

1. Introduction:

1.1. The Government of India has not undertaken any meaningful public consultations with the civil society in preparation for the third cycle of the UPR on India. The prevailing environment of fear and suspicion against the government has prevented the civil society from openly participating in the consultations organised by the government. Government of India has a long record of persecution of human rights defenders; particularly of those that the government is worried would speak against it.

1.2. The latest victim of this persecution is Mr. Khurram Parvez from the state of Jammu and Kashmir, who was prevented by the government from travelling to Geneva to attend the 33rd regular session of the UN Human Rights Council. The government prevented Khurram from leaving the country, and arrested him without any tenable reason at the airport.

1.3. The court granted bail to Khurram, and upon release from the custody, the state police again detained him without formal charges. At the time of submission of this report, Khurram is detained 300 kilometres away from his hometown, at Kot Bhalwal in Jammu. The government has failed to disclose any reason for his continued detention for the past seven days.

1.4. Similar is the case of Ms. Priya Pillai, who was offloaded from an airplane departing from New Delhi on January 12, 2015, when Ms. Pillai was on her way to London to address a gathering of British MPs on alleged human rights abuses committed against the tribal communities of Mahan in Madhya Pradesh State. No sensible reason was given for Ms. Pillai from traveling out of the country. Later Ms. Pillai filed a case against the government and won. However, by then the damage has been done and the government succeeded in preventing Ms. Pillai from speaking in London.

1.5. The state agencies in India enjoy absolute immunity for such excesses. The courts in India fail to effectively intervene in such circumstances.

1.6. During the 2nd cycle of the UPR on India, specific recommendations were made, requesting India to create a comprehensive framework of legal and procedural processes to protect human rights defenders (A/HRC/21/10 - Para. 138). India has taken no follow-up actions in furtherance to this recommendation. The government has taken no initiative either to legislate or to provide a protective environment for human rights defenders to undertake their work without fear of persecution. India has failed to comply with this recommendation, and continues to persecute human rights defenders.

2. Justice institutions:

2.1. During the 2nd UPR cycle, at least 9 recommendations were made, requesting India reform its justice institutions, *inter alia*, (i) to contain the practice of torture committed with impunity; (ii) to combat corruption; (iii) to protect the rights of minority communities including Dalits, women, children, indigenous communities, gay and lesbian communities; (iv) to address disappearances; (v) to end poverty - urban and rural; (vi) to end religious violence; (vii) to end delays in adjudication; and

(viii) to ensure equality before the law and equal access to justice. The government of India has not undertaken any steps to further these recommendations into effect.

2.2. **Judiciary:** Judiciary is an institution to which absolutes apply. It is either an independent and impartial judiciary, or it is not. There cannot be a 90% good judiciary and 10% corrupt, inept or unprofessional judiciary, since victims who approach the judiciary do not have an option to choose the judge to whom a complaint or case is presented.

2.3. India's judiciary has an alarmingly high number of judges who are corrupt and inefficient. Corruption, like in all other institutions in India, is a scourge that has affected the independence and efficiency of India's judiciary. It has affected judges way up at the Supreme Court of India and down at the local magistracy level. Despite evidence of corruption against Supreme Court and High Court judges produced in the Supreme Court of India, seeking the Court's intervention to address the concern, the Court has not taken any actions to stem corruption within its own realm.

2.4. Admitting the concern, a former judge of the Supreme Court, Justice Mr. Markandey Katju has said that 50% of all judges in the Supreme Court and at the High Courts are corrupt. All former Chief Justices of India have admitted that corruption in the judiciary is at alarming levels. However, so far, not a single judge has been impeached for corruption in India so far. This shows the failure and incapacity of India's judiciary and that of its government to combat corruption.

2.5. The latest in the tally were the wide and open allegations against Mr. K. G. Balakrishnan, former Chief Justice of India and Chairperson of the National Human Rights Commission. Despite compelling evidence being produced against Mr. Balakrishnan's children and immediate relatives having unfairly and economically benefited from Mr. Balakrishnan being a judge and later the Chief Justice of India, no action was initiated against the judge. He finished his term, first at the Supreme Court, as one of its longest serving Chief Justices, and later at the NHRC as its Chairperson. It was during Mr. Balakrishnan's chairmanship that the NHRC of India was rendered as one of the least accountable, and ineffective national human rights institutions of India.

2.6. India's judiciary also suffers from the lack of resources, rendering it ineffective and a useless institution. 10 or more years of delay in adjudication is hence the norm in India. India has a wide gap in its judge to population ratio. There are 18 judges per one million people as compared to 50 judges recommended by the Law Commission in its 1987 report which the Chief Justice of India had recently cited seeking an increase in the judges strength.

2.7. The sanctioned strength of the High Courts till 2014 was 906 judges and it was increased to 1,079 in June in 2015. There are 24 High Courts in the country. But despite the increase in the sanctioned strength, the High Court, as in July 2015, faced a shortage of 477 judges. The subordinate courts in the country, the backbone of justice delivery system, have a sanctioned strength of 20,502. But there are only 16,070 judicial officers serving in the courts and the shortage stood at 4,432 as on December 31, 2015.

2.8. Speaking to this concern, the Chief Justice of India, Justice T. S. Thakur, addressing the Prime Minister of India and other judges broke down and cried in a public event in April this year, pleading to the government that unless the shortage of judges is not addressed immediately, the ordinary people of India will lose complete faith in its judiciary. The government has however not done anything to address the problem, and the financial allocation for judiciary in the national budget remains negligible 0.4 per cent of the total budget. Studies reveal more than 18 states in India are not even spending 1% of the budget allocated to judiciary.

