali and Sudurpaschim provinces in western Nepal.[65]

Discrimination against sexual minorities belonging to the LGBTQIA+ community continued in Nepal during the period under review. Discrimination by the state was evident in the announcement in January of the preliminary findings of the decennial census held in 2021 as it did not record in a single Nepali in the 'other' category besides male and female,[66] in a population that totalled 29 million,[67] despite the existence of such a category in the census form. Activists, however, hope that when the final results of the census is announced, there will be better news for them. The census had also been criticised for the lack of inclusivity in the census as LGBTQIA+ activists saying that 'other' does not reflect the diversity within the category.[68]

That harassment of sexual minorities at the societal level remains despite *hijras* being traditionally recognised in the Tarai plains of southern Nepal was evident when two of them, aged 43 and 47, were indiscriminately beaten up on suspicions of stealing a baby in Bishnupur Rural Municipality of Siraha district.[69] They were rescued by the police. The duo with other *hijaras* visit families to bless a newborn, a traditional practice.

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65 'Derogatory names of Dalits in citizenship papers kick up a row', *The Himalayan Times*, August 9, 2022, https://thehimalayantimes.com/kathmandu/derogatory-names-of-dalits-in-citizenship-papers-kick-up-a-row.

66 Ankit Khadgi, 'The inclusivity problem with Nepal's census', *The Kathmandu Post*, May 18, 2022, https://kathmandupost.com/art-culture/2021/05/18/the-inclusivity-problem-with-nepal-s-census.

67 'Nepal's population 29,192, 480', *The Himalayan Times*, January 27, 2022, https://thehimalayantimes.com/nepal/nepals-population-29192480.

68 Nasana Bajracharya, 'Nepal census preliminary report LGBTQIA+, but community hasn't lost hope yet', *Onlinekhabar*, February 16, 2022, https://english.onlinekhabar.com/nepal-census-lgbtqia-hope.html.

69 Bharat Jharga Magar, 'Violence against LGBTQI+ people continue', *The Kathmandu Post*, September 15, 2022, https://kathmandupost.com/province-no-2/2022/09/15/violence-against-lgbtqi-people-continues.

Pakistan

During the period under review, Pakistan's religious minorities continued to face threats, physical attacks, including targeted killing, mob violence, abduction and forced marriage and desecration of cemeteries.[70] Christians and Amhadiyyas were particular targets of attacks but Hindus were not spared either. The LGBTQIA+ community was also under threat despite the traditional tolerance of transgender people.

An elderly Christian priest was shot dead and another priest travelling with him was wounded in Peshawar, the capital of Khyber Pakhtunkhwa province in January. The 75-year-old priest was returning after Sunday mass.[71] A Christian man died of wounds after he was shot by two people on motorcycles in a Christian colony in the Mastung area of Baluchistan province in August. Three teenagers were also injured in the attack.[72] In February, the Christian owner of a snooker club in Lahore died after he was beaten by a mob of some 150 to 200 Muslim men following an altercation at the club the previous day. The victim's uncle had filed a complaint with the police after some men had ransacked the club's property following the argument and the mob had gathered demanding the withdrawal of the complaint.[73]

The Ahmadiyya community is another religious minority that continued to face violent attacks in Pakistan. In May, a 33-year-old Ahmadiyya man was stabbed and killed by a seminary student while he was returning from his fields in Okara of Punjab province.[74]

70 'Religious Freedom in Pakistan', United States Commission on International Religious Freedom, 2022, https://www.uscirf.gov/sites/default/files/2022-08/2022%20Pakistan%20Country%20Update.pdf.

71 Pakistani police widen manhunt after priest shot and killed', *The Guardian*, January 31, 2022, https://www.theguardian.com/world/2022/jan/31/pakistani-priest-shot-killed-police-manhunt.

72 Kamran Chaudhary, 'One killed in shooting in Christian colony in Pakistan', *Union of Catholic Asian News*, August 10, 2022, https://www.ucanews.com/news/one-killed-in-shooting-at-christian-colony-in-pakistan/98344.

73 Monica George, 'Persecution of Pakistan's Christians continues unabated', *The Friday Times*, March 21, 2022, https://www.thefridaytimes.com/2022/03/31/persecution-of-pakistans-christians-continues-unabated/.

