



UNITED NATIONS HUMAN RIGHTS COUNCIL

**27<sup>th</sup> Session of the Working Group on the Universal Periodic Review  
April - May 2017**

**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE  
UNIVERSAL PERIODIC REVIEW OF INDIA**

Submitted on 16 September 2016

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# **SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UNIVERSAL PERIODIC REVIEW OF INDIA**

## **Introduction**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of India.
2. In this submission, the ICJ raises concern about the following issues:
  - a. discrimination and violence based on sexual orientation and gender identity;
  - b. death penalty;
  - c. impunity and accountability;
  - d. freedom of speech, expression and association;
  - e. international human rights instruments.
3. With respect to each of the above-mentioned concerns, the ICJ calls upon the Working Group on the UPR and the Human Rights Council to make a number of recommendations to the Indian authorities.

## **(a) Discrimination and violence based on sexual orientation and gender identity**

### **Criminalization of same-sex relations**

4. In its second UPR, the Government of India accepted a recommendation to "Study the possibility of eliminating any criminalisation of same sex relations". Despite this commitment, at the time of writing, same-sex relations continued to be criminalized in the country.
5. Section 377 of the Indian Penal Code criminalizes voluntary "carnal intercourse against the order of nature".<sup>1</sup> This provision has been used as a tool to persecute, including through prosecutions, persons for their real or perceived sexual orientation and gender identity, including through blackmail, extortion, and police abuse. The Supreme Court in its 2014 decision in *National Legal Services Authority v Union of India* (the NALSA case) acknowledged this, noting that Section 377 was "used as an instrument of harassment and physical abuse against Hijras and transgender persons".<sup>2</sup>
6. In 2013, 13 men were arrested under section 377 in Hassan.<sup>3</sup> In July 2014, the Bangalore police arrested eight people under section 377.<sup>4</sup> In this case, seven men were blackmailing the eighth after having sex with him. In October 2014, a man was arrested under section 377 after his wife caught him having an affair with another man on camera.<sup>5</sup> According to data published by India's National Crime Records Bureau, 1148 cases were reported under section 377 in 2014, and 1347 cases were reported in 2015.<sup>6</sup>
7. In 2009, the Delhi High Court in the case of *Naz Foundation v. Government of NCT of New Delhi and Others* had read down Section 377 to exclude consensual same-sex intercourse from the range of conduct criminalized. However, in 2013

on appeal, the Supreme Court reversed the 2009 Delhi High Court ruling and effectively recriminalized homosexuality.<sup>7</sup> In February 2016, the Supreme Court admitted the curative petition filed by the petitioners, and referred it to a larger bench.<sup>8</sup> The larger bench is yet to be constituted.

8. There have been at least two attempts to amend section 377 at the legislative level. In December 2015 and then in March 2016, Shashi Tharoor, an MP from the opposition Congress party, attempted to introduce a Bill to repeal Section 377 in the Lower House of Parliament.<sup>9</sup> In both cases the Lok Sabha voted against the introduction of this Bill.
9. By allowing the criminalization of consensual same-sex conduct, section 377 has facilitated numerous human rights violations, including violations of the non-discrimination principle and of the rights to equality before the law and equal protection of the law, liberty and security of person, free expression, health, and privacy. Section 377 has also perpetuated homophobic and transphobic attitudes in India, leading to discrimination and violence against LGBT individuals.<sup>10</sup> It has created an environment in which State authorities, including the police, not only fail to protect LGBT individuals, but perpetrate further human rights violations against them with impunity.
10. The Indian government has also not promoted protections against discrimination and violence on the basis of sexual orientation and gender identity as a member of the Human Rights Council. It abstained during the vote on Human Rights Council Resolution 32/2 of 30 June 2016 on Protection against violence and discrimination based on sexual orientation and gender identity.

