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UNITED NATIONS HUMAN RIGHTS COMMITTEE

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**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UN HUMAN RIGHTS
COMMITTEE IN VIEW OF THE COMMITTEE'S
EXAMINATION OF INDIA'S FOURTH PERIODIC REPORT
UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND
POLITICAL RIGHTS**

Submitted on 3rd June 2024

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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Introduction

1. During the 141st session, from 1st to 23rd July 2024, the UN Human Rights Committee ('the Committee') will examine India's implementation of and compliance with the provisions of the International Covenant on Civil and Political Rights ('ICCPR'), including in light of India's 4th periodic report under article 40 of the ICCPR.¹
2. In light of the above, the International Commission of Jurists (ICJ) wishes to draw the Committee's attention to significant concerns arising from India's failure to comply with its obligations under the ICCPR, and the consequences for the protection of certain Covenant rights. In particular, the submission addresses:
 - a) Independence of the judiciary and the administration of justice – articles 2 and 14;
 - b) Violations of right to life, the prohibition of torture and the right to liberty, and specifically torture, extrajudicial killings and enforced disappearances – articles 2, 6, 7, 9 and 16;
 - c) Arbitrary prosecutions of human rights defenders – articles 9, 14, 19, 21 and 22;
 - d) Arbitrary restrictions on human rights defenders – articles 19, 21 and 22;
 - e) The Citizenship Amendment Act and the National Register of Citizens – article 2, 24 and 26;
 - f) Freedom of peaceful assembly and association – articles 2, 9, 14, 19, 20, 21, 22 and 26.

II. Independence of the Judiciary and the administration of justice – articles 2 and 14

3. For several decades now the Indian Supreme Court has resisted the executive's interference in judicial appointments and in 2015 struck down the executive's effort to introduce a National Judicial Appointments Commission, holding that it would undermine judicial independence.²
4. Presently, the selection of judges in India is carried out by a 'Collegium' comprising the Chief Justice of the Supreme Court and four other senior judges of the Supreme Court. Only the executive has the power to withhold appointments, effectively a veto power, from among the names suggested by the Supreme Court Justices.³
5. At present, the system of selection of judges lacks transparency and assessment of objective criteria for selection.⁴ The Constitution of India and the Supreme Court's

¹ Human Rights Committee, [Fourth periodic report submitted by India under article 40 of the Covenant due in 2020](#), CCPR/C/IND/4, 22nd September 2021. The Committee's review will also be based on the Committee's [List of issues prior to submission of the fourth periodic report of India](#), CCPR/C/IND/QPR/4, 22nd August 2019, and India's implementation, if any, of the Committee's previous Concluding observations of 1997, Human Rights Committee, [Concluding Observations of the Human Rights Committee on India](#) CCPR/C/79/Add 81, 4th August 1997.

² Judgment of 16 October 2015, Supreme Court of India, [Supreme Court Advocates-on-Record Association and Anr. v. Union of India](#)

³ V. Venkatesan, "[Judiciary vs. Executive: Turf war intensifies over judge appointments](#)", in *Frontline Magazine*, 8 December 2023

⁴ "[My fight is for transparency, says Justice Chelameshwar](#)" in *The Hindu*, 28 November 2021

jurisprudence govern the system of selection, appointment, promotion and transfer of judges. The current system, however, lacks adequate safeguards to insulate it from external influence or improper motive. For example, the ICJ is concerned that the system of elevation of High Court judges to the Supreme Court and the system of transfer of judges between High Courts lacks transparency and objective and predetermined criteria. Therefore, it is open to arbitrariness, with the potential to function as disguised sanctions.⁵

6. Lately, the ICJ has been concerned about the executive using its power to prevent the appointment of judges who are known not to align with its own interests.⁶ Former Judges and senior lawyers of the Supreme Court have written and spoken about these concerns. The practice of retired judges taking up employment with the ruling party is prevalent and undermines the independence and impartiality of the judiciary by indicating a predetermined position or bias while in office. It also serves as a signal to sitting judges of potential rewards from the executive in return for favorable judicial decisions.⁷
7. The conduct of judges in office is regulated by impeachment by parliament, as provided for in the Constitution, or by in-house disciplinary proceedings. In light of international law and standards, the ICJ considers that impeachment is disproportionate for every instance of judicial misconduct.⁸ In addition, the organization is concerned that the in-house disciplinary proceedings are not transparent or enforceable due to lack of statutory or Constitutional basis.⁹
8. The ICJ is particularly concerned about the following:
 - a) judicial administration, including the assignment and listing of cases, as being arbitrary and designed to favour the executive;
 - a) despite the existence of rules and procedures governing the assignment of cases, there have been serious allegations that the Chief Justice has listed matters before judicial benches that are seen to favour the executive;¹⁰
 - b) judgments of the Supreme Court appear to show that they favour executive action in contravention of settled law and jurisprudence,¹¹ and, at the same time, there have been

Retd. Justice A.P. Shah, "[Speak and speak loudly: The four top judges showed by Indian Judiciary needs urgent reform](#)" in *Scroll.in*, 9 March 2018

⁵ Kaushik Deka, "[You are transferred, my Lord. But why?](#)" in *India Today*, 22nd november 2023

⁶ V. Venkatesan, "[Judiciary vs. Executive: Turf war intensifies over judge appointments](#)", in *Frontline Magazine*, 8 December 2023

⁷ Retd. Justice A.P.Shah, "[Post-retirement appointments: a danger to judicial independence](#)", in *The Hindu*, 16 February 2023

⁸ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007)

⁹ Retd. Justice A.P. Shah, "[A manifesto for judicial accountability in India](#)" in *The Wire*, 29 July 2019

