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# UNIVERSAL PERIODIC REVIEW (UPR): MID-TERM REPORT 2020

## Assessing India's Implementation Of UPR-III Recommendations

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Working Group on Human Rights  
in India and the UN

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## Assessing India's Implementation Of UPR-III Recommendations

Submitted by

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the UN**

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## FOREWORD

India's Universal Periodic Review (UPR) took place for the third time (UPR-III) on 4 May 2017, when it received a total of 249 recommendations on diverse subjects and issues. India will be reviewed in its fourth UPR cycle (UPR-IV) in 2022. This mid-term review is an attempt by the Working Group on Human Rights in India and the United Nations (WGHR) to assess how far the Government of India has been able to implement the recommendations received.

The report has been prepared with contributions from WGHR charter members as well as other partners. We are grateful to The YP Foundation, the Civil Society Forum on Human Rights (CSFHR), and Mr. Ankur Bisen for their contributions and inputs to this report. WGHR has allowed each contributor to write their respective chapter without being limited by a word count. We have sought to keep to a uniform format that is not judgmental, either in tone or content, and have based our report on factual research from a range of sources including government, international organizations, academic research, civil society reports, and media accounts. Each chapter comes with a matrix which indicates the status of implementation of the recommendations falling under that theme.

Despite our best efforts, we acknowledge that the recommendations have not been covered completely and the analysis has not fully addressed some issues relevant to certain recommendations. For example, the section on Adivasis and tribals needs to include tribes and ethnic groups from the North-Eastern states. We propose to fill these gaps in the stakeholder report for the India's UPR-IV which will be due in 2022.

We also acknowledge that the problems of refugees, migrants, and internally displaced persons (IDPs) have not been specifically addressed in this mid-term report. However, they do feature in the recommendation matrices from UPR-III intersecting with various thematic issues and sectors – from health, drinking water and sanitation, education, child rights, labour rights, issues revolving around gender, as well as access to justice, including police and prisons. We look forward to reviewing and addressing this segment in WGHR's stakeholder report for UPR-IV.

The process for compilation of this mid-term report has been as follows: individual members contributed their drafts to the Secretariat consisting of Mr. Sarthak Roy, Ms. Alice Vieira, and Ms. Aditi Patil. These chapters were then compiled and edited by Aditi Patil. Following this, they were reviewed by members of the Editorial Board, who also helped to finalize them. We are especially grateful to Aditi for having taken on the mammoth task of putting together this report.

Given the expediency with which this report is being published, we have prepared it only as an e-version, although those who want can print it. We look forward to reviews, feedback, and inputs to the report. These will help our preparations for our stakeholder report for UPR-IV. We hope this document will be useful to stakeholders, citizens, researchers, media, and civil society in enabling a better understanding of the parameters, ground realities, gaps, and the continuing human rights challenges that need to be addressed in India as the next review approaches.

**Sanjoy Hazarika**  
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## LIST OF ABBREVIATIONS

<b>Aam Aadmi Bima Yojana</b>	A social security scheme targeted towards providing financial aid to the low-income families, especially in rural areas; the premium of the of the scheme holder is paid from the Social Security Fund of the Government
<b>Adivasis</b>	Tribal / Indigenous Communities
<b>AES</b>	Acute Encephalitis Syndrome
<b>AFHC</b>	Adolescent-Friendly Health Clinics
<b>AFSPA</b>	Armed Forces Special Powers Act 1958; also, Armed Forces (Jammu and Kashmir) Special Powers Act 1990 [J&K AFSPA]
<b>AHTUs</b>	Anti-Human Trafficking Units
<b>AMU</b>	Aligarh Muslim University
<b>ANC</b>	Ante-Natal Care
<b>Anganwadi Centres</b>	Government-run crèches/ children's day-care centres
<b>APDP</b>	Association of Parents of Disappeared Persons
<b>ASHAs</b>	Accredited Social Health Activists
<b>Atal Pension Yojana</b>	A Government-backed pension scheme primarily targeted at the unorganized sector (formerly known as <i>Swavalamban Yojana</i> )
<b>AWSC</b>	Allocation for the Welfare of the Scheduled Castes
<b>AWST</b>	Allocation for the Welfare of the Scheduled Tribes
<b>Ayushman Bharat Yojana</b>	A scheme introduced by the Government of India to provide free access to health care for 40 per cent of the people in the country
<b>Bangkok Rules</b>	United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders
<b>BJP</b>	<i>Bharatiya Janata Party</i>
<b>BPL</b>	Below Poverty Line
<b>BPRD</b>	Bureau of Police Research and Development
<b>CAA</b>	Citizenship Amendment Act 2019
<b>CAAJ</b>	Committee Against Assault on Journalists in India
<b>CAG</b>	Comptroller and Auditor-General of India
<b>CAH</b>	Citizens Against Hate
<b>CAPF</b>	Central Armed Police Forces
<b>CBI</b>	Central Bureau of Investigation
<b>CBMP</b>	Community-Based Monitoring and Planning
<b>CBNP</b>	Community-Based Nutrition Programmes
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women (also, Committee on the Elimination of Discrimination Against Women)
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CHC</b>	Community Health Centre
<b>CHRI</b>	Commonwealth Human Rights Initiative
<b>CIC</b>	Central Information Commission
<b>CID</b>	Criminal Investigation Department
<b>CoSHWC</b>	Code on Occupational Safety, Health and Working Conditions
<b>CoSS</b>	Code on Social Security
<b>COVID-19</b>	Corona Virus Disease 2019

<b>CoW</b>	Code on Wages
<b>CrPC</b>	Code of Criminal Procedure 1974
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CRPF</b>	Central Reserve Police Force
<b>CSDS</b>	Centre for the Study of Developing Societies
<b>CSO</b>	Civil Society Organization
<b>DSLA</b>	District-level Legal Services Authority
<b>ED</b>	Enforcement Directorate
<b>EEVFAM</b>	Extrajudicial Execution Victim Families Association Manipur
<b>EPF</b>	Employees' Provident Fund
<b>ESIC</b>	Employees' State Insurance Corporation Scheme
<b>FCRA</b>	Foreign Contribution (Regulation) Act 2010 (amended recently in 2020)
<b>FIR</b>	First Information Report
<b>FNPs</b>	Foreign National Prisoners
<b>FPIS</b>	Family Planning Indemnity Scheme
<b>GDP</b>	Gross Domestic Product
<b>GHI</b>	Global Hunger Index
<b><i>Gram Panchayat</i></b>	Village Council – the smallest unit of local self-governance in India
<b>GST</b>	Goods and Services Tax
<b><i>Hijra, Kinnar, and Jogta</i></b>	Different terms, some with regional references, associated with the transgender communities in India
<b>HLRN</b>	Housing and Land Rights Network
<b>HRCtte</b>	Human Rights Committee
<b>HRD</b>	Human Rights Defender
<b>HRDA</b>	Human Rights Defenders Alert – India
<b><i>Hurriyat</i></b>	A separatist political front in Jammu and Kashmir
<b>I&amp;B Ministry</b>	Ministry of Information and Broadcasting
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICDS</b>	Integrated Child Development Services
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICJ</b>	International Court of Justice at The Hague
<b>ICMR</b>	Indian Council of Medical Research
<b>ICPPED</b>	International Convention on the Protection of All Persons from Enforced Disappearance
<b>ICRMW</b>	International Convention on the Protection of the Rights of Migrant Workers and Members of their Families
<b>ILO</b>	International Labour Organization
<b>IPC</b>	Indian Penal Code 1860
<b>IPHS</b>	Indian Public Health Standards
<b>IUD</b>	Intra-Uterine Device
<b>J&amp;K</b>	Jammu and Kashmir (earlier the state of Jammu and Kashmir, which was then restructured into two union territories of 'Jammu and Kashmir' and 'Ladakh' in August 2019)
<b><i>Janani Suraksha Yojana (JSY)</i></b>	Safe motherhood intervention under the auspices of the National Health Mission to reduce maternal and neonatal mortality and promote institutional delivery

<b>JJB</b>	Juvenile Justice Board
<b>JNU</b>	Jawaharlal Nehru University
<b><i>Kuposhan Mukht Bharat</i></b>	Malnutrition Free India
<b>LARR Act</b>	Land Acquisition, Rehabilitation and Resettlement Act 2013
<b>LCI</b>	Law Commission of India
<b>LGBTQI+</b>	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Others
<b><i>Lok Sabha</i></b>	House of the People – the lower house of India’s bicameral Parliament
<b><i>Lokpal and Lokayukta</i></b>	Anti-corruption grievance redressal mechanisms in India
<b>LPCD</b>	Litre per capita per day
<b>LSI</b>	Legal Services Institutions
<b>MCI</b>	Medical Council of India (replaced by the National Medical Commission in 2020)
<b>MEA</b>	Ministry of External Affairs
<b>MGNRGA</b>	Mahatma Gandhi National Rural Employment Guarantee Act 2005
<b>MHA</b>	Ministry of Home Affairs
<b>MHCA</b>	Mental Health Care Act 2017
<b>MHRD</b>	Ministry of Human Resource Development
<b>MoHFW</b>	Ministry of Health and Family Welfare
<b>MoLE</b>	Ministry of Labour and Employment
<b>MPV</b>	Mission <i>Parivar Vikas</i> – An intervention within the National Health Mission for improved access to contraceptives and family planning services in 145 high fertility districts in seven states
<b>MSJE</b>	Ministry of Social Justice and Empowerment
<b>MSM</b>	Men who have sex with men
<b>MTP Act</b>	Medical Termination of Pregnancy Act 1971
<b>NALSA</b>	National Legal Services Authority
<b>NAP</b>	National Action Plan
<b>NARSS</b>	National Annual Rural Sanitation Survey
<b>NCEUS</b>	National Commission for Enterprises in the Unorganized Sector
<b>NCLP</b>	National Child Labour Project
<b>NCM</b>	National Commission for Minorities
<b>NCPCR</b>	National Commission for Protection of Child Rights
<b>NCRB</b>	National Crime Records Bureau
<b>NCW</b>	National Commission for Women
<b>NDA</b>	National Democratic Alliance – a coalition of political parties in India
<b>Nelson Mandela Rules</b>	United Nations Standard Minimum Rules for Treatment of Prisoners 2015
<b>NEP</b>	New Education Policy 2020
<b>NFHS</b>	National Family Health Survey
<b>NFSA</b>	National Food Security Act 2013
<b>NGO</b>	Non-Governmental Organization
<b>NGT</b>	National Green Tribunal
<b>NHM</b>	National Health Mission
<b>NHP</b>	National Health Policy 2017
<b>NHRC</b>	National Human Rights Commission
<b>NIA</b>	National Investigation Agency
<b>NNM</b>	National Nutrition Mission
<b>NPDW</b>	National Platform of Domestic Workers
<b>NPHCE</b>	National Programme for Health Care of the Elderly 2011



<b>NPR</b>	National Population Register
<b>NRC</b>	National Register of Citizens
<b>NRCWM</b>	National Rural Clean Water Mission
<b>NRDWP</b>	National Rural Drinking Water Programme
<b>NSA</b>	National Security Act 1980
<b>NWQSM</b>	National Water Quality Sub-Mission
<b>OBC</b>	Other Backward Classes
<b>ODF</b>	Open Defecation Free
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>One crore</b>	10 million
<b>One lakh</b>	One hundred thousand / 0.1 million
<b>PCA</b>	Prevention of Corruption Act 1988
<b>PCPNDT Act</b>	Pre-conception and Pre-natal Diagnostic Techniques Act 1994
<b>PCRA</b>	The Protection of Civil Rights Act 1955
<b>PFI</b>	Popular Front of India
<b>PHC</b>	Primary Health Centre
<b>PIL</b>	Public Interest Litigation
<b>PLVs</b>	Paralegal Volunteers
<b>POA</b>	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989
<b>POCSO Act</b>	Protection of Children from Sexual Offences Act 2012
<b>POSH Act</b>	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
<b>POSHAN Abhiyaan</b>	Prime Minister's Overarching Scheme for Holistic Nourishment
<b>PPE</b>	Personal Protective Equipment
<b>Pradhan Mantri Awaas Yojana</b>	An initiative of the Government of India to provide affordable housing to the urban poor
<b>Pradhan Mantri Jeevan Jyoti Bima Yojana</b>	A Government-backed life insurance scheme in India
<b>Pradhan Mantri Matru Vandana Yojana</b>	A maternity benefit programme run by the Government of India which provides for conditional cash transfer for pregnant and lactating women of 19 years of age or above for the first live birth
<b>Pradhan Mantri Suraksha Bima Yojana</b>	A Government-backed accident insurance scheme in India
<b>PSA</b>	Jammu and Kashmir Public Safety Act 1978
<b>PSI</b>	Prison Statistics India
<b>PTR</b>	Pupil-Teacher Ratio
<b>PUCL</b>	People's Union for Civil Liberties
<b>PVTG</b>	Particularly Vulnerable Tribal Groups
<b>PwD</b>	Persons with Disability
<b>Rajya Sabha</b>	Council of States – the upper house of India's bicameral Parliament
<b>Rashtriya Madhyamik Shiksha Abhiyaan</b>	A programme sponsored by the Central Government for the development of secondary education in public schools in the country
<b>Rashtriya Swasthya Bima Yojana (RSBY)</b>	A Government-run insurance programme for the poor which aims at providing health insurance coverage to the unorganized sector workers falling Below Poverty Line
<b>RKSK</b>	<i>Rashtriya Kishor Swasthya Karyakram</i> – National Adolescent Health Programme
<b>RPD Act</b>	Rights of Persons with Disabilities Act 2016



<b>RSS</b>	<i>Rashtriya Swayamsevak Sangh</i>
<b>RTE Act</b>	The Right of Children to Free and Compulsory Education Act 2009
<b>RTI</b>	Right to Information
<b>SAM</b>	Severe Acute Malnutrition
<b><i>Saubhagya Scheme</i></b>	A project of the Central Government aimed at electrification of all the households in the country
<b>SBM-G</b>	<i>Swachh Bharat Mission – Gramin / Mission Clean India – Rural</i>
<b>SC</b>	Scheduled Castes
<b>SDGs</b>	Sustainable Development Goals
<b>SECC</b>	Socio-Economic Caste Census
<b>SHGs</b>	Self-Help Groups
<b>SHRC</b>	State Human Rights Commission
<b>SIC</b>	State Information Commission
<b>SIMI</b>	Students Islamic Movement of India
<b>SOGI</b>	Sexual Orientation and Gender Identity
<b>SOP</b>	Standard Operating Procedures
<b>SPIR</b>	Status of Policing in India Report
<b>SRHR</b>	Sexual and Reproductive Health Rights
<b>SSA</b>	<i>Sarva Shiksha Abhiyaan</i> – the Government of India’s flagship programme aimed at universalization of elementary education
<b>ST</b>	Scheduled Tribes
<b>STF</b>	Special Task Force
<b><i>Swachh Bharat Abhiyaan</i></b>	<i>Swachh Bharat Mission (SBM)/ Mission Clean India</i>
<b><i>Taluka / Tehsil</i></b>	An administrative division in India that can be understood as a ‘sub-district’ or ‘township’
<b>TDPS</b>	Targeted Public Distribution System
<b>THR</b>	Take-Home Ration
<b>Triple Talaq</b>	A practice that allowed Muslim men to divorce their wives instantaneously and irrevocably, which was ruled as unconstitutional in 2017 and criminalized in 2019
<b>UAPA</b>	Unlawful Activities (Prevention) Act 1967
<b>UN</b>	United Nations
<b>UNCAT</b>	United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNFPA</b>	United Nations Population Fund
<b>UNHRC / HRC</b>	United Nations Human Rights Council
<b>UNICEF</b>	United Nations Children’s Fund
<b>UPR</b>	Universal Periodic Review
<b>UTRC</b>	Under-Trial Review Committee
<b>UWSS Act</b>	The Unorganized Workers’ Social Security Act 2008
<b>VHSC</b>	Village Health and Sanitation Committee
<b>Voice vote</b>	A process that involves the speaker of the legislature putting a question and asking the House to put forth its opinion in the forms of ‘yes’ or ‘no’. Based on an approximation of which side was louder, the speaker then decides whether the motion has passed or failed
<b>WGIED</b>	Working Group on Enforced or Involuntary Disappearances
<b>WHO</b>	World Health Organization

## CHAPTER 1

### DALIT RIGHTS

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.189	Continue to ensure access to education for all especially children of scheduled castes and tribes.	Holy See	Supported	Partially Implemented
161.152	Remove barriers prohibiting scheduled castes and scheduled tribes from registering their births and obtaining birth certificates of their children.	Bahrain	Noted	Not Implemented
161.155	Implement a human-rights based, holistic approach to ensure access to adequate housing as well as to adequate water and sanitation, also for marginalized groups, including Dalits/scheduled castes, homeless, landless, scheduled tribes, religious and ethnic minorities, persons with disabilities, and women.	Germany	Supported	Partially Implemented
161.81	Continue the fight against discrimination, exclusion, dehumanization, stigmatization, and violence suffered by scheduled castes.	Peru	Supported	Partially Implemented
161.101	Step up its efforts caste-based violence, discrimination and prejudice, including by eradicating all forms of caste-based discrimination in the educational system.	Czechia	Noted	Partially Implemented
161.83	Take necessary measures to ensure effective implementation of the Scheduled Castes and Scheduled Tribes Act, notably through the training of State officials.	France	Supported	Partially Implemented
161.82	Take urgent measures to repeal the norms that discriminate	Argentina	Supported	Partially Implemented

	against castes; investigate and sanction the perpetrators of acts of discrimination and violence against the, in particular against the Dalits.			
161.70	Strengthen the national framework to reduce all kinds of discrimination.	Iraq	Supported	Partially Implemented
161.71	Intensify efforts to guarantee equality and non-discrimination in line with its international obligations, by developing public human rights awareness programmes and taking concrete steps to advance the rights of women and girls, members of religious minorities, LGBTI persons and to combat caste-based discrimination including to: criminalize marital rape; decriminalize consensual same-sex relations; and establish appropriate policies and practices for registering, investigating and prosecuting violence against women, girls and members of religious minorities.	Ireland	Noted	Partially Implemented
161.187	Increase investment in the universal, mandatory and free education by giving priority to measures to eradicate discrimination and exclusion that affect girls, children with disability, the Dalits group and marginalized persons.	Mexico	Supported	Partially Implemented
161.72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, tribes, and other vulnerable populations.	United States of America	Supported	Partially Implemented
161.99	Prevent and pursue through the appropriate judicial means all violent acts against religious and	Holy See	Supported	Partially Implemented

	tribal minorities, Dalits and lower castes.			
161.84	Establish a national action plan in combating hate crimes, racism and negative stereotypes against people of African descent inside its territory, including appropriate programmes of public awareness that will address the problem of racism and Afro-phobia, in full consultation with those particularly affected.	Haiti	Noted	Not Implemented
161.215	Enhance activities aimed at eliminating discrimination against women, that particularly affects the women from lower castes.	Kyrgyzstan	Supported	Partially Implemented
161.75	Adopt laws and implement policies to suppress all forms of <i>de facto</i> discrimination against any person or group.	Guatemala	Supported	Partially Implemented

This chapter outlines some key concerns about violations of basic human rights as well as the fundamental rights enshrined in the Constitution of India with regard to one of the most vulnerable and marginalized communities, that is, the *Dalits* and *Adivasis*, who are officially termed as the “Scheduled Castes” and “Scheduled Tribes” respectively.<sup>1</sup> In UPR-III, 15 recommendations were specific to the promotion and protection of rights of the rights of Scheduled Castes and Scheduled Tribes. Of these, the Government of India supported 11 recommendations and noted four of them.

### **Implementation of Protective Laws and Access to Justice**

#### *Status of Government Action*

Article 17 of the Constitution of India<sup>2</sup> abolished untouchability. The Protection of Civil Rights Act (PCRA) 1955 (renamed in 1976)<sup>3</sup> and Rules 1977<sup>4</sup> made the practice of untouchability a cognizable and non-compoundable offense warranting enhanced terms of imprisonment. They prescribed the

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1 Dalits called as the ‘Scheduled Castes’ and Adivasis called as the ‘Scheduled Tribes’ were subjected to the so-called social practice of untouchability in both public and private spheres. Due to such exclusion, they had been historically deprived of access to resources, services and development, leaving most of them in abject poverty. Despite subsequent constitutional safeguards and special legislations for their protection, violations of their fundamental human rights continue on a large scale even today with the deeply entrenched discriminatory social attitude. Key issues include access to justice and rising violence against them, the intersecting discrimination against Dalit women, slavery and child labour, discrimination in education, untouchability, access to basic services, and economic and social rights.

2 The Constitution of India 1950, Art. 17. Available at: <http://legislative.gov.in/constitution-of-india>

3 The Protection of Civil Rights Act 1955 (renamed in 1976; enacted as the Untouchability Offences Act 1955). Available at: <https://bit.ly/314ekhc>

4 The Protection of Civil Rights Rules 1977. Available at: <https://bit.ly/3nquieh>

appointment of prosecutors for these offenses and established Special Courts and Committees to assist state governments in implementing anti-untouchability measures. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (POA) Act 1989 defined criminal, economic, political, and property-related offenses committed against Scheduled Castes and Scheduled Tribes as ‘atrocities’ and designated a system to bring atrocity cases under the jurisdiction of Special Courts.<sup>5</sup> After 2015, the POA Act was further strengthened through an amendment<sup>6</sup> after the Supreme Court of India passed a judgment<sup>7</sup> that had the effect of diluting Section 18 of POA Act 1989.<sup>8</sup>

In 2018, another set of amendments were effected to further strengthen the Act and restored the provisions of the POA Act 1989 in the form of Section 18A.<sup>9</sup> India has also taken action to establish Special Courts and the *Anusuchit Jati / Janjati Kalyan* (AJK) *thanas*<sup>10</sup> that are aimed at streamlining access to justice for the Dalit and Adivasi victims of atrocities. However, till date, such AJK *thanas* have been established only in four states: Jharkhand, Chhattisgarh, Madhya Pradesh, and Bihar.

Article 23 of the Constitution<sup>11</sup> outlawed trafficking of human beings and forced labour, but the legislation defining and prohibiting bonded labour was enacted only in 1976. The Bonded Labour System Abolition Act of 1976<sup>12</sup> stipulated that the monitoring of labour violations and their enforcement are responsibilities of state governments. However, governments have largely demonstrated their lack of will in meaningfully implementing the ban. The POA Act, in fact, criminalizes the practice of forcing a Dalit or Adivasi into forced or bonded Labour. However, due to implementation deficits for both these Acts, many Dalits and Adivasis — especially women and children — are forced into modern slavery and slavery-like practices. The updated Rehabilitation of Bonded Labour Scheme 2016 mandated authorities to rehabilitate victims of such bonded labour — psychologically, socially, and economically<sup>13</sup> — but its implementation at the grassroots is limited.<sup>14</sup>

### *Status of Implementation*

- a) Rising violence against Dalits and Adivasis and lapses in the implementation of the POA Act 1989 and Rules 1995

Despite the Constitutional guarantees provided through fundamental rights and legislations such as the POA Act, atrocities against Dalit and Adivasi communities persist. According to the National Crime Records Bureau (NCRB) of India, the number of reported atrocity cases against Scheduled Castes has

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5 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Available at: <http://bit.ly/2WhyJMX>

6 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015, Cl. 9. Available at: [https://ncsk.nic.in/sites/default/files/POA\\_ACT\\_2016.01.pdf](https://ncsk.nic.in/sites/default/files/POA_ACT_2016.01.pdf)

7 *Kashinath Mahajan v. State of Maharashtra* (2018) 6 SCC 454.