2.9. The result of this apathy is a huge number of cases pending disposal in India. According to National Judicial Data Grid there are 21,909,846 cases pending before District Courts across the country as on 4 May 2016. Out of this nearly 7,500,000 are civil cases and criminal cases are around 14,400,000. In addition to this, nearly 4,500,000 cases are pending in High Courts and 60,000 cases at the Supreme Court. In all India has around 30,000,000 cases that are pending in various courts. Of these cases 28% are above 10 years old, 53% are 5 to 10 years old, and the rest from within the five years.

2.10. **Prosecution:** India does not have an independent prosecution department. The role of the prosecutor in criminal trial is limited to presenting the case in trial. Governments appoint the prosecutors. Appointments are however not done on merits, but on political allegiances. Like the judiciary, India's prosecutors are also deeply corrupt and demand bribes for opposing or not opposing bail applications, to undertake trials and to present evidences in court.

2.11. Due to the delays in adjudication, often different prosecutors and judges undertake prosecution of a single case, thereby losing the continuity in knowledge and engagement in a given case. In addition to overwhelming dependency on unscientific evidences and oral evidences in trial, and the changes of prosecutors and judges over the period of 10 to 14 years a trial takes to complete, leads to the acquittal of the accused.

2.12. There has not been a single study undertaken by the government to assess the efficiency of the prosecutorial office and its accountability in India. In law and practice, there are no provisions to fasten accountability upon the prosecutors. Prosecutors do not receive any training for undertaking trials of complex and advanced crimes. This creates enormous difficulties due to insensitivity while handling cases involving women and children.

2.13. Prosecutors' office at most trial courts often resembles cattle sheds, with case files piled up on the floor and at all corners, and people having uncontrolled access to case records. Destruction or otherwise loss of case records henceforth is a norm, for which prosecutors accept bribes from the accused. It is a common practice in India where prosecutors summon witness to their office and arrange for the accused to threaten witnesses. Local police conspire with prosecutors in this process.

2.14. During the past two UPR cycles, despite information provided by stakeholders, not a single question was raised about India's prosecution system or about the standard of India's prosecutors. This must end.

2.15. **Policing:** During the 1st and 2nd UPR cycles there are at least more than a dozen occasion where India was encouraged to ratify the UN CAT. India has taken no meaningful steps whatsoever to follow-up on this recommendation. The Prevention of Torture 2010, as passed in the lower house of the Indian parliament, the Lok Sabha, at the very least is the mockery of India's international human rights obligations. The law as passed by the lower house even failed to define torture properly, as per the standards set in international law.

2.16. The draft law when was considered by the upper house of the Indian parliament, the Rajya Sabha, the House constituted a Parliamentary Select Committee to review the law, and recommended the then government to comprehensively review the law. Since then, the draft law has been pushed deep into the country's legislative freezers, from which it has not been recovered yet.

2.17. Torture is the hallmark of India's policing system. Torture is used to extract forced confessions from detainees, based on which statements are doctored by the police and to be presented as oral testimonies during trial. After 10 or more years when the case comes up for trial, witnesses fail to recollect these doctored statements and contradict their alleged former statements to the investigator, thereby leading the trial to an acquittal. Suffice is it to say that crime investigations in India begin and end with a forced statement extracted by the investigator from the detainee.

2.18. Whether a criminal is convicted or acquitted does not have a bearing upon the investigator's professional career. No police officer is punished or disciplined in India for poor investigation. This is because contrary to perception, proving crimes have never been the expected mandate of police officers in India. The mere fact that 73% of India's parliamentarians are those with criminal records of having accused of engaged in serious crimes ranging from armed robbery to rape, murder and corruption is proof to this fact.

2.19. Torture therefore in India is used for social control. Police officers use torture or the threat of it to extract bribes from persons in their custody, or generally from the public. Instances were constables to high-ranking police officers threatening members of the general public with physical and verbal abuse demanding money for simple offences like illegal parking or hawking or from street vendors is a normal scene in public places in India. Torture with impunity and the general unaccountability within policing has rendered India's police a deeply demoralised institution.

2.20. Police modernisation and a through reform of the institution has never been a subject of public debate in India since independence. Not many are aware, including India's civil society, that the policing introduced to India is not based on the London Metropolitan Model, but is based on the Irish Constabulary Model. Therefore the violence that the institution is engaged in despite seven decade after independence and the stiff resistance to change is by design. Mere training of selected officers, deployed to operate in unchanged circumstances will not end this.

2.21. Mere ratification of UN CAT therefore will not end torture in India. India does not have a publically declared policing policy. India does not have a National Police Commission. What is required is the formulation of a policing policy that caters to the emerging needs of a democracy, shedding its colonial attributes.

3. Recommendations:

1. India should be encouraged to substantially increase its budget allocation for justice institutions, allowing the judiciary, prosecution and the police to restructure and refine to become able and accountable institutions that could augment India's obligations under international human rights law;
2. Corruption at all levels must be curbed, and an independent institution with adequate resources, human potential and an unbridled mandate to end corruption should be set up at the national level, with operations spread across the country;
3. India should ratify the UN CAT, and further it should breathe life to its commitment under international human rights law by thoroughly refining and reforming its criminal justice institutions;
4. The prosecutors' office in India must be brought under a legal framework that is equipped to ensure professionalism, accountability and transparency. Prosecutors must be appointed on the basis of their merits, and not on their political alliances. Existing service conditions of prosecutors, including their basic pay must be revised to attract talented professionals. Periodic training must be provided to the prosecutors so that they are updated on international as well as domestic law principles relating to criminal law;
5. India must enact and implement a law to secure the safety of human rights defenders.