## **Transgender rights**

11. In 2014, in the NALSA case, the Indian Supreme Court affirmed transgender persons' right to their self-identified gender, and directed the government to grant legal recognition of the same and take specific steps to ensure equality and non-discrimination for transgender persons. It also directed the state and central governments to take some concrete steps to address the marginalization of transgender persons.<sup>11</sup>
12. Since then, while some governmental agencies have taken important steps towards implementing the NALSA decision, several promises in the decision remain unrealized.<sup>12</sup> ICJ interviews and media reports indicate that, along with the perpetuation of social stigma and discrimination, violence and abuse by law enforcement officials, including the police, and private actors continue to be prevalent and are often perpetrated with impunity against members of the transgender community in India. Individuals also continue to be at risk because of criminalization under various laws, including Section 377 and laws criminalizing beggary and sex work. In the State of Karnataka, for example, the police continue to be allowed to record the names of "eunuchs" in the jurisdiction, purportedly "in order to prevent or suppress or control undesirable activities".<sup>13</sup>
13. In April 2015, the Rajya Sabha, the Upper House of Parliament, unanimously passed a "Rights of Transgender Persons Bill". This was a private members' bill, and aimed to implement some of the core promises of the NALSA decision. This Bill was later introduced in the Lok Sabha, but has not been passed.<sup>14</sup>

14. Later in 2015, the Ministry of Social Justice and Empowerment made available on its website another draft of a Union (central government) Bill on the same subject, with some amendments, asking for public inputs. This initiative was widely criticized since the public consultation time initially allowed was only two weeks –and therefore inadequate; however, the consultation time was eventually extended by another week. In July 2016, a government version of the Transgender Persons (Protection of Rights) Bill 2016, was approved by the parliament, and has now been introduced in the Lok Sabha.
15. However, the Bill’s definition of who is a “transgender person”, and the process of gender recognition it outlines are inconsistent with the principle of self-recognition of gender identity, as well as the spirit of the NALSA decision. The provisions of the Bill do not allow persons seeking a change in the gender identity assigned to them at birth to identify as male or female, but only as transgender. The Bill requires a recommendation from two authorities – a District Magistrate and a District Screening Committee – before a certificate of identity can be issued. Furthermore, the lack of adequate provisions on employment, education, anti-discrimination measures, as well as the lack of penalties for offences committed, are deeply problematic and at odds with the Supreme Court’s directions in the NALSA judgment.<sup>15</sup>

#### **(b) Death penalty<sup>16</sup>**

16. India has carried out two executions since 2012: Afzal Guru (2013) and Yakub Memon (2015). Afzal Guru was convicted and sentenced under the Prevention of Terrorism Act, and Yakub Memon under the Terrorist and Disruptive Activities Act. Both laws have since been repealed and were heavily criticized because their provisions violated human rights law.<sup>17</sup> According to the National Crime Records Bureau, 95 people were sentenced to death in 2014.<sup>18</sup>
17. In 2014, in the case of *Shatrughan Chauhan*, the Supreme Court laid down important guidelines for safeguarding the interest of the death row convicts.<sup>19</sup> A 2015 Law Commission of India’s report also recommended that “the death penalty be abolished for all crimes other than terrorism related offences and waging war”.<sup>20</sup>
18. Despite these developments, India continues to retain the death penalty for several offences,<sup>21</sup> including for some non-lethal crimes.<sup>22</sup> Moreover, the number of offences that can result in the imposition of the death penalty upon conviction has increased. For example, the 2013 Criminal Law Amendment Act introduced the death penalty as a possible punishment for certain categories of rape.<sup>23</sup> In 2016, the Bihar Excise (Amendment) Act, 2016 and the Anti-Hijacking Act both introduced the death penalty for acts that do not constitute “most serious crimes” as defined under international human rights law.<sup>24</sup>

#### **(c) Impunity and accountability**

19. Several “special laws” in India operate in regions “experiencing conflict”, including the northeast, Kashmir and certain central Indian states. These include the Armed

Forces Special Powers Act, 1958 (AFSPA); the Jammu and Kashmir (J&K) AFSPA, 1990; the J&K Public Safety Act; the National Security Act; the Unlawful Activities Prevention Act; and several state-level "Disturbed Areas" Acts.