74 Imran Gabol, 'Ahmadiyya community member killed in Okara', *Dawn*, May 19, 2022, https://www.dawn.com/news/1690355.

In August, another Ahmadiyya man was stabbed to death in Chiniot district, Punjab province, after the assailant told him to disassociate himself from the community.[75] Ahmadiyyas are also persecuted for observing Muslim rituals since their status, though earlier recognised as a Muslim sect, was redefined in 1974 and also in 1984 when any Ahmadiyya declaring themselves Muslims was made a criminal offence. In July, three members of the community were arrested after a case was filed against them for sacrificing animals in their homes in Faisalabad, Punjab province on Eidul Azha, which is celebrated by Muslims by sacrificing animals.[76]

Ahmadiyya graves were desecrated during the period under review in a further sign of intolerance towards the community. In July, 53 graves in an Ahmadiyya graveyard in Gujranwala, Punjab province, were desecrated with their headstones shattered and broken by policemen.[77] A similar such incident took place in February when police defaced as many as 45 Ahmadiyya graves, removing plaques and destroying headstones in Hafizabad, Punjab province.[78]

In another sign of religious intolerance in the country, girls and women of minority religious communities are abducted, converted into Islam and married to Muslim men. In January, a 14-year-old Christian girl was abducted, converted and married to a 45-year-old Muslim man in Lahore in Punjab province.[79] But the law does not see such incidents as a crime as long as the girl has started menstruating as she is considered to be of marriageable age.[80] Besides, forced conversion is not a crime and Pakistan's

75 Imran Gabol, 'Ahmadi man stabbed to death in Chiniot', *Dawn*, August 12, 2022, https://www.dawn.com/news/1704485.

76 Imran Gabol, '3 Ahmadis arrested in Faisalabad for sacrificing animals on Eid', *Dawn*, July 10, 2022, https://www.dawn.com/news/1699181.

77 'Police allegedly desecrate 53 Ahmadi graves in Gujranwala days before Eid', *The Friday Times*, July 8, 2022, https://www.thefridaytimes.com/2022/07/08/police-allegedly-desecrate-53-ahmadi-graves-in-gujranwala-days-before-eid/.

78 '45 Ahmadi graves desecrated by Punjab Police in Hafizabad', *The Friday Times*, February 7, 2002, https://www.thefridaytimes.com/2022/02/07/45-ahmadi-graves-desecrated-by-punjab-police-in-hafizabad/.

79 'Religious Freedom in Pakistan 2022', United States Commission on International Religious Freedom, 2022, https://www.uscirf.gov/sites/default/files/2022-08/2022%20Pakistan%20Country%20Update.pdf.

80 Zelda Caldwell, 'Christians in Pakistan are victims of rape, forced marriages

parliamentary committee in October 2021 rejected a bill to protect religious minorities against forced conversion.[81] In March, an 18-year-old Hindu girl was shot dead in Sindh province when she resisted an attempt to abduct her and force her marriage.[82]

Pakistan's blasphemy laws are also used to persecute religious minorities and others and this trend continued during the period under review. After protests, a Hindu sanitation worker was arrested in Karachi in August on charges of burning pages of a religious book 'without proper investigation'.[83] In February, a Hindu college teacher was sentenced to life imprisonment in Karachi, Sindh province, for blasphemy.[84] In July 2017, a 34-year-old Christian bicycle mechanic was arrested and later sentenced to death for blasphemy against Prophet Muhammad following an altercation with a customer who was asking for a discount in Lahore of Punjab province [85] In October, a handicapped man, accused of blasphemy, was set ablaze, and when he jumped into pond to douse the fire, his attacker, a seminary student, followed and strangled him to death.[86] In March, a woman teacher of an all-girls' school was killed with her throat slit by a female colleague in

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and violent mobs using blasphemy laws against them', *Aleteia*, July 1, 2022, https://aleteia.org/2022/07/01/christians-in-pakistan-are-victims-of-rape-forced-marriages-and-violent-mobs-using-blasphemy-laws-against-them/.

81 'Religious Freedom in Pakistan 2022', United States Commission on International Religious Freedom, 2022, https://www.uscirf.gov/sites/default/files/2022-08/2022%20Pakistan%20Country%20Update.pdf.