8 Section 18 in the POA Act 1989 provided that Section 438 of the Code of Criminal Procedure (CrPC), which makes provision for anticipatory bail, would not be applicable to persons committing an offence under the POA.

9 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act 2018, Cl. 2. Available at: [http://socialjustice.nic.in/writereaddata/UploadFile/PoA\\_Act\\_2018636706385256863314.pdf](http://socialjustice.nic.in/writereaddata/UploadFile/PoA_Act_2018636706385256863314.pdf)

10 The *Anusuchit Jati/Janjati thanas* are special police stations which have been established to address the atrocity cases.

11 The Constitution of India 1950, Art. 17. Available at: <http://legislative.gov.in/constitution-of-india>

12 It is an Act to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the society and for matters connected therewith or incidental thereto.

13 The Wire, ‘Modern Day Slavery: How Dalits from Lalitpur became bonded labourers in Delhi’, 9 October 2019. Available at: <https://bit.ly/3jwxHpT> <accessed at 16:05 on 19 July 2020>

14 Centre for Budget and Governance Accountability, ‘How effective are the policies for rehabilitation of bonded labour in India?’, 30 April 2019. Available at: <http://bit.ly/3acf0GR>

gone up to 45,935 in 2019 from 42,793 in 2018<sup>15</sup> showing an increase of 7.3 per cent.<sup>16</sup> This number was 40,801 in 2016.<sup>17</sup> There were 8,257 cases registered for crimes or atrocities against Scheduled Tribes in 2019 as opposed to 6,528 cases in 2018 showing an increase of 26.5 per cent over the year.<sup>18</sup> According to NCRB's Crime in India Report 2019, 3,375 Dalit women<sup>19</sup> and 880 Adivasi women<sup>20</sup> were subjected to assault, sexual harassment, Intent to disrobe, voyeurism, stalking, and insult to their modesty. As many as 3,486 Dalit women<sup>21</sup> and 1,110 Adivasi women<sup>22</sup> were reported to be subjected to rape, constituting 7.6 per cent and 13.4 per cent of the total atrocities registered against them.<sup>23</sup>

Adding another layer of victimization, around 1,117 Dalit children<sup>24</sup> and 396 Adivasi children<sup>25</sup> were reported to be subjected to sexual offences in 2019, despite existence of a special legislation such as the Protection of Children from Sexual Offences Act (POCSO Act) 2012 imposing stringent punishment for sexual offences against children.<sup>26</sup> The vulnerability of Dalit women is further exacerbated by their marital status; widowed women are often found to face harassment, evictions, sexual exploitation, and abuse from family members and other villagers. It must be noted that the number of pending court cases of crimes against Scheduled Castes under POA Act has gone up to 1,91,448 at the end of 2019 which takes the pendency rate to 93.8 per cent.<sup>27</sup> The conviction rate is 32.1 per cent<sup>28</sup>; the rate of acquittal is twice the rate of conviction under POA Act.<sup>29</sup> The number of pending court cases of crimes against Scheduled Tribes at the end of 2019 were 30,697 with a pendency rate of 91.4 per cent.<sup>30</sup> Some of the heinous offences against Dalit and Adivasi persons — especially women — that have been reported include: forcing them to eat human faeces, parading them naked, gang rapes, assaults, forcefully tonsuring their heads, etc. It is important that these cases are given a top priority; efforts should be made towards taking immediate and timely action — investigation into and prosecution and conviction of those found guilty.

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- 15 Crime in India 2019 - National Crime Records Bureau India (Volume II, p.75). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%202.pdf> <accessed at 19:31 on 18 October 2020>
  - 16 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.21). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf> <accessed at 19:38 on 18 October 2020>
  - 17 Crime in India 2018 - National Crime Records Bureau India (Volume II, p.75). Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%202.pdf> <accessed at 19:43 on 18 October 2020>
  - 18 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.21). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf> <accessed at 19:38 on 18 October 2020>
  - 19 Crime in India 2019 - National Crime Records Bureau India (Volume II, p.79). Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%202.pdf> <accessed at 19:38 on 18 October 2020>
  - 20 Ibid, p. 179.
  - 21 Ibid, p.85.
  - 22 Ibid, p.185.
  - 23 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.21). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf> <accessed at 19:38 on 18 October 2020>
  - 24 Crime in India 2019 - National Crime Records Bureau India (Volume II, p.86). Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%202.pdf> <accessed at 19:38 on 18 October 2020>
  - 25 Ibid, p. 186.
  - 26 The Protection of Children from Sexual Offences (POCSO) Act 2012 was enacted to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process.
  - 27 Crime in India 2019 - National Crime Records Bureau India (Volume II, p.116). Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%202.pdf> <accessed at 19:52 on 18 October 2020>
  - 28 Ibid.
  - 29 Ibid, p.120.
  - 30 Ibid, p. 216.

## b) Prohibition of Traffic in Human Beings and Forced Labour

Multiple studies have found that Dalits are at a significantly higher risk of being pushed into modern slavery, including forced and bonded labour and child labour.<sup>31</sup> In the state of Tamil Nadu, majority of textile and garment workforce is women and children. Almost 60 per cent of the *Sumangali* workers<sup>32</sup> belong to the Scheduled Castes. Among them, about 65 per cent of the mostly unskilled workers are women.<sup>33</sup> It has been indicated that girls under the age of 14 years are recruited to work in these factories. An academic study estimates that 10-20 per cent of *Sumangali* workers are child labourers, aged between 11 and 14.<sup>34</sup>

The following abuses came to light:<sup>35</sup>

- Withholding wages and paying below the minimum wage levels. Daily wages generally start at roughly Rs. 60 (€0.88) per day during the first six months, with a gradual increase of Rs. 10 every six months, up to a maximum of Rs. 110 on average. Costs for food and boarding, approximately Rs. 15 per day, are deducted from the daily wages.<sup>36</sup>
- Poor living conditions in the company-controlled hostels where these workers are sometimes even reported to be locked up.
- Nearly all Dalit girls are forced to work and face verbal and physical abuse.<sup>37</sup> Each dormitory is shared by 12-15 girls at a time and is reused by different girls after each shift.
- According to a study by the *Arunthathiyar* Human Rights Forum (AHRF), 61 per cent of the girls working in the textile industries had a stressful living environment and experienced psychological tension during their period of employment. 10 per cent of the girl labourers had skin problems; more than one third of the girls had gynecological issues and most were anaemic.<sup>38</sup>
- The walls of these factories are barricaded and it is impossible for anybody without permission to enter or exit the premises; leave is restricted to a few days a year when the girls are allowed to visit their families.<sup>39</sup>

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31 International Dalit Solidarity Network, 'Caste-based Slavery – Issues and Documentation'. Available at: <http://bit.ly/2WgF3EJ>

32 Under the *Sumangali* system, young women are hired on contract for up to five years. During their contract they earn minimal wages and at the end are given a lump sum to pay for their dowry. Terms like '*Sumangali*' and 'camp labour' are often used interchangeably when describing forced labour in the Tamil Nadu textile mills.

33 Fair Labour Association, 'Understanding the Sumangali Scheme in Tamil Nadu's Garment and Textile Industry', 8 May 2012. Available at: <http://bit.ly/2WIAhpu>

34 The Centre for Research on Multinational Corporations (SOMO), 'Captured by Cotton: Exploited Dalit girls produce garments in India for European and US markets', May 2011. Available at: <https://www.somo.nl/captured-by-cotton/>

35 Ibid.

36 Fair Labour Association, 'Understanding the Sumangali Scheme in Tamil Nadu's Garment and Textile Industry', 8 May 2012. Available at: <http://bit.ly/2WIAhpu>

37 The Centre for Research on Multinational Corporations (SOMO), 'Captured by Cotton: Exploited Dalit girls produce garments in India for European and US markets', May 2011. Available at: <https://www.somo.nl/captured-by-cotton/>

38 *Terres des Hommes*, 'What is the Sumangali Scheme? (translated)', 2012. Available at: <http://bit.ly/385My6V>

39 The Centre for Research on Multinational Corporations (SOMO), 'Bonded (child) labour in Indian garment industry draws global attention', 8 August 2012. Available at: <http://bit.ly/3nuD3oo>



- Many clothing companies do not remit employers' and employees' contributions to the Employees' State Insurance (ESI) Scheme, and workers are denied the benefits thereunder.<sup>40</sup>
- The majority of the workers were reported on verbal abuse, shouting and verbal lashing by the employers. On a regular basis, women work up to 12 hours per day to complete one and a half shifts.<sup>41</sup>

A report documents the widespread slavery in India's brick-making industry, where majority of workers are Dalits.<sup>42</sup> 100 per cent of the brick moulders were from traditionally marginalized / excluded castes: 53 per cent were Dalits and 47 per cent were from 'Other Backward Classes' (OBC).<sup>43</sup> Similarly, the Indian Railways is an institution where dry latrines still exist in great numbers.<sup>44</sup> The link between manual scavenging and caste system needs to be acknowledged to make any meaningful reform in this respect.<sup>45</sup> The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 does not provide for any concrete measures for rehabilitation and a clear plan for implementation. There is little clarity on who will formulate the schemes and how they will be implemented.<sup>46</sup> 2019 reportedly saw the highest number of manual scavenging deaths in the last five years with 110 workers killed while cleaning sewers and septic tanks.<sup>47</sup> However, the judiciary in India has, from time to time, raised serious concerns over the practice<sup>48</sup> and even issued directions for the effective implementation of the Manual Scavengers Act 2013.<sup>49</sup>

c) Targeted State violence and instances of torture and ill-treatment as well as arbitrary arrests and detention

The National Human Rights Commission (NHRC) has found that the law enforcement machinery has violated the rights of Dalits in several instances. The police is reported to have subjected Dalit

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- 40 The Centre for Research on Multinational Corporations (SOMO), 'Captured by Cotton: Exploited Dalit girls produce garments in India for European and US markets', May 2011. Available at: <https://www.somo.nl/captured-by-cotton/>
- 41 Documentary series of issues faced by the victims of the scheme in the form of snap shot stories, R. Karuppusamy; see also, The Hindu, 'Campaign against 'Sumangali scheme' culminates in Tirupur', 21 December 2012. Available at: <http://bit.ly/34fDr2e>
- 42 Anti-Slavery International, 'Slavery in India's Brick Kilns and The Payment System', September 2017. Available at: <https://www.antislavery.org/wp-content/uploads/2017/09/Slavery-In-Indias-Brick-Kilns-The-Payment-System.pdf>  
Female workers do not receive wages; workers are hired as a family unit, and wages are exclusively paid to the male head of the household unit. 65 to 80% of children between the ages of 5 and 14 that live in the brick kilns, are working between 7-9 hours a day. They do not go to primary schools or access other early childhood services. 100% of children between the ages of 14 and 18 reportedly working at the kiln, on average 12 hours a day in summer months and 10 hours a day during winter months. 96% of adult males interviewed reported taking an advance (loan) before starting work in the kiln. 33% of workers reported being paid less than the minimum piece rate wage for 1000 bricks. 100% of workers had their wages withheld until the end of the brick-making season, which is approximately 8-10 months long. Workers also have other deductions taken from their wages, many of which are illegal. 84% of workers were paid a lower rate than what had been agreed/promised at the beginning of the season.
- 43 Ibid, p.2.
- 44 The Wire, 'The Nine Kinds of Manual Scavenging in India', 24 November 2018. Available at: <https://thewire.in/labour/manual-scavenging-sanitation-workers>
- 45 Economic and Political Weekly, 'Why India needs to address caste-based manual scavenging before it aims for a 'Swachh Bharat'', 25 June 2018. Available at: <https://bit.ly/37lmZzm>
- 46 Down To Earth, Bezwada Wilson of the *Safai Karamchari Andolan*, quoted in 'Manual Scavenging Prohibition Bill: How Effective', 4 July 2015. Available at: <https://bit.ly/3dJZhP>
- 47 The Hindu, 'Watch| India's Manual Scavenging Problem', 16 February 2020. Available at: <http://bit.ly/2WjLarJ>
- 48 The Hindu, 'Supreme Court on manual scavenging: "No country sends its people to gas chambers to die"', 18 September 2019. Available at: <http://bit.ly/3mlqnyx>
- 49 Live Law, 'Manual scavenging most inhuman; violates Article 21: Karnataka High Court issues directions to implement the Manual Scavengers Act 2013', 10 December 2020. Available at: <http://bit.ly/3gPOHHI>

communities to violent search and seizure operations.<sup>50</sup> They are often subjected to falsified charges<sup>51</sup> as well as physical abuse and torture following arrest. They are often illegally detained; held in custody for unjustifiably long periods of time; subjected to caste-based verbal abuse and humiliation; severe beatings<sup>52</sup> and inhuman torture<sup>53</sup>; forced to pay money or bribes for their release<sup>54</sup>; sexual abuse<sup>55</sup>; and assaults,<sup>56</sup> among other things. Dalit children have also been found to be arrested on fabricated charges and tortured in custody.<sup>57</sup> The intersectionality between custodial torture and ill-treatment and caste needs to be duly recognized.<sup>58</sup> In some cases, Dalit and Adivasi undertrial prisoners are allegedly excluded from being served hygienic food, beddings, wages, medical attention, and visiting time in the prisons.<sup>59</sup>

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- 50 Human Rights Watch, 'India: Events of 2018'. Available at: <https://www.hrw.org/world-report/2019/country-chapters/india>. In July 2018, police in Ahmedabad city raided an area, home to 20,000 members of the vulnerable and marginalized *Chhara* Tribe, a denotified tribe. According to residents, police allegedly brutally beat up scores of people, damaged property, and filed false cases against many of them.
  - 51 The Hindu, 'Dalit youth alleges torture at police station in the Arkalgud taluk', 13 March 2019. Available at: <https://www.thehindu.com/news/national/karnataka/dalit-youth-alleges-torture-at-police-station-in-arkalgud-taluk/article26518660.ece>. On 10, February 2019, a Dalit was on the way to meet one of his customers at Konanur, when he noticed a group of youths fighting among themselves. As he stopped his bike, two constables caught him and wanted to know where he was from. The moment he said he was from Ambedkar Colony in Konanur, they scolded him taking his caste and referred to him a cow-eater. The police took him to the police station and allegedly tortured him.
  - 52 Hindustan Times, 'Telangana: Alleged torture of Dalits, OBCs in police custody kicks up row', 4 August 2017. Available at: <https://bit.ly/31wskk8>. In August 2017, some Dalits from Rajanna Siricilla were arrested on the charges of burning sand-laden trucks. The police allegedly subjected them to third-degree torture, beat them indiscriminately, poured hot water on their genitals, electrocuted them, administered sedatives, and threatened them with encounter killings.
  - 53 The News Minute, 'Kerala Dalit teen alleged torture in police custody: Crime branch to submit report soon', 8 October 2017. Available at: <https://www.thenewsminute.com/article/kerala-dalit-teen-alleged-torture-police-custody-crime-branch-submit-report-soon-69626>. In July 2017, a 17 year old Dalit boy was nabbed in a false case and he was allegedly subjected to custodial torture by police officers at Pavaratty police station in Thrissur, Kerala. He died by suicide on 18 July 2017 after he was released from police custody.
  - 54 News Click, 'Three "custodial deaths" in three months, is this the best law and order in UP?', 23 January 2019. Available at: <https://www.newsclick.in/three-custodial-deaths-three-months-best-law-and-order>. On 26 December 2018, a 30-year-old Dalit man had died in police custody in Amroha district of western UP. His family members had alleged that they had to sell their jewellery to pay the bribe demanded by policemen for his release.
  - 55 Hindustan Times, 'Four tribal women allege they were gang raped by cops in MP's Dhar, local Congress MLA demands judicial probe', 30 January 2017. Available at: <https://bit.ly/3dTsN4l>; see also, The Wire, 'Villagers in Chhattisgarh traumatised, allege security forces raped 14-year-old girl', 6 April 2017. Available at: <https://bit.ly/35pUA9o>
  - 56 The Indian Express, 'Two BSF personnel arrested for raping women, killing her friend', 6 September 2017. Available at: <https://indianexpress.com/article/india/two-bsf-personnel-arrested-for-raping-woman-killing-her-friend-4831661/>. Two paramilitary personnel were arrested on suspicion of killing a woman and raping and throwing acid on her friend in Mizoram in July 2017.
  - 57 Hindustan Times, 'Police behaved inhumanly with Dalit family, says SC/ST panel', 11 October 2015. Available at: <https://bit.ly/31ykuGG>
  - 58 Scroll, 'Dead over a stolen pigeon: Family of 14-year-old Dalit boy accuses Haryana police of torture', 24 October 2015. Available at: <https://bit.ly/2J0ijW3>
  - 59 Open The Magazine, 'Caste in Prison Stone', 11 November 2011. Available at: <https://openthemagazine.com/features/india/caste-in-prison-stone/>. A One Dalit incarcerated at the Palayamkottai Central Jail in Thirunelveli, revealed that prisoners are beaten up for no reason by the jail staff who were *Thevars*. The food served was scarcely edible. The visiting time for his relatives was curtailed. He had to work, but was not paid. There are eight blocks with 30-35 cells each. The fourth block, far from the main building, is for Dalits; *Thevars*, *Nadars* and Muslims are all in different blocks. While *Thevar* prisoners are free to use mobile phones, Dalits are not. While *Thevars* do not have too many restrictions on visitors, Dalits are given a separate place where officers often interfere with warnings that 'the meeting time is up'. Dalit women visitors have to endure long waits, even gross insults. The exclusion of Dalits is painfully evident in the fact they have no access to the prison hospital. Doctors visit inmates every week, but they hardly step into the blocks reserved for Dalits.

An independent report by a committee<sup>60</sup> constituted by the National Commission for Scheduled Castes, based on the rising number of complaints by the *Kuravan* community on police atrocities<sup>61</sup> found that the community is still subjected to physical torture by the police in Tamil Nadu on falsified charges in many cases. The members of the community, including children, were found to be subjected to systematic ill-treatment by the police.<sup>62</sup> They are reported to be arrested under false pretexts, detained illegally, and often subjected to brutal forms of torture and inhuman treatment to extract “false confessions” from them for crimes that they have not committed.<sup>63</sup>

d) A high and disproportionate number of undertrial prisoners are Dalits and Adivasis

The caste and religious profiles of individuals whose death sentences have been confirmed by the judiciary show that a disproportionate section belong to the Dalit community and religious minorities. According to the Death Penalty India Report of the National Law University Delhi (NLUD),<sup>64</sup> 76 per cent of the prisoners sentenced to death (279 prisoners) in India belong to backward classes and religious minorities, especially all the 12 female prisoners. While the proportion of Scheduled Castes and Scheduled Tribes among those on the death row was 24.5 per cent, it was significantly higher in Maharashtra (50%), Karnataka (36.4%), Madhya Pradesh (36%), Bihar (31.4%), and Jharkhand (30.8%), with 10 or more prisoners sentenced to death. The findings also showed that out of the Scheduled Castes / Scheduled Tribes prisoners with confirmed death sentences, 85.4 per cent were also economically vulnerable. For religious minorities, this proportion was 76 per cent, compared to 64.4 per cent for the general category. This intersectionality mirrors the disparate impact of the death penalty on marginalized and vulnerable groups.<sup>65</sup>

In the cases pending before the High Courts in the country, the social profile of prisoners sentenced to death more or less reflects the overall national figures. However, at the upper end of the hierarchy of the legal process, the proportion of general category prisoners is seen to decrease, while that of prisoners belonging to the Scheduled Castes / Scheduled Tribes and religious minorities rises. In the death penalty cases pending in the Supreme Court, the proportion of general category is 15.7 per cent, while it is 26.7 per cent in the cases pending before the High Courts. On the other hand, the proportion of death penalty cases involving Scheduled Castes / Scheduled Tribes’ prisoners rose from 20.7 per cent at the High Court pendency to 27.5 per cent in cases pending before the Supreme Court. This proportion further increased to 42 per cent at the stage of the mercy petition.

e) Protection of rights of Dalit minorities

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60 A study report on the alleged cases of police atrocities against Kuravars in Tamil Nadu: 15 December 2014 - 13 January 2015; see also, The Wire, ‘For the Kuravars of Tamil Nadu, custodial violence is a way of life. And death’, 1 July 2020. Available at: <https://thewire.in/caste-for-the-kuravars-of-tamil-nadu-custodial-violence-is-a-way-of-life-and-death>

61 “Kuravar” community is one of the sub-castes of the Scheduled Caste community based in Tamil Nadu. Their population in the state is estimated to be about 10 lakhs (one million). They were notified as “Habitual Offenders” by the British in 1871. These notifications gave sweeping powers to the local governments to recommend that certain “tribes, gangs, or classes” be declared as being “addicted to the systematic commission of non-bailable offences”. Although the Criminal Tribes Act was repealed across India in 1952, these communities continue to bear with them the stigma of criminality.

62 The Wire, ‘For the Kuravars of Tamil Nadu, custodial violence is a way of life. And death’, 1 July 2020. Available at: <http://bit.ly/2WkchD4>

63 News Click, ‘How caste plays out in the criminal justice system’, 5 January 2019. Available at: <http://bit.ly/3gTsvfH>

64 Death Penalty India Report, National Law University Delhi (NLUD). Available at: <https://www.project39a.com/dpir>

65 Ibid.

In addition to physical violence, Dalits who have converted to Islam or Christianity face structural discrimination in the form of denial of affirmative action benefits and exercise of their freedom of religion.<sup>66</sup> This essentially violates the letter and spirit of Article 25 of the Constitution, which underscores that “all persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion.”<sup>67</sup> This also has resonance with Article 18 of the International Covenant on Civil and Political Rights (ICCPR).<sup>68</sup>

This structural discrimination is in the form of the denial of rights and protections afforded to Dalit Christians, who constitute an estimated 70 per cent of India’s Christian population. Dalit Christians (as well as Dalit Muslims) are excluded from receiving the benefits of affirmative action from the Government in the form of reserved seats in government education and employment in furtherance of a Presidential Order of 1950.<sup>69</sup> According to this order, called as the Constitution (Scheduled Castes) Order 1950, only Hindus would be considered as ‘Scheduled Castes’ to avail these benefits. However, other minorities such as Sikhs and Buddhists were included within the folds of such affirmative action in 1956 and 1990 respectively. However, Dalit Muslims and Dalit Christians remained two major religious minorities who are still denied these benefits. As a result, they are also not covered under the POA Act, which provides greater protection and access to justice for caste-based discrimination and violence.