20. Some contain vague provisions giving security forces overly broad powers inconsistent with the Indian authorities' obligation to respect the right to life;<sup>25</sup> others authorize long periods of administrative detention,<sup>26</sup> and facilitate several other human rights violations, including rape, torture, extrajudicial killings, and enforced disappearances. To date, many instances disclosing credible evidence of such violations remain uninvestigated.<sup>27</sup>
21. The AFSPA (both 1958 and 1990) gives armed forces the power to arrest without warrant, to enter and search any premises, and in certain circumstances, "fire upon or otherwise use force, even to the causing of death", in "disturbed areas".<sup>28</sup> While it was reported that the AFSPA had been lifted in the state of Tripura,<sup>29</sup> no implementing notification to this effect has been passed and the state remains militarized.
22. These laws also contain sanction provisions – meaning they require permission from the government before any member of the security forces can be prosecuted in a civilian court for certain crimes, including offences arising from the commission of grave human rights violations.<sup>30</sup> Sanction provisions serve to entrench impunity as they are rarely, if ever, granted in the case of human rights violations.
23. Laws governing the armed forces – such as the Army Act - also contain provisions allowing members of the armed forces charged in connection with complaints of grave human rights violations to be tried in military courts instead of civilian courts. While there has been at least one instance of a military court finding army personnel guilty of human rights violations in Kashmir,<sup>31</sup> people accused of offences arising from serious human rights violations should be tried in civilian courts.<sup>32</sup>
24. The National Human Rights Commission has limited powers to investigate allegations of human rights violations by the Armed Forces.<sup>33</sup>
25. In 2012, the NGO Extra Judicial Execution Victims Family Association and Human Rights Alert filed a petition at the Supreme Court of India, alleging that between 1979 and 2012, security forces in Manipur extra-judicially executed 1528 people. In 2013, a court-appointed fact-finding commission studied six of these cases, and found that the deaths were not lawful.<sup>34</sup> In a 2016 order, the Supreme Court asked for more information about each of these cases, and noted that all deaths caused by armed forces should be investigated.<sup>35</sup> The case is still pending.
26. In the state of Chhattisgarh, where security forces exercise broad powers in the name of "counter insurgency" operations, reports of extrajudicial killings and sexual violence are rarely investigated.<sup>36</sup> Since 2012, there have been multiple instances of lawyers,<sup>37</sup> activists,<sup>38</sup> and journalists working on human rights violations being harassed and threatened.<sup>39</sup>

27. Following the killing of Burhan Wani in July 2016, security forces in Kashmir used excessive and lethal force in response to large-scale public demonstrations. There were instances of stone pelting from some protestors as well. At the time of writing, over 78 people were killed and over 10,000 injured.<sup>40</sup> Pellet guns – considered non-lethal by the government – are responsible for over 50% of these injuries, which have included blindness and other serious eye damage.<sup>41</sup> Children and passers-by were also injured, and reports indicate that security forces attacked ambulances and hospitals.<sup>42</sup>

#### **(d) Freedom of speech, expression and association**

28. The state has used a variety of means, including bringing criminal charges of “sedition” and “defamation” against human rights defenders, NGOs, journalists and others to silence dissent.<sup>43</sup> Section 295A of the Indian Penal Code – a provision criminalizing “blasphemy” – has also been used to target speech deemed “offensive” of “religious sentiments”.<sup>44</sup> Restrictions introduced in legislation pertaining to the funding of NGOs have been used to limit the space and functioning of civil society.

29. For example, using the bureaucratic obstacles and vague and overbroad provisions of the Foreign Contribution Regulation Act (FCRA) – the law governing foreign funding to non-governmental organizations in India – the government cancelled the registration of about 4000 groups in 2012 and 10,000 groups in 2015.<sup>45</sup> The FCRA has been used to disproportionately target and harass NGOs and activists critical of governmental priorities and policies – including Greenpeace, Lawyers Collective, and Sabrang Trust.<sup>46</sup>

30. The State has also imposed long curfews, limitations on Internet, and phones, restrictions on newspapers,<sup>47</sup> and arrested a prominent human rights defender.<sup>48</sup>

#### **(e) International instruments**

31. India has not ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); and the International Convention for the Protection of All Persons from Enforced Disappearance. It has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol of the CAT; the Second Optional Protocol to the International Covenant on Civil and Political Rights; and the Rome Statute of the International Criminal Court.

32. In its second UPR, the Government of India accepted a recommendation to finalize the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. However, torture is still not specifically criminalized. The first draft of the Prevention of Torture Bill 2010 was inconsistent with the CAT and other applicable international human rights law on several grounds. After representations from civil society groups, the government released a revised version with several improvements.<sup>49</sup> However, as yet, no action has been taken to enact the Bill.