¹⁰ Sheryl Sebastian, "[Dushyant Dave Writes To CJI DY Chandrachud About Change Of Benches In 'Sensitive Matters'; Says Listing Rules Are Disregarded](#)", in *Live Law*, 6 December 2023

Saurav Das, "[Contrary To SC's Rules Of Assignment, At Least 8 Politically Sensitive Cases Moved To One Judge In 4 Months](#)", in *Article 14*, 7 December 2023

¹¹ Gautam Bhatia, "[The fear of executive courts](#)" in *The Hindu*, 14 December 2018

Gautam Bhatia, "[The Supreme Court in the Modi era](#)", Carnegie Endowment, 13 March 2024

instances of sitting judges making public statements praising the Prime Minister,¹² both of which indicate institutional and individual bias;.

- c) there have been notable instances of the Supreme Court abdicating its duty to protect human rights, undermining fair trial rights and the right to personal liberty, as well as criminalizing human rights defenders and public interest litigation;¹³
- d) in other instances the Supreme Court has appeared to be a passive bystander in the face of anti-Muslim communalism and persecution of Muslims, abdicating its role to scrutinize and check social and executive majoritarianism. Examples include the Supreme Court's judgment allowing a Hindu Temple to be built on the site of the Babri Masjid,¹⁴ demolished by members of the BJP and allied groups in 1992, and the Court's reluctance to act against anti-Muslim hate speech.¹⁵

Recommendations

1. Ensure a transparent system of selection and appointment of Judges that is insulated from executive interference.
2. Review and place necessary restrictions on the practice of post-retirement employment of judges by the executive, in order to maintain the independence of judges while in office.
3. Review the role of the executive in appointment, promotion/elevation and transfer of judges and ensure that executive power is not used with improper motive.
4. Ensure the administration and functioning of the judiciary is in adherence with article 14 of the ICCPR, the UN Basic Principles on Independence of the Judiciary and General Comment No.32 of the Human Rights Committee on the right to equality before courts and tribunals and to a fair trial.

III. Violations of right to life, the prohibition of torture and the right to liberty, and specifically torture, extrajudicial killings and enforced disappearances – articles 2, 6, 7, 9 and 16

9. The ICJ is particularly concerned about continued extrajudicial killings by the police and security forces, enforced disappearances, and torture in prisons and jails.
10. Pervasive abuse of power by the police and security forces in India, made possible due to gaps in the domestic legal framework, and exacerbated by the lack of accountability and

¹² Anurag Bhaskar, "[Is It Ethical For A Sitting Judge To Publicly Praise the Prime Minister?](#)", in *Live Law*, 29 February 2020

¹³ Umang Poddar, "[Courts penalizing petitioners upturn a primary role of the judicial system](#)", in *Scroll.in*, 22 January 2022

¹⁴ The Babri mosque situated in the State of Uttar Pradesh was demolished in December 1992 by mobs. Members of the BJP and its affiliate's the Rashtriya Swayamsevak Sangh and the Vishwa Hindu Parishad have been held responsible for inciting the mob and for participating in the demolition. The Babri mosque has been the subject of a longstanding dispute, where members of the Hindu community claim that the mosque was built on the site of a Hindu temple demolished centuries prior. This dispute was litigated as a land title dispute in the Supreme Court, which in 2022 held in favor of the Hindu petitioners.

¹⁵ Shivasundar, "[Indian Jurisprudence Seems to Be Bending to the Will of Hindutva Forces](#)", in *The Wire*, 3 January 2023

immunity enjoyed by public servants is common to each of the above-mentioned concerns.

Requirement of sanction for prosecution

11. Indian law requires prior sanction for prosecution of a public servant, including for human rights violations like torture, extrajudicial killings and enforced disappearances. Sanction is required under ordinary criminal law,¹⁶ as well as special laws like the Armed Forces Special Powers Acts.¹⁷ These legal provisions require the State or Central government, as applicable, to grant sanction (that is, official permission and approval) for the criminal prosecution of public servants. Despite judgments of the Indian Supreme Court holding that the prior sanction requirement should not be used “merely as a cloak for doing an objectionable act” but only to carry out those acts required to be done in the course of a public servant’s duty,¹⁸ sanction for prosecution for criminal conduct arising from the perpetration of human rights violations is routinely denied.
12. There are judgments of the Supreme Court that explicitly hold that when it is shown *prima facie* that the conduct of a public servant amounts to a criminal offence, particularly, those constituting human rights violations, the conduct cannot be said to be done in the course of official duty and hence the question of requiring prior sanction for prosecution does not arise.¹⁹ Despite such progressive jurisprudence on the issue, the existence of the statutory prior sanction requirement allows the prosecuting authorities to use such legislative requirement to prevent criminal trials and accountability in cases of human rights violations.
13. In the case of the extrajudicial killing of Ishrat Jahan and three other men in the State of Gujarat in 2004, pursuant to an investigation a charge sheet was filed against senior officers of the Gujarat police, who purportedly carried out the extrajudicial killings on instructions of senior political leaders of the State. The trial court took cognizance of the charge sheet, however, each of the accused police officers was discharged before the trial could even begin, on grounds of want of prior sanction.²⁰ The government of Gujarat refused to sanction the prosecution of these police officers, pointing to the inherent conflict of interests and institutional shielding preventing accountability and ultimately resulting in impunity for serious human rights violations.