The claim — regarding a better economic and social situation on conversion — has been consistently proven to be false by several Government commissions on the issue such as the Mandal Commission 1980, the Sachar Committee 2006, and most recently, by the National Commission for Minorities in 2008. The Sachar Committee report stated: *“by all available evidence we do find the caste system to be an all-pervading social phenomenon of India shared by almost all Indian communities irrespective of their religious persuasions.”*<sup>70</sup> Even upon conversion to Christianity, Dalit Christians continue to face discrimination similar to other Dalits, including being prevented from using the same streets as that of the upper castes, sharing sources of drinking water and other public resources, and being made to walk around with brooms tied to their waists etc. A report by the Institute for Dalit Studies<sup>71</sup> had concluded that *“discrimination, violence, and atrocities being committed on Dalit Christians are mostly on caste lines and its nature and forms are same as that of atrocities against other Dalits”*.

It is important that immediate action is taken to ensure the establishment of police stations and Special Courts that are equipped to respond to the crimes under the POA Act in each district. States should set up sub-divisional level committees, which include representatives from civil society organizations and Dalit communities, to review of implementation of the POA Act, including relief and rehabilitation of victims. It is also important to take measures to promote and ensure access to legal services for Dalit and Tribal communities. Additionally, in accordance with the D.K.Basu

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66 Scroll, ‘For 70 years, Dalits have been denied freedom of religion – through a Presidential order’, 21 August 2020. Available at: <https://bit.ly/2HqUGWc>

67 The Constitution of India 1950, Art. 25. Available at: <http://legislative.gov.in/constitution-of-india>

68 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (ICCPR), Art. 18. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

69 Scroll, ‘For 70 years, Dalits have been denied freedom of religion – through a Presidential order’, 21 August 2020. Available at: <https://bit.ly/3dTt7QY>

70 Ministry of Minority Affairs - Government of India, Sachar Committee Report. Available at: <http://www.minorityaffairs.gov.in/reports/sachar-committee-report>

71 Indian Institute of Dalit Studies, Working Paper - Dalit Christians in India: Discrimination, Development Deficit and the Question for Group-Specific Policies, 2012. Available at: <https://bit.ly/2Hq9WT6>

Guidelines,<sup>30</sup> the police should be sensitized and counselled on the subject in order to avoid custodial violence and those public servants found guilty should be brought to justice under appropriate legislations. It is vital to have in place special mechanisms or guidelines to both prevent the violence against Dalits and protect them, which should include data and research on the scope, prevalence, and incidence of all forms of violence against Dalits; on the causes and consequences of such violence; and on lessons and good practices in preventing and addressing such violence.

## **Protection of Dalit Human Rights Defenders**

### *Status of Government Action*

The NHRC has established a *Focal Point for Human Rights Defenders* aimed at providing 24-hour crisis support. In 2016, India voted in favour of the HRC Resolution 31/32 on *Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights*.<sup>72</sup> However, on the other hand, India has not ratified the 'UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', also known as 'The Declaration on Human Rights Defenders (HRDs)'. Similarly, India has not yet enacted any specific legislation to recognize and protect the rights and work of HRDs, including Dalit HRDs, within the context of the diversity of the forms in which the Declaration may be implemented.

### *Situation of Dalit Human Rights Defenders*

In India, HRDs advocating against caste-based discrimination and violence against Scheduled Castes and Scheduled Tribes have faced an ongoing risk of attack and harassment.<sup>73</sup> They face harassment, threats, physical violence, abuses, and untouchability, for defending the rights of Dalits and Adivasis. In addition to the other challenges, women HRDs face gender-specific violations such as rape and sexual violence, which are used as tools for harassment.<sup>74</sup>

Additionally, they face reprisals in the form of fabricated charges<sup>75</sup> of abetment, criminal conspiracy, promoting enmity between religious groups, imputations prejudicial to national interests,<sup>76</sup> threat to public servants, statements conducing to public mischief, criminal intimidation, etc. under the Indian Penal Code (IPC).<sup>77</sup> They are also subject to diverse range of attacks and harassment from non-state

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72 UN Human Rights Council, 31st Regular Session, Resolution 31/32 – Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights (A/HRC/RES/31/32). Available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/31/32](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/31/32)

73 This includes assaults, torture, illegal detention, harassment, forced disappearances, extrajudicial killings, surveillance, targeting of family members, branding as 'Naxalites' and 'anti-nationals', and implication in false cases.

74 New Indian Express, 'Activists say NHRC urgently needs to protect human rights defenders', 11 December 2019. Available at: <https://bit.ly/35kgwT2>

75 Scroll, 'Maharashtra: Dalit activists claim youth leader arrested on false charges in Nanded', 5 January 2018. Available at: <https://bit.ly/3jwyjMd>; see also, Mr. Ajinath Anand Raut, an activist from Osmanabad, Maharashtra works for the rights of the *Charmakar* (Scheduled Caste) community. As he questioned the caste-based discrimination, some members of the dominant caste filed false cases against him of outraging modesty of a woman and rape. He was beaten brutally; his shop was set on fire and he was asked to leave the village. Repeated complaints to the police were in vain.

76 The Times of India, 'Fresh NSA charges on Bhim Army Chief', 2 May 2018. Available at: <https://timesofindia.indiatimes.com/city/meerut/fresh-nsa-charges-on-bhim-army-chief/articleshow/64006187.cms>.

77 The Indian Penal Code 1860. Available at: <https://bit.ly/31CElo6>



actors as well such as killing, physical assault,<sup>78</sup> arbitrary detention,<sup>79</sup> and threats. This has also happened in respect of participating in public assemblies,<sup>80</sup> peaceful protests,<sup>81,82</sup> and collective action to demand basic human rights as HRDs working in this context face a higher level of threat, both as organizers and participants, including unwarranted and excessive use of force resulting in deaths.

They are also increasingly becoming targets of online hate campaigns by fundamentalist groups.<sup>83</sup> Additionally, there also has been targeting of journalists under IPC Sections 499 and 500 for criminal defamation, due to their writings on Dalit issues<sup>84</sup> or for covering Dalit atrocities.<sup>85</sup> Sedition charges<sup>86</sup> under IPC Section 124A have also been used to suppress freedom of expression and dissent.<sup>87</sup> In the Bhima Koregaon incident,<sup>88</sup> wherein violence erupted between Dalits and Hindu Nationalists,<sup>89</sup> activists and intellectuals defending Dalit and Tribal rights have been charged under stringent laws such as the Unlawful Activities (Prevention) Act (UAPA) 1967 (now 2019).

In March 2020, the Supreme Court denied anticipatory bail applications of two such activists, Gautam Navlakha and Anand Teltumbde, charged in the same case; they were both arrested on 14 April 2020.<sup>90</sup> More than 100 activists spoke out against this “witch hunt”<sup>91</sup>; those who supported the activists arrested in this case were reportedly targeted through spyware.<sup>92</sup> Subsequent reports<sup>93</sup> have

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- 78 Patrika, ‘Attack on Advocate Lal Chand in Jaunpur’, 17 January 2018. Available at: <https://www.patrika.com/jaunpur-news/attack-on-advocate-lal-chand-in-jaunpur-1-2239991/>; another such incident took place in Maharashtra where a Dalit activist, Samir Navagrahe, was beaten up by the dominant caste men for his work for Dalit rights.
- 79 News Click, ‘Dalits from UP, MP and Rajasthan still remain in police custody for Bharat Bandh protests’, 23 April 2018. Available at: <https://newsclick.in/dalits-mp-and-rajasthan-still-remain-police-custody-bharat-bandh-protests>
- 80 Al Jazeera, ‘Concerns over illegal detention of Indian Dalits’, 11 January 2018. Available at: <https://www.aljazeera.com/news/2018/01/concerns-illegal-detention-indian-dalits-180110152033805.html>
- 81 On 2 April 2018, five Dalit activists from the National Dalit Movement for Justice (NMDJ) from East Champaran in Bihar were assaulted by non-Dalits for participating in a peaceful protest against the Supreme Court ruling diluting the spirit of the POA Act 1989. Though the FIR on their behalf was registered same day, a false case has also been registered against them.
- 82 The National Coalition for Strengthening POA Act and its implementation, ‘Violence Against Dalits During Peaceful Protests on 2 April 2018 in Madhya Pradesh’, 2018. Available at: [http://www.annihilatecaste.in/uploads/downloads/doc\\_180518034312\\_232540.pdf](http://www.annihilatecaste.in/uploads/downloads/doc_180518034312_232540.pdf)
- 83 Sabrang India, ‘Did anti-Dalit WhatsApp messages shared among Savarnas trigger violence during Bharat Bandh?’, 6 April 2018. Available at: <https://bit.ly/3j0ztsP>
- 84 The News Minute, ‘How Dalit writer in Tamil Nadu is being ostracized for writing against caste atrocities’, 19 December 2015. Available at: <https://bit.ly/3jmbXg7>
- 85 The Quint, ‘2 journos, 7 Dalits arrested during ‘caste wall’ protest in Kerala’, 22 January 2018. Available at: <https://www.thequint.com/news/india/journalists-covering-dalit-protests-arrested-by-kerala-police>
- 86 Financial Express, ‘15 Dalit protestors booked on sedition charges in Karnal’, 16 June 2017. Available at: <https://www.financialexpress.com/india-news/15-dalit-protesters-booked-on-sedition-charges-in-karnal/720976/>
- 87 The Wire, ‘Activists arrested from Lucknow Press Club for organizing convention against Dalit atrocities’, 3 July 2017. Available at: <https://thewire.in/caste/lucknow-press-club-dalit-protest>
- 88 Police claimed that Dalit and Adivasi rights activists instigated the violence by making inflammatory speeches. In 2018, the Maharashtra Police arrested nine activists including Sudha Bharadwaj, Shoma Sen, Surendra Gadling, Mahesh Raut, Arun Ferreira, Sudhir Dhawale, Rona Wilson, Vernon Gonsalves and Varavara Rao. The subsequent charge sheets filed by the police accuse the HRDs of terror-related activities. This issue is discussed in the chapter on Human Rights Defenders and Civic Space: Freedoms of Expression, Assembly and Association in this report.
- 89 India Today, ‘What happened at Bhima Koregaon’, 29 August 2019. Available at: <https://www.indiatoday.in/india/story/what-happened-at-bhima-koregaon-1326175-2018-08-29>
- 90 The Hindu, ‘Gautam Navlakha surrenders before NIA in Elgar Parishad case’, 15 April 2020. Available at: <https://bit.ly/3mk9CEt>
- 91 The Wire, ‘Witch Hunt: Activists speak out against Anand Teltumbde, Gautam Navlakha’s impending arrests’, 12 April 2020. Available at: <https://thewire.in/rights/anand-teltumbde-gautam-navlakha-arrest>
- 92 The Citizen Lab, ‘NSO Group / Q Cyber Technologies: Over a 100 new abuse cases’, 29 October 2019. Available at: <https://citizenlab.ca/2019/10/nso-q-cyber-technologies-100-new-abuse-cases/> <accessed at 01:33 on 18 July 2020>
- 93 Scroll, ‘WhatsApp spyware: 22 confirmed cases of activists, lawyers, scholars targeted in India’, 31 October 2019. Available at: <https://bit.ly/34pwXhY>

revealed that at least 22 of these 100 individuals were activists, lawyers, and scholars, who have been involved in advocating for the release of those arrested in relation to the Bhima Koregaon incident.

It is important that the Parliament enacts a separate law to protect HRDs, including specific vulnerabilities of Dalit HRDs, in a meaningful consultation with the civil society in order to fulfil India's constitutional guarantees as well as international obligations. The power of the NHRC to protect the Dalit HRDs must be further strengthened through measures such as facilitating fast-track access to protection, access to justice, and rehabilitative support. It is also important that India ratifies the 'UN Declaration on Human Rights Defenders' to ensure a safe and conducive environment for HRDs, including those working for the Dalit and Adivasi communities.

### **Rights of Dalit Women**

#### *Status of Government Action*

The POA Act 1989 criminalizes two gender-specific caste-based atrocities: (i) assault or use of force with intent to dishonour or outrage her modesty and (ii) sexual exploitation. The National Policy for the Empowerment of Women 2001 recognizes that the underlying causes of gender inequality are inherently linked to the socio-economic structure. It acknowledges that for vulnerable women, including Dalit women, access to basic amenities such as education, health, and productive resources remain grossly inadequate. Despite this, the policy outlines a targeted strategy for Dalit women only with regard to equal access to education. Similarly, while the Scheduled Castes Sub-Plan and Gender Budget incorporate special budgeting provisions for Scheduled Caste women, any planning for these women is not mandatory.

#### *Status of implementation*

Facing intersecting discrimination on the basis of gender, caste and class, Dalit women are particularly vulnerable to human rights violations as well as social, economic, and political exclusion. According to the National Family Health Survey (NFHS)-III (2005-06), 41.7 per cent Dalit women reported having faced some kind of physical violence since the age of 15 years from someone other than their current or last husband, as compared 26.8 per cent of other women. Similarly, 11 per cent of Dalit women reported having faced sexual violence as compared to 7.8 per cent of other women.<sup>94</sup>

Dalit women are often reported to bear the brunt of sexual violence as a way to punish their communities. The intersecting discrimination that they face on account of both their gender and their caste makes them a key target of violence and systematically denies them choices and freedoms in all spheres of life. The impunity to the perpetrators of these crimes is also another factor that adds the violations of their dignity and rights. As previously mentioned, the Crime in India Report 2019, finds that 3,375 Dalit women<sup>95</sup> and 880 Adivasi women<sup>96</sup> were subjected to assault, sexual harassment, Intent to disrobe, voyeurism, stalking, and insult to their modesty; 3,486 Dalit women<sup>97</sup> and 1,110

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94 National Family Health Survey-III (NFHS-III), 2005-06, Volume-I, p.549. Available at: [http://rchiips.org/nfhs/NFHS-3%20Data/VOL-1/India volume I corrected 17oct08.pdf](http://rchiips.org/nfhs/NFHS-3%20Data/VOL-1/India%20volume%20I%20corrected%2017oct08.pdf)

95 Crime in India 2019 - National Crime Records Bureau India (Volume II, p.79). Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%202.pdf>

96 Ibid, p. 179.

97 Ibid, p.85.



Adivasi women<sup>98</sup> were reported to be subjected to rape constituting 7.6 per cent and 13.4 per cent of the total atrocities registered against Dalits and Adivasis.<sup>99</sup>

Dalit women are also vulnerable to peculiar forms of violence: Studies revealed that over 90 per cent of *Devadasi/Jogini* women forced into ritualized prostitution are from the Scheduled Castes.<sup>100</sup> Official statistics show that over 2,500 women have been killed on the suspicion of practising witchcraft in the past 15 years.<sup>101</sup> It has been noted that about 95 per cent manual scavengers are women<sup>102</sup> and most of them belong to the Dalit community. Thus, they often face multiple vulnerabilities, discrimination, and exploitation based on their caste and gender.<sup>103</sup>

A study undertaken in Vizianagaram district of Andhra Pradesh revealed that around 77.2 per cent of respondents had no information regarding the structure and functioning of the Village Health and Sanitation Committees (VHSCs). A majority (75%) of the Dalit respondents said that the VHSCs do not give any importance to Dalit issues. While 55 per cent of the men interviewed said that VHSC members did inquire about their health-related issues, only 4.3 per cent women said that this was true. 74.4 per cent respondents said that there was hardly any participation of the Dalit community in the VHSCs.<sup>104</sup>

Harmful socio-cultural practices such as the *Devdasi* system, that perpetuate violence, sexual exploitation, and bonded labour of Dalit women, need to be eliminated through robust legal and development measures. There must be a cooperative engagement by the Ministry of Social Justice and Empowerment and the Ministry of Women and Child Development at both the Central and state levels to address the specific challenges and intersectional vulnerability faced by Dalit women. Proactive efforts are necessary to improve legal literacy and access to justice for Dalit women, including better implementation and understanding of the gender-specific provisions of the POA Act. There should also be an increase in the annual budgetary allocation for the protection of Dalit women and children from abuse, neglect, exploitation, and violence.

### **Affirmative Action and Enjoyment of Economic and Social Rights**

#### *Status of Government Action*

The Constitution clearly prohibits all discrimination in employment and commits to promoting the economic interests of the Scheduled Castes, Scheduled Tribes, and Other Backward Classes.<sup>105</sup> Especially, Article 16(2) allows for 15 per cent reservation for the Scheduled Castes to enable their

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98 Ibid, p.185.

99 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.21). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>

100 Anti-Slavery International, 'Women in Ritual Slavery: *Devadasi*, *Jogini* and *Mathamma* in Karnataka and Andhra Pradesh, Southern India', 2007. Available at: <https://bit.ly/37xLVEn>

101 India Today, 'Over 2000 women killed in India for practising 'black magic' in 14 years', 20 June 2016. Available at: <https://www.indiatoday.in/india/story/over-2000-women-killed-in-india-for-practicing-black-magic-in-14-years-15280-2016-06-20>; see also, Hindustan Times, 'Suspected to be witch, elderly Dalit woman burnt alive in Bihar', 28 March 2017. Available at: <https://bit.ly/3mk9eWf>

102 Livemint, 'Supreme Court awards compensation for sewer deaths since 1993', 28 March 2015. Available at: <https://www.livemint.com/Politics/TIcoOwqRsgw2ACB0Gk81nL/Supreme-Court-awards-compensation-for-sewer-deaths-since-199.html>; see also, Youth Ki Awaaz, 'In manual scavenging, caste and gender converge to oppress women', 12 October 2020. Available at: <https://bit.ly/3jmc6QH>

103 UN News, 'UN rights chief welcomes movement to eradicate manual scavenging in India', 31 January 2013. Available at: <https://bit.ly/2TIT0Q1>

104 Andhra Pradesh: People's Action for Rural Awakening, 'Still some way to go: Communitization of Health Services among Dalit Community', 2012.

105 The Constitution of India 1950, Arts. 16(2), 46. Available at: <http://legislative.gov.in/constitution-of-india>

participation in government and public services, educational institutions, and political bodies. It is from this enabling provision that India derives its elaborate quota system for reserved seats in public jobs, publicly funded colleges, and elected assemblies for communities marginalized on the basis of their caste or tribal status.<sup>106</sup> There are additional legislative provisions, such as that under the POA Act, that punish any discrimination in access to employment on the basis of caste, e.g. wrongfully dispossessing a person belonging to a Scheduled Caste from his / her land. Section 4(I), (IV), and (VIII) of the PCRA 1955 prohibit any interference with the right to access water and other public services on the basis of untouchability. Additionally, India also has numerous state and national-level social welfare schemes, including programmes to provide financial assistance and access to housing, water and sanitation, livelihood, development training, legal aid, and scholarships to socio-economically disadvantaged groups.

The Parliament has also enacted the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act 2013, which not only banned manual scavenging, a largely caste-based occupation in India, but also provided punishment for engaging any person in hazardous cleaning of sewers and septic tanks<sup>107</sup> after constant efforts and interventions by the civil society and the NHRC. The Ministry of Social Justice and Empowerment has also worked together with the civil society in rehabilitating manual scavengers.<sup>108</sup> Recently, in March 2020, the Government of India prepared a Rs. 1,250 billion National Action Plan to be implemented in a phased manner to put a complete end to manual scavenging. It aims at acquiring high technology machinery in 500 cities and major *gram panchayats*<sup>109</sup> to clean sewers without any human interface.<sup>110</sup>

### *Status of implementation*

#### a) Employment:

There is no gender-disaggregated data available which specifically indicates the representation of Scheduled Caste women in government services in either Central or state government posts. It has been found that persons belonging to the Scheduled Castes were congregated in the junior ranks of the Central Government employment with 23 per cent in Class-D jobs (mostly engaged as sweepers) as compared to 11.5 per cent in Class-A jobs. In 2010, the data on the number of persons from the Scheduled Castes in government services in the states and union territories also presented a similar pattern of their high representation in Class-D jobs. This was as high as over 30 per cent in states such as Punjab and Andhra Pradesh. The highest Class-A job representation for the Scheduled Castes was in Uttarakhand (23%) and Karnataka (18.6%).<sup>111</sup>

Despite a special recruitment drive since 2008, until March 2012, various government departments and state-run undertakings could fill only 17,898 of the 30,968 identified vacancies in the promotion

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106 World Development, 'Does Affirmative Action Reduce Productivity? A Case Study of the Indian Railways', Vol. 64, pp. 169-180, 2014. Available at: <https://bit.ly/3jwyQxH>

107 The Wire, 'Why the proposed Manual Scavenging Prohibition Bill looks good only on paper', 9 October 2020. Available at: <https://thewire.in/caste/manual-scavenging-prohibition-bill-2020-caste-rehabilitation>

108 Human Rights Watch, 'Cleaning Human Waste: "Manual Scavenging", Caste and Discrimination in India', 25 August 2014. Available at: <https://bit.ly/3kp3s5m>

109 *Gram Panchayat* means village council and is the smallest unit of local self-governance in India.

110 The Economic Times, 'Govt. draws up Rs. 1.25 L-cr action plan to end manual scavenging', 6 March 2020. Available at: <https://bit.ly/2Tc9NVI>

111 National Commission for Scheduled Castes – Government of India, Annual Report 2012-13. Available at: [http://ncsc.nic.in/files/PDFsam\\_merge.pdf](http://ncsc.nic.in/files/PDFsam_merge.pdf)

quota, indicating a success rate of only 57.8 per cent. The situation was nearly similar in direct recruitment at 59.2 per cent, with the various government departments giving jobs to 27,540 persons belonging to the Scheduled Castes, Scheduled Tribes, and Other Backward Classes as against the identified backlog vacancies of 46,552 posts.<sup>112</sup> This trend was also seen at the top level of government bureaucracy.<sup>113</sup> Despite no visible change in their social or economic status as a result of conversion, Dalit Christians and Dalit Muslims are deprived of the benefits of reservation, support, and development schemes formulated for their counterparts in Hindu, Sikh, and Buddhist religions, as aforementioned.<sup>114</sup>

With respect to the social representation in the judiciary, there has been a serious criticism on the poor representation of Schedule Castes and Scheduled Tribes, especially in the ranks of the higher judiciary. Only about 10 per cent of the judges in the High Courts are women. The percentage of women judges in the lower judiciary is pegged at 27 per cent. When it comes to caste representation, the numbers fall even more drastically. It is estimated that the Other Backward Classes constitute only 12 per cent of the lower judiciary,<sup>115</sup> which is significantly less in reference to their actual population share estimated to be close to 40 per cent according to the 2011 Census. Dalits constitute 14 per cent, which is slightly less than their population share of 16.6 per cent. Judges from the Scheduled Tribes constitute 12 per cent of the lower judiciary, higher than their estimated population share of 8.6 per cent.<sup>116</sup>

#### b) Manual Scavenging:

While the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act 2013 has been enacted, it does not have concrete measures for rehabilitation and a clear implementation plan.<sup>117</sup> The practice has continued in the country driven by caste, class, gender, and income device. Increasing number of people died while cleaning sewers and septic tanks over the years. 2019 saw the highest number in the past five years: 110 workers.<sup>118</sup> Despite several laws and policies, around 48,345 manual scavengers were identified till February 2020. The reports of three manual scavengers who choked to death in Mumbai<sup>119</sup> and five others in Delhi<sup>120</sup> remain a dark spot on the *Swachh Bharat Abhiyaan*.<sup>121</sup> The mission should devise ways of improved sanitation and waste management in harmony with the need to eradicate the practice of manual scavenging.