33. In its second UPR, the Government of India accepted a recommendation to continue cooperating with Special Procedures and accept, in particular, requests for visits from Special Rapporteurs. India has issued a standing invitation to all Special Procedures. However the Special Rapporteur on torture reported that India has been unresponsive to requests for a visit.<sup>50</sup>

### **Recommendations**

34. The ICJ therefore calls upon the Working Group and the Human Rights Council to recommend to the Indian authorities the following;

- a. Decriminalize consensual same-sex sexual conduct;
- b. Engage in meaningful public consultation with members of the transgender community, with a view to substantially revising the Transgender Persons (Protection of Rights) Bill, 2016, to bring it in line with the NALSA decision and international human rights law;
- c. Immediately declare a moratorium on executions with a view to abolishing the death penalty for all crimes and in all circumstances; commute all subsisting death sentences;
- d. Repeal the AFSPA and other state and central level laws which similarly violate international human rights law;
- e. Conduct prompt and independent investigations in all instances disclosing credible evidence of human rights violations perpetrated by or with the alleged involvement of the security forces; hold perpetrators to account, and respect the rights of victims including to compensation;
- f. Repeal section 197 of the Code of Criminal Procedure, and other sanction provisions; and grant permission in all pending applications relating to allegations of gross human rights violations;
- g. Repeal or amend sections the Army Act 1950 to ensure that military tribunals do not have jurisdiction to investigate or prosecute allegations of gross violations of human rights;
- h. Repeal section 124(A) [sedition], 499 and 500 [criminal defamation] and 295A [speech and acts outraging religious sentiments], and conduct a thorough and consultative review of Indian law with a view to reforming provisions that limit freedom of speech and expression in a manner inconsistent with international human rights law;
- i. Repeal the FCRA and ensure laws regulating non-governmental organizations are not used in an arbitrary or discriminatory manner against NGOs critical of the government and to silence dissent;

- j. Become a party to the CAT; OPCAT; the Second OP to the ICCPR; the CED; the Migrant workers convention; and the Rome Statute; and facilitate the visits of all UN Special Procedures

## ENDNOTES

<sup>1</sup> "Section 377, Indian Penal Code: Unnatural offences - Whoever voluntarily has carnal inter-course against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

<sup>2</sup> *National Legal Services Authority v UOI*, available here: <http://supremecourtindia.nic.in/outtoday/wc40012.pdf>. The court said "this case would demonstrate that Section 377, though associated with specific sexual acts, highlighted certain identities, including Hijras and was used as an instrument of harassment and physical abuse against Hijras and transgender persons," at para 18.

<sup>3</sup> For more details about the case, see: <http://altlawforum.org/gender-and-sexuality/13-people-arrested-under-section-377-of-the-indian-penal-code-in-november-2013/>.

<sup>4</sup> For more details about this case, and why the use of 377 was so problematic, see page 26 of CSMR, "Dignity First" available at <https://www.scribd.com/document/249770116/Dignity-First-One-Year-of-Resistance-to-Re-Criminalisation-of-LGBT-Lives>.

<sup>5</sup> See: <http://www.firstpost.com/living/booked-under-section-377-bangalore-techies-story-gets-extra-punch-thanks-to-outdated-law-1780029.html>.

<sup>6</sup> The NCRB only started publishing this data in 2014. It can be accessed here: <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Table%201.3.pdf>.

<sup>7</sup> *Suresh Kumar Koushal v Naz Foundation*, available here: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41070>. The Court reversed the 2009 judgment of the High Court, adding "the competent legislature shall be free to consider the desirability and propriety of deleting Section 377 IPC from the statute book or amend the same as per the suggestion made by the Attorney General".

<sup>8</sup> See: <http://www.thehindu.com/news/national/supreme-court-refers-plea-against-section-377-to-5judge-bench/article8183860.ece>. For more details on the case and its background, see the following ICJ briefing paper: <http://icj2.wpengine.com/wp-content/uploads/2016/03/India-QA-art-377-Advocacy-Analysis-brief-2016-ENG.pdf>.

