

**Submission from Human Rights Watch
Universal Periodic Review of India**

September 2016

In 2012, in its submission for the second Universal Periodic Review (UPR), the Indian government said that its approach towards “protection and promotion of human rights has been characterised by a holistic, inclusive and multi-pronged effort.”¹ It listed the various judicial pronouncements, laws and policies to make human rights “real and meaningful.”²

India has taken some good steps since the 2012 review. Following outrage over a brutal gang rape and murder in Delhi, the government amended its criminal laws with a view to strengthening the criminal justice response to sexual assault.³ India has also enacted new laws to protect rights including to prosecute child sex abuse and to end the degrading and inhuman practice of “manual scavenging.” It has amended laws to protect Dalit and tribal communities. The Supreme Court of India took a strong stand against impunity for security forces under laws such as Armed Forces (Special Powers) Act (AFSPA), which is used to deploy the military to resolve internal conflict situations. The court also recognized transgender individuals as a third gender, and ordered a review of its earlier judgment that had upheld a discriminatory colonial-era law criminalizing homosexuality. The National Commission for Women took up its first-ever study of the situation of women with psychosocial and intellectual disabilities in government mental health institutions.⁴

At the same time, the Indian government has failed to implement several significant UPR recommendations including ratification of the Convention against Torture and its Optional Protocol, the Convention for the Protection of All Persons against Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights with a view to abolishing the death penalty, and the International Labour Organization Convention No. 189 on domestic work. Security forces and public officials continue to enjoy effective impunity for serious human rights abuses.

Since a new national government took office in 2014, led by the Hindu nationalist Bharatiya Janata Party (BJP), there have been numerous incidents of violence against members of Dalit, Muslim, tribal and Christian communities. The government has also clamped down on civil society organizations critical of its policies. Free speech rights are coming under increasing attack, often instigated by groups that claim to be supporters of the BJP.

Impunity for Serious Human Rights Violations

The government of India has not implemented the UPR recommendation to *ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol*. It also

¹ Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21; India,” UN Doc. A/HRC/WG.6/13/IND/1, March 2012, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/85/PDF/G1211685.pdf?OpenElement> (accessed August 21, 2016).

² Ibid.

³ The Criminal Law (Amendment) Act, 2013, <http://indiacode.nic.in/acts-in-pdf/132013.pdf> (accessed August 30, 2016).

⁴ “Addressing concerns of women admitted to psychiatric institutions in India: An in-depth analysis,” National Institute of Mental Health and Neuro Sciences, Bangalore, and National Commission for Women, New Delhi, 2016, http://ncw.nic.in/pdfReports/Addressing_concerns_of_women_admitted_to_psychiatric_institutions_in_INDIA_An_in-depth_analysis.pdf (accessed September 1, 2016).

failed to implement the recommendation to *ratify the International Convention for the Protection of All Persons from Enforced Disappearance*. Both these recommendations were also made at its first UPR in 2008. Eight years later, India's proposed Prevention of Torture Bill remains pending in parliament.

A number of Indian laws make it extremely difficult to prosecute state officials implicated in abuses, promoting a culture of impunity. In particular, all government officials and members of security forces are protected under section 197 of the Criminal Procedure Code, which provides that no court can recognize any offense (with the exception of sexual offenses) alleged to have been committed by a public servant in the discharge of an official duty without the approval of the central or state government.

Military personnel are provided additional immunity when they are deployed in areas of internal conflict under the AFSPA. Permission to prosecute is rarely granted, even when an investigation shows strong evidence of human rights violations. A May 2015 report by the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions noted that "impunity remains a serious problem" and expressed regret that India had not repealed or at least radically amended AFSPA.⁵ In July 2016, the Supreme Court of India, while ordering an investigation into 1,528 cases of alleged extrajudicial killings in Manipur state, said the security forces cannot use excessive or retaliatory force under AFSPA and that every allegation of extrajudicial killing by the armed forces should be thoroughly investigated.⁶

Security forces in the Maoist-affected central Indian state of Chhattisgarh were also accused of serious human rights violations including sexual assault. Numerous people belonging to tribal communities have been arbitrarily arrested and detained as Maoist sympathizers. At the same time, journalists, lawyers, and civil society activists in the state faced harassment and arbitrary arrest.⁷

Police reforms remained stalled even as police were accused of torture and extrajudicial killings in a number of new cases. Since 2014, several police officials were reinstated in Gujarat state despite being implicated in cases of staged armed encounters, raising concerns about the government's commitment to police accountability.

