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World Report 2017 - India

Limits on free speech and attacks on religious minorities, often led by vigilante groups that claim to be supporters of the ruling Bharatiya Janata Party (BJP), are an increasing concern in India. In 2016, students were accused of sedition for expressing their views; people who raised concerns over challenges to civil liberties were deemed anti-Indian; Dalits and Muslims were attacked on suspicion they had killed, stolen, or sold cows for beef; and nongovernmental organizations (NGOs) came under pressure due to India's restrictive foreign funding regulations.

A crackdown on violent protests in Jammu and Kashmir beginning in July killed over 90 people and injured hundreds, fueling further discontent against government forces. Impunity for police and security forces largely continued amid new allegations of torture and extrajudicial killings, including reports of sexual assault and other abuses by security forces in the central Indian state of Chhattisgarh.

There were also some positive developments in 2016. The Narendra Modi government took steps toward ensuring greater access to financial services such as banking, insurance, and pensions for economically marginalized Indians and launched a campaign to make modern sanitation available to more households. In July, the Supreme Court of India took a strong stand against impunity for security forces, ruling that the Armed Forces (Special Powers) Act (AFSPA) does not protect soldiers from prosecution for abuses committed while deployed in internal armed conflicts. The court also gave new life to a challenge to a discriminatory colonial-era law criminalizing homosexuality.

Security Forces Abuses and Lack of Accountability

Indian law makes it difficult, if not impossible, to prosecute public officials. Section 197 of the Criminal Procedure Code bars courts from recognizing any offenses (except sexual offenses) alleged to have been committed by public servants in the discharge of their official duties unless the central or a state government permits prosecution. In August, a special court discharged Gujarat police officer Rajkumar Pandian from a 2005 extrajudicial killing case under this provision. Pandian was the 12th defendant to be discharged in the case.

In rare cases in 2016, police were held accountable for abuses. In January, four policemen in Mumbai were sentenced to seven years in prison for their role in the death of a 20-year-old man in police custody. In April, 47 policemen were sentenced to life in prison for involvement in the killing of 11 Sikhs in 1991 in the Pilibhit district of Uttar Pradesh state.

Despite calls for repeal of the Armed Forces Special Powers Act, soldiers continue to have immunity from prosecution when deployed in areas of internal conflict. In July 2016, however, the Supreme Court of India, in a decision ordering an investigation into 1,528 cases of alleged extrajudicial killings in Manipur state, ruled that the AFSPA does not provide immunity to security force personnel who use excessive or retaliatory force, and that every alleged extrajudicial killing should be investigated. The confession of a Manipuri policeman in January that he had acted on orders to kill more than 100 suspected militants between 2002 and 2009 exposed how police had adopted illegal practices long associated with the army and paramilitary forces.

In October, authorities resisted calls for investigation into the killing of eight prisoners who escaped a high security prison in Madhya Pradesh state, fueling concerns that any wrongdoing by police would go unpunished.

Violent protests erupted in July after the killing of Burhan Wani and two other Hizb-ul-Mujahedin militants in an armed exchange with government forces in Jammu and Kashmir. In all, over 90 protesters and two police officers were killed, and hundreds of others were injured. The Central Reserve Police Force, a paramilitary unit, defended the use of shotguns that fired pellets and resulted in hundreds of eye injuries, even as they told the Jammu and Kashmir High Court that “it was difficult to follow the standard operating procedure given the nature of the protests.”

Security forces operating against Maoist insurgents continue to be accused of serious human rights violations, including sexual assault. Numerous tribal villagers have been arbitrarily arrested as Maoist sympathizers. In July, security forces in Odisha killed five tribal villagers, including a 2-year-old child, claiming they were killed in crossfire during anti-Maoist operations, an assertion disputed by the National Commission of Scheduled Tribes.

In June, after 21-year-old tribal woman Madkam Hidke was killed in an alleged gunfight with armed Maoists in Chhattisgarh’s Sukma district, family members and rights activists alleged that security personnel had forcibly picked her up from her home, gang raped her, and then killed her. In August, security forces killed a 19-year-old in Bastar region in Chhattisgarh in what activists alleged was an extrajudicial killing.

Treatment of Dalits, Tribal Groups, and Religious Minorities

Hindu vigilante groups attacked Muslims and Dalits over suspicions that they had killed, stolen, or sold cows for beef. The violence took place amid an aggressive push by several BJP leaders and militant Hindu groups to protect cows and ban beef consumption.

In March 2016, a Muslim cattle trader, Mohammed Mazlum Ansari, 35, and a 12-year-old boy, Mohammed Imteyaz Khan, were found hanging from a tree in Jharkhand state, their hands tied behind their backs and their bodies bruised. In August, a man was killed in Karnataka state by members of a nationalist Hindu group while transporting cows.

In July, four men in Gujarat were stripped, tied to a car, and publicly beaten with sticks and belts over suspicions of cow slaughter.