¹⁶ Section 197 of The Code of Criminal Procedure, India

¹⁷ Section 6 of the Armed Forces Special Powers Act, applicable to parts of the north-eastern States and Section 7 of the Armed Forces Special Powers Act applicable to Kashmir, India

¹⁸ Judgment of 1 May 2012, Supreme Court of India, General officer Commanding versus CBI (AIR 2012 SC 1890) at Para 22

¹⁹ Judgment of 7 September 1971, Supreme Court of India, Harihar Prasad v. State of Bihar (1972) SCC (Cri) 409 and Judgment of 14 March 1997, Supreme Court of India, Sambhoo Nath Misra v. State of U.P and Ors AIR 1997 SC 2012

²⁰ Sparsh Upadhyay, “[Ishrat Jahan Case- No Question Of Any Fake Encounter, Nothing To Suggest That Victims Weren't Terrorists: CBI Court Discharges 3 Policemen](#)” in *Live Law*, 31 March 2021 and “[Ishrat Jahan Case: Spl. CBI Court Discharges D G Vanzara and N K Amin](#)”, in *Live Law*, 2 May 2019

14. In all six cases of extrajudicial killing cases from Manipur,²¹ where investigation has been completed and charge sheets have been filed against the accused police officers and security personnel, sanction was denied by the Union Government under AFSPA, 1958 and victim families have had to approach the High Court and Supreme Court on the question of prior sanction for prosecution, which remains pending before the Court's.²²
15. Sanction for prosecution for human rights violations is granted rarely, and typically only when the victims approach the Constitutional Courts. As a result, trial courts are not mandated to take cognizance and initiate trials in the majority of cases of human rights violations where charge sheets are filed against the police and security forces.
16. With respect to this, the then UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, stated, "The Special Rapporteur is concerned with the obstacles to hold public servants, including members of the security forces, accountable, particularly due to statutory immunities provisions. Section 197 of the CPC requires prior sanction from the concerned government before cognizance can be taken of any offense by a public servant for criminal prosecution. This provision effectively renders a public servant immune from criminal prosecution. It has led to a context where public officers evade liability as a matter of course, which encourages a culture of impunity and further recurrence of violations".²³
17. With regard to impunity for sexual violence by security forces, in 2013 an exception was introduced into the legal provision requiring prior sanction for prosecution; since then no sanction is required for the prosecution of public servants for any sexual offence, including rape.²⁴ While this is a positive development, there continues to be lack of criminal accountability for sexual violence committed by the police, prison officers and armed forces.²⁵

Lack of impartial investigation

²¹ *In the Extra Judicial Execution Victim Families Association (EEVFAM) case involving 1,528 extra-judicial killings by the police and security forces in Manipur, thanks to Supreme Court's intervention, the CBI (Central Bureau of Investigation) found the armed forces of the union involved in the unlawful killing of the civilians in at least six of the 30 cases in which it has completed investigation. But the union government has denied prosecution sanction in all six.*

Interview with Babloo Loitongbam, "[AFSPA cannot protect unlawful killings', says human rights defender documenting abuses by the security forces](#)" in *The Leaflet*, 15 December 2021

²² "[Manipur encounters: SC asks HC to decide issue of sanction to prosecute in 6 months](#)" in *The Print*, 20th October 2022

²³ Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Mission to India, A/HRC/23/47/Add.1, (2013)

²⁴ See Section 197 of the Code of Criminal Procedure, India,

Explanation.--For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, 4[section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).

²⁵ PTI, "[275 cases of custodial rape registered from 2017-2022; offenders range from police to armed forces: NCRB](#)", Deccan Herald, 25 February 2024,

18. The ICJ is concerned about the near impossibility of a fair and competent investigation into instances of torture, extrajudicial killings and other human rights violations by the police and security forces. It has been judicially acknowledged that when the perpetrators of such violations are police officers, the institutional affiliation between the accused and the investigator results in the investigation being conducted in a manner that shields the perpetrator.²⁶ Moreover, in these cases, it is the perpetrators who have access to and control over documentary and other evidence surrounding the investigation of their alleged crimes.
19. In trials against law enforcement officials for human rights violations, the Courts have recurrently observed that such cases are often dogged by a “defective investigation” and found destruction, tampering and suppression of evidence.²⁷ To remedy this situation, the National Human Rights Commission issued guidelines from 1997 onward, requiring, among other measures, inquests and magisterial inquiries to be conducted into custodial deaths and deaths in the course of police action, and that the investigating officers should be drawn from a police station distinct from that of the perpetrators. These measures, however, have yet to ensure effective, fair and *bona fide* investigations into human rights violations by the police and security forces in line with international standards and relevant Covenant rights.²⁸ The lack of a statutory or enforceable basis for fair and effective investigations into human rights violations by law enforcement personnel perpetuates a climate of impunity and makes criminal accountability near impossible.

Torture

20. Torture is not recognized and criminalized as a criminal offence in India. The Indian Penal Code under Section 330 and Section 348²⁹ criminalizes the “causing of hurt” and the “wrongful confinement” for the purpose of extorting a confession, however, these offences do not satisfy the scope of torture as defined under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) or under article 7 of the Covenant.
21. In 2017 the Law Commission of India recommended a Prevention of Torture Bill 2017 as part of its Report on “Implementation of the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment through legislation”.³⁰

²⁶ Judgment dated 9 May 1995, Supreme Court of India, *State of M.P v. Shyam Sundar Trivedi* (1995) 4 SCC 262

²⁷ Judgment dated 17 July 2018, Supreme Court of India, *Tehseen S. Poonawalla v. Union of India* (2018) SCC Online SC 696

Judgment dated 9 May 1995, Supreme Court of India, *State of M.P v. Shyam Sundar Trivedi* (1995) 4 SCC 262

Judgment dated 12 April 2004, Supreme Court of India, *Zahira Habibulla H. Sheikh v. State of Gujarat*; AIR 2004 SC 3114

²⁸ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017

²⁹ Section 330 of the Indian Penal Code
Section 348 of the Indian Penal Code

³⁰ Government of India, Law Commission of India, [‘Implementation of ‘United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment’ through Legislation’](#), 273rd Report, October 2017

In 2010³¹ and again in 2022,³² a stand alone 'Prevention of Torture' Bill was introduced in the Lok Sabha (lower house of Parliament). While these bills have been introduced, no further steps have been taken by the Union Government to enact legislation on torture.