82 Haroon Janjua, 'Pakistan: Hindu girl's killing reignites forced conversion killing', *Aljazeera*, March 31, 2022, https://www.aljazeera.com/news/2022/3/31/pakistan-hindu-girls-killing-reignites-forced-conversion-fears.

83 'Hindu man arrested after protests for alleged blasphemy in Pak: Report', *NDTV*, August 22, 2022, Hindu Man Arrested After Protests For Alleged Blasphemy In Pak: Report (ndtv.com).

84 'Pakistan court sentences Hindu teacher to life imprisonment over blasphemy', *NDTV*, February 9, 2022, https://www.ndtv.com/world-news/pakistan-court-sentences-hindu-teacher-to-life-imprisonment-over-blasphemy-charges-in-sindh-2757403.

85 Rachel Bunyan, 'Christian mechanic is sentenced to death for blasphemy in Pakistan after he argued with a customer who demanded a discount for being a devout Muslim', *The Daily Mail*, July 8, 2022, https://www.dailymail.co.uk/news/article-10994767/Christian-mechanic-sentenced-death-blasphemy-Pakistan-argued-customer.html.

86 S. Khan, 'Pakistan: Activists sound alarm over hate crimes', *DW*, October 10, 2022, https://bit.ly/3HwiVgP.

Dera Ismail Khan, Khyber Pakhtunkhwa province, after two nieces of the alleged murderer, also students at the school, reportedly told her said that a relative had dreamt the victim had committed blasphemy.[87]

Pakistan also witnessed the fallout of derogatory remarks made against Prophet Muhammad in June by leaders of India's ruling Hindu nationalist Bharatiya Janata Party. A group of armed men entered a Hindu temple in Karachi and desecrated it.[88]

Pakistan's transgender people faced threats to their identity during the period under review with the growing opposition to the 2018 Transgender Persons (Protection of Rights) Act, which allows transgender Pakistanis to choose their gender as they see themselves. Those opposing the law, hailed globally when enacted, see it as a 'threat to family'. As evidence of growing threats to transgender people, known as *hijras* and traditionally tolerated in the country, four trans-women were killed in September while 20 transgender people were killed in 2021.[89]

Sri Lanka

During the period under review, discrimination against religious and ethnic minorities continued in Sri Lanka. In particular, families of those who disappeared during Sri Lanka's decades-long civil war that ended in 2009 continued to face surveillance, questioning, intimidation and unannounced visits by intelligence and police officers, and former cadres of the Liberation Tigers of Tamil Eelam, too, continued to face intense scrutiny.[90] But with the change in

87 'Pak school teacher killed by colleague, students for "Blasphemy": Police', *NDTV*, March 30, 2022, https://www.ndtv.com/world-news/blasphemy-pak-school-teacher-killed-by-colleague-students-for-blasphemy-2852025.

88 Munir Ahmed, 'Pakistan probes Hindu temple's desecration as India protests', *Associated Press*, June 10, 2022, https://apnews.com/article/politics-pakistan-new-delhi-india-arrests-276771734da5146d43ff3dd52edf2cd2.

89 Sarah Zaman, 'Pakistan's progressive trans gender law faces opposition 4 years later', *VoA*, September 28, 2022, https://www.voanews.com/a/pakistan-s-progressive-transgender-law-faces-opposition-4-years-later-/6768168.html.

90 United Nations Office of the High Commissioner for Human Rights, 'Situation of human rights in Sri Lanka', United Nations Office of the High

regime in the country, following widespread protests from March to July as the country faced a worsening economic crisis, leading to the flight from the country of the-then President Gotabaya Rajapakshe in July, there appeared signs of the repression of minorities easing. The incoming president, Ranil Wickremesinghe, said that it would not continue the previous administration's 'one country, one law' policy, and he celebrated the country's ethnic and religious diversity in a speech to parliament in August.[91] In the wake of the latest UNHRC resolution on Sri Lanka, he noted that reconciliation is a priority and appointed a cabinet subcommittee, presided by himself to address the matter.[92]

A bill to amend the draconian Prevention of Terrorism Act, in place since 1979 and which allowed arbitrary detention, was passed by the parliament in March, allowing detainees to challenge their detention in court, giving detainees right to counsel, and making it mandatory for the magistrate to visit detainees.[93] But, according to the United Nations, the amendments do not fully comply with the country's human rights obligations under international law and some of the most 'problematic' provisions of the act have not been addressed in the amendment either.[94]

During widespread protests across the country from March to July 2022, the country's ethnic and religious and minorities joined hands with the majority groups demanding the ouster of the president in face of the growing economic crisis.[95] However, the

Commissioner for Human Rights, 2022, https://www.ohchr.org/en/documents/reports/ahrc515-situation-human-rights-sri-lanka-comprehensive-report-united-nations-high.