On addressing impunity, India should:

- Repeal the Armed Forces (Special Powers) Act and remove effective immunity granted under the Criminal Procedure Code to security forces for violations of fundamental rights, including torture and ill-treatment, enforced disappearances, and extrajudicial killings.
- Implement police reform as recommended by the Supreme Court including the establishment of a complaint mechanism to address police abuse.
- Enact the pending Prevention of Torture Bill, but only after ensuring it conforms with the Convention against Torture. The law should not include any provisions that would grant officials effective immunity from prosecution.
- Promptly and impartially investigate and appropriately prosecute officials who order, commit, or tolerate human rights violations, including torture, custodial killings, faked armed encounter killings, and enforced disappearances.
- Ratify the Convention against Torture and its Optional Protocol.
- Ratify the Convention for the Protection of All Persons from Enforced Disappearance.

Violent Protests and Other Security Challenges

⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Follow-up to country recommendations: India, UN Doc. A/HRC/29/37/Add.3, May 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/089/34/PDF/G1508934.pdf?OpenElement> (accessed August 23, 2016).

⁶ *Extra Judicial Execution Victim Families Association (EEVFAM) and Anr. v. Union of India and Anr.*, Supreme Court of India, W.P. (CrI). No. 129/2012, July 8, 2016, http://supremecourtindia.nic.in/FileServer/2016-07-08_1467967629.pdf (accessed August 23, 2016).

⁷ "India: High Cost for Reporting in Chhattisgarh," Human Rights Watch news release, April 18, 2016, <https://www.hrw.org/news/2016/04/18/india-high-cost-reporting-chhattisgarh> (accessed August 23, 2016).

During India's second cycle review, India noted recommendations to *Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes*. Failure to ensure justice has fueled violence. The government's use of pellet guns and lethal force in response to violent street protests in Kashmir since July 2016 has led to scores of protester deaths and hundreds more injured. The paramilitary Central Reserve Police Force told the Jammu and Kashmir High Court that it had used 1.3 million pellets in 32 days, admitting that "it was difficult to follow the standard operating procedure given the nature of the protests."

In Assam, sectarian violence since 2012 between indigenous Bodo tribes and Muslim migrant settlers has resulted in deaths, injuries, and internal displacement. Protests by some tribal communities in Manipur state over new laws they think will undermine their rights to land and resources have also led to violence and deaths.

There have been several incidents of communal clashes in different parts of the country in which the authorities have failed to prosecute those responsible. In 2013, communal violence in Uttar Pradesh state killed over 60 people, mostly Muslims, and displaced tens of thousands.

Crackdown on Civil Society, Freedom of Expression

Even as it boasts of its active civil society, the Indian government has intensified the use of the Foreign Contribution Regulation Act (FCRA) to restrict foreign funding for nongovernmental organizations (NGO), particularly targeting those that criticize government policies. In April 2016, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai analyzed the FCRA and said the restrictions imposed by the law and its rules "are not in conformity with international law, principles and standards."⁸

The impact of the FCRA on Indian civil society has been severe. When the Indian Home Ministry conducts an investigation under FCRA, it often freezes the accounts of the NGO being investigated, cutting its source of funding, and forcing it to stop its activities. Such tactics have a wider chilling effect on the work of other groups. At the last UPR, India had accepted recommendations to *Continue to fully involve the national civil society in the follow-up to the UPR of India as was done for its preparation*.

The authorities have routinely used the sedition law against critics of the government, including activists and students, for alleged anti-national speech. Other overbroad and vaguely worded laws such as criminal defamation and hate speech laws are used to harass and prosecute those expressing dissenting, unpopular, or minority views. In several cases, when interest groups that claim to be offended by books, movies, or works of art pushed for censorship or harassed authors, the government allowed them a "heckler's veto" rather than protecting those under attack.⁹

On ensuring space for civil society and protecting freedom of expression, India should:

- Stop harassment of human rights defenders and amend the FCRA so that it does not interfere with the rights to freedom of expression and association and cannot be misused to choke the protected peaceful activities of civil society organizations.
- Repeal the sedition law, and in the interim instruct state governments to follow Supreme Court strictures when applying the law.

Rights of Dalits, Tribal Communities and Religious Minorities

⁸ Analysis on international law, standards and principles applicable to the Foreign Contributions Regulation Act 2010 and Foreign Contributions Regulation Rules 2011 by United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, April 20, 2016, <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAAinfo-note-India.pdf> (accessed August 25, 2016).