<sup>9</sup> March 2016 vote: <http://indianexpress.com/article/india/india-news-india/decriminalising-homosexuality-lok-sabha-votes-against-shashi-tharoor-bill-again/>; December 2015 vote: <http://indianexpress.com/article/india/india-news-india/shashi-tharoor-bill-to-decriminalise-homosexuality-defeated-in-ls/>.

<sup>10</sup> This includes instances of blackmail, extortion, and violence: for example, <http://www.reuters.com/article/us-gay-rights-india-idUSKBN0MY00P20150407>; <http://www.businessinsider.com/r-blackmail-and-abuse-gay-sex-ban-in-india-stirs-violence-2015-4?IR=T>; <http://america.aljazeera.com/articles/2014/4/17/living-in-fear-lgbtsinindia.html>.

<sup>11</sup> *National Legal Services Authority v UOI*, available here: <http://supremecourtindia.nic.in/outtoday/wc40012.pdf>. Among other things, the Court held that "(1) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature. (2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender. (3) We direct the Centre and the State Governments to take steps to treat them as socially and

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educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments. (4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues. (5) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal. (6) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities. (7) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment. (8) Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables. (9) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life. .... We are informed an Expert Committee has already been constituted to make an in-depth study of the problems faced by the Transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this Judgment and implemented within six months", paras 129-130.

12 For more details see the following ICJ briefing paper on the need to implement the NALSA decision: <http://www.icj.org/india-government-must-implement-nalsa-judgment-and-protect-transgender-people/>.

13 Section 36A of the Karnataka Police Act: Power to regulate eunuchs.- The Commissioner, may, in order to prevent or suppress or control undesirable activities of eunuchs, in the area under his charge, by notification in the official Gazette, make orders for,- (a) preparation and maintenance of a register of the names and places of residence of all eunuchs residing in the area under his charge and who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences, (b) filing objections by aggrieved eunuchs to the inclusion of his name in the register and for removal of his name from the register for reasons to be recorded in writing; (c) prohibiting a registered eunuch from doing such activities as may be stated in the order. (d) any other matter he may consider necessary. The government has stated that this will be repealed soon, but this has not yet been done: <http://timesofindia.indiatimes.com/city/bengaluru/Govt-agrees-to-remove-eunuch-from-Police-Act/articleshow/50556225.cms>.

14 See: <http://www.icj.org/india-support-comprehensive-and-consultative-transgender-rights-bill/>.

15 For more details regarding the bill, please see the following ICJ briefing paper: <http://www.icj.org/wp-content/uploads/2016/08/INDIA-TG-BILL-CRITIQUE-Advocacy-Analysis-brief-2016-ENG.pdf>.

16 The ICJ opposes the death penalty under any circumstances, and considers its use to constitute a violation of the right to life and freedom from cruel, inhuman or degrading punishment.

17 The TADA allowed for long periods of pre-charge detention, made confessions to the police admissible in court, limited the right to appeal, defined offences in a broad and vague way, and reversed the presumption of innocence in certain cases: The POTA also contained some similar provisions: <https://www.amnesty.org/en/documents/ASA20/039/1994/en/>.

18 Prison Statistics India (2014), at page 126 available here: <http://ncrb.gov.in/StatPublications/PSI/Prison2014/Full/PSI-2014.pdf>.

19 See: <https://indiankanoon.org/doc/59968841/>.

20 Law Commission of India, Report 262, and available here: <http://lawcommissionofindia.nic.in/reports/report262.pdf>. The Commission said that "Although

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there is no valid penological justification for treating terrorism differently from other crimes, concern is often raised that abolition of death penalty for terrorism related offences and waging war, will affect national security. However, given the concerns raised by the law makers, the commission does not see any reason to wait any longer to take the first step towards abolition of the death penalty for all offences other than terrorism related offences". It also added "the Commission sincerely hopes that the movement towards absolute abolition will be swift and irreversible".

21 At least 11 sections in the Indian Penal Code prescribe the death penalty. Other laws that have capital punishment include the Unlawful Activities Prevention Act, 1967; Narcotics Drugs and Psychotropic Substances Act, 1985; Maharashtra Control of Organised Crime Act, 1999; and the Army Act. A list can be found on pages 32 and 33 of the Law Commission Report.

22 See for example section 364A of the Indian Penal Code: Kidnapping for ransom, etc.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine. In August 2015, the Supreme Court upheld the constitutional validity of this section. <http://indianexpress.com/article/india/india-others/death-penalty-for-kidnap-sc-upholds-validity-of-sec-364a/>.