The government’s continuing failure to rein in militant groups, combined with inflammatory remarks made by some BJP leaders, has contributed to the impression that leaders are indifferent to growing intolerance.

A 2016 report on caste-based discrimination by the UN special rapporteur on minority issues noted that caste-affected groups continue to suffer exclusion and dehumanization. In January, the suicide of Rohith Vemula, a 25-year-old Dalit student, drew renewed attention to entrenched caste-based discrimination in Indian society, and sparked nationwide protests by students and activists calling for reforms in higher education.

In June, a special court in Gujarat convicted 24 people for their involvement in the mass killing of 69 people by a Hindu mob in Gulberg Society, a Muslim neighborhood in Ahmedabad, during the 2002 Gujarat riots. While pronouncing the verdict, the court called the killings the “darkest day in the history of civil society.” But some victims’ families, lawyers, and rights activists criticized the acquittals of senior BJP leaders and a police official.

Freedom of Speech

Authorities continue to use sedition and criminal defamation laws to prosecute citizens who criticize government officials or oppose state policies. In a blow to free speech, the government in 2016 argued before the Supreme Court in favor of retaining criminal penalties for defamation. The court upheld the law.

In February, authorities arrested three students at the Jawaharlal Nehru University in Delhi under the sedition law for alleged anti-national speech, acting on complaints by members of the Akhil Bharatiya Vidyarthi Parishad (ABVP), the student wing of the ruling BJP. These arrests led to widespread protests over the arbitrary use of the sedition law.

In August, police in southern Karnataka state filed a sedition case against Amnesty International India based on a complaint by ABVP, alleging that anti-Indian slogans were raised at a meeting organized by Amnesty on abuses in Kashmir. Police later claimed, however, that they did not have sufficient evidence to proceed with charges. The same month, an actor-turned-politician in the state also faced sedition charges after she praised the friendship and courtesy she received in Pakistan.

In August, the Karnataka High Court called the state government “clearly paranoid” for pressing sedition charges against three people, including two former policemen, for organizing a protest seeking better police wages and working conditions.

In Chhattisgarh, journalists, lawyers, and civil society activists faced harassment and arrest. In March, the Editors Guild of India reported that media in Chhattisgarh state were “working under tremendous pressure” from authorities, Maoist rebels, and vigilante groups.

Civil Society and Freedom of Association

The Modi government continues to use the Foreign Contribution Regulation Act (FCRA), which regulates foreign funding for civil society organizations, to cut off funds and stymie the activities of organizations that question or criticize the government or its policies. In April 2016, Maina Kiai, the UN special rapporteur on freedom of assembly and association, analyzed the FCRA and said that restrictions imposed by the law and its rules “are not in conformity with international law, principles and standards.”

In May, the government temporarily suspended the FCRA status of the Lawyers Collective, an organization founded by Indira Jaising, a former additional solicitor general, and her husband, Anand Grover, a former UN special rapporteur on the right to health. The Lawyers Collective accused the government of attempting to disempower and weaken the organization because of its work assisting people in cases challenging Modi government policies. In June, three UN special rapporteurs released a statement raising concerns over the suspension and calling on the government to repeal FCRA. In November, the government refused to renew FCRA for 25 NGOs, including several prominent human rights groups.

Even as authorities were using FCRA to tighten restrictions on NGOs, the government amended the law in March to retroactively legalize funding by foreign entities to political parties.

Women’s Rights

Despite some high-profile rape and sexual assault prosecutions, new reports of gang rapes, domestic violence, acid attacks, and murders of women in 2016 continued to spotlight the need for concerted government action to improve women’s safety and ensure prompt police investigation of such crimes. Women and girls with disabilities in particular continue to face barriers to accessing justice for violence against them.

In March, the Bombay High Court directed the Maharashtra state government to ensure that women are not denied entry to any place of worship that allows men access. Following the decision, two temples in the state opened their inner sanctum to women. In August, the High Court further ordered that women be allowed to enter the Mumbai-based Muslim shrine, Haji Ali. A case pending before the Supreme Court at time of writing will determine whether women of menstrual age are allowed to enter the Kerala-based Sabarimala Ayyappa Hindu temple. Sabarimala is one of the few Hindu temples to restrict entry of women aged 10 to 50, saying menstruating women are impure. In April, the Supreme Court had observed that “[g]ender discrimination in such a matter is unacceptable.”

In October, the government told the Supreme Court that the practice of triple *talaq* (giving Muslim men the right to unilaterally divorce their wives by uttering the phrase “I divorce you” three times), a part of Muslim personal law, violates fundamental constitutional rights and inhibits gender equality. The government’s statement was made in response to petitions filed by the organization Muslim Women’s Quest for Equality and others seeking to have triple *talaq* deemed unconstitutional.

Children’s Rights

In January 2016, the new Juvenile Justice Act came into force, permitting prosecution of 16- and 17-year-olds in adult court when charged with serious crimes such as rape and murder. The law was enacted despite strong opposition from children’s rights activists and the National Commission for Protection of Child Rights.