⁹ Human Rights Watch, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india>

During India's 2012 review, Norway's recommendation to *Take legislative action to ensure every person's right to freely choose one's religion in line with the Indian Constitution and effectively and swiftly prosecute acts of violence against religious minorities* was merely noted. However, religious minorities, especially Muslims and Christians, are feeling increasingly at risk. Some BJP leaders have made inflammatory remarks against minorities while militant Hindu groups, who often claim to be supporters of the BJP government, threatened and harassed Muslims and Christians, in some cases physically attacking them.

Hindu vigilante groups have killed six Muslims in separate incidents across the country in 2015 and early 2016 over suspicions that they were trading cows for beef. The violence took place amid an aggressive push by several BJP leaders and militant Hindu groups to protect cows, which many Hindus consider sacred, and for a ban on beef consumption. Vigilante groups also targeted Dalits in various parts of the country. After four Dalit men were stripped, tied to a car, and publicly thrashed with sticks and belts in Gujarat state over suspicions of cow slaughter, Dalits took part in widespread protests.

Churches were also attacked in several states in 2015, prompting fears of growing Hindu nationalist militancy under the BJP government. The authorities did not press robustly for prosecution of those responsible for violent attacks on minorities, and impunity for the assailants is contributing to a sense of government indifference to growing religious intolerance.

Although in 2015, the government enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, strengthening protections for Dalit and tribal communities and making it easier for them to pursue justice, it failed to implement policies to protect them from discrimination and violence. A 2016 report on caste-based discrimination by the UN Human Rights Council's Special Rapporteur for minority issues noted how caste-affected groups in India continued to suffer exclusion and dehumanization.¹⁰

In its second UPR, the government had cited the 2009 Right of Children to Free and Compulsory Education Act to show its commitment to "broad-based improvement in the quality of life in an inclusive manner."¹¹ However, Human Rights Watch research found that discrimination against children from Dalit, tribal and Muslim communities led to high dropout rates among these children.¹² According to government statistics, 64 percent of adolescent girls drop out of school. Those who drop out often end up being vulnerable to the worst forms of child labor or early marriage.

In 2013, India passed the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, committing itself to ending "manual scavenging" — the cleaning of human excreta. Seven months later, the Indian Supreme Court held that India's constitution requires state intervention to end manual scavenging and "rehabilitate" all people engaged in the practice. However, manual scavenging, a caste-designated occupation that is mainly imposed upon Dalit women, has persisted. Human Rights Watch research found that certain state governments have institutionalized the practice with local governments and municipalities employing manual scavengers.¹³

On protecting the rights of Dalits, tribal communities, and religious minorities, India should:

¹⁰ UN Human Rights Council, Report of Special rapporteur on minority issues, Rita Izsák, UN Doc. A/HRC/31/56, January 2016, <http://idsn.org/wp-content/uploads/2016/03/Special-Rapporteur-on-minority-issues-report-on-caste.pdf> (accessed August 24, 2016).

¹¹ Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21; India," A/HRC/WG.6/13/IND/1, March 8, 2012, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/85/PDF/G1211685.pdf?OpenElement> (accessed August 21, 2016).

¹² Human Rights Watch, *"They Say We're Dirty": Denying an Education to India's Marginalized*, (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/04/22/they-say-were-dirty/denying-education-indias-marginalized>

¹³ Human Rights Watch, *Cleaning Human Waste: "Manual Scavenging," Caste and Discrimination in India*, (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>

- Take immediate steps to eliminate abuses against Dalits, tribal groups, religious minorities, and other marginalized communities, provide concrete plans to implement laws and government policies to secure their protection, and monitor development programs that have largely failed to reach target groups.
- Publicly condemn crimes against vulnerable communities including Dalits, tribal groups and religious minorities, and promptly prosecute all those responsible for such crimes.
- Uphold its commitments to end manual scavenging and ensure that all support for sanitation projects require an immediate end to manual scavenging and contain effective mechanisms for ongoing monitoring to ensure the practice is discontinued.

Rights of Women, Children, and Persons with Disabilities

After the 2012 gang rape and murder of a young student in Delhi, the government undertook legal reforms, introducing new and expanded definitions of rape and sexual assault, criminalizing acid attacks, providing for a right to medical treatment, and instituting new procedures aimed at helping women and girls with disabilities who experience sexual assault through the criminal justice process. But the government has yet to put in place a systematic monitoring mechanism to ensure that state governments—tasked with implementing these laws—work cohesively with the federal government to adequately budget for their implementation, including through capacity building. Women and girls with disabilities in particular continue to face barriers to accessing justice for such crimes.