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112 The Indian Express, 'No SC, ST, OBC candidates for 40 pc 'Backlog Vacancies'', 14 December 2012. Available at: <http://archive.indianexpress.com/news/no-sc-st-obc-candidates-for-40-pc-backlog-vacancies-/1045119/>

113 Reply of Minister of State in the Prime Minister's Office, V. Narayanasamy to the Rajya Sabha question no. 3040, answered on 20-11-2012.

114 Ministry of Minority Affairs - Government of India, Report of the National Commission for Religious and Linguistic Minorities, p.142. Available at: <https://bit.ly/3dQt08Y>

115 The Times of India, 'Data: OBCs just 12% of lower court judges', 29 January 2018. Available at: <http://bit.ly/2IT7sxm>

116 The Wire, 'We need annual diversity statistics for the judiciary', 25 May 2018. Available at: <https://thewire.in/law/annual-diversity-statistics-judiciary>

117 Down To Earth, Bezuda Wilson of the *Safai Karamchari Andolan*, quoted in 'Manual Scavenging Prohibition Bill: How Effective', 4 July 2015. Available at: <https://bit.ly/3dJZlhP>

118 The Hindu, 'Watch: India's Manual Scavenging Problem', 16 February 2020. Available at: <https://www.thehindu.com/news/national/indias-manual-scavenging-problem/article30834545.ece>

119 Mumbai Mirror, '3 choke to death in Govandi septic tank', 24 December 2019. Available at: <https://bit.ly/2HjuiO8>

120 News Click, 'Death of 5 men in a septic tank adds to Delhi's Hall of Shame', 10 September <https://www.newsclick.in/death-5-men-septic-tank-adds-delhis-hall-shame>

121 *Swachh Bharat Mission / Swachh Bharat Abhiyaan* or Clean India Mission was a country-wide campaign from 2014 to eliminate open defecation and improve solid waste management in urban and rural areas in India. With coming up of technology, it was believed to also reduce manual scavenging.

c) Economic rights and Budget Allocation:

To bridge the gap between the Dalit and Adivasi communities and others, the Government had crafted a policy of budget allocations for their specific issues. In the financial year 2020-21, the budget allocation for the Scheduled Castes stands at Rs. 832.57 billion and at Rs. 536.53 billion for the Scheduled Tribes. 323 schemes for the Scheduled Castes and 331 schemes for the Scheduled Tribes have been devised under the Allocation for the Welfare of Scheduled Castes (AWSC) and the Allocation for Welfare of Scheduled Tribes (AWST) respectively.

While the Government has acknowledged the need for development of the Dalit and Adivasi communities, it is not reflected in the budget for the financial year 2020-21. There is a total gap in allocation of Rs. 1,229.98 billion under the Scheduled Castes budget and of Rs. 576.06 billion under the Scheduled Tribes budget. Out of the total budget allocated for the Scheduled Castes, only Rs. 161.74 billion is for targeted schemes (19% of the allocated budget); for the Scheduled Tribes, this amount is at Rs. 194.28 billion (36% of the allocated budget). This shows that most of the schemes are based either notional allocation or general allocation. There are some Ministries and Departments of the Government, such as Ministries of Power and Environment and Forests, that have violated the norms in allocating notional schemes that have no direct direction to give benefit to the communities. The Government should take some steps to correct such anomalies.

The atrocities and violence against Dalits, especially women, have continued to increase according to the Crime in India Report 2019 as outlined earlier in the chapter. However, the amount allocated for the implementation of the POA Act 1989 has reduced from Rs. 1.89 billion to Rs. 1.65 billion. This indicates a lack of budgetary commitment. There have been protests of the youth from marginalized communities against arbitrary fee hike and other barriers in accessing higher education. The allocation for the Post-Matric Scholarships has been nominally increased from Rs. 29.26 billion to Rs. 29.87 billion. It must be noted that up to December 2019, only Rs. 17.40 billion of the sanctioned amount was utilized.

A massive amount of Rs. 222.12 billion has been allocated to the Department of Agriculture which has about 24 schemes and little relevance for the community directly. Since majority of the Dalits do not own land, they might not be able to access any of these schemes. Dalit and Adivasi women, being poor and marginalized, are highly dependent on public provisioning of basic services. However, the Government has only allocated 0.9 per cent for Scheduled Castes women and 0.34 per cent for Scheduled Tribes women of the total eligible Central Sector and Centrally Sponsored Schemes.<sup>122</sup>

d) Disaster Risk Management:

The Scheduled Castes and Scheduled Tribes are vulnerable to both natural and man-made disasters because of their marginal social standing and systemic discrimination, with their habitation usually being in marginal spaces segregated from the mainstream.<sup>123</sup>

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122 National Campaign on Dalit Human Rights (NCDHR), 'Dalit Adivasi Budget Analysis 2020-21. Available at: <http://www.ncdhr.org.in/wp-content/uploads/2020/02/NCDHR-Budget-2020.pdf>

123 National Dalit Watch, NCDHR and Social Awareness Society for Youth, 'Tsunami to 2015 Floods: "No respite for Dalits in disaster response, Tamil Nadu" - Report of Initial Findings from Immediate Needs Assessment and Monitoring Responses towards Affected Dalit Communities'. Available at: <https://bit.ly/34nOrLC>. It revealed that Dalits are still waiting for the justice in response and how they were treated during the floods and in the process of rescue, relief and

e) Right to Adequate Housing and Land:

Persons from the Dalit communities regularly face discrimination and violence while trying to access adequate housing and land. They own the lowest percentage of land in rural India (9.23%); the average area owned per Dalit household is about 0.27 hectares. In many villages, Dalit settlements are located on the peripheries without access to basic services. Purchase of land by Dalits is difficult; incidents of forcible occupation by other castes of land distributed to Dalits are commonly reported.<sup>124</sup> 71 per cent Dalits are landless labourers, who work on the land that they do not own. In rural areas, 58.4 per cent Dalit households do not own any land at all.<sup>125</sup> Although the *Pradhan Mantri Awaas Yojana* is a well-thought scheme aimed at bridging the adequate housing needs of the poor and the marginalized, there are reports of caste-based discrimination against Dalits and Adivasis in the allotment process.<sup>126</sup>

It is vital that the Government conducts a complete audit and assessment of the current schemes relevant to supporting access to social and economic rights with attention to overcoming existing access barriers for Dalit and Adivasi communities. It would require adequate and gender-sensitive training programmes based on up-to-date market analysis, so that it can result in sustainable livelihoods, impart marketable skills, and include an ongoing support to participants until they have secured jobs or established a functioning business. Coordinated action by all the concerned ministries and government stakeholders — including but not limited to the Ministries of Social Justice and Empowerment, Drinking Water and Sanitation, Rural Development, Housing and Urban Poverty Alleviation, Urban Development, Women and Child Development, and Labour — are vital to advance socio-economic rights of Dalits and Adivasis. Similarly, practices that violate their basic human rights such as manual scavenging, bonded labour, and forced and child labour, need to be eliminated with time bound National Action Plan, including through stringent implementation of the existing legal mechanisms, relief, rehabilitation, and development measures.

### **Right to Education**

#### *Status of Government Action*

Articles 15 and 46 of the Constitution, coupled with Article 21A leading to the enactment of the Right of Children to Free and Compulsory Education (RTE) Act 2009, protect the rights of all children between the ages of six and 14 years to free and compulsory elementary / primary education. The Act specifically directs the Government to take necessary action to ensure that children from the disadvantaged social groups are not discriminated against or prevented from pursuing and completing elementary education.<sup>127</sup> To give effect to the constitutionally guaranteed right of access to education to the marginalized and minority communities, the Government has, in successive years, introduced

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post-disaster care. The narratives show how children, women, and the elderly, who have lost their houses, are struggling without basic facilities.

124 Housing and Land Rights Network, 'The Human Rights to Adequate Housing and Land in India' – Joint Stakeholder Report to the UN Human Rights Council for India's Third Universal Periodic Review in 2017. Available at: [https://www.hlrn.org.in/documents/Housing\\_Land\\_Rights\\_UPRII\\_HLRN.pdf](https://www.hlrn.org.in/documents/Housing_Land_Rights_UPRII_HLRN.pdf)

125 Hindustan Times, 'Landlessness takes away Dalits' legal and official validity as Indian citizens', 1 July 2019. Available at: <https://bit.ly/3okOj7u>

126 SAGE Journals, 'Caste and Discrimination in Welfare: Social Exclusion of Dalits in Uttar Pradesh', 13 March 2019. Available at: <https://doi.org/10.1177%2F2455328X18821447>

127 The Right of Children to Free and Compulsory Education Act 2009, Sec. 8(c). Available at: [https://www.mhrd.gov.in/sites/upload\\_files/mhrd/files/upload\\_document/rte.pdf](https://www.mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/rte.pdf)

several schemes, programmes, and policies. However, despite such measures, there remain some gaps that are a divisive factor in the education system of the country.

The *Sarva Shiksha Abhiyaan* (SSA)<sup>128</sup> Implementation Framework, based on the RTE Act, made interventions for inclusion of Dalit children, including establishing norms of behaviour for teachers and students and timely detection of the forms of discrimination practiced by either teachers or students. The Ministry of Human Resource Development (MHRD) has issued Guidelines against Discrimination in Elementary Education in 2012.<sup>129</sup> India's 12th Five-Year Plan (2012-17) acknowledged that the dropout rate of Dalit children from education is higher than the national average and recognized social exclusion as "the single most important challenge in universalizing elementary education."<sup>130</sup> The Government has also put in place pre-matric and post-matric scholarships for Dalit children to incentivize and promote education. There are also Government-run hostels for Dalit children and it is all aimed at promoting their access to education.

### *Status of implementation*

Despite the Government's focus on education for the Dalit community, especially children, discrimination in schools remains a significant barrier in accessing education. Children face discrimination in access to drinking water and provision of mid-day meals. Dalit children have been made to clean the premises, utensils, toilets and do such other menial tasks. Many children also face verbal abuse, derisive harassment and humiliation on the basis of their caste identity.<sup>131</sup>

In 2016-17, over 8.5 million students belonging to Dalit and Adivasi communities were awaiting scholarships that have been delayed for over a year. As a result, many students are forced to drop out from their courses.<sup>132</sup> Across the key fields of study, Dalit enrolment in 2018-19 fell short of the mandated quota of 15 per cent; the Scheduled Tribe enrolment was short of the mandated quota of 7.5 per cent.<sup>133</sup> There have been several cases of discrimination against the Dalit and Adivasi students at school and college levels, which forces the students to drop off. Instances of suicide of students have also been reported; cases of death by suicide of Rohith Vemula<sup>134</sup> and Payal Tadv<sup>135</sup> gained national attention owing to allegations of institutional as well as social discrimination and harassment.

It is crucial to take immediate actions to ensure that school and educational institutions free from all kinds of discrimination, including by requiring schools to display their commitment to "Discrimination-Free Schools" in prominent places and immediately rename schools with caste names. It is equally important to have legal mechanisms in place to address caste-based discrimination in higher

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128 *Sarva Shiksha Abhiyaan* is a programme aimed at universalization of primary education – "education for all".

129 These guidelines specify that all schools should not discriminate against a child belonging to a socially disadvantaged group in terms of admissions. It also prohibits their discrimination, harassment, victimization and segregation.

130 The Plan, thus, calls for a rights-based approach, sharper focus on disadvantaged social groups and emphasis on increasing access and enrolment and improving learning outcomes.

131 News Click, '2 Dalit research scholars "forced to clean toilet" by Professor at BHU', 31 May 2019. Available at: <http://bit.ly/37tkA65>; see also, The Times of India, 'Woman moves HRC after Dalit students forced to clean toilets', 6 June 2018. Available at: <http://bit.ly/34i0ZDO>; and The Hindu, 'Teachers held for forcing Dalit students to clean toilets', 24 April 2015. Available at: <http://bit.ly/3gSOof9>

132 NCDHR, 'Budgeting for Inclusion: Report cards on Equitable Access to Higher Education for Dalits Adivasis', August 2017. Available at: <https://bit.ly/3kn5rao>

133 Ministry of Human Resource Development – Department of Higher Education, 'All India Survey of Higher Education (AISHE) 2018-19'. Available at: <http://aishe.nic.in/aishe/viewDocument.action?documentId=262>

134 The Wire, 'Rohith Vemula's suicide triggered a new political wave', 17 January 2019. Available at: <https://thewire.in/caste/rohith-vemula-suicide-triggered-a-new-political-wave>

135 Livemint, 'Payal Tadv suicide case: The death of a doctor', 7 June 2019. Available at: <https://bit.ly/31zUQS4>



education at all levels and implement the 2013 Guidelines issued by the University Grants Commission in this regard. The education should also have a rights-based curriculum to raise awareness among all students about human rights and non-discrimination.

### **Right to Access Clean Water and Sanitation**

#### *Status of Government Action*

India has allocated resources to modernize sanitation. National sanitation schemes aimed at modernizing human waste management include the Integrated Development of Small and Medium Towns Scheme 1969, *Sulabh Shauchalaya* (simple latrines) Scheme 1974, the Integrated Low Cost Sanitation Scheme 1981, the Low Cost Sanitation for Liberation of Manual Scavengers Scheme 1989, and the Total Sanitation Campaign 1999, which was later renamed *Nirmal Bharat Abhiyaan*. In 2014, the Government had launched *Swachh Bharat Abhiyaan* and declared the country open defecation-free in 2019. But the information from the grassroots contradicts this. It must be noted that the day when the Government announced that the country is free from open defecation, two Dalit children were killed by two dominant caste men because they were defecating in the open.<sup>136</sup> Despite efforts, many Dalit households still do not have effectively functioning latrines and sanitation facilities.<sup>137</sup>

#### *Status of implementation*

According to the 2019 Annual Report<sup>138</sup> of the Special Rapporteur on the human rights to safe drinking water and sanitation, more than 20 per cent Dalits in India do not have access to safe drinking water. Similarly only 10 per cent Dalit households have access to public sanitation, as compared to 27 per cent non-Dalit households.<sup>139</sup> Dalits are frequently disentitled and prohibited from using public taps and wells located in non-Dalit / upper caste areas. Only a quarter of the Dalit households have water sources within premises as compared to almost half for the general population. 23.7 per cent of Dalit households have access to latrine facilities as compared to 42.3 per cent for general households. On the other hand, only 17 per cent of Adivasi households have access to latrines, which is significantly lower than that for the general population.<sup>140</sup> There is a need to revise the existing water and sanitation related laws, regulations, policies, and operating procedures to ensure that they refrain from or do not indirectly lead to discrimination. Public water and sanitation budgets should be reviewed to ensure that they address the needs of vulnerable and marginalized groups, including those living in informal settlements and in arid and semi-arid areas.

### **Conclusion**

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136 The Hindu, 'Two Dalit children beaten to death over open defecation in Madhya Pradesh's Shivpuri district', 26 September 2019. Available at: <https://bit.ly/37zEuN9>

137 Ministry of Statistics and Programme Implementation – Govt of India (National Sample Service Office), 'Household Ownership and Land Holdings in India', 2013. Available at: <https://bit.ly/3p9kHdz>

138 UN Human Rights Council, 42nd Regular Session, Report of the Special Rapporteur on the human rights to safe drinking water and sanitation - Rights to water and sanitation in spheres of life beyond the household with an emphasis on public spaces (A/HRC/42/47). Available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/42/47](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/47)

139 Minority Rights Group (MRG) International, Joint statement by MRG and the International Dalit Solidarity Network (IDSN) in the Interactive Dialogue with the Special Rapporteur on the right to safe drinking water and sanitation at the 42nd UNHRC Session, September 2019. Available at: <https://bit.ly/3jnAuBz>

140 NCDHR, 'Stigmatization of Dalits in Access to Water and Sanitation in India'. Available at: <https://bit.ly/3dT4lkk>



The Government ought to take further proactive and appropriate measures to completely weed out the caste system and the practice of untouchability to uphold the constitutional values. This could be done not only through programmes and policies, but also through investing in awareness-building campaigns in partnership with organizations working for the rights of Dalit and Adivasi / Indigenous peoples. Comprehensive measures are required to enact and give effect to anti-discrimination, equal opportunity, and equality laws. Benefits of affirmative action and reservation measures must be extended to Dalit converts of all religions such as Dalit Christians and Dalit Muslims, who are presently excluded due to Constitution (Scheduled Castes) Order 1950, which needs to be repealed or amended.

The Unorganized Workers' Social Security Bill should be adopted without any further delay and equal attention should be given to Dalit women domestic workers. The ILO Convention on Domestic Workers and Rules 2011 should be given due consideration for subsequent ratification. The Government should plan, design, develop, and implement a National Action Plan to eliminate all forms of discrimination as a priority. It should integrate human rights education and training at all levels and mitigate commitment deficit for effective implementation of the recommendations of the UN Treaty Bodies and Special Rapporteurs as well as for proper and active coordination of the concerned line ministries, National and state institutions, and the civil society.

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## CHAPTER 2

### CHILD RIGHTS

#### Recommendations on Birth Registrations

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.150	Promote and facilitate universal access to birth registration, especially for people living in extreme poverty, belonging to religious minorities or living in remote areas of the country through the implementation of mobile units and carrying out awareness-raising campaigns.	Mexico	Supported	Partially Implemented
160.152	Remove barriers prohibiting scheduled castes and scheduled tribes from registering their births and obtaining birth certificates of their children.	Bahrain	Noted	Not Implemented <sup>141</sup>

#### *Developments / Issues Post UPR-III:*

Even after 40 successive years of implementation of The Registration of Births and Deaths Act 1969, the current statistics indicate that registration figures are as low as 55 per cent of births and 46 per cent of deaths. This means that out of the approximately 26 million births that take place in a year in India, only about 14 million are registered.<sup>142</sup> According to the National Family Health Survey (NFHS)-IV, as of 2015-16, three in five children under the age of five years — which makes it to only 62.3 per cent of the total population of children in the country — have their births registered and possessed a birth certificate.<sup>143</sup> This is a significant improvement from 26.9 per cent in 2005-06.<sup>144</sup> Despite this progress, every birth and death is still not registered. It has also been found that states that have poor infrastructure in registering infant deaths also have a significantly higher infant mortality rate.<sup>145</sup>

However, these statistics do not paint an accurate picture as the performance of states is affected by many different factors. States such as Kerala and Tamil Nadu show a high percentage of registration

<sup>141</sup> While universalization of birth registration is pretty skewed across all the states, none of the state governments have taken any special measures to encourage and promote birth registration of children from the Scheduled Castes and Scheduled Tribes.

<sup>142</sup> PLAN International for India, 'Birth Registration In India: Status and Strategies for Improvement', 2011. Available at: <https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticle50451.aspx>

<sup>143</sup> National Family Health Survey (NFHS) – IV, 2015-16. Available at: <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>

<sup>144</sup> Scroll, 'Almost 38% of Indian children under the age of five don't have a birth certificate', 4 January 2020. Available at: <https://scroll.in/article/948667/almost-38-of-indian-children-under-the-age-of-five-dont-have-a-birth-certificate>

<sup>145</sup> India Spend, 'Birth Certificates Are Citizenship Proof, Govt Says. But 38% Under-5 Children Don't Have One', 3 January 2020. Available at: <https://bit.ly/3kppx3L>

of births and deaths, while most of the northern states show a dismal registration record.<sup>146</sup> The situation is even worse for migrants and refugees forced to flee their countries because of conflict; their children are often under a looming threat of being rendered stateless without any legal identity.<sup>147</sup>

In the cumulative backdrop of the recent Citizenship Amendment Act (CAA) 2019 and the proposed National Register of Citizens (NRC) process — on which the Government has not yet communicated a cogent plan of action — it is feared that many children will be left out of the process and possibly deprived of citizenship due to lack of proof of birth.