23 See: <http://indiacode.nic.in/acts-in-pdf/132013.pdf>.

24 Section 50 (a) of the Bihar Excise (Amendment) Act, 2016: Whoever mixes or permits to be mixed with any liquor sold or manufactured or possessed by him any noxious drug or any foreign ingredient likely to cause disability or grievous hurt or death to human beings, shall be punishable - if as a result of such an act, death is caused, with death or imprisonment for life. Section 4 (a) of the Anti-Hijacking act 2016: Whoever commits the offence of hijacking shall be punished—(a) with death where such offence results in the death of a hostage or of a security personnel or of any person not involved in the offence, as a direct consequence of the offence of hijacking.

The definition of "most serious crimes" in international law: The 1984 Safeguards Guaranteeing Protection of the Rights of those Facing Execution restricted the death penalty to "intentional crimes with lethal or other extremely grave consequences". Later the UN Secretary General stated that, "most serious crimes" meant, "offences should be life threatening, in the sense that this is a very likely consequence of the action". In 2006, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions narrowed the understanding further by defining them as "cases where it can be shown that there was an intention to kill, which resulted in the loss of life".

25 For example, see: <http://www.ici.org/india-repeal-armed-forces-special-powers-act-immediately/>.

26 The J&K Public Safety Act allows for administrative detention for up to 2 years. The National Security Act also provides for administrative detention.

27 For examples from Kashmir, please see "Structures of Violence" <http://www.jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir-2/>; and "Alleged Perpetrators" [http://kashmirprocess.org/reports/alleged\\_perpetrators.pdf](http://kashmirprocess.org/reports/alleged_perpetrators.pdf). See list of uninvestigated extrajudicial killings in the *EEVFAM v UOI* case is also illustrative.

28 See <http://www.ici.org/india-repeal-armed-forces-special-powers-act-immediately/>.

29 See <http://www.thehindu.com/news/national/other-states/tripura-withdraws-afspa-says-insurgency-on-the-wane/article7252919.ece>.

30 For example - Code of Criminal Procedure, 1973, section 45, section 132(1), section 197; Armed Forces (Special Powers) Act 1958, section 6; Armed Forces (Special Powers) Act 1990, section 7; Unlawful Activities Prevention Act 1967, section 45; The Narcotic Drugs and

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Psychotropic Substances Act (NDPS) 1985, section 59(3); Jammu and Kashmir Disturbed Areas Act 1992, section 6; Maharashtra Control of Organized Crime Act 1999, section 23(2); Jammu and Kashmir Public Safety Act 1978, section 21.

31 In 2010 three civilians were extra judicially executed by Indian soldiers in Macchil, Kashmir and later falsely identified as militants. In 2013, a court martial prosecuting army personnel for their involvement in the Macchil killings found six of them guilty and recommended life imprisonment. In September 2015, it was reported that the army confirmed these sentences. See <http://www.thehindu.com/news/national/other-states/court-martial-sentence-in-machil-fake-encounter-confirmed/article7625081.ece>.

32 Trying cases of serious human rights violations before military courts raises questions about the independence and impartiality of the tribunal and contributes to impunity. This has been reaffirmed in several international standards, including the UN Draft Principles Governing the Administration of Justice through Military Tribunals; Declaration on the Protection of All Persons from Enforced Disappearance; and Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity.

33 See section 19 of the Protection of Human Rights Act: [http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993\\_Eng.pdf](http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf). In the *EEVFAM v UOI* case, the Supreme Court said "By way of a complaint (if we may call it that) the NHRC states in the affidavit that it has written to the Central Government to increase its staff but the request has not been acted upon. It also states that to give more teeth to the guidelines issued by the NHRC, it would be appropriate if this Court directs all the States to strictly comply with them both in letter and spirit".

34 Report of the Santosh Hegde Commission: <http://www.hrln.org/hrln/images/stories/pdf/hedger-report-manipur.pdf>.

35 The order is available here: [http://supremecourtindia.nic.in/FileServer/2016-07-08\\_1467967629.pdf](http://supremecourtindia.nic.in/FileServer/2016-07-08_1467967629.pdf). For a summary of the case, see: <http://www.icj.org/india-supreme-court-opinion-welcome-move-towards-ending-afspa-impunity/>.