91 Ibid.

92 'Sri Lanka to appoint cabinet subcommittee on reconciliation chaired by president', *EconomyNext,* 18 October 2022, https://economynext.com/sri-lanka-to-appoint-cabinet-subcommittee-on-reconciliation-chaired-by-president-101281/.

93 Sandasen Marasinghe and Camelia Natheniel, 'PTA Bill passed with majority', *Daily News*, March 23, 2022, https://www.dailynews.lk/2022/03/23/local/275466/pta-bill-passed-majority.

94 'Press Briefing Notes on Sri Lanka', United Nations Office of the High Commissioner for Human Rights, February 25, 2022, https://www.ohchr.org/en/press-briefing-notes/2022/02/press-briefing-notes-sri-lanka.

95 Tasnim Nazeer, 'Sri Lanka protests transcend ethnic, religious divisions', *The Diplomat*, April 20, 2022, https://thediplomat.com/2022/04/sri-lankas-protests-transcend-ethnic-religious-divisions/.

Tamil minority in the north and the east could not protest, fearing retaliation since they have to face the military while protestors in the rest of the country are dealt with by the police.[96] Activists said that protests in the north and the east against the government was much rarer since security forces would not show restraint the way they had in the capital and elsewhere in the country. Treatment by the authorities depended on who the protestors were and where they were.[97]

Despite Wickremesinghe's conciliatory words towards minorities, they are wary of him. Particularly since he was the prime minister during the post-2019 Easter bombings riots in which 250 people were killed. Further, his ascension to the presidency was made possible by the Buddhist-Sinhalese nationalists who dominate the parliament.[98]

Many developmental policies and economic measures were proposed to take Sri Lanka out of its current economic crisis, but they are top-down measures that bypass the provincial council architecture that is a central demand of the minority communities. Furthermore, there are no signs that provincial council elections will be held.

During the economic crisis, dozens of Tamil families also left for the Indian state of Tamil Nadu after selling their possessions.[99] Tensions between the majority Sinhalese-Buddhist and Tamil-Hindu communities continued to simmer during the period under review as evidenced by a court order in July to remove new constructions of a Hindu temple and a Buddhist temple in

96 Kritigha Narayanan, 'How Sri Lanka's crisis impacted its Tamil minority', *DW*, July 14, 2022, https://www.dw.com/en/how-has-sri-lankas-economic-crisis-impacted-its-tamil-minority/a-62470563.

97 Nick Marsh, 'Sri Lanka: The divisions behind the country's united protests', *BBC*, May 4, 2022, https://www.bbc.com/news/world-asia-61295238.

98 Niro Kandasamy, 'Sri Lankas's crisis is not just about the economy but a long history of discrimination against minority groups', *The Conversation*, July 14, 2022, https://theconversation.com/sri-lankas-crisis-is-not-just-about-the-economy-but-a-long-history-of-discrimination-against-minority-groups-186747.

99 Blessy Mathew Prasad, 'Steady trickle of Sri Lankan refugees in Tamil Nadu', *The Citizen*, July 10, 2022, https://www.thecitizen.in/amp/world/steady-trickle-of-sri-lankan-refugees-in-tamil-nadu-288592.

Mullaitivu district in Northern Province.[100] In June, the army had facilitated the building of a Buddhist temple on the site.[101]

With the Sri Lankan Penal code criminalising same-sex activity between consenting adults, members of LGBTIQA+ community have been denied their rights in the county. In March, the United Nations Office of the High Commissioner for Human Rights said that the criminalisation means that 'discrimination, violence and harassment of the lesbian, gay, bisexual, transgender and intersex community in Sri Lanka will continue with impunity' and called on decriminalisation of same-sexual sexual activity.[102] A bill has been presented in parliament to decriminalise same-sex activity and President Wickremesinghe in September said that the government would not oppose the bill. But he also said it would be at the discretion of lawmakers on how they vote on the bill.[103]

100 Rasula Dilhara Gamage, 'Court orders removal of new constructions in Mullaitivu kovil, temple', *Daily News*, July 18, 2022, https://www.dailynews.lk/2022/07/18/law-order/283234/court-orders-removal-new-constructions-mullaitivu-kovil-temple.