#### *Government of India's Response:*

In India, the civil registration system is one of the most robust systems put in place by the Government. However, its implementation by state governments has remained uneven. Some states have implemented some of the state-level schemes to boost birth registrations and have even achieved some level of improvement. For example: The state of Assam has devised *Majoni* scheme which provides social benefits to all girl children born in the family. Similarly, *Beti Bachao Beti Padhao* scheme implemented by the Government of India aims at improving the sex ratio in the country and encourages the registration of birth for girl children. However, recently, even this flagship scheme has seen major budget cuts by the Government of India.<sup>148</sup>

#### **Recommendations on Child Labour**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.14	Ratify the Convention against Torture as soon as possible and further <b>ratify the Minimum Age Convention 1973 (No.138) and the Worst Forms of Child Labour Convention 1999 (No.182) of the International Labour Organization</b> and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights and abolish the death penalty as recommended by the Law Commission of India.	Ireland	Noted	Implemented (Highlighted portion)

146 The Hindu, 'Birth and Death Registration is Still Low in India', 18 April 2019. Available at: <https://www.thehindu.com/news/national/births-and-deaths-registration-still-low-in-india/article4630425.ece>

147 Ibid.

148 HAQ: Centre for Child Rights, 'Children in The Trillion Dollar Economy: Budget for Children 2019-20'. Available at: <https://bit.ly/31AsUxy>; see also, HAQ: Centre for Child Rights, 'Budget for Children 2020-21: Together with ALL, Development for ALL, the Trust of ALL (EXCEPT) CHILDREN'. Available at: <https://bit.ly/2J0kkS7>

161.38	Ratify the Minimum Age Convention 1973 (No.138) and the Worst Forms of Child Labour Convention 1999 (No.182) of the International Labour Organization.	Slovenia	Supported	Implemented
161.40	Consider acceding to the ILO Worst Forms of Child Labour Convention 1999 (No.182).	Uruguay	Supported	Implemented
161.37	Develop a national strategy to tackle exploitative labour practices and to ratify the ILO Protocol of 2014 to the Forced Labour Convention 1930 and continue to strengthen protections for children.	United Kingdom of Great Britain and Northern Ireland	Noted	Partially Implemented
161.227	Prohibit child labour in family enterprises and extend the list of dangerous activities in line with the recommendations of the Committee on the Rights of the Child.	Spain	Noted	Not Implemented
161.228	Consider repealing the provision that allows children to work in family-based occupations.	Slovakia	Noted	Not Implemented
161.229	Continue strengthening national strategies to combat child labour.	Brazil	Supported	Partially Implemented
161.231	Continue strengthening institutions to protect children and adolescent girls and boys, with a view to eradicating child labour, sexual exploitation and the practice of child marriage.	Chile	Supported	Partially Implemented <sup>149</sup>
161.236	Increase efforts to improve the rights of the child, notably through the <b>effective application of the prohibition of child labour</b> , as well as the rights of women.	France	Supported	Not Implemented
161.237	Establish a monitoring mechanism to oversee the	Thailand	Supported	Not Implemented

149 Reference: National Child Labour Project (NCLP). Available at: <https://labour.gov.in/childlabour/nclp>

	<b>effective implementation of the Child Labour (Prohibition and Regulation) Amendment Act, the National Child Labour Policy and the Accessible India Campaign to prevent exploitation of children and protect the rights of persons with disabilities.</b>			
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#### *Developments/Issues Post UPR-III:*

The situation of child labour post UPR-III has remained grim with no indications of any decrease in the practice of employing children, including in hazardous tasks. The consolidated data which allows us to grasp the presence of child labour has not been easily available, with only the Census 2011 providing such comprehensive information, giving a total number of working children within the age group of 5 and 14 to be 10.1 million.<sup>150</sup> A 2015 ILO report estimated the working population of children to be around 5.7 million.<sup>151</sup> Besides such data sets, there are several scattered newspaper reports highlighting the persistent presence of child labour across the country even in ‘hazardous’ working conditions, which remains a major impediment to their growth and development.<sup>152</sup>

While welcoming the prohibition of child labour up to the age of 14 years, and the inclusion of children in the 15-18 years within the ambit of the law, child rights organizations and activists working on the prevention of child labour were opposed to some of the other amendments introduced in 2016 to the Child Labour (Prohibition and Regulation) Act 1986.<sup>153</sup> Their concern is that the retention of the proviso allowing children to work within families pushes children into caste-based occupations and also makes it difficult to identify children involved in the various unorganized sector labour force. The inspections into child labour cases have also been decreasing by the year, contributing to the already the low number of prosecutions and convictions.<sup>154</sup>

150 Census of India 2011. Available at: <https://censusindia.gov.in/2011-common/censusdata2011.html>

151 Reuters, ‘Parliament passes controversial child labour bill’, 26 July 2016. Available at: <https://in.reuters.com/article/india-children-labour-idINKCN10619V>

152 The NHRC was in a manner forced to undertake a study in 2019 after *Terre des hommes* (TDH), an organization working on child rights, came out with its own report on the presence of child labour in the Mica mines of Bihar and Jharkhand. The NHRC report revealed that close to 5,000 children had to drop-out from schools due to compulsions of being employed as labourers in the mines. The number given by NHRC were far less as compared to what TDH study had revealed, where around 22,000 children were working in these very mines. See, The Wire, ‘5,000 Children Abandon Studies to Work in Mica Mines of Jharkhand, Bihar’, 27 August 2019. Available at: <https://bit.ly/31AnzGu>

153 An amendment which, at first glance, appeared progressive, but was completely riddled with flaws on a closer reading. The Amendment Act reduced types of hazardous occupations from a total of 83 to include just mining, explosive and occupations mentioned in Factory Act. Additionally, Section 4 of the Act was further changed to allow for changes in list of hazardous occupation at the discretion of governmental agencies. The most regressive change was to allow children to work in their family enterprises after school hours or during vacations. This could range from occupations of weaving, making bidi etcetera and definitely puts additional burden on children. See, The Hindu, ‘A law that allows child labour’, 10 August 2016. Available at: <https://bit.ly/3matnxW>

154 In 2014, only 1,027 cases of violations were reported under Child Labour (Prohibition and Regulation) Act, out of which only 792 cases went for prosecution, resulting into 754 cases for conviction. See, Ministry Of Labour and Employment – Government of India, Lok Sabha, Unstarred Question No.1285, Answered on 01.12.2014, Conviction under Child Labour Laws. Available at: <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=6668>; see also, The Hindu, ‘Dismal conviction rate mars rescue of child labourers’, 3 July 2018. Available at: <https://bit.ly/35sLdFW>; see also, The

The situation is much more serious if one is to take into account the children who have been able to come out of child labour. The National Child Labour Project (NCLP), since its inception in 1988, has managed to rescue over 1.2 million children, which is indicative of the evasive nature of child labour often allowing it to escape from the eyes of the law and consolidate its presence across sectors.<sup>155</sup> A similar dismal state of rescue is reflected by the Platform for Effective Enforcement for No Child Labour (PENCIL) Portal since its inception in 2017. It identified over 186 thousand children who were employed as labourers and needed to be rescued.<sup>156</sup> Amidst all this, the budgetary allocation towards NCLP has seen a consistent decline from 2016-17 and 2017-18 where Rs. 1.40 billion and Rs. 1.60 billion were allocated respectively, to 2018-19 where Rs. 1.20 billion were allocated. It was further decreased in 2019-20 by 16 per cent; the contribution towards PENCIL Portal was also reduced.<sup>157</sup>

### *Government of India's Response*

The Government of India in June 2017 ratified the ILO Minimum Age Convention 1973 (No. 138)<sup>158</sup> and ILO Worst Forms of Child Labour Convention 1999 (No. 182).<sup>159</sup> In 2017, as mentioned above, that the PENCIL Portal was established to ensure effective implementation of the Child Labour (Prohibition and Regulation) Act 1986. The NCLP scheme has further expanded to 312 districts in the country where the Government aims at facilitating rescue missions and shift more children engaged in child labour to *Kendriya Bal Shramik Vidyalyayas*.<sup>160</sup> For the purpose of managing the overall functioning of NCLP and PENCIL Portal, the Ministry of Labour and Employment (MoLE) constituted a Task Force, whose first meeting was held on 17 October 2018.<sup>161</sup>

### **Recommendations on Sexual Offences Against Children**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
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- New Indian Express, 'Convictions Continue to Plunge in Telangana's Child Labour Cases', 18 May 2019. Available at: <https://bit.ly/34nFHF5>
- 155 NDTV, '12.8 Lakh Children "Mainstreamed" Through National Child Labour Project: Minister', 20 November 2019. Available at: <https://bit.ly/37zKZzu>
- 156 PENCIL Portal. Url: <https://pencil.gov.in> <accessed at 16:33 on 19 October 2020>
- 157 Counterview, 'Decline in Union budget for eradicating child labour, encouraging girl child schemes', 6 July 2019. Available at: <https://www.counterview.net/2019/07/decline-in-union-budget-allocation.html>
- 158 ILO Convention No. 138 stipulates that the minimum age at which children can start work should not be below the age of compulsory schooling and in any case not less than 15 years, with a possible exception for developing countries. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)
- 159 ILO Convention No. 182 prohibits hazardous work which is likely to jeopardize children's physical, mental or moral health. It aims at immediate elimination of the worst forms of child labour for children below 18 years. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182). However, in the Indian context, there still remain challenges in terms of reporting and rescue missions which these ratifications should have induced, but the data for the same is still lacking as can be seen from the NCRB reports.
- 160 NDTV, '12.8 Lakh Children "Mainstreamed" Through National Child Labour Project: Minister', 20 November 2019. Available at: <https://bit.ly/34oluhn>; *Kendriya Bal Shramik Vidyalyayas* are Central Schools for Child Labourers in India.
- 161 V.V. Giri National Labour Institute, 'Child Hope', July-December 2018. Available at: [https://vvgnli.gov.in/sites/default/files/Child\\_Hope\\_July\\_-\\_December\\_2018\\_6-2-2019.pdf](https://vvgnli.gov.in/sites/default/files/Child_Hope_July_-_December_2018_6-2-2019.pdf)

161.201	Take additional serious measures to eliminate violence against women and children, including sexual violence.	Kyrgyzstan	Supported	Partially Implemented <sup>162</sup>
161.202	Continue and strengthen measures to prevent and repress offences and violence against women and girls, including through early childhood education, awareness-raising and enhancing effective mechanisms of reparation.	Viet Nam	Supported	Partially Implemented <sup>163</sup>
161.213	Redouble its efforts to enforce its legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls.	Liechtenstein	Supported	Partially Implemented <sup>164</sup>
161.214	Strengthen legislations to combat sexual offences against children and women.	Timor-Leste	Supported	Partially Implemented <sup>165</sup>
161.216	Implement the Protection of Children from Sexual Offences Act to increase the protection of children from sexual abuse.	Kenya	Supported	Partially Implemented
161.230	Continue to take all necessary measures to enhance the effectiveness of the protection of children, in particular in cases of sexual violence against children.	Portugal	Supported	Partially Implemented
161.231	Continue strengthening institutions to protect children and adolescent girls and boys, with a view to eradicating child labour, sexual exploitation and the practice of child marriage.	Chile	Supported	Partially Implemented <sup>166</sup>

162 This recommendation was partially implemented. However, the recent changes in the law introduced through the Criminal Law Amendment Act 2018 and the POCSO Amendment Act 2019 — which introduced death penalty for rape of children under 12 years of age as a deterrent — are against the principles of human rights and are not progressive.

163 Early childhood education has been made a part of the new National Education Policy (NEP) 2020. There is also a National Early Childhood Care and Education (NECCE) Policy 2013 in place.

164 Reference: The Criminal Law Amendment Act 2018 and the POCSO Amendment Act 2019.

165 Ibid.

166 Reference: National Child Labour Programme (NCLP). Available at: <https://labour.gov.in/childlabour/nclp>



161.232	Develop specific guidelines for protection and support for victims of child sexual abuse and their families undergoing trial.	Slovakia	Supported	Not Implemented
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#### *Developments/Issues Post UPR-III:*

According to the Crime in India 2018 Report of the NCRB, there was almost 10 per cent increase in crimes against children in India in 2018 as against the numbers in 2017. The overall crimes against children increased from 1,29,032 incidents in 2017 to 1,41,764 incidents in 2018. This number rose to 1,48,185 reported cases of crimes against children in 2019 showing an increase of 4.5 per cent over 2018.<sup>167</sup> Moreover, there is a significant increase 22 per cent in sexual offences against children in 2018 as against 2017 with a total number of 39,827 registered cases.<sup>168</sup> The number of cases of sexual offences against children registered in 2019 was 47,335.<sup>169</sup> It also revealed that Uttar Pradesh, Madhya Pradesh, Maharashtra, Delhi, and Bihar accounted for over 51 per cent of all crimes against children in the country in both 2018 and 2019.<sup>170</sup>

India has enacted the Protection of Children from Sexual Offences (POCSO) Act 2012 to stringently deal with the menace of child sexual abuse. However, the implementation of the Act remains unsatisfactory throughout the country. Research studies conducted by the Centre for Child and the Law (CCL) of the National Law School of India University (NLSIU) Bengaluru of the 2,788 judgments of Special Courts in five states<sup>171</sup> and by HAQ: Centre For Child Rights and the Forum Against Child Sexual Exploitation (FACSE) of the 1,957 judgments in Delhi and Mumbai<sup>172</sup> both indicate that the implementation of the POCSO Act in the areas covered by the studies is poor and the law is not followed in letter and in spirit.

Even the Supreme Court took *suo moto* cognizance of the issue in the case *In Re Alarming Rise in The Number of Reported Child Rape Incidents*<sup>173</sup> and pointed out the poor implementation of the POCSO Act.<sup>174</sup> Rehabilitation of the victims of child sexual abuse is in a devastating shape, as only 4 per cent victims have received either interim or final compensation by the Courts.<sup>175</sup>

167 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.20). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf> <accessed at 16:09 on 20 October 2020>

168 Crime In India: 2017 and 2018; National Crime Records Bureau (NCRB).

169 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.359). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf> (accessed at 16:19 on 20 October 2020)

170 Ibid; see also, India Today, '109 children sexually abused every day in India in 2018: NCRB', 16 January 2020. Available at: <https://www.indiatoday.in/india/story/109-children-sexually-abused-every-day-india-2018-1636160-2020-01-12>

171 CCL-NLSIU, 'Implementation of the POCSO Act 2012 by Special Courts: Challenges and Issues Based on CCL-NLSIU's Studies on the Working of Special Courts in Five States', 2018. Available at: <https://www.nls.ac.in/ccl/publications/POCSOIMPLEMENT2018.pdf>

172 HAQ: Centre for Child Rights and Forum against Sexual Exploitation of Children (FACSE), 'Implementation of the POCSO Act-Goals, Gaps and Challenges, Study of Cases of Special Courts in Delhi & Mumbai (2012 - 2015)', 2017. Available at: <http://haqcr.org/publication/implementation-pocso-act/>

173 *Suo moto* W.P. (CrI) No.-01 of 2019.

174 This report shows a shocking state of affairs. In 20% of the cases, investigation is not completed within one year. Virtually, no support persons are provided and no compensation is paid to the victims. Almost two-third of the cases are pending trial for more than one year. It appears that at all stages of dealing with POCSO cases commencing with the investigation up to the stage of trial, the time lines stipulated under the Act have not been complied with. [Excerpts from the Court Order dt. 13-11-2019 in *Suo moto* W.P. (CrI.) 01 of 2019].

175 Report presented by Mr. Surinder S. Rathi, Registrar, Supreme Court of India in *Suo moto* W.P. (CrI.) 01 of 2019, 13 November 2019. Available at: <https://bit.ly/3ooV0pc>

### *Government of India's Response:*

Most of the Government's response to sexual offences against children in the recent years has been in terms of increasing the minimum and maximum punishment and introducing death penalty for rape of children below the age of 12 years as a deterrent measure.<sup>176</sup> However, studies from the grassroots and organizations working with victims of child sexual abuse note that, in most cases, offenders are known to children — from their own family, a neighbour or even a person with whom they have a romantic relationship. Therefore, contrary to the objectives of these measures, they have made disclosure of offences even more difficult. It has also led to an increase in the rate of victims or children turning hostile in courts under duress leading to more acquittals. Introduction of stringent minimum mandatory sentences take away the discretion of the courts to apply their judicial mind and decide on a proportionate sentence taking into account all the aggravating and mitigating circumstances in each individual case. Further analysis also shows that when a victim is bordering on the age of majority, that is, 18 years, courts are more inclined to declare them as adults in order to avoid the stringent minimum mandatory sentences.<sup>177</sup>

### **Recommendations on Corporal Punishment**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.233	Introduce legislation to prohibit corporal punishment of children in the home and in all other settings, including as a sentence under traditional forms of justice.	Liechtenstein	Supported	Partially Implemented <sup>178</sup>
161.234	Introduce comprehensive and continuous public education, awareness-raising and social mobilization programmes on the harmful effects of corporal punishment.	Liechtenstein	Supported	Not Implemented
161.235	Establish a database of all cases of violence against children and explicitly prohibit all forms of corporal punishment of children under 18 years of age in all settings.	Zambia	Supported	Not Implemented

<sup>176</sup> Reference: The Criminal Law Amendment Act 2018 and the POCSO Amendment Act 2019

<sup>177</sup> HAQ: Centre for Child Rights, 'Towards Improving access to Justice and Restorative Care for Child Victims of Sexual Abuse in Delhi: A Report of State Level Multi-Stakeholder Dialogue', February 2019. Available at: <https://bit.ly/3kuEm5e>

<sup>178</sup> Although the Right to Education (RTE) Act 2009 does prohibit corporal punishment, it does not prescribe for any penal punishment for violating the prohibition. Similarly, it must be noted that corporal punishment is also banned in the institutional setting under the Juvenile Justice (Care and Protection of Children) Act 2015.

### *Developments/Issues Post UPR-III:*

Corporal punishment is legally banned in India for over a decade now, but it remains culturally acceptable in most settings.<sup>179</sup> Serious injuries, and even death, due to corporal punishment have been reported throughout the country.<sup>180</sup> An analysis of the data gathered in 2016-17 shows that nearly 4,130 child care institutions and homes admitted to using corporal measures and such punishments to discipline children that violate the law. The percentage of care homes hitting and spanking children was highest in Meghalaya (19%), Haryana (17.7%), Arunachal Pradesh (12.5%), and Delhi (10%), but the actual numbers were far higher in the states of Karnataka, Maharashtra, Kerala, and Tamil Nadu. In total, 697 homes admitted to name-calling children, 564 to hitting and spanking, 528 to restricting movement, 432 to withholding food, 283 to using abusive language, 244 to insulting and humiliating children, 183 to shaking children, and 171 to pinching children to ensure their cooperation or for misbehaviour.<sup>181</sup> The 'Play It Safe' opinion poll conducted by UNICEF — along with organizations, NINEISMINE and Mumbai Smiles, with the aim of identifying, recording and tracking the violence that children experience — found that three out of every five students in rural areas were slapped, forced to stand outside their homes, locked, or had their ears pulled as punishment. The number of urban children who faced these punishments was two in every five.<sup>182</sup>

### *Government of India's Response:*

The National Policy for Children does recognize protection of children from all forms of violence, including corporal punishment. The amended Juvenile Justice (Care and Protection of Children) Act 2015 contains a provision exclusively on prohibiting corporal punishment,<sup>183</sup> although it is only restricted to institutional settings such as child care institutions housing children in need of care and protection, and children in conflict with the law. The ban on corporal punishment in schools is included in the RTE Act 2009.<sup>184</sup> Further, it is also banned under some state laws.<sup>185</sup>

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179 India Spend, 'Blamed For Their Parents' Poverty, 80% Of Marginalised Indian Children Experience Corporal Punishment In School', 22 November 2018. Available at: <https://bit.ly/3jroAXc>; see also, The Wire, 'Problem of Corporal Punishment Persists in Schools', 11 July 2018. Available at: <https://bit.ly/3mfIQOr>

180 Even after the Delhi High Court directive to ban corporal punishment in schools, there are reports of children being meted out severe punishments by teachers which at times also results in their death as in the case of the 11 years old municipal corporation student. She was physically hit by her teacher and then made to stand in the scorching sun for two hours. The shock and severity of her punishment landed her in coma and she eventually succumbed to her injuries. See, Jagran Josh, 'Corporal punishment', 20 February 2020. Available at: <https://www.jagranjosh.com/articles/corporal-punishment-1282821714-1>

181 Global Initiative To End All Corporal Punishment of Children, Country Report for India, July 2020. Available at: <https://endcorporalpunishment.org/reports-on-every-state-and-territory/india/>

182 Hindustan Times, 'Study: Rural kids face more physical abuse', 29 March 2017. Available at: <https://bit.ly/3mbIMzq>

183 Although the focus is on institutions, the provision covers all settings and for the first time allows corporal punishment to be recognised as a crime against children. Section 2(24) states that "corporal punishment" means subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child. See also, Section 82, which provides, "Any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both."

184 The Right of Children to Free and Compulsory Education (RTE) Act, 2009, prohibits physical punishment and mental harassment under Section 17(1) and makes it a punishable offence under Section 17(2).

185 Goa (Goa Children's Act 2003, Section 41), Andhra Pradesh (Education Rules 1966 [amended 2002] Rule 122), Tamil Nadu (Education Rules [amended 2003] Rule 51) and possibly in Telangana. In Delhi, provisions for corporal punishment in the Delhi School Education Act 1973 were struck down by the Delhi High Court in 2000, and in 2004 the Calcutta High Court ruled that caning in state schools in West Bengal was unlawful. A ruling by the Gujarat High Court

The National Commission for Protection of Child Rights (NCPCR) has issued guidelines on banning corporal punishment in schools, but the monitoring and implementation aspects of these guidelines remain poor.<sup>186</sup> Despite repeatedly committing to prohibiting all forms of corporal punishment in all settings without delay since 2011, corporal punishment persists, is culturally accepted, and goes unpunished in most settings. There is no indication whether the Government intends to introduce a comprehensive legislation prohibiting all corporal punishment in the near future.<sup>187</sup>

### **Recommendations on Child, Early and Forced Marriage**

<b>Rec #</b>	<b>Recommendations</b>	<b>Recommending State</b>	<b>Government's Response</b>	<b>Status of Implementation</b>
161.197	Improve the enforcement of the legal provisions prohibiting harmful and discriminatory practices against women and girls, in particular child marriages, dowry-related murders and honour killings, and ensure that all women, without discrimination, have access to public services.	Czechia	Supported	Not Implemented
161.217	Ensure that legislation defining the minimum legal age of marriage at 18 is enforced at all levels, everywhere in the country.	Iceland	Supported	Partially Implemented
161.218	Step up its efforts to eradicate child marriage and the so-called "honour crimes".	Israel	Supported	Not Implemented
161.219	Step up efforts to combat and eliminate child, early and forced marriages.	Sierra Leone	Supported	Partially Implemented
161.220	Adopt legislative measures and policies to prevent early or forced marriages.	Honduras	Supported	Partially Implemented

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in 2008 confirmed that where the law prohibits corporal punishment in schools, Section 89 of the Indian Penal Code cannot be used as a legal defence for its use.

186 National Commission for Protection of Child Rights – Government of India, Guidelines for Eliminating Corporal Punishment in Schools. Available at: <http://ncpcr.gov.in/showfile.php?lid=153>

187 Global Initiative To End All Corporal Punishment of Children, Country Report for India, July 2020. Available at: <https://endcorporalpunishment.org/reports-on-every-state-and-territory/india/>

161.221	Continue and intensify the actions to prohibit child marriage.	Gabon	Supported	Not Implemented <sup>188</sup>
161.60	Continue efforts to eradicate child and forced marriage.	Peru	Supported	Partially Implemented
161.195	Take urgent measures to put an end to harmful traditional practices such as so-called “honour killings”, selective abortion on the basis of the sex of the foetus, <i>sati</i> , <i>devadasi</i> , early and enforced marriage, bringing the perpetrators to justice and guaranteeing assistance for victims.	Argentina	Noted	Partially Implemented <sup>189</sup>

#### *Developments/Issues Post UPR-III:*

One of the key recommendations made time and again, including in UPR-III, was to ensure proper and effective implementation of the Prevention of Child Marriage Act 2006. Ascertaining the exact incidents of child marriage has been a difficult task, but the overall trend indicates a certain rise in number of reported cases being 326 in 2016 to 501 in 2018.<sup>190</sup> This number rose to 525 in 2019.<sup>191</sup> It should be noted that traced over a longer period of time, there has been a decline in cases of child marriage from 2005-06 to 2015-16.<sup>192</sup> A recent report published by UN in 2019 highlighted that 27 per cent of Indian girls were married before the age of 18 as compared to 47 per cent a decade ago.<sup>193</sup> While these numbers do indicate progress, the number of cases reflected in different surveys are considered to be far away from actual figures by many activists and experts working on the issue. A landmark moment in the annulment of child marriage came with child rights activist, Kirti Bharti, securing such an annulment in *Meghwal* case in 2012. She secured 29 more annulments since then till

188 While the data compiled by the Government Departments, including by the NCRB, has consistently shown that incidents of child marriage have been low over the years, the social realities suggest their continuing prevalence, especially in rural and interior regions.

189 India has brought in penal laws for preventing sex selective abortions in the country. However, there is no separate law defining the offence of “honour killing”. Similarly, it has not yet taken any special measures to ensure successful prosecution of the perpetrators of child marriages or to guarantee assistance to the victims.