22. In any event, each of the bills mentioned above fails to comply with India's obligations under the ICCPR, including the prohibition of torture or other ill-treatment in article 7 of the Covenant. For example, they provide for a two-year statute of limitation, which would preclude torture victims from obtaining a remedy after the expiration of this period; they also provide for immunity by requiring prior sanction from the government before permitting criminal prosecution of public servants accused of torture. In addition, these Bills provide for the imposition of the death penalty as a punishment for a person convicted of torture, in violation of the ICCPR.

23. In September 2019 in response to a petition seeking enactment of an anti-torture legislation, the Union Government submitted to the Supreme Court that enactment of legislations fell within the domain of the Parliament and the Supreme Court could not issue directions in this regard, which the Supreme Court appeared to accept.³³ However, in September 2020 the junior Home Minister stated in Parliament that there is no proposal to bring an anti-torture legislation, as it was the responsibility of State Governments to "ensure compliance with law and protect the life and property of people"³⁴. Since then, neither the Union Government nor any State Government has taken steps to enact anti-torture legislation.

Recommendations

1. Ratify the Convention against Torture and its Optional Protocol.
2. Enact standalone legislation on torture that complies with the ICCPR, the CAT and other relevant international human rights law and standards, including by adequately criminalizing torture and other ill-treatment as criminal offences.
3. Review Section 197 of the Criminal Procedure Code, which requires prior sanction from the government before cognizance can be taken of any offense allegedly committed by a public servant before criminal prosecution can take place, and remove this requirement for all instances of criminal offenses allegedly committed by public servants disclosing credible evidence of human rights violations.

Extrajudicial killings

24. Extrajudicial killings continue to be prevalent across the country. From 2016 to 2022, reports show that Chhattisgarh recorded the highest number of extrajudicial killings: 259;³⁵ Uttar Pradesh: 183;³⁶ and from 2021 onwards, Assam recorded more than 200

³¹ [The Prevention of Torture Bill, 2010](#), India

³² [The Prevention of Torture Bill, 2022](#), India

³³ Judgment dated 5 September 2019, Supreme Court of India, Dr. Ashwani Kumar v. Union of India AIR ONLINE 2019 SC 1002

³⁴ G.Kishan Reddy, Minister of State in the Ministry of Home Affairs, [Response to question asked in Indian Parliament](#), Parliamentary Proceedings, 15 September 2022

³⁵ Nidhi Jacob, "[Data check: In last six years, India has registered a case of encounter killing every three days](#)", *Scroll.in*, 28 January 2022

extrajudicial killings.³⁷ During the same period, the Chief Ministers of Uttar Pradesh and Assam are reported to have made public statements, encouraging the police to carry out extrajudicial killings portraying them as a method of ensuring law and order.

25. The Criminal Procedure Code and the Indian Penal Code mandate that a First Information Report or (FIR) is to be filed into every case of murder, including with respect to instances of extrajudicial killing. However, often FIRs are not registered against the police officers involved in the extrajudicial killing. The National Human Rights Commission issued guidelines in 1997, 2003 and 2010 and the Supreme Court in its judgment in the case *PUCL v. State of Maharashtra* in 2014 reiterated that FIRs are to be filed in all instances of extrajudicial killings. Pursuant to this, there is compliance by the police in registration of FIRs, but often FIRs are wrongly registered for the lesser offence of culpable homicide, as opposed to murder even when evidence seemingly supports murder charges. Where FIRs are registered, there continues to be lack of accountability for extrajudicial killings because of a failure to carry out a fair, independent and impartial investigation culminating in criminal trials. While domestic law requires that investigations in cases of alleged extrajudicial killings be conducted by an independent agency, investigations continue to be conducted by police officers and rely disproportionately on statements of the accused police officers as opposed to on thorough medical, forensic and ballistic verification as required by, among others, article 6 of the Covenant and the Minnesota Protocol.
26. Following an investigation, the investigating agency, typically the police of a different police station, routinely submits "closure reports" on grounds that the police used force in self-defence, despite this being in contravention of the Indian Penal Code and jurisprudence of the Supreme Court, which require a judicial determination of self-defence to be established pursuant to a trial and not to be accepted by the investigating agency during investigation.
27. In extrajudicial killings cases, the family of the victim and their legal representative are not informed of and do not have access to the investigation, including to all information relevant to the investigation. They are not informed about the closure of the case.
28. In the rare cases of extrajudicial killings where a FIR is registered and charge sheet is filed against the accused police officers or security personnel, the trial is stalled due to the statutory requirement of sanction for prosecution and the practice of viewing extrajudicial killings as conducted in the "course of official duty". In turn, this allows the State government to refuse permission for the prosecution of the accused police officers and prevents a criminal trial against the perpetrators.
29. As a result, criminal accountability of law enforcement officials for extrajudicial killings remains almost absent. With regard to more than 1528 documented instances of extrajudicial killings in the State of Manipur from 1979 to 2012, pursuant to the Supreme

³⁶ PTI, "[Supreme Court seeks status report from U.P. on 183 'police encounters'](#)" in *The Hindu*, 13 August 2023

³⁷ Arshad Ahmed, "[Shootings Of Cattle-Smugglers, Drug Peddlers, Suspected Insurgents: Inside The 20-Fold Surge In Assam's Encounter Killings](#)", Article 14, 5 April 2024

Court's Orders in *EEVFAM and Anr v. Union of India*³⁸ and the Justice Santosh Hegde Commission of Inquiry, the Central Bureau of Investigation, registered First Information Reports in only 39 cases. However, most have been closed during the stage of investigation, and in others where charge sheets have been filed, no trial has commenced due to refusal of the State Government to grant sanction for the prosecution of the law enforcement officials allegedly involved.³⁹

30. From 2018 onwards, Petitions have been filed in the Supreme Court seeking investigation and accountability for extrajudicial killings in the State of Uttar Pradesh. With respect to these cases, however, the status reports or updates submitted by the State show that no police officers have been convicted in any of them.⁴⁰
31. Criminal accountability for extrajudicial killings is not completely impossible, and there have been some instances where the police and security forces have been indicted. For example, in December 2019 a judicial commission indicted security forces for the extrajudicial killing of 17 villagers in Chhattisgarh in 2012.⁴¹ In May 2022 a Commission of Inquiry constituted by the Supreme Court of India recommended that 10 police officers of the State of Telangana be tried for the murder of four men in custody in 2019.⁴² In March 2024, the Maharashtra High Court upheld the conviction and sentence of police officer Pradeep Sharma and 13 others to life imprisonment for a 2006 "fake encounter" killing.⁴³ However, in each of these cases, extraordinary measures have been taken to ensure accountability, pointing to numerous gaps in the domestic legal framework that allow a majority of extrajudicial killings to go unaddressed.

Recommendations

1. Ensure that in all cases of alleged extrajudicial killings a FIR be registered against the perpetrators (i.e. police officers or members of the security forces) for the offence of murder (Section 302 of the Indian Penal Code) as opposed to for the offence of culpable homicide (Section 307 of the Indian Penal Code) if the evidence so warrants.
2. Ensure that investigation into the FIRs for murder be conducted by an independent agency and seeking the participation of the victim's family and in adherence with other aspects of the Minnesota Protocol.
3. Review: Section 46 of the Criminal Procedure Code of India; Section 4 of the Armed Forces Special Powers Act, 1958 of India; and the Armed Forces Special Powers Act, 1990 of India, regarding use of force to ensure that the use of lethal force be always

³⁸ Judgment dated 8 July 2016, Supreme Court of India, "[Extra-judicial Execution Victim Families Association \(EEVFAM\) v. Union India](#)"

³⁹ IFP Bureau, "[Centre blocking justice in fake encounter cases: EEVFAM](#)" in *Imphal Free Press*, 12 July 2022

⁴⁰ Prabhati Nayak Mishra, "[SC Seeks Response From Yogi Government On UP Encounter Killings](#)" in *Live Law*, 2 July 2018

⁴¹ Debobrat Ghose, "[17 killed in encounter at Chhattisgarh's Sarkeguda not Naxals, finds judicial inquiry: Villagers recall long struggle for justice](#)" in *FirstPost*, 5 December 2019

⁴² Hon'ble Justice V. Sirpurkar, [Report of the Commission of Inquiry](#), 28 January 2022

⁴³ Sharmeen Hakim, "[Fake Encounter: First Ever Conviction Of Police Officers In Mumbai Upheld By Bombay High Court, Ex-Cop Pradeep Sharma Sentenced To Life](#)" in *Live Law*, 19 March 2024

- in compliance with the Covenant and other relevant international human rights law and standards with respect to the use of force by law enforcement officials.
4. Review Section 197 of the Criminal Procedure Code of India, requiring prior sanction from the government before cognizance can be taken of any alleged offence by a public servant for criminal prosecution, and remove this requirement for all alleged criminal offences disclosing credible evidence of the commission of human rights violations, including, in particular, with respect to deaths resulting from the action of a public servant.
 5. Ensure compliance with the doctrine of command and/or superior responsibility with respect to individual criminal liability, whenever the evidence so warrants, in all cases of alleged violations of right to life by law enforcement officials, including members of the security forces.
 6. Ensure the mandatory implementation of victim-witness protection programmes in all instances of violations of right to life by police and security forces, and ensure that such protection be provided by a force that is distinct and independent from the force that is allegedly responsible for such violations.
 7. Ensure mandatory monetary compensation and rehabilitation to the victim family in all instances of violations of right to life by police or security force.
 8. Ensure that no investigation be closed or trial be concluded without providing the victim family all documents on the basis of which an investigation is being closed, all documents submitted to the National Human Rights Commission, all documents relied on during trial and also providing the victim family a mandatory right to be heard by the investigating agency, before the National Human Rights Commission and during trial.
 9. Ensure that the National Crime Records Bureau maintains accurate and disaggregated data on credible allegations of extrajudicial killings, custodial killings/deaths, torture and other deaths resulting from police action, and that this data is corroborated by the records of the National Human Rights Commission.

Enforced Disappearances

32. Enforced disappearances have been documented in the States of Punjab during the 1980s,⁴⁴ in Kashmir from the 1990s onwards⁴⁵ and in West Bengal from 2016 onwards,⁴⁶ with the police, army and border security force being allegedly responsible.
33. Despite ongoing litigation before the High Courts, Supreme Court and representations before the National Human Rights Commission and State Human Rights Commissions, the Indian State has not taken steps to ensure the investigation of or accountability for enforced disappearances.
34. Enforced disappearance is not codified as a criminal offence under domestic law and the only remedy for enforced disappearance is to file a Writ of Habeas Corpus before the High Court or Supreme Court of India. The only form of legal and institutional recognition of

⁴⁴ Bilal Kuchay, "[Families of Punjab's disappeared pin hopes on Supreme Court bid](#)", in Al Jazeera, 22 August 2019

⁴⁵ [Association of Parents of Disappeared Persons](#), Kashmir (Accessed 2 June 2024)

⁴⁶ National Human Rights Commission, India, "[NHRC told to fairly investigate into "enforced disappearance of youth off Bangla border"](#)" 15 January 2024

the occurrence of enforced disappearances is through grant of compensation to the victim family either by the State Human Rights Commission or by a Court Order.

35. India signed the International Convention for the Protection of All Persons from Enforced Disappearance (CED) in 2007, but is yet to ratify it. Even as recently as 2023 India maintained that it did not need separate legal provisions or a statute for enforced disappearances.⁴⁷

Recommendations

1. Ratify CED.
2. Enact standalone legislation or specific provisions recognizing enforced or involuntary disappearances as criminal offence, along with other provisions and procedures to ensure investigation, trial and accountability for enforced disappearances.
3. Take measures set out in the 'Recommendations' to the above sections on Torture and Extrajudicial killings, particularly, those addressing legal immunity from prosecution of public servants.

IV. Arbitrary prosecutions of human rights defenders – articles 9, 14, 19, 21 and 22

36. Human rights defenders (HRDs) in India are being targeted through the use of overbroad national security laws, particularly the Unlawful Activities Prevention Act, 1967 (UAPA), and criminal laws on sedition and hate speech. Under these legislative provisions, the Indian authorities have targeted HRDs for human rights violations, including arbitrary detention and violations of their right to a fair trial.
37. The Indian authorities have also typically interfered with HRDs' legitimate exercise of their rights to freedom of expression and association. From 2018 onwards, at least 31 HRDs had been charged in connection with two well-publicized cases: the Bhima Koregaon and Delhi Riots Cases, including under the UAPA, on allegation of membership of "terrorist organizations".⁴⁸ Notably, 20 of the 31 HRDs were arrested in 2020, after the onset of the COVID-19 pandemic. At least six of the 31 defenders are above 60 years of age and suffer from serious health problems, which have been exacerbated in custody. In July 2021, one of the HRDs, Father Stan Swamy, died in custody after repeatedly being denied bail.⁴⁹ Both in the Bhima Koregaon and Delhi Riots Cases, formal charges are yet to be framed by the prosecution and the trial is yet to start, notwithstanding the fact that people were arrested in 2018 and 2020 and have been in detention ever since.

⁴⁷ Permanent Mission to India at Geneva, "[Statement by India under Agenda Item 3: Interactive Dialogue with the Working Group on Enforced and Involuntary Disappearances](#)" at the 54th Session of the Human Rights Council (11 September - 13 October 2023) delivered by Dr. P.R. Thulasidass, Under Secretary, Geneva, 19 September 2023

⁴⁸ International Commission of Jurists, "[Punished for Protest: Violations Against Human Rights Defenders in Times of Covid-19](#)", November 2022

⁴⁹ Amnesty International and others, "[Joint Statement on the death of human rights defender Father Stan Swamy](#)" 6 July 2021

Recommendations

1. Review overbroad national security laws, particularly the Unlawful Activities Prevention Act, 1967 (UAPA), and criminal laws on sedition and hate speech to bring them in line with the ICCPR.
2. Stop the arbitrary prosecution of human rights defenders and release those arbitrarily detained.

V. Arbitrary restrictions on Human Rights Defenders – articles 19, 21 and 22

38. The free and effective functioning of civil society organizations and human rights organizations in India is being undermined through the use of a web of legislations and regulations,⁵⁰ including the Foreign Contribution Regulation Act 2010 (FCRA); Income tax Act and regulations; the Prevention of Money Laundering Act, along with regular criminal laws and the use of Central agencies like the Central Bureau of Investigation and the Enforcement Directorate.
39. Civil society organizations in India are dependent on foreign contributions (regulated by the FCRA) to be able to carry out human rights work. In September 2020, the FCRA was amended in a manner that has had the effect of imposing unreasonable restrictions on civil society organizations' access to and use of funds. The amendments impose a complete prohibition on sub-granting, a 20 percent cap on any administrative expenses drawn from foreign funds, and a requirement that organizations open a bank account to receive foreign funds only at the main branch of the State Bank of India in New Delhi.⁵¹
40. As of April 2024, the Government of India is reported to have canceled the FCRA registration of over 20,600 out of a total of 33,000 civil society organizations, purportedly for breaches of provisions of the FCRA.⁵² The bank accounts of several civil society and research organizations have been frozen and criminal and other legal proceedings have been initiated against several prominent civil society organizations, particularly those that have expressed concern about actions or policies of the present government. Notable examples include Greenpeace India; Amnesty International; Centre for Equity Studies; Lawyers Collective; Centre for Policy Research; Legal Initiative for Forest and Environment; and Citizens for Justice and Peace.

Recommendations

1. Review the Foreign Contribution Regulation Act, 2010 along with all its amendments and ensure its provisions do not have the effect of imposing arbitrary, unreasonable or disproportionate restrictions on civil society organizations in violation of India's obligations under the Covenant.

⁵⁰ A detailed report by the International Centre for Not-for Profit Law (ICNL) shows the manner in which the legal framework in India is used to impose arbitrary and unreasonable restrictions on the work of civil society organizations. Noshir H Dadrawala, "[Current Legal Framework for Civil Society in India](#)" in *International Centre for Not for Profit Law*, September 2023

⁵¹ [The Foreign Contribution Regulation \(Amendment\) Act, 2020](#), India

⁵² PTI, "[Govt cancelled FCRA licence of over 20,600 NGOs in 10 years](#)" Economic Times, 9 February 2021

2. Ensure that the FCRA, other laws and regulations that are applicable to human rights organizations, civil society organizations or not for profit organizations do not have the effect of undermining articles 19, 21, 22 of the ICCPR.

VI. The Citizenship Amendment Act and the National Register of Citizens – article 2, 24 and 26

41. The Citizenship Act was amended in 2019⁵³ (Citizenship Amendment Act, CAA) to offer a legal path to citizenship to foreign nationals from certain countries neighbouring India, including to individuals who may have entered or remained in India while undocumented, provided that they belong to certain religious minority groups, are fleeing persecution and have lived and worked in India for a certain number of years. However, foreign nationals, including migrants who may have entered or resided in India while undocumented, who are Muslims are excluded and cannot avail themselves of the provisions of the Act to obtain Indian citizenship, in violation of articles 2, 24 and 26 of the ICCPR.
42. At the same time the government initiated the process of documenting all Indian Citizens through the 'National Register of Citizens' (NRC), which recognized citizenship only on the basis of documentary proof. The NRC, which has so far been implemented only in the State of Assam,⁵⁴ has had the effect of declaring all those who were unable to prove their citizenship through documentary evidence (whether they were foreign nationals or Indian nationals) as not being Indian citizens. In light of this, Indian nationals who are Muslims and cannot prove their Indian nationality through documentation are being rendered stateless as a result of the enforcement of the NRC and will not have any recourse since, as Muslims, they cannot avail themselves of the provisions of the CAA.⁵⁵

Recommendations

1. Review the CAA and the NRC to ensure their compliance with Covenant rights, including in particular, articles 2, 24 and 26, and that people are not made stateless as a result of their implementation.

VII. Freedom of peaceful assembly and association – articles 2, 9, 14 19, 20, 21, 22 and 26

43. The manner in which the Indian government and the police have dealt with peaceful assemblies gives rise to serious concerns with respect to its compliance with articles 2, 9, 14, 19, 20, 21, 22 and 26 of the ICCPR.
44. As mentioned above, the implementation of the CAA and the NRC gives rise to serious human rights concerns, including with respect to the fact that it may potentially strip many Indian Muslim nationals of their citizenship.

⁵³ [Citizenship Amendment Act, 2019](#), India

⁵⁴ [National Register of Citizens](#), India

⁵⁵ [Citizenship Amendment Act, 2019](#), India

45. The country-wide protests that erupted across the country against the Citizenship Amendment Act and the National Register of Citizens (CAA/NRC)⁵⁶ in 2019-2020, and the protests against proposed laws affecting the entitlements of farmers in the States of Delhi, Haryana and Punjab,⁵⁷ are the most notable instances of the legitimate exercise of the rights to freedom of association and peaceful assembly in recent times.
46. In 2020, the government of India introduced three Farm Bills in Parliament,⁵⁸ which if enacted, would have had the effect of deregulating the sale of farm produce. They would have required farmers to sell directly to corporations, instead of selling their produce through the government. This, would, in turn, have removed the minimum price guarantee to which farmers in India have been entitled when selling their produce to the government. The move was met with large-scale and long drawn-out protests by farmers, trade unions and political parties, particularly in the agrarian states of Punjab, Haryana and Uttar Pradesh, all of which border the national capital of Delhi.⁵⁹ A year after the protests began the Prime Minister announced the withdrawal of the farm Bills.⁶⁰
47. The government's response to both sets of protests points to an urgent need to review the domestic legal framework guaranteeing the right to freedom of peaceful assembly. The protests against the CAA/NRC were met with a combination of refusal of permissions to protest and repression by the State, including subsequent criminalization of protestors and those against the farm laws with disproportionate use of force, including causing death.⁶¹
48. In India, the right to freedom of assembly and the right to hold protests and rallies are governed by a restrictive and prohibitive legal regime, in violation of the Covenant. This regime includes the requirement of prior intimation and permission to hold protests and it allows for prior restraint by the District Administration.⁶² The Criminal Procedure Code gives the District Administration the authority to pass administrative orders prohibiting the formation of assemblies.⁶³ The police are also given prohibitory powers. Further, the Executive (police and district administration) has powers of preventive detention, internment, powers to stop assemblies, disperse assemblies and even use force to disperse assemblies in circumstance where such use of force would not comply with the strict requirements under the Covenant as held by the Human Rights Committee.

⁵⁶ [Citizenship Amendment Act, 2019](#), India and [National Register of Citizens](#), India

⁵⁷ Human Rights Watch, "[India: Protect Farmers Right to Peaceful Protest](#)" 29 February 2024

⁵⁸ [Farmers' Produce Trade and Commerce \(Promotion and Facilitation\) Act, 2020](#), India; and [The Farmers \(Empowerment and Protection\) Agreement on Price Assurance and Farm Services Bill, 2020](#), India; and [The Essential Commodities \(Amendment\) Ordinance, 2020](#), India.

⁵⁹ "[Farm Laws: India farmers end protests after government accepts demand](#)" in *BBC*, 9 December 2021

⁶⁰ Nistula Hebbar, "[Narendra Modi government relents, decided to spike farm laws](#)" in *The Hindu*, 19 November 2021

⁶¹ Hadi Khan, "[Farmers protest Highlights: Deaths, clashes and major events](#)" in *Times of India*, 27 February 2024

⁶² Police Acts and Standing Orders of each State in India

⁶³ Section 144 of the Code of Criminal Procedure, India

49. In addition, freedom of assembly has been denied altogether in parts of the North-Eastern States and Kashmir for decades under “special laws” and legal regimes giving power to security forces to shoot on sight.⁶⁴
50. Protests in India are increasingly criminalized, with protestors being arrested and implicated in criminal conspiracy cases under “terror laws”, as in the case of Umar Khalid, Devangana Kalita and others as a result of their participation in the anti-CAA protests.⁶⁵ The arrest of human rights defenders in the ‘Bhima Koregaon’ conspiracy case and their criminalization under “terror laws” can be traced back to the Elgar Parishad, a conference of Dalit rights groups and activists that was held in January 2018.⁶⁶
51. In Uttar Pradesh, protesters against the CAA were held in preventive detention, unlawful detention, criminal cases, destruction of their property, recovery of damages, demolition of their houses and a series of other punitive actions like their faces being published on public hoardings. Arbitrary forms of punishment, bearing no nexus with the objective of assemblies’ dispersal, have been increasingly deployed in recent years. Additionally it has been documented that these measures are disproportionately deployed against individuals hailing from the Muslim community.⁶⁷
52. The Covid-19 pandemic was used to further curb the right to assembly under the guise of measures to control the spread of Covid. In Delhi, the Shaheen Bhag protest site was cleared shortly after the lockdown was declared,⁶⁸ and protest signs and graffiti were taken down despite there being no relationship between the taking of such measures and containment of the coronavirus.⁶⁹ During the same period, an assembly of Muslims, the Tabliqi Jamaat, was held responsible for the spread of covid, despite no evidence to substantiate the same. Members of the Muslim community were held responsible for spreading covid, and many of those who attended the Jamaat had criminal cases against them taken out under various criminal law provisions and under the Epidemic Diseases Act and the Foreigners Act.
53. The selective repression and criminalization of assemblies is evident from the different approaches the Government has taken to dissenting views and to assemblies, where public gatherings related to majoritarian or religious events or political rallies of the ruling party are not subjected to the same ‘prevent, prohibit and penalize’ legislative framework and implementation measures.⁷⁰ For example, in February 2020, a rally in support of the

⁶⁴ Armed Forces Special Powers Act, 1958, India and Armed Forces Special Powers Act, 1990, India

⁶⁵ [“Punished for Protest: Violations against Human Rights Defenders in times of Covid-19”](#) International Commission for Jurists, November 2022

⁶⁶ Saumya Kalia, [“The cases and charges against the Bhima Koregaon 16 | Explained”](#) in *The Hindu*, 18 May 2024

⁶⁷ [“Indian officials demolish houses of Muslims after protests”](#) in *BBC*, 13 June 2022

[“Bulldozer injustice in India”](#), Amnesty International, 7 February 2024

[“India: surge in summary punishments of Muslims”](#) Human Rights Watch, 7 October, 2022

⁶⁸ [“Coronavirus: Shaheen Bagh protest cleared after 100 days amid lockdown in Delhi”](#) in *Financial Express*, 24 March 2020

⁶⁹ Fatima Khan, [“Art installations at Shaheen Bagh, Jamia removed by Delhi Police, graffiti painted white”](#) in *The Print*, 24 March 2020

⁷⁰ Vrinda Grover, [“Assessing India’s Legal Framework on the Right to Peaceful Assembly”](#) International Centre for Not-for-Profit Law, December 2021

Citizenship Amendment Act, which was addressed by members of the ruling party, saw slogans calling for “traitors to be shot”, traitors being a coded reference to Muslims in India, with no consequences.⁷¹ In December 2021, a Hindus’ religious assembly of Hindu’s was addressed by Yati Narsinganand, a priest, who called for the genocide of Muslims during the assembly. No FIR was registered against him until the Supreme Court intervened, and no action was taken to prevent similar assemblies after this.⁷²

54. Social media and digital media too are being subjected to new regimes of restrictive laws, which give the Government vague and overbroad powers of surveillance and censorship.⁷³

Recommendations

1. Repeal and revise those laws, regulations and standing orders that provide over broad powers to the executive and the police to curtail Freedom of Assembly.
2. Refrain from the unwarranted use of criminal law, including legal provisions purporting to counter “terrorism”, against people exercising their right to freedom of association and peaceful assembly.
3. Withdraw charges under the Unlawful Activities Prevention Act, 1967 and sedition against protestors involved in protests against the Citizenship Amendment Act.
4. Ensure that, in the course of regulating peaceful assemblies, police personnel use minimal force and only as a last resort and in compliance with the strict requirements for the use of force under the Covenant.
5. Ensure the criminal accountability of police personnel responsible for unlawful use of force resulting in death of protesters.
6. Review restrictions on online content, social media and digital media that amount to censorship, and/or arbitrarily and unreasonably restrict freedom expression.
7. Desist from selective, including discriminatory, restrictions on freedom of expression, freedom of assembly or association on the basis of religion and other characteristics protected under article 2 and 26 of the ICCPR.

⁷¹ PTI, “[Goli Maro...” slogans at pro-CAA rally in Hyderabad](#)”, in *Times of India*, 3 February 2020

⁷² Samarth Grover, “[Narsinghanand Organises 3-Day Hate Speech Conclave in Haridwar](#)”, in *The Quint*, 22 December 2021

⁷³ [Internet Freedom Foundation](#) (accessed on 2nd June 2024)