In rural areas, discriminatory and abusive practices by local authorities persist. Unofficial village councils in several Indian states, called *khaps*, made up of men from dominant castes who often enjoy political patronage, issue edicts restricting women's mobility and rights, and condemning couples for marrying outside their caste or religion.

Despite accepting recommendations during the second cycle to *Ensure better protection for persons with disabilities and the elderly*, persons with disabilities remain particularly at risk of discrimination and violence. Many are locked up in overcrowded and unsanitary state mental hospitals and residential institutions, without following existing legal procedures that allow them to challenge such institutionalization, in part due to stigma and the absence of adequate community-based support and mental health services.¹⁴ India's Upper House of Parliament passed a new mental health bill in August 2016, however, it fails to fully comply with the UN Convention on the Rights of Persons with Disabilities and does not recognize that people with disabilities enjoy legal capacity on an equal basis with others in all aspects of life with appropriate measures to provide access to support they require in exercising their legal capacity.

The government also passed amendments to the Juvenile Justice Act to permit prosecution of 16 and 17-year-olds as adults when charged with serious crimes such as rape and murder, despite concern that this violates India's commitments to child rights protections. In 2016, the government enacted a new law against child labor that bans complete employment of children below the age of 14, but allows children to work in family enterprises. Indian activists opposed the law saying it left children from poor and marginalized communities open to worst forms of exploitation since a majority of child labor occurs invisibly within families.

On rights of women, children, and persons with disabilities, India should:

- Institute an effective monitoring mechanism that oversees the implementation of laws dealing with sexual violence against women and children, including failures in police accountability. The federal government should also monitor and support state governments' provisions for appropriate support services, including psycho-social counseling, legal aid, emergency medical care, and

¹⁴ Human Rights Watch, "*Treated Worse than Animals: Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*," (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/12/03/treated-worse-animals/abuses-against-women-and-girls-psychosocial-or-intellectual>.

reproductive and sexual health services responsive to the effects of sexual violence, and training for law enforcement officers and the judiciary.

- Repeal laws permitting prosecution of 16 and 17-year-olds as adults, in line with India's international legal commitments, and in the meantime, ensure that the treatment for children under 18 in conflict with law is restorative and reformatory, and not penal.
- Respect its international obligations under the Convention on the Rights of Persons with Disabilities by ensuring new disability rights legislation guarantees the right to legal capacity for all persons with disabilities.
- Immediately introduce guidelines to ensure that people with psychosocial disabilities have access to support to participate effectively in informed consent procedures governing medical treatment.
- Support community-based mental health and support services, and seek to strengthen a community-based model instead of creating new or refurbished mental health or residential care institutions. Develop and implement a de-institutionalization policy and a time-bound action plan for de-institutionalization, based on the values of equality, independence, and inclusion for persons with disabilities.
- Ratify ILO Convention No. 189 on domestic work.

Death Penalty

In 2012, India lifted its eight-year unofficial moratorium on death penalty and by 2016 had executed three people; during the second cycle UPR, India noted all recommendations related to the abolition of the death penalty. Indian courts have recognized that the death penalty has been imposed disproportionately and in a discriminatory manner against disadvantaged groups in India.

On the death penalty, India should:

- Immediately reinstate a moratorium on executions and work toward complete abolition of capital punishment.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights with a view to abolishing the death penalty.

Rights of Lesbian, Gay, Bisexual, and Transgender Persons

India has a mixed record on rights of lesbian, gay, bisexual, and transgender (LGBT) persons. In its second UPR, the Indian government cited as a positive development the 2009 Delhi High Court judgment that struck down the law that criminalized same-sex relations.¹⁵ However, the law was reinstated by the Supreme Court in 2013. Currently, the Supreme Court has ordered a review of the 2013 ruling based on a number of curative petitions.

In April 2014 the Supreme Court recognized transgender individuals as a third gender and found them eligible for quotas in jobs and education. However, a bill introduced in 2016 to protect the rights of transgender persons contained several provisions inconsistent with the Supreme Court ruling,

On rights of LGBT persons, India should:

- Repeal section 377 of the Indian Penal Code, which criminalizes consensual same-sex relations among adults.
- Revise the Transgender Persons (Protection of Rights) Bill, 2016, after consultation with transgender communities to bring it in line with international human rights law and the directions of the Indian Supreme Court.

¹⁵ Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21; India," UN Doc. A/HRC/WG.6/13/IND/1, March 2012, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/85/PDF/G1211685.pdf?OpenElement> (accessed August 21, 2016).