190 Table 4A.2, Crime in India Report 2018. Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>

191 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.367). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf> (accessed at 17:26 on 20 October 2020).

192 NFHS-III. Available at: <https://bit.ly/3jprmwj>

193 Al Jazeera, ‘UN: 12 million girls married during childhood annually’, 6 March 2018. Available at: <https://www.aljazeera.com/news/2018/03/12-million-females-married-childhood-annually-180306131428342.html> In the very same article, it was highlighted by Lakshmi Sundaram, a social activist working towards eradication of child marriage, that implementation of laws are only part of the problem, while the major onus for the decrease also needs to be given upon girl empowerment through education, health care etc.

2015.<sup>194</sup> Despite some success, Bharti states that deep-rooted patriarchy and socio-cultural practices in rural areas hold back women from coming forward and registering cases for annulment.<sup>195</sup>

For ensuring a proper mechanism of reporting, it is crucial to avail the amendment brought to the Prevention of Child Marriage Act in 2016, which creates a provision of declaring every child marriage that has occurred before the child attaining the age of 16 years as *void ab initio*.<sup>196</sup> However, the relevant data to assess the impact of such amendments is not made available in the public domain. Meanwhile, there have been several discussions on the intricacies of child marriage which raises one of the core concerns relating to the question of how to work with the noticeable phenomenon of adolescent sexuality. As a result of discussion amongst activists and experts working on the issue, it must be underlined that child marriages may also occur in circumstances where families of both the partners object to a consensual romantic relationship between two individuals, who may not have attained majority. In this light, it was suggested that the law should bear cognizance of the changed circumstances and development of adolescent sexuality, in addition to other socio-cultural factors, to ensure robust protection of children against any harm and abuse.<sup>197</sup>

#### *Government of India's Response:*

Besides the 2016 amendment, the response of Government has been erratic on this issue in recent years. It is mostly the state governments, who have occasionally taken up the responsibility of maintaining a dedicated helpline number for reporting of child marriages.<sup>198</sup> Similar observation was put forth by Justice Madan B Lokur (Retd) of the Supreme Court in the case of *Independent Thought v. Union of India*, which stressed the fact that focused and positive remedial actions need to be taken in order to enable the girl child to have a life free from such evils and to prevent child marriages.<sup>199</sup> It also revealed the need of rethinking of how social protection schemes initiated by different states need to be realigned to achieve their respective purpose of empowering young girls.

A Task Force was constituted by the Government on 4 June 2020 to review the minimum age of marriage for women in the country, study its implications on maternal health, and submit its recommendations to the Government. The proposal to set up this task force was first mentioned by

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194 Freedom United, 'Kriti Bharti, Activist Stopping Child Marriage', 9 May 2016. Available at: <https://www.freedomunited.org/news/kriti-bharti-activist-stopping-child-marriage/>

195 The Guardian, 'Child marriage in India finally meets its match as young brides turn to courts', 27 May 2015. Available at: <https://bit.ly/2HrUSnK>

196 The Section 3(2) of the Amendment Act states: "The marriage referred to in sub-section (1) may be declared null and void by a decree of nullity, on a petition being filed in the district court only by a contracting party, who was below the age of sixteen years at the time of marriage." It further adds that in sub-section (3A): "The petition for annulling a child marriage under sub-section (3) by a decree of nullity may be filed in a district court by a contracting party till the age of twenty years." This amendment was considered as a welcome step by many social activists with the foresight that such provision would allow girl-children to come out of child-marriages which have been forced onto them. Similar judgments were passed, before the national amendment. The 2016 Amendment available at: <http://164.100.47.4/billtexts/LSBillTexts/AsIntroduced/5332LS.pdf>. For the experience in the state of Karnataka, see: <https://clpr.org.in/blog/child-marriage-and-karnataka-amendments-re-engaging-with-the-debate-on-voidability/>

197 Partners for Law in Development (PLD) India, 'Grassroots Experiences Of Using The Prohibition Of Child Marriage Act 2006', 2019. Available at: <https://bit.ly/3oazleV>. The report also expresses, in continuation of the point made, that the law should be conceptualized in a manner that could distinguish between forced, arranged and self-arranged marriages and between marriages taking into account whether parties are in early or late adolescence.

198 The Hindu, 'Dedicated helpline to prevent child marriages, trafficking in West Bengal', 3 June 2020. Available at: <https://bit.ly/34FLVS>

199 Down To Earth, 'Ending child marriage, beyond slogans', 24 February 2020. Available at: <https://www.downtoearth.org.in/blog/governance/ending-child-marriage-beyond-slogans-69420>



finance minister, Mrs. Nirmala Sitharaman, while presenting the Union Budget in February 2020. This proposal was mentioned by the Prime Minister in his Independence Day speech.

A similar attempt has been made through the introduction of the National Education Policy (NEP) 2020 which looks at engaging with parents on issues such as child marriage in order to explain its impact on the education and development of the girl child. It is hoped that this will not only increase the enrolment of girl children in schools, but will also incentivize them to continue their education to higher levels.<sup>200</sup> It needs to be seen if such positive externalities and social ideas have any impact on the prevalence of child marriage in the country.

### **Recommendations on Trafficking**

<b>Rec #</b>	<b>Recommendations</b>	<b>Recommending State</b>	<b>Government's Response</b>	<b>Status of Implementation</b>
161.117	Continue with relevant consultations and adopt a law of combating trafficking in persons.	Belarus	Supported	Not Implemented
161.118	Continue the consultation process with all concerned parties to elaborate a new draft of the law against trafficking in persons.	Cuba	Supported	Not Implemented
161.119	Continue and redouble its efforts to combat trafficking in persons and modern slavery, including through better law enforcement to end impunity for human traffickers and through initiatives aimed at destigmatizing and rehabilitating victims of trafficking.	Liechtenstein	Supported	Partially Implemented
161.120	Continue to implement measures to stop the flow of trafficking in persons.	Holy See	Supported	Partially Implemented
161.121	Strengthen the national mechanisms to combat human trafficking and support victims and their rehabilitation.	Lebanon	Supported	Not Implemented
161.122	Accelerate efforts towards combating human trafficking,	Philippines	Supported	Partially Implemented

<sup>200</sup> Ministry of Human Resource Development - Government of India, National Education Policy 2020. Available at: [https://www.mhrd.gov.in/sites/upload\\_files/mhrd/files/NEP\\_Final\\_English\\_0.pdf](https://www.mhrd.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf)

	particularly by protecting and rehabilitating victims.			
161.123	Continue combating human trafficking.	Senegal	Supported	Partially Implemented
161.124	Continue efforts to improve social services that provide support to the victims of human trafficking, forced labour and those who have been sexually exploited.	The Maldives	Supported	Partially Implemented
161.125	Continue improving the national legislative framework on the rehabilitation of victims of trafficking.	Ukraine	Supported	Partially Implemented

#### *Developments/Issues Post UPR-III:*

Child trafficking remains a serious concern while protecting the rights of children. Almost all rights of the children who are trafficked are nullified, which shoots up their vulnerability substantially.<sup>201</sup> The data provided by NCRB exemplifies that cases of victims trafficked who are below 18 years of age have reduced from 3,535 cases in 2017 to 2,834 in 2018.<sup>202</sup> However, this number rose slightly to 2,914 cases of trafficking with minor victims in 2019.<sup>203</sup> Another concerning statistics regarding victims rescued from trafficking below 18 years of age shows that less number of children could be rescued in 2018 as compared to 2017.<sup>204</sup> In 2019, 2,837 victims under 18 years were rescued from trafficking.<sup>205</sup> The trauma that trafficking inflicts on children is clearly visible in the narratives of the children rescued. It also reveals that social set up to spread awareness among children for protecting themselves from trafficking and such other services that could help them have remained poor in the country.<sup>206</sup> The purpose of trafficking in children remains majorly for employing them in labour process, with the an overwhelming number also being trafficked for forced prostitution and forced marriages.<sup>207</sup>

201 News 18, 'Pulled Out of School, Pushed Into Marriage: What the Pandemic is Doing to India's Teenaged Girls', 12 June 2020. Available at: <https://bit.ly/35tSFQT>

202 Table 14.2, Crime in India 2018 (Volume III). Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%203.pdf>. While this data remains crucially to understand the developments in child trafficking in the country, the inconsistency in data representation has been regularly pointed out by many social activists. The number of children trafficked shows a decrease when total figures are computed, but if one looks at reporting of trafficking cases by taking into account particular sections of IPC the number seems to be increasing. An example can be that incidences of trafficking cases reported under section 370 and 370A for children sees a jump from 330 in 2017 to 435 in 2018. Therefore, value needs to be placed on getting data consistency when numbers of traffic victims are being reported by different agencies.

203 Crime in India 2019 - National Crime Records Bureau India (Volume III, p.88). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%203.pdf>

204 Table 14.3, Crimes in India 2018 (Volume III). Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%203.pdf>

205 Crime in India 2019 - National Crime Records Bureau India (Volume III, p.89). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%203.pdf>

206 World Vision India and Columbia Group for Children in Adversity, 'Combating Child Trafficking for Sexual Exploitation in West Bengal', 2018. Available at: <https://www.worldvision.in/wvreports/Combat-Childtrafficking-WestBengal.pdf>

207 Al Jazeera, 'Children for Sale: The Fight Against Child Trafficking in India', 29 September 2019. Available at: <https://bit.ly/3oi6p9V>

One of the major structural responses by the Government to prevent cases of trafficking was the creation of Anti-Human Trafficking Units (AHTUs). However, the AHTUs have been facing a serious resource crunch and lack of inter-state coordination, which adversely impacts on their efficient functioning.<sup>208</sup> While efforts to prevent child trafficking need to be recognized, there is still a long way to go in completely curbing the practice of child trafficking and prosecuting the perpetrators in a time-bound manner. India is still classified as Tier-2 country in the Trafficking in Persons Report 2019 released by the Department of State of the Government of the United States of America, highlighting that the Government has not fully met the base line standards necessary to eliminate trafficking.<sup>209</sup>

#### *Government of India's Response:*

The Government renewed its efforts to prevent child-trafficking by introduced the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill in 2018. It was placed by the Ministry of Women and Child Development and contained key initiatives for rescuing and protecting children who were trafficked. It allowed for creating an Anti-Human Trafficking Unit at the district level and a National Anti-Trafficking Bureau at the national level. It also aimed at constructing protection homes for rehabilitation of the rescued victims, where they can be provided with proper education, nutrition, and care.<sup>210</sup> The Bill was passed by the *Lok Sabha* (the Lower House of the Parliament), but did not reach the *Rajya Sabha* (the Upper House of the Parliament).<sup>211</sup> It subsequently lapsed after the general elections in 2019, but the Government has indicated that it is likely to bring in a new bill with nuanced provisions to combat child trafficking.<sup>212</sup>

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208 Scroll, 'Child trafficking: Lack of data is hindering the work of Indian agencies and NGOs', 12 July 2019. Available at: <https://bit.ly/2TkRyxm>. While the AHTU is riddled with fallacies, there is reporting of its positive impression to prevent child trafficking with recent rescue of 333 children in Delhi and 25 tribal children in Rajasthan. It is important to recognize the positive impacts these units might have that social activists working to prevent child trafficking argue for its strengthening. To read more, see: <https://bit.ly/37AZxyK>

209 U.S. Department of State, 2019 Trafficking in Persons Report: India. Available at: <https://bit.ly/3dT13xu>

210 The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018, Ministry of Women and Child Development, Government of India. Available at: <https://bit.ly/2TIRBsk>. Some critics of the Bill have raised issues that the Bill remains unclear and does not focus on causes of trafficking, but only tries to work on symptoms through a failed model of 'raid-rescue-rehabilitation-criminalization'. To read more on this: <https://bit.ly/3okE6bj>; see also, <https://www.epw.in/engage/article/trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018-is-neither-clear-nor-comprehensive>

211 Outlook India, 'Victims of Human Trafficking Write To PM, Seek Early Tabling Of Anti-Trafficking Bill In Rajya Sabha', 5 January 2019. Available at: <https://bit.ly/31wxpsl>

212 The Times of India, 'Reporting of crime a must in new anti-trafficking bill', 16 March 2020. Available at: <https://bit.ly/3jjadnX>

**CHAPTER 3**  
**RIGHTS OF (I) WOMEN AND (II) SEXUAL AND GENDER MINORITIES**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.204	Continue its efforts to promote the empowerment of women and to combat violence against women, in line with the recommendations of the Verma Committee.	Brazil	Supported	Partially Implemented
161.206	Increase the resources so that the female survivors of violence and domestic abuse can denounce the crimes with guarantees they will not be repeated.	Spain	Noted	Partially Implemented
161.223	Enact the Women's Reservation Bill providing for the reservation of seats for women in the Parliament and Legislative Assemblies, in order to enhance political participation of women.	The Netherlands	Noted	Not Implemented
161.51	Criminalize marital rape.	(i) Portugal (ii) Sweden	Noted	Not Implemented
161.53	Remove the exception relating to marital rape from the definition of rape in the Indian Penal Code and criminalize "honour crimes".	Slovenia	Noted	Not Implemented
161.54	Remove the exception relating to marital rape from the definition of rape in Section 375 of the Indian Penal Code.	(i) Belgium (ii) Iceland	Noted	Not Implemented
161.55	Consider removing the exception relating to marital rape from the definition of rape in Section 375 of the Indian Penal Code.	Namibia	Noted	Not Implemented

161.56	Remove the exception of marital rape from the definition of rape in Section 375 of the Penal Code, in line with the efforts already undertaken for the protection of women.	France	Noted	Not Implemented
161.57	Criminalize all forms of sexual abuse of girls under 18 years of age, including marital rape and “honour crimes”.	Zambia	Noted	Not Implemented
161.58	Take additional steps in criminalizing marital rape.	Lithuania	Noted	Not Implemented
161.79	Repeal Section 377 of the Indian Penal Code, which criminalizes same-sex conduct between consenting adults, and enact legislation consistent with the Supreme Court’s recognition of the transgender persons’ rights.	Canada	Noted	Partially Implemented <sup>213</sup>
161.179	Continue furthering sexual and reproductive health and rights of all women by immediately putting an end to camp-based sterilization operations in accordance with the Supreme Court order of 14 September 2016, by ensuring access to counselling on and access to the full range of modern contraceptives in a voluntary, safe and quality manner, and providing comprehensive sexuality education.	Finland	Supported	Partially Implemented
161.67	Provide systematic training on women’s rights to all law enforcement personnel, medical staff and judicial officers.	Belgium	Supported	Information not available
161.87	Allocate adequate resources to realize Sustainable	Norway	Supported	Partially Implemented

<sup>213</sup> Section 377 was declared unconstitutional unanimously by the Supreme Court of India in *Navtej Singh Johar v. Union of India* in September 2018, which decriminalized consensual same-sex relations between adults. Regarding the enactment of a law recognising the rights of transgender persons, while the Government enacted and brought into effect the Transgender Persons (Protection of Rights) Act 2019, it was criticised by the transgender community and some other legal experts for violating the Supreme Court guidelines recognizing their rights in *National Legal Services Authority (NALSA) v. Union of India* in 2014.

	Development Goal targets to reduce maternal mortality and end preventable deaths of new borns and children under 5.			
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The recommendations on the themes of women's rights, sexual and reproductive rights, women human rights defenders, and rights of sexual minorities constituted more than 70 recommendations received in UPR-III. Most recommendations revolved around diverse themes such as gender-based violence, improving access to sexual and reproductive health services, elimination of discrimination against marginalized women, protection of sexual and gender minorities, improving women's legislative and economic participation, increasing access to education for girls, increasing resources for women with disabilities and eliminating child, early and forced marriage, etc. While some aspects of these rights are covered under other thematic chapters, this chapter primarily addresses the key recommendations made in this regard.

### **Violence against Women**

Violence against women has continued to remain a pervasive challenge in India that is only showing signs of increase. It is reported that every third woman in the country has experienced some form of abuse or violence after attaining the age of 15 years.<sup>214</sup> While the Government has maintained its stance on enhancing women's safety, there has been very little tangible action to support this claim.

One of the measures taken by the previous Government was to analyse the issue of gender-based violence in the country and map out the best course of action which led to the establishment and work of the Justice Verma Committee. However, the Committee's work was not followed through. While the Government has largely taken cognizance of the Justice Verma Committee's recommendations, their implementation has been dismal at best. Most recommendations remained confined to the report. Some other recommendations, ranging from improving infrastructure to giving victims of such violence adequate resources, have only been partially implemented.

In 2020, following a Public Interest Litigation application, the Supreme Court sent a notice to the Central Government<sup>215</sup> to review its actions in implementing the recommendations framed in the report. The application contended that the judicial system is still not sensitive to the needs of victims of sexual violence and that the Central Government is yet to develop any concrete plans or timelines to ensure compliance with the recommendations.

Another step taken after the Delhi gang-rape case in 2012 was the creation of the *Nirbhaya* Fund with the aim to provide adequate resources and aid to the survivors of sexual violence. However, its implementation was also seen to be lacking in vitality and effectiveness. The fund provides money to states, who are then expected to spend the it on safety, awareness programmes, and resources for

214 News 18, 'Every third woman in India suffers sexual, physical violence at home', 8 February 2018. Available at: <https://www.news18.com/news/india/the-elephant-in-the-room-every-third-woman-in-india-faces-domestic-violence-1654193.html>

215 Outlook India, 'SC notice to Centre on PIL seeking implementation of Justice J.S. Verma Committee Report', 20 January 2020. Available at: <https://www.outlookindia.com/newscroll/sc-notice-to-centre-on-pil-seeking-implementation-of-justice-j-s-verma-committee-report/1713069>



women. In 2019, the Ministry of Women and Child Development presented the data<sup>216</sup> on the utilization of the fund in Parliament and stated that only about 20 per cent of the funds disbursed by the Ministry has been used by states. Similarly, states have submitted, to the Ministry of Home Affairs (MHA), utilization certificates for less than nine per cent of the money released under *Nirbhaya* Fund, that is for approximately Rs. 1.47 billion out of the allocated Rs. 16.57 billion in the last five years.<sup>217</sup>

While the usage of the resources for the victims and survivors of violence has been low, incidents of violence have been on a steady rise. The Crime in India 2019 Report noted 4,05,861 registered cases of crimes against women in 2019 showing an increase of 7.3 per cent over 2018, which reported 3,78,236 cases.<sup>218</sup> The second highest cases were recorded under ‘Assault on women with intent to outrage her modesty’ (21.8%), while 7.9 per cent of the total cases registered were that of ‘rape’.<sup>219</sup>

It must be noted that although most forms of violence against women have been criminalized under the Indian law, there is a conspicuous absence of marital rape in that list. While data shows that the highest number of crimes against women that are reported (nearly 31%)<sup>220</sup> are under ‘Cruelty by husband or his relatives’, there have been reiterations from the authorities in the Central Government that criminalizing marital rape in the Indian context would destabilize the institution of marriage, which is integral to the social structure in India.<sup>221</sup> While marital rape has held onto its tenuous legality, despite violating Articles 14 and 21 of the Constitution,<sup>222</sup> there has been an upsurge in petitions before the judiciary with appeals to criminalize it.

In 2019, there was a Private Member’s Bill brought before the Parliament titled, ‘The Women’s Sexual, Reproductive and Menstrual Rights Bill’, which mentioned the need to introduce the element of consent within marriage.<sup>223</sup> In December 2019, the MHA constituted a five-member committee to make the amendments to the criminal law, including the possibility of criminalizing marital rape.<sup>224</sup> While drafting this report, the Committee was still in a consultation stage with various stakeholders.<sup>225</sup>

Another form of insidious violence that still does not have a legal or legislative recognition is honour killing. In 2018 and 2019, there were only 30<sup>226</sup> and 24<sup>227</sup> reported instances of honour killing in India. However, civil society and media persons/agencies working at the grassroots have reported a much

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216 Press Information Bureau, Ministry of Women and Child Development – Government of India, ‘Nirbhaya Fund’, 29 November 2019. Available at: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1594221>

217 India Today, ‘Nirbhaya Fund utilisation shows why women continue to be unsafe in India’, 5 December 2019. Available at: <https://bit.ly/2TjkrjZ>

218 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.20). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>

219 Ibid.

220 Ibid.

221 The Hindu, ‘Criminalising marital rape may destabilise institution of marriage, Centre tells HC’, 29 August 2017. Available at: <https://bit.ly/34nYsbK>

222 Harvard Human Rights Journal, ‘Marital Rape: A Non-Criminalized Crime in India’, 1 January 2019. Available at: <https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/>

223 The Leaflet, ‘Why Shashi Tharoor’s private member bill demanding criminalisation of marital rape is a step in the right direction’, 5 January 2019. Available at: <https://bit.ly/3krJfvy>

224 The Indian Express, ‘From sedition to marital rape: Home panel looks at overhaul of criminal law’, 5 July 2020. Available at: <https://indianexpress.com/article/india/criminal-law-overhaul-marital-rape-sedition-amit-shah-6490636/>

225 The Leaflet, ‘Criminal law reforms committee completes first phase of consultation’, 21 August 2020. Available at: <https://www.theleaflet.in/criminal-law-reforms-committee-completes-first-phase-of-consultation/#>

226 Crime in India 2018 - National Crime Records Bureau India (Volume I, p.200). Available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>

227 Crime in India 2019 - National Crime Records Bureau India (Volume I, p.202). Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>

wider prevalence of honour killings and crimes in the country. In the Parliament session in July 2019, several parliamentarians mentioned the lack of data and sufficiency of existing legislation as reasons to not discuss a Bill specifically aimed at criminalizing honour killing.<sup>228</sup>

In 2018, the Supreme Court condemned the prevalence of honour killings, stated that such practices “put the rule of law in a catastrophic crisis”, and issued directives and guidelines such as setting up special cells across the country to take calls from couples in distress.<sup>229</sup> However, without budgetary allocations and commitment,<sup>230</sup> the implementation of such directives is difficult and it does little to address the issue. In the absence of a central law on the issue, systematic data collection, enacting prevention measures, and offering redressal to victims, is almost impossible.

### **Rights of Women: Sensitization of the Judiciary, Law Enforcement, and Health Care Workforce**

India is yet to have a mandatory inclusion of a comprehensive training on women’s rights and gender sensitization for its judiciary, law enforcement, and health care workforce. While such trainings are increasingly being organized, they need to be a part of an on-going process.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 has led to formation of institutional committees to address the issue in work settings and often a limited conversation over gender sensitization does happen through them. However, it is unfortunately not comprehensive in terms of women’s rights being limited only to protection against sexual harassment.

The National Commission for Women (NCW) had formulated separate course curricula on gender sensitization for the judiciary and police force in 2016, but the status of its inclusion and implementation across the country is not conclusively known from the sources available in the public domain. The NCW had also organized such training for the police from the Andaman and Nicobar Islands in late 2019.<sup>231</sup> Similarly, a collaborative project by the Karnataka State Police and UNICEF<sup>232</sup> was successfully completed and evaluated. However, with these efforts on the one hand, there have been several instances of police brutality — including in the recent past — with impunity and no accountability, which showcases the undermining of human rights.