101 United Nations Office of the High Commissioner for Human Rights, 'Situation of human rights in Sri Lanka', United Nations Office of the High Commissioner for Human Rights, 2022, https://www.ohchr.org/en/documents/reports/ahrc515-situation-human-rights-sri-lanka-comprehensive-report-united-nations-high.

102 United Nations Office of the High Commissioner for Human Rights, 'Sri Lanka: Criminalisation of same-sex sexual activity breached rights of a LGBTI activist, UN women's rights committee finds', United Nations Office of the High Commissioner for Rights, March 23, 2022, https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-criminalisation-same-sex-sexual-activity-breached-rights-lgbti.

103 'Sri Lankan Prez says Govt won't oppose Bill to decriminalize homosexuality', *Business Standard*, September 12, 2022, https://www.business-standard.com/article/international/sri-lankan-prez-says-govt-won-t-oppose-bill-to-decriminalise-homosexuality-122091200038_1.html.

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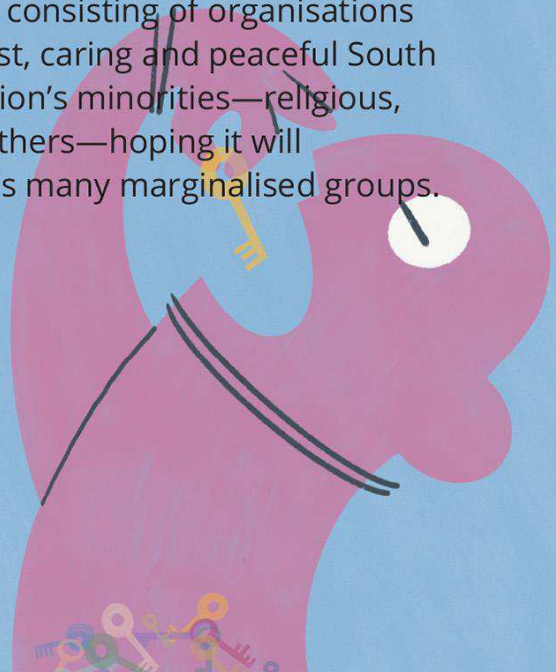
The condition of minorities in South Asia, home to a fifth of humankind, is grim, to say the least. Religious, ethnic and linguistic minorities face persecution; Dalits suffer structural violence; and women and girls besides other gender minorities are subjected to deep-seated intersectional discrimination. This is the outcome of poor commitment by South Asian states to protecting and promoting human and minority rights, and poor implementation of the measures that do exist. Behind much of the failure is South Asian states' poor engagement with international human rights mechanisms.

The South Asia State of Minorities Report 2022: Weakening Human Rights Commitments and Its Impact on Minorities presents overviews from Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka on how each of the states have performed in their commitment to human rights standards, and how they deliver, across civil and political as well as social, economic and cultural rights for their minorities.

This volume is planned as a tool for advocacy. It is hoped that these annual reports on outcomes for minorities and the quality of state provisioning will spur public debate in the region and create the conditions for state parties, and regional and international mechanisms to give serious consideration to issues of minorities. The purpose of the initiative is to promote equal citizenship and equal rights for all citizens, a central challenge of the 'deepening democracy' agenda in the region, and to highlight the alarmingly narrow civic space for minorities, including human rights defenders, journalists and activists.

This publication is the sixth in the series, following the earlier South Asia State of Minorities Reports: *Mapping the Terrain (2016), Exploring the Roots (2018), Refugees, Migrants and the Stateless (2019), Minorities and Shrinking Civic Space (2020), and Hate Speech Against Minorities (2021)*. These reports are put together by the South Asia Collective, consisting of organisations and human rights activists that dream of a just, caring and peaceful South Asia by documenting the condition of the region's minorities—religious, linguistic, ethnic, caste, and gender, among others—hoping it will contribute to better outcomes for South Asia's many marginalised groups.



The South Asia Collective

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