36 See: <http://www.caravanmagazine.in/vantage/bastar>; <http://scroll.in/article/808039/no-one-is-safe-in-chhattisgarhs-villages-women-complain-of-sexual-assault-by-security-forces>.

37 See: <http://www.caravanmagazine.in/vantage/interview-jaglaq-lawyers-evicted-bastar>.

38 See: <http://www.thehindu.com/news/national/other-states/soni-sori-attacked/article8262627.ece>.

39 See: <http://www.bbc.com/news/world-asia-india-36386258>.

40 See <http://www.ndtv.com/india-news/man-killed-during-clashes-in-south-kashmir-shopian-1456951>.

41 See <http://www.nytimes.com/2016/08/29/world/asia/pellet-guns-used-in-kashmir-protests-cause-dead-eyes-epidemic.html>.

42 See <http://www.hindustantimes.com/india-news/50-ambulances-attacked-in-kashmir-activists-blame-security-forces/story-bCmMFbOZl4x6bzzl4iXTwO.html>.

43 For example, in August 2016, an FIR was filed against Amnesty International in India for sedition linked to an event they had organized on human rights violations in Kashmir. Charges were dropped. In February 2016, student leaders and a former teacher were charged with sedition in Delhi for allegedly "anti-national" speech. In May 2016, the Indian Supreme Court upheld the constitutionality of criminal defamation: [http://supremecourtindia.nic.in/FileServer/2016-05-13\\_1463126071.pdf](http://supremecourtindia.nic.in/FileServer/2016-05-13_1463126071.pdf).

44 For example, see: <http://indiatoday.intoday.in/story/vishal-dadlani-jain-guru-tarun-sagar-jains-arvind-kejriwal-haryana-assembly-tehseen-poonawala/1/751038.html>; <http://timesofindia.indiatimes.com/india/SC-quashes-case-against-Dhoni-for-hurting-religious-sentiments/articleshow/54020333.cms>; <http://www.hindustantimes.com/bollywood/these-actors-were-charged-under-section-295a-before-kiku-sharda/story-vMJqps1bSZxQsjAOTcbBBN.html>.

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45 <http://www.hindustantimes.com/india-news/all-ngos-must-fall-in-line-and-work-under-law-rjijiu/story-Vh3jSHSLUeI5DMxR0xCmFK.html>. There are proposals to make the FCRA more stringent.

46 In 2016, the Special Rapporteur on the rights to freedom of peaceful assembly and of association found that the FCRA violated the rights to freedom of peaceful assembly and association. He concluded that "the broad objective pursued by the FCRA, the broad discretion allowed for the government in applying the law, and the measure of a total ban on access to foreign funding for those CSOs or associations found to be of a 'political nature' or acting against economic or national interest by the State is likely to disproportionately impact those associations engaged in critical human rights work, those which address issues of government accountability and good governance, or represent vulnerable and minority populations or views".

Analysis available here: <http://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteIndia.pdf>. Since then, 3 Special Rapporteurs have urged a repeal of the FCRA: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>.

47 See <http://www.hindustantimes.com/india-news/j-k-govt-bans-publication-of-newspapers-in-valley-for-3-days-to-ensure-peace/story-VbUclQOQOScIxCMmHdYrqP.html>.

48 See <http://www.aljazeera.com/news/2016/09/india-kashmir-police-arrest-activist-khurram-parvez-160916060226635.html>; [http://www.nytimes.com/2016/09/16/world/asia/india-kashmir-khurram-parvez-jkccs.html?\\_r=0](http://www.nytimes.com/2016/09/16/world/asia/india-kashmir-khurram-parvez-jkccs.html?_r=0).

49 For a detailed analysis see the following ICJ briefing paper: <http://ici.wpenqine.netdna-cdn.com/wp-content/uploads/2012/06/India-opinion-prevention-torture-legal-submission-2012.pdf>.

50 See [http://articles.economictimes.indiatimes.com/2015-03-12/news/60047860\\_1\\_requests-india-human-rights-council](http://articles.economictimes.indiatimes.com/2015-03-12/news/60047860_1_requests-india-human-rights-council).