Similarly, gender sensitization of the health care workforce has also been attempted through fragmented initiatives within the in-service trainings. However, there needs to be a systematic approach to embed it within the curricula of all health-related fields. In case of medical education, a nation-wide mandate can be brought in by the newly formed National Medical Commission after dissolution of the Medical Council of India. In Maharashtra, the Directorate of Medical Education and Research has already adopted a revised gender-sensitive medical curriculum since 2018 in collaboration with UNFPA and CEHAT (a Mumbai-based NGO).

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228 Ministry of Home Affairs – Government of India, Lok Sabha, Unstarred Question No. 2609 to be answered on 9 July 2019. Available at: <https://mha.gov.in/MHA1/Par2017/pdfs/par2019-pdfs/ls-09072019/2609.pdf>

229 Scroll, ‘“Catastrophic crisis for rule of law”: Supreme Court cracks down on khap panchayats, “honour crimes”’, 28 March 2018. Available at: <https://bit.ly/34nZ6FT>

230 The Swaddle, ‘Why India Needs A Separate Law For Honour Killings’, 21 April 2020. Available at: <https://theswaddle.com/honor-killings-india-law/>

231 National Commission for Women, ‘Gender sensitization training programme conducted by NCW for 400 police officers in Moradabad, UP, 5 May 2018. Available at: <https://bit.ly/3jhqoSv>

232 UNICEF, ‘Evaluation of Gender Sensitization and People-Friendly Police Initiative: Karnataka - Final Report’, June 2011. Available at: <https://uni.cf/2HIOTBo>

## **Women and political leadership**

India ranks below average on the parameter of political participation of women as compared to the global average of 24.58 per cent as of 2019.<sup>233</sup> India only has 14.39 per cent women in its National Assembly / Parliament.<sup>234</sup> Indian political parties have played a vital role as gatekeepers of women's political participation. The Women's Reservation Bill that aims to reserve 33 per cent seats in the *Lok Sabha* (Lower House of the Parliament) and all state legislative assemblies for women remained pending for decades, lapsed after successive elections, and has not been reintroduced.<sup>235</sup>

The idea for the Bill originated from the 73rd Constitutional Amendment Bill passed in 1993, which stated that one-third of *sarpanch* positions in the *gram panchayats*<sup>236</sup> at random should be reserved for women. The Women's Reservation Bill was initially introduced in the Parliament in 1996, but in the face of a stringent opposition, it lapsed. It was reintroduced in 2008, and passed by *Rajya Sabha* (Upper House of the Parliament) in 2010. It has since remained pending in the *Lok Sabha*. Although the bill itself has clauses that would elude to a fall back on tokenism of women's representation in politics, its opponents have argued that it in fact perpetuates the unequal status of women as they would not be perceived to be competing on merit.<sup>237</sup>

When the bill was last discussed, it was recommended that the reserved seats be allocated on a rotational basis. While sustained efforts and advocacy by civil society are required to ensure the passage of the bill, it is important that Indian political parties make their own internal structures more conducive to the participation of women in decision-making roles. Currently, all the efforts are restricted to tokenism without any meaningful empowerment of women and political parties are mostly seen supporting women candidates when it is politically advantageous for them. States such as Uttar Pradesh, West Bengal, and Maharashtra have elected the most number of women as the Members of Parliament,<sup>238</sup> but they also continue to top the list in terms of crimes against women.

This highlights two points: (i) The women elected as the Members of Parliament may not be adequately sensitized on issues related to gender-based violence; and (ii) They continue to operate in a male-dominated, paternalizing environment that restricts their growth, visibility, and decision-making power. It is therefore not enough to challenge the hierarchy in spaces such as the Parliament, but it is imperative to collectively amplify the decision-making capacity of diverse women to truly transform their leadership at all levels.

## **Maternal Health**<sup>239</sup>

India's performance in the area of maternal health has improved with the Maternal Mortality Ratio dropping to 122 per 1,00,000 live births according to the Sample Registration System (SRS) Bulletin

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233 The World Bank, 'Proportion of seats held by women in national parliaments (%)'. Available at: <https://data.worldbank.org/indicator/sg.gen.parl.zs>

234 Election Commission of India, 'Participation of women candidates in poll', 11 October 2019. Available at: <https://eci.gov.in/files/file/10947-24-participation-of-women-candidates-in-poll/>

235 The Hindu, 'Women's Day: Why women's reservation bill not tabled in last 6 years? Asks Yechury', 8 March 2020. Available at: <https://bit.ly/3ojZEER>

236 *Gram Panchayat* means village council and is a unit of local self-governance in India; a *sarpanch* is the head of the village council.

237 PRS Legislative Research, Women's Reservation Bill [The Constitution (108th Amendment) Bill 2008. Available at: <https://www.prsindia.org/billtrack/womens-reservation-bill-the-constitution-108th-amendment-bill-2008-45>

238 Parliament of India, Seventeenth Lok Sabha, Women Members. Available at: <http://164.100.47.194/loksabha/members/women.aspx>

239 This aspect is discussed in further detail in the chapter on the Right to Health in this report.

2017. However, it is certainly in need of greater investments and focus in order to achieve the SDG targets. The *Ayushman Bharat* scheme launched in September 2018 is a health insurance scheme covering maternity services apart from the existing conditional cash transfer scheme of *Janani Suraksha Yojana*. The Prime Minister has pledged an investment of USD 100 billion by 2025 in health (especially for reproductive, maternal, neonatal, child, and adolescent health) at the Partnership for Maternal, Newborn, and Child Health (PMNCH) Forum 2018.<sup>240</sup> Towards improving the quality of maternal healthcare, LaQshya guidelines were released in 2017<sup>241</sup>; a new cadre of Nurse Practitioners in Midwifery course was started in pilot mode from 2019.<sup>242</sup> However, the overall health care budget as a percentage of the annual budget has remained abysmally low at around 1.2 per cent of the total budget. The chronic inadequacy of the health care budget, coupled with the trend of increasing health care privatization, is detrimental to the public health system accessed by a majority of Indian citizens and directly undermines equitable improvement of maternal health status.

### **Adolescent and young people's health**

According to the NFHS-IV (2015-16), eight per cent of girls between the ages of 15 and 19 years were already mothers or pregnant at the time of survey. It was further found that only 58 per cent girls in rural areas within the age group of 15 and 24 years use hygienic and sanitary absorbent materials during menstruation; more than one-fourth (26.8%) of the girls in the country get married before attaining majority.

Persistence of child, early and forced marriages, coupled with the alarming rate of domestic violence that officially stands at 31.1 per cent, has made the situation even more severe.<sup>243</sup> A study by the Population Council reveals that levels of knowledge regarding sexual and reproductive health are very low among adolescents in the states of Uttar Pradesh and Bihar. They also were found to have minimal engagement with the frontline workers, including a limited utilization of the Adolescent-Friendly Health Clinics (AFHC) under the National Adolescent Health Programme.<sup>244</sup>

Besides some state-specific studies conducted by a handful national and international NGOs, there is a dearth of composite national-level data on adolescent health. Most of the available national data captures progress on indicators with a focus only on pregnant adolescents that surpass segregation by age. While the country's current economic and financial policy narratives miss the multiple benefits of investing in sexual and reproductive health rights — especially for adolescents and young adults — the health and education landscape in India has steadily improved since the early 2000s. There has been a subtle shift from a population control and maternal health-focused approach to addressing adolescence as an important phase for promoting a positive approach to healthy development.<sup>245</sup>

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240 PR Newswire, '2018 Partners' Forum opens on Universal Health Coverage Day in New Delhi, PM Modi commits USD 100 billion for health services in India', 12 December 2018. Available at: <https://prn.to/2Th8DbF>

241 Ministry of Health and Family Welfare – Government of India, 'National Health Mission 2017 – LaQshya Guidelines'. Available at: [https://nhm.gov.in/New\\_Updates\\_2018/NHM\\_Components/RMNCH\\_MH\\_Guidelines/LaQshya-Guidelines.pdf](https://nhm.gov.in/New_Updates_2018/NHM_Components/RMNCH_MH_Guidelines/LaQshya-Guidelines.pdf)

242 India Spend, 'India readies a new cadre of certified midwives to improve maternal, infant care', 7 February 2017. Available at: <https://bit.ly/2JOowkP>

243 National Family Health Survey (NFHS) – IV, 2015-16. Available at: <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>

244 RKSK Policy Brief: Bihar, November 2017. Available at: <https://bit.ly/3mjm5lz>

245 The YP Foundation, 'Shareer Apna, Adhikaar Apne: A Policy Brief on Comprehensive Sexuality Education'. Available at: <https://bit.ly/3jgGmMN>

However, one of the biggest gaps is that India still does not have a direct policy that mandates any form of Sexuality Education (either within or beyond the school curricula), nor is its implementation the explicit responsibility of any one Central ministry. It has mainly been addressed within the spectrum of education through the Ministry of Human Resource Development (MHRD) in the Adolescence Education Programme (AEP), which has now transformed into the more recently launched School Health Programme under the *Ayushman Bharat* scheme. In the spectrum of health, it is under the Ministry of Health and Family Welfare (MoHFW), through the National Adolescent Health Programme, namely *Rashtriya Kishor Swasthya Karyakram* (RKSK).

According to the operational guidelines, the AFHCs, counselling and curative services are to be provided at primary, secondary, and tertiary levels of care on fixed days with due referral linkages. However, according to the Common Review Mission's 12th Report, there continues to be a lack of focus on adolescent health which has, in turn, significantly impacted the maternal and child health by missing a crucial stage of development.<sup>246</sup> A recent study conducted by the WHO states that although the RKSK made strides in putting adolescent health on the agenda for the very first time in India, the human and financial resources mobilized were grossly insufficient to ensure any meaningful impact.

Additionally, in the states where the study took place, it was noted that the focus on clinical service provision was limited to a few health facilities, while a complementary focus was put on promoting community support and adolescent demand. This meant that services were not as easily accessible to adolescents in their communities, while many were not even aware of them.<sup>247</sup> There need to be proactive efforts in ensuring that all adolescents receive comprehensive, rights-affirming information that results in their sexual and reproductive self-determination, and that this information is not reserved for certain demographics such as married and older adolescents only.

### **Forced Sterilization**<sup>248</sup>

Although India has done away with target-based approach on paper, it currently uses expected levels of achievement (ELA) as a form of assessment. Health officials are often praised for their performance based on these assessments. This acts as incentives for them to coerce or manipulate people to undergo sterilization procedures in order to reach those stipulated numbers. The landmark judgment of the Supreme Court in the case of *Devika Biswas and Ors. V. Union of India*<sup>249</sup> had directed the Government to phase out sterilization camps by 2019, but there has been anecdotal evidence that under the garb of 'fixed day approach', sterilization drives continue to take place.

On the other hand, women with disabilities, especially those with intellectual disabilities, are often forced to undergo sterilization procedures by their legal guardians in violation of their reproductive autonomy and dignity.<sup>250</sup> In the state of Madhya Pradesh, there was a government circular released to identify staff members who had failed to convince any man to get sterilization done and ordered them to persuade at least one such man.<sup>251</sup> Though it was withdrawn after receiving criticism, it

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246 National Health Mission, 12th Common Review Mission – Report 2018. Available at: [https://nhm.gov.in/New\\_Updates\\_2018/Monitoring/CRM/12th/12th-CRM\\_Report.pdf](https://nhm.gov.in/New_Updates_2018/Monitoring/CRM/12th/12th-CRM_Report.pdf)

247 Reproductive Health Journal 17, 87, 'Adolescent health programming in India: A Rapid Review', 2020. Available at: <https://doi.org/10.1186/s12978-020-00929-4>

248 This aspect is discussed in further detail in the chapter on the Right to Health in this report.

249 *Devika Biswas v. Union of India*, (2016) 10 SCC 729.

250 Feminism In India, "Women with disabilities and forced sterilization in India", 12 March 2020. Available at: <https://feminisminindia.com/2020/03/12/women-disabilities-forced-sterilization-india/>

251 DW, 'India: State withdraws forced sterilization order', 23 February 2020. Available at: <https://bit.ly/3mkeRUn>

reflects the focus on ensuring a certain rate of sterilization and the undermining of bodily autonomy and reproductive rights principles enshrined in the fundamental human rights of an individual.

### **Controlling the basket of choice**

In 2017, the MoHFW launched family planning efforts in districts with higher fertility rates under a programme called *Mission Parivaar Vikaas* (MPV), which hopes to achieve assured contraceptive service delivery by ensuring contraceptive security and capacity-building of service providers.

NFHS-IV showed that the most common contraception that married women use is female sterilization which make 36 per cent of all the procedures.<sup>252</sup> In this context, it should be highlighted that according to the MPV guidelines, frontline health service workers are not only held accountable on administration targets for methods such as sterilization, but also incentivized on its administration. Further, new women users of methods such as Copper Intra-Uterine Device (IUDs) and female sterilization are also highly compensated for opting for these methods. This shows that the programme continues to use narratives that are “family planning” focused with emphasis on either population control or spacing and delaying pregnancies for married women. There are little to no instances of rights-based messaging for contraceptive choice; involvement of young and unmarried people is almost invisible in such efforts.

Although the programme has seen introduction of new contraceptive options in the method mix such as injectable contraceptives and non-hormonal weekly pills, methods are prioritized based on demographics. Compounded with the incentivized approach described above, only 46.6 per cent of current users reported that they were told about side-effects of their current method.<sup>253</sup> This implies an undermining of women’s agency and choice around contraceptives by the public health system.

### **Safe Abortions**<sup>254</sup>

The abortion law in India is an exception to the Indian Penal Code (IPC) where the decision-making on whether or not to abort a foetus lies with the medical service provider, as an expert, based on the circumstances in each case. Thus, access to safe abortion is not a right as such, but a service provided at the discretion of the medical provider. In spite of an estimated 15.6 million abortions happening in the country every year,<sup>255</sup> there is no dedicated Government programme focusing on it. Some NGOs have partnered with states to increase provider-base of first trimester abortions, while access to second trimester abortions remains a challenge, especially in rural areas.

Moreover, conditional access based on husband’s consent and/or acceptance of contraception which is legally unnecessary, adds another layer of difficulty. Conflated with the Pre-conception and Pre-natal Diagnostic Techniques (PCPNDT) Act 1994, which criminalizes sex determination of the foetus, these access problems have led to an adverse impact on safe abortion service provision by doctors,

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252 National Health Mission, ‘Guidelines: Mission Parivar Vikas’. Available at: [https://nhm.gov.in/images/pdf/programmes/family-planing/guidelines/MPV/MPV\\_guidelines.pdf](https://nhm.gov.in/images/pdf/programmes/family-planing/guidelines/MPV/MPV_guidelines.pdf)

253 National Family Health Survey (NFHS) – IV, 2015-16. Available at: <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>

254 This aspect is discussed in further detail in the chapter on the Right to Health in this report.

255 The Lancet Global Health (Volume 6, Issue 1), ‘The incidence of abortion and unintended pregnancy in India 2015’, January 2018. Available at: [https://doi.org/10.1016/S2214-109X\(17\)30453-9](https://doi.org/10.1016/S2214-109X(17)30453-9)



especially for second trimester abortions.<sup>256</sup> The overdrive of the PCPNDT Act implementation by the governments through campaigns stigmatizing abortion has received flak from activists and citizens.<sup>257</sup> However, it continues unabated as an instrumentalist approach to influence sex-ratio by trampling individual reproductive rights and fuelling stigma against abortion.

Often NGOs working in the space of sexual and reproductive health rights in collaboration with state and/or national governments — owing to organizational policies and/or bindings of expanded Protecting Life in Global Health Assistance (PLGHA) policy (as in the case of USAID funding sources) — exclude the theme of abortion altogether. The Central Government has introduced the Medical Termination of Pregnancy (Amendment) Bill in 2020 which seeks to increase the gestational limit for permissible abortions for foetal anomaly and sexual violence conditions. However, it fails to address the need of increasing the service-provider base, while proposing to bring in third-party authorization by introducing medical boards for decision-making on abortions.<sup>258</sup>

### **Rights of persons belonging to gender and sexual minority groups**

#### *Decriminalization of consensual same-sex relations*

Despite a barrage of homophobic remarks by the Indian political leaders over the years,<sup>259</sup> consensual same-sex relations were decriminalized unanimously by the Supreme Court in its verdict in the case of *Navtej Singh Johar and Ors. v. Union of India, The Secretary, Ministry of Law and Justice* on 6 September 2018. The Court pronounced that Section 377 of the IPC was unconstitutional<sup>260</sup>; it was arbitrary and violative of Article 14 of the Constitution guaranteeing the right to equality of all. The Court further stated that the provision violated the rights to dignity, privacy, and sexual autonomy guaranteed to individuals (including LGBTQI+ persons) under Article 21, and the right to freedom of expression under Article 19(1)(a) of the Constitution.

While the victory in this decade long battle for decriminalization of consensual same-sex relations between adults is a major milestone for LGBTQI+ rights in India, the fight for fundamental civic, social, and political equality is far from over. People belonging to gender and sexual minorities continue to face discrimination, harassment, and violence in all spheres of life; it gets further compounded as a result of other intersecting identities, including caste, class, and religion.<sup>261</sup>

It must be noted that the Government remains largely apathetic to the rights of the LGBTQI+ community; discussions around their inherent rights are still not a part of the mainstream discourse. The disregard for the rights of sexual and gender minorities is evident from the Government's

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256 Reproductive Health Matters (Volume 23, 2015 – Issue 45), “‘If a woman has even one daughter, I refuse to perform the abortion’: Sex determination and safe abortion in India”, 26 July 2015. Available at: <https://doi.org/10.1016/j.rhm.2015.06.003>

257 The Times of India, ‘Withdraw Rajasthan anti-abortion video: Activists tell JP Nadda’, 2 April 2018. Available at: <https://bit.ly/3ipyWqw>

258 PRS Legislative Research, Medical Termination of Pregnancy (Amendment) Bill 2020. Available at: <https://www.prsindia.org/billtrack/medical-termination-pregnancy-amendment-bill-2020>

259 Quartz India, “‘Disease’, “dangerous”, “curable”: What key public figures in India think of homosexuality’, 6 September 2018. Available at: <https://qz.com/india/1380027/section-377-what-ramdev-adityanath-zakir-naik-think-of-gays/>

260 *Navtej Singh Johar and Ors. v. Union of India, The Secretary, Ministry of Law and Justice*, (2018) 7 SCC 192. Available at: [https://main.sci.gov.in/supremecourt/2016/14961/14961\\_2016\\_Judgement\\_06-Sep-2018.pdf](https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf)

261 International Commission of Jurists, ‘Living with Dignity: Sexual orientation and gender identity-based human rights violations in Housing, Work and Public Spaces in India’, June 2019. Available at: <https://bit.ly/31AxPyt>; see also, Centre for Law and Policy Research, ‘Intersectionality: A report on discrimination based on caste with the intersections of sex, gender, identity and disability in Karnataka, Andhra Pradesh, and Tamil Nadu and Kerala’, 2019. Available at: <https://bit.ly/2TISd1K>



ambivalent stance in the affidavit submitted to the Supreme Court stating that “so far as the constitutional validity Section 377 to the extent it applies to “consensual acts of adults in private” is concerned, the Union of India would leave the said question to the wisdom of this Hon’ble Court”,<sup>262</sup> a move castigated by Justice D.Y. Chandrachud who noted that, “we would have appreciated a categorical statement of position by the Government, setting out its views on the validity of Section 377 and on the correctness of Koushal...The statement of the Union Government does not concede to the contention of the petitioners that the statutory provision is invalid.”<sup>263</sup>

The Supreme Court through its judgment had also ordered the Government to “take all measures to ensure that this judgment is given wide publicity through the public media, which includes television, radio, print, and online media at regular intervals, and initiate programs to reduce and finally eliminate the stigma associated with such persons. Above all, all government officials, including and in particular police officials, and other officers of the Union of India and the states, be given periodic sensitization and awareness training of the plight of such persons in the light of the observations contained in this judgment” – which the Government has failed to act upon. Recently, in December 2020, the National Human Rights Commission’s (NHRC) Core Group on LGBTQI+ Communities made various recommendations to the Government on how to sensitize the general public, the law enforcement agencies, and the medical community to ensure that LGBTQI+ rights are safeguarded and upheld.<sup>264</sup>

It must be noted that in stark contrast with the judicial development in the country, at the 41st Session of the UN Human Rights Council in Geneva, the Government of India abstained from voting on the resolution seeking to renew the mandate of the Independent Expert on sexual orientation and gender identity.<sup>265</sup> This indifference continues to endanger lives and well-being of the people belonging to sexual and gender minority groups, especially those in humanitarian settings.<sup>266</sup>

#### *The NALSA Judgment 2014 and The Transgender Persons (Protection of Rights) Act 2019*

In 2014, the Supreme Court delivered its judgment in the *National Legal Services Authority v. Union of India* (the NALSA Judgment).<sup>267</sup> It recognized transgender persons as the “third gender”; affirmed their fundamental rights guaranteed under the Constitution; and laid down a series of measures for securing these rights by: mandating prohibition of discrimination, recommending the creation of welfare policies and reservations for transgender persons in educational institutions and jobs. The judgment upheld “the right to self-determination of one’s gender, regardless of gender affirmative surgeries or other medical interventions” as a right was guaranteed by the Constitution of India. This judicial mandate was successively upheld by the *Puttuswamy* (2017) and *Navtej Johar* (2018) judgments by the Supreme Court. The NALSA judgment also noted the presence of transgender

262 Short affidavit on behalf of Union of India in the matter of Navtej Singh Johar and Ors. v. Union of India dated 11 July 2018. Available at: <http://images.assettype.com/barandbench/import/2018/07/ASG-Tushar-Mehta.pdf>

263 Alternative Law Forum, ‘Right To Love: Navtej Singh Johar v. Union of India – A transformative constitution and the rights of LGBT persons’, September 2018. Available at: <https://bit.ly/2TwYRCt>

264 Hindustan Times, “Sensitise public, police about rights of LGBTQI+ community: NHRC tells Centre”, 14 December 2020. Available at: <http://bit.ly/37lcoEH>

265 International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and International Service for Human Rights (ISHR), ‘Renewal of the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity’, July 2019. Available at: [https://ilga.org/downloads/RenewalIESOGI\\_report.pdf](https://ilga.org/downloads/RenewalIESOGI_report.pdf)

266 The Economic Times, ‘View: 377 anniversary this week, but for queers in Kashmir, there is no ‘gay liberation’’, 1 September 2019. Available at: <https://bit.ly/34nmALv>

267 *National Legal Services Authority (NALSA) v. Union of India and Ors.*, AIR 2014 SC 1836. Available at: [https://www.prsindia.org/sites/default/files/bill\\_files/Transgender\\_rights\\_case\\_%28NALSA vs. UOI%29 2.pdf](https://www.prsindia.org/sites/default/files/bill_files/Transgender_rights_case_%28NALSA%20vs.%20UOI%29_2.pdf)

persons in India throughout history and made references to the *Hijra*, *Kinnar*, and *Jogta* communities, spread across the country and beyond in the Indian subcontinent.

While the decision in the NALSA case was still pending, an Expert Committee report on issues related to transgender rights was published in January 2014 after consultations between the Ministry of Social Justice and Empowerment and representatives from the transgender communities in August 2013. In this context, a Member of Parliament had introduced a private member's bill in the *Rajya Sabha* called the Rights of Transgender Persons Bill 2014. The Government had initially asked the said member to withdraw the bill citing various issues and problems; however, the opposition had a majority in the house and the bill was unanimously passed by the *Rajya Sabha* on 24 April 2015.<sup>268</sup> This bill was welcomed by transgender rights activists in India, notwithstanding their absence in the drafting process of the bill and the lack of representation in the consultation process.

However, the 2014 bill underwent significant changes because of the Government's intervention, which left out many important provisions in the bill. After recommendations were received from the transgender community, the bill was forwarded to the Ministry of Law and Justice and was titled as the Rights of Transgender Persons Bill (2015). It was introduced in the *Lok Sabha* on 26 February 2016. It was argued that the bill would help extend the constitutional rights and end discrimination against transgender persons thereby enabling them to live a life of dignity. However, after deliberations in the *Lok Sabha*, the member who proposed the 2014 bill refused to withdraw it.

With the 2014 bill passed by *Rajya Sabha* still pending, the Government tabled the Transgender Persons (Protection of Rights) Bill in 2016 following the reconstitution of the *Lok Sabha* after the 2014 general elections.<sup>269</sup> The 2016 bill was found to be not as progressive as the 2014 bill; it was criticized and met with protests from the transgender community in India.<sup>270</sup> It was then referred to a Standing Committee, which submitted its report in July 2017.<sup>271</sup> The *Lok Sabha* then tabled and passed a newer version of the bill with 27 amendments on 17 December 2018.<sup>272</sup> This bill was also severely criticized and protested against as it overlooked the recommendations made by the Standing Committee as well as the inputs and suggestions made by the transgender community.<sup>273</sup>

Following the 2019 general elections, the bill lapsed and was reintroduced on 19 July 2019 by the Minister of Social Justice and Empowerment. It was passed by a 'voice vote' in the *Lok Sabha* on 5 August 2019, amidst chaos following the revocation of Jammu and Kashmir's special constitutional status by the Parliament; it was eventually assented by the President on 5 December 2019.<sup>274</sup>

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268 The Rights of Transgender Persons Bill 2014. Available at: <https://bit.ly/3miEvc6>

269 The Transgender Persons (Protection of Rights) Bill 2016. Available at: <https://bit.ly/2FRRQsr>

270 India Today, 'LGBTQ community protests against Transgender Persons Bill', 17 December 2017. Available at: <https://bit.ly/3mdiWda>; see also, Feminism In India, 'Chalo Delhi! Protests against the Trans Bill 2016', 18 December 2017. Available at: <https://bit.ly/3dRhqlj>; see also, Feminism In India, 'Joint Statement by Trans\* Community Against The Transgender Bill', 11 December 2017. Available at: <https://bit.ly/2HrzTBU>

271 Standing Committee on Social Justice and Empowerment, 43rd Report – The Transgender Persons (Protection of Rights) Bill 2016, Sixteenth Lok Sabha, July 2017. Available at: [https://www.prsindia.org/sites/default/files/bill\\_files/SCR-%20Transgender%20Bill.pdf](https://www.prsindia.org/sites/default/files/bill_files/SCR-%20Transgender%20Bill.pdf)

272 The Transgender Persons (Protection of Rights) Bill 2018. Available at: <https://bit.ly/3m9DzqD>

273 PRS Legislative Research, 'The Transgender Persons (Protection of Rights) Bill 2016: Comparison of the 2016 Bill with 2018 amendments'. Available at: <https://www.prsindia.org/node/824354/chapters-at-a-glance>; see also, The News Minute, 'Equal to killing us': Why India's transgender community is rejecting the Trans Bill', 18 December 2018. Available at: <https://bit.ly/2FWVSjs>

274 The Transgender Persons (Protection of Rights) Act 2019. Available at: <https://bit.ly/2Hr6nfi>

The Bill, as it was passed by the *Lok Sabha*, was widely criticized by transgender persons, rights activists, students as well as lawyers.<sup>275</sup> There were demonstrations across the country and the provisions of the Act were criticized contravening the guidelines laid down by the NALSA Judgment. Other aspects of the law such as criminalization of begging was feared to affect a large majority of transgender persons in the country, such as *Hijras* and *Jogtas*, who have historically relied on alms as a ritual/custom as well as a source of livelihood.

Another provision of creating the District Screening Committee had the potential of letting structural prejudice, bias, and discrimination permeate into the lives of transgender persons and would have the effect of institutionalizing the violation of their right to self-determination of their gender. The justification given for the inclusion of this provision was ‘to filter out imposters from seeking benefits of the welfare schemes meant for “authentic” transgender persons’. Furthermore, the definition of ‘transgender person’ under the 2019 Act, is reported to be at variance with its understanding by international expert committees.<sup>276</sup> One of the biggest criticisms of the Act is also that it also facilely conflates intersex persons with transgender persons, who are separate groups and have their specific sets of concerns.<sup>277</sup>

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- 275 Sampoorna: For Trans\* and Intersex Indians By Trans\* and Intersex Indians Across The Globe, ‘SPWG Statement on Transgender Persons (Protection of Rights) Bill 2019. Available at: <https://bit.ly/3m9Fvzo>; see also, NPR, ‘India just passed a trans rights bill. Why are trans activists protesting it?’, 4 December 2019. Available at: <https://n.pr/3oiIVSn>; see also, Scroll, ‘Why India’s transgender people are protesting against a Bill that claims to protect their rights’, 26 November 2019. Available at: <https://bit.ly/3mcfxeH>; see also, Hindustan Times, ‘The Transgender Persons Bill misses key demands of the community’, 15 June 2019. Available at: <https://bit.ly/2TjB5JP>
- 276 The Leaflet, ‘Reclaiming Rights: Transgender Persons Bill And Beyond’, 4 December 2019. Available at: <http://theleaflet.in/reclaiming-rights-transgender-persons-bill-and-beyond/>
- 277 The Print, ‘Modi govt releasing draft rules on Transgender Persons Act in lockdown a blow to community’, 5 May 2020. Available at: <https://bit.ly/37GOXGi>

**CHAPTER 4**  
**HUMAN RIGHTS DEFENDERS AND CIVIC SPACE**  
**(Freedoms of Expression, Assembly, and Association)**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.135	Amend the Foreign Contribution Regulation Act (FCRA) to ensure the right to freedom of association, which includes the ability of civil society organizations to access foreign funding, and protect human rights defenders effectively against harassment and intimidation.	Germany	Noted	Not Implemented <sup>278</sup>
161.134	Enact a law for the protection of human rights defenders.	Lithuania	Noted	Not Implemented
161.140	Lift legal restrictions or hurdles to the work of civil society, individuals or organizations, and ensure that they can undertake their legitimate activities without fear of reprisals.	Switzerland	Noted	Not Implemented
161.141	Carry out independent investigations in all cases of attacks against journalists.	Lithuania	Noted	Not Implemented
161.145	Bring all legislation concerning communication surveillance in line with international human rights standards and especially recommend that all communication surveillance requires a test of necessity and proportionality.	Liechtenstein	Noted	Not Implemented
161.131	Ensure that any measure limiting freedom of expression, assembly and association on the internet is based on clearly defined criteria in accordance	Sweden	Noted	Not Implemented

<sup>278</sup> While the Government did bring in an [amendment to the FCRA in September 2020](https://bit.ly/2Tlh4m4) through a bill that was passed by a 'voice vote', the new amendment has in fact put further stringent restrictions on receiving and use of foreign funding, which is likely to have further consequences on the functioning civil society. Reference: <https://bit.ly/2Tlh4m4>

	with international law including international human rights law.			
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The current political climate in India has fostered a public sphere where the existing civil society space is shrinking rapidly. A dangerous and polarising discourse is being legitimised by both State and non-state actors which has gained credence. Events over the last few years, including since UPR-III, have blurred the consciousness for a democracy creating a larger atmosphere and acceptability of violence and vitriol. Several have chosen silence over dissent, which directly strikes at the long cherished constitutional values posing the threat to the Constitution and the Indian democracy at large. This has posed serious questions pertaining to civic space in India. While the civic space is fast shrinking, democratic institutions and processes are being attacked systematically. Criminalization of dissent is an attack on civic space, while an acceptance of criminalization of dissent is an attack on democratic space. It is currently one of the biggest challenges for Indian democracy. A new trend, among civil society actors, of silence and unquestioning acceptance has emerged due to various reasons, directly and indirectly injected by the State, which has serious implications for Indian democracy.

The present Government and its allies — mostly the cadres of the *Rashtriya Swayamsevak Sangh* (RSS)<sup>279</sup> and other outfits of the *Sangh Parivar* umbrella<sup>280</sup> — have popularised a discourse alleging that those working to ensure justice and dignity for victims of past and ongoing human rights violations and for the marginalized populations and communities, and those questioning the State, its policies and actions, constitute a serious threat to the ‘national interest’ or are ‘anti-national’. These forces have redefined ‘nation’ in an attempt to homogenize India’s diverse secular and ethnic fabric and have fostered an antagonistic attitude towards anyone questioning the State, instead of accepting and viewing the questioning voices as partners in deepening the democratic values. It has been done by systematic dilution of ‘enabling’ laws meant to ensure justice for the already marginalized communities as well as by introduction of restrictive, vaguely-worded legislations.

Some recent instances demonstrate the stifling of strong dissenting voices and freedoms of expression, association and assembly. This curtailment of rights is not limited to human rights defenders (HRDs), but has extended to writers,<sup>281</sup> artists,<sup>282</sup> and certain sections of the media. These attacks indicate a pattern of retaliation both from State and non-state actors, religious-political formations, vigilantes targeting religious and sexual minorities, and mafias allegedly promoted by corporate actors indulging in land grabbing and environmental degradation. These attacks have assumed the form of criminalization, violations by law enforcement agencies, and abuse by private actors often in collusion with these agencies.

### **Freedom of Speech and Expression: Journalists, Writers, and Media**

The recent years have witnessed systematic attacks on the media and journalists. India’s rank on the World Press Freedom Index has consistently lowered over the years: it ranked 138th out of 180 in

279 *Rashtriya Swayamsevak Sangh*. Available at: <https://www.rss.org/>

280 Scroll, ‘How the Sangh Parivar systematically attacks the very idea of India’, 13 November 2014. Available at: <https://scroll.in/article/689584/how-the-sangh-parivar-systematically-attacks-the-very-idea-of-india>

281 BBC, ‘How India’s writers are fighting intolerance’, 13 October 2015. Available at: <https://bbc.in/2HiDHp9>

282 Free Muse: Defending Artistic Freedom, India. Available at: <https://bit.ly/3dIL70B>

2018,<sup>283</sup> 140th in 2019,<sup>284</sup> and ultimately 142nd in 2020.<sup>285</sup> India also consistently featured on the Global Impunity Index put together by the Committee to Protect Journalists in 2017,<sup>286</sup> 2018,<sup>287</sup> and 2019,<sup>288</sup> which is a list of countries having high number of unresolved cases of suspicious deaths of journalists and high level of impunity for their killers. The data recorded by Committee Against Assault on Journalists in India (CAAJ) shows that between 2014-18, 17 journalists were killed, 21 charged with fabricated cases and 44 cases of threats personally and online with these only being known cases.<sup>289</sup>

Several independent journalists are vulnerable to attacks for pursuing stories against governments, political leaders, and other powerful people and corporations, resulting in restrictions on their freedom. This has also forced many journalists to self-censor. Such targeting of journalists is often driven by vengeance with an intention to silence them and discourage others from doing their professional duty. Many such retaliatory actions are often veiled behind legal charges such as sedition,<sup>290</sup> contempt of court,<sup>291</sup> public disorder,<sup>292</sup> obscenity, Officials Secrets Act, defamation, etc. Media freedom is further curtailed by corporations taking control of media houses and pressurizing journalists to report according to their agenda.

Senior journalist and Editor of Rising Kashmir, **Shujaat Bukhari**, was shot dead outside his office in Srinagar on 14 June 2018.<sup>293</sup> Another senior journalist, **Gauri Lankesh**, was assassinated by two gunmen in front of her residence on 5 September 2017.<sup>294</sup> She was the editor of *Lankesh Patrike*, a Kannada weekly critical of the RSS and other Hindutva organisations for the killings of rationalists and thinkers, attacks against religious minorities, hate speeches, etc. The Editor of The Shillong Times, **Patricia Mukhim**, was attacked on 17 April 2018, by unidentified assailants who threw a bomb at her residence for reporting on limestone mining in the state of Meghalaya.<sup>295</sup> On 19 December 2018, a TV journalist from Manipur, **Kishore Chandra Wangkhem**, was arrested and detained under the National Security Act (NSA) 1980, for social media posts critical of the ruling *Bharatiya Janata Party* (BJP) and

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283 Reporters Without Borders, 'World Press Freedom Index 2018'. Available at: <https://rsf.org/en/ranking/2018#>

284 Reporters Without Borders, 'World Press Freedom Index 2019'. Available at: <https://rsf.org/en/ranking/2019>

285 Reporters Without Borders, 'World Press Freedom Index 2020'. Available at: <https://rsf.org/en/ranking/2020>

286 Committee to Protect Journalists (CPJ), 'Getting Away With Murder: Global Impunity Index 2017', 31 October 2017. Available at: <https://cpj.org/reports/2017/10/impunity-index-getting-away-with-murder-killed-justice-2/>

287 CPJ, 'Getting Away With Murder: Global Impunity Index 2018'. Available at: <https://bit.ly/37EyKLN>

288 CPJ, 'Getting Away With Murder: Global Impunity Index 2019', 29 October 2019. Available at: <https://cpj.org/reports/2019/10/getting-away-with-murder-killed-justice/>

289 Committee Against Assault on Journalists. Available at: <https://www.caajindia.org/>

290 The Hindu, 'Journalist and three others, arrested on their way to Hathras, booked for sedition in UP', 7 October 2020. Available at: <https://bit.ly/2FTkE3P>; Deccan Herald, 'Gujarat journalist booked for sedition remanded in police custody', 13 May 2020. Available at: <https://bit.ly/2Tg8KUS>

291 The Hindu, 'Power of contempt of court misused to stifle free speech: Prashant Bhushan', 3 September 2020. Available at: <https://bit.ly/2TeVwal>; NDTV, 'Attorney-General vetoes contempt case against journalist Rajdeep Sardesai', 17 September 2020. Available at: <https://bit.ly/31BTTbL>

292 The Wire, 'UP Police Goes After Eight Journalists In September Alone', 21 September 2019. Available at: <https://thewire.in/rights/uttar-pradesh-police-journalists>; see also, The Frontline, 'Freedom of expression: Unlawful Arrests', 5 July 2019. Available at: <https://frontline.thehindu.com/social-issues/general-issues/article28043858.ece>; see also, Newslandry, 'Gagging the media: A list of Indian journalists booked, arrested, assaulted during the lockdown', 7 May 2020. Available at: <https://bit.ly/3dPd9Y8>

293 BBC, 'Kashmir journalist Shujaat Bukhari shot dead in Srinagar', 14 June 2018. Available at: <https://www.bbc.com/news/world-asia-india-44488081>

294 The Indian Express, 'Hyper masculine ire is reserved for women who dare challenge orthodoxies', 30 September 2017. Available at: <https://bit.ly/37yKt4F>

295 The Times of India, 'Attack on journalist Patricia Mukhim's house condemned', 19 April 2018. Available at: <https://bit.ly/34mYTTu>



Prime Minister Narendra Modi. He was earlier detained on 27 November 2018 for the same reason before being released by the Manipur High Court on 8 April 2019.<sup>296</sup>

In June 2017, the Central Bureau of Investigation (CBI) raided the offices of a prominent national news channel in India, the New Delhi TV (NDTV), and home of its founder on the grounds of investigating corruption and money laundering. NDTV is a private media channel that has pursued to exert accountability over the Government.<sup>297</sup> In yet another case, a defamation suit was filed against a journalist<sup>298</sup> and her news portal, The Wire, after they published a story highlighting a conflict of interest in a financial firm owned by the son of the President of BJP.<sup>299</sup> In another such case, the Editor of the Economic and Political Weekly (EPW),<sup>300</sup> one of the most credible and widely-read journals, had to resign following the articles he decided to publish,<sup>301</sup> which exposed a deal benefitting a corporation through tax evasions allegedly facilitated by the Government.<sup>302</sup> The corporation sent a letter demanding the authors, the Editor and the trust that owns and runs the EPW to “remove/delete and unconditionally retract” the article.<sup>303</sup> The Board decided to retract it and the Editor had to resign.<sup>304</sup>

Writers and rationalists, countering majoritarian views of religion through their progressive writings and activism have also been at the receiving end of the violence. Three rationalists and thinkers, **Dr Narendra Dabholkar**, **Govind Pansare**, and **MM Kalburgi**,<sup>305</sup> were murdered by unidentified people in the last five-seven years. The investigations into these cases have been lax,<sup>306</sup> especially in pursuing members of the pro-Hindutva groups, who are alleged to have conspired and carried out these killings.<sup>307</sup> Such lack of timely justice reflects a trend of silencing critics as all three thinkers were deeply critical of the majoritarian politics, were vehement supporters of freedom of expression, and were visionaries of a new rational world which is at loggerheads with the image of a homogenous India being constructed through the current public discourse.

According to the reported confession of the man accused of killing Dr Narendra Dabholkar — who was also involved in the murders of Govind Pansare and Gauri Lankesh — their next target was Justice BG Kolse Patil, a former judge of the Bombay High Court, who had worked with Dr Dabholkar on the

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296 NDTV, Manipur journalist Kishore Chandra Wangkhem jailed for criticizing BJP, PM released ahead of polls’, 8 April 2019. Available at: <https://bit.ly/2IZFcZK>

297 NDTV, “World Media on CBI raids on NDTV”, 7 June 2017. Available at: <https://bit.ly/3knWk9b>

298 The Wire, ‘Jay Amit Shah’s case against The Wire is an attempt to censor, intimidate media at large’, 12 October 2017. Available at: <https://thewire.in/law/jay-amit-shah-the-wire-defamation-media>

299 The Wire, ‘The Golden Touch Of Jay Amit Shah’, 8 October 2017. Available at: <https://bit.ly/3jn8wWs>

300 Economic and Political Weekly. Available at: <https://www.epw.in/>

301 The Wire, ‘Modi Government’s Rs. 500 Crore Bonanza To The Adani Group’, 19 June 2017. Available at: <https://thewire.in/business/modi-government-adani-group>

302 The Wire, ‘Did the Adani Group evade Rs. 1,000 crore in taxes?’, 14 January 2017. Available at: <https://thewire.in/business/adani-group-tax-evasion>

303 The Wire, ‘Adani Group ‘SLAPP’ pushed EPW editor out of his job’, 18 July 2017. Available at: <https://thewire.in/media/adani-group-slapps-epw-editor-job>

304 The Wire, ‘Ashok Mitra to EPW Trustees: Protect Editor’s Independence, Face Up To Legal Threats’, 31 July 2017. Available at: <https://thewire.in/politics/ashok-mitras-letter-to-deepak-nayyar-and-d-n-ghosh-about-epw>

305 Newslandry, ‘The death of rationalism: Who killed Dabholkar, Pansare and Kalburgi?’, 14 September 2015. Available at: <https://bit.ly/37Fv7LX>

306 The Wire, ‘Seven years after his killing, justice for Narendra Dabholkar nowhere in sight’, 20 August 2020. Available at: <https://bit.ly/37zzXdB>; see also, Scroll, ‘Activists’ murders: Supreme Court says CBI can investigate if there’s a ‘common thread’ in all cases’, 11 December 2018. Available at: <https://bit.ly/2FT5L7>

307 DaliyO, ‘Narendra Dabholkar, Govind Pansare, MM Kalburgi and Gauri Lankesh killed: Why no one cares for the naked proof’, 19 July 2019. Available at: <https://bit.ly/31NKtdB>; see also, The Indian Express, ‘Explained: Dabholkar-Lankesh murders- What the investigations into violent right-wing activism show’, 26 May 2019. Available at: <https://bit.ly/2Tq9N4p>; see also, Mumbai Mirror, ‘Sanatan Sanstha hand in Dabholkar, Pansare, Kalburgi hits: Prosecution’, 25 August 2020. Available at: <https://bit.ly/2Hyf0os>



enactment of an anti-superstition bill in the state of Maharashtra.<sup>308</sup> In another such case, **Dr Ram Punyani**, a noted anti-communalism activist based in Mumbai, received a threatening phone call on 6 June 2019, where the caller abused and threatened him to stop his work or “suffer consequences”.<sup>309</sup>

The State has used several means to instil fear among critics and those who continue to exercise their democratic rights. A recent report collated by the Delhi-based Rights and Risk Analysis Group (RRAG) found that 55 journalists “faced arrest, FIRs, summons or show cause notices, physical assaults, alleged destruction of properties, and threats” for reporting on COVID-19 during the nationwide lockdown between 25 March 2020 and 31 May 2020.<sup>310</sup>

### **Freedom of Speech and Expression: Human Rights Defenders (HRDs)**

Between 2014-19, the Human Rights Defenders Alert – India (HRDA) has documented and intervened in over 500 cases of attacks on HRDs across the country.<sup>311</sup> HRDs and members of their families often face threats to their personal safety and physical security; they are profiled, harassed, intimidated, ill-treated, and subjected to hateful abuse in the media. Several of them were reported to be arbitrarily arrested and detained; false cases filed against them; their offices raided and files stolen or confiscated; and in extreme cases, were tortured, made to disappear or killed. In 36 per cent of these cases in which the HRDA intervened, HRDs are charged with fabricated cases; 11 per cent cases were of killings of HRDs. According to a report by Global Witness, India documented a three-fold rise in the murders of land rights defenders and was placed fourth in global rankings of the worst affected.<sup>312</sup>

#### *HRDs barred from travelling to or outside India*

There are three specific instances where HRDs were barred from travelling outside India and engaging with the UN and other international bodies. In September 2014, a prominent Indian anti-nuclear activist, **S.P.Udayakumar**, was barred from travelling to Kathmandu to meet the UN Special Rapporteur on freedom of assembly and association.<sup>313</sup> In January 2016, Greenpeace activist, **Priya Pillai**, was barred from travelling to London to address British Parliamentarians.<sup>314</sup> In September 2016, a human rights activist from Kashmir, **Khurram Parvez**, was barred from attending the UN Human Rights Council