In July, the parliament approved a new law against child labor that bans all forms of employment of children below age 14, with an exception for children of all ages who work in family enterprises where such work does not interfere with their schooling. Indian activists opposed the law saying it left children from poor and marginalized communities open to exploitation in the absence of effective implementation of the right to education law, emphasizing that most child labor occurs invisibly within families.

Violent protests in Kashmir that began in July 2016 led to disruption in children’s education as schools were forced to close for months; at least 32 schools were burned down and several were taken over by paramilitary forces who set up temporary camps inside.

Sexual Orientation and Gender Identity

In February 2016, the Supreme Court of India allowed a challenge to section 377 of the penal code to proceed, referring the case to a five-judge bench. The colonial-era provision, which the court had upheld in 2013, criminalizes same-sex relations between adults. In June, several well-known LGBT professionals filed a petition in Supreme Court arguing that section 377 violates the right to life and personal liberty.

In August, the government introduced a new bill in parliament on the rights of transgender persons. The bill was flawed, however, by provisions that were inconsistent with the 2014 Supreme Court ruling that recognized transgender individuals as a third gender and found them eligible for quotas in jobs and education.

Rights of People with Disabilities

Women and girls with psychosocial or intellectual disabilities in India continue to be locked up in overcrowded and unsanitary state mental hospitals and residential institutions, without their consent, due to stigma and the absence of adequate community-based support and mental health services. After a Human Rights Watch report revealed the range of abuses such women face in institutions, the National Commission for Women took up its first-ever study of the issue.

India's Upper House of Parliament passed a new mental health bill in August 2016. The law fails, however, to comply fully with the United Nations Convention on the Rights of Persons with Disabilities, including its provision that people with disabilities should enjoy legal capacity on an equal basis with others in all aspects of life, with appropriate measures to provide support they may require in exercising their legal capacity.

Death Penalty

There were no executions in 2016, but some 385 prisoners remained on death row. Most of the prisoners belong to marginalized communities or religious minorities. Indian courts have recognized that the death penalty has been imposed disproportionately and in a discriminatory manner against disadvantaged groups in India.

Foreign Policy

Relations between India and Pakistan deteriorated in 2016. Following the outbreak of renewed violence in Jammu and Kashmir in July, the government of Pakistan called on the UN secretary-general for an independent inquiry and plebiscite under UN supervision.

The Indian government rejected Pakistan's allegations and request, accusing Pakistan of stirring up trouble in the region and of using terrorism as an instrument of state policy. Meanwhile, Prime Minister Narendra Modi called attention to what he called "atrocities" committed by Pakistan in Balochistan and Pakistan-administered Kashmir in his speeches, including on India's Independence Day. Tensions further escalated in September after the Indian government claimed its security forces had attacked militant sites inside Pakistan in response to an attack on an Indian army base in Jammu and Kashmir that killed 19 soldiers.

India's voting record on rights issues at the UN was disappointing. In May, the government abstained from voting on a bid by the Committee to Protect Journalists, an international press freedom group, for UN accreditation. In July, the government abstained on a resolution that created a UN expert post to address discrimination against LGBT persons and voted in favor of amendments to weaken the mandate, saying India's Supreme Court was still to decide on the issue of lesbian, gay, bisexual, and transgender (LGBT) rights.

India pushed Nepal to adopt an inclusive constitution that accommodated the aspirations of minority groups in the southern plains adjoining the Indian border. India continued to press Sri Lanka to address the demands of minority Tamils.

India and US strengthened security collaboration. In July, Modi addressed a joint session of the US Congress, noting a shared commitment to combating climate change and terrorism.

In October, India hosted the BRICS (Brazil, Russia, India, China and South Africa) summit. While the prime minister spoke of partnering to address security challenges and economic uncertainties, there was no mention of working to uphold international human rights principles.

In October, India ratified the Paris agreement on climate change, which 195 countries adopted in December 2015.

Key International Actors

A US Congressional Commission held a hearing in July 2016 on the human rights situation in India, coinciding with Modi's visit to Washington. The hearing spotlighted issues of violence against marginalized communities and religious minorities such as Muslims and Christians.

A 2016 report by the US Commission on International Religious Freedom said religious tolerance had "deteriorated" and "religious freedom violations" had increased in India. During his visit to India in June, US Senator Ben Cardin, a ranking member of the Senate Foreign Relations Committee, expressed concerns over religious intolerance, anti-conversion laws, and extrajudicial killings in the country. In August, during his India visit, US Secretary of State John Kerry emphasized the need to protect the rights to freedom of expression and peaceful protest.

In a joint statement following the India-European Union summit in March attended by Modi and the heads of the European Council and European Commission, the leaders "highlighted the need for efforts to ensure gender equality and respect for women and girls' human rights."

In August, UN High Commissioner for Human Rights Zeid Ra'ad al-Hussein expressed regret at the failure of Indian and Pakistani authorities to grant his office access to Jammu and Kashmir for a fact-finding visit. "Without access, we can only fear the worst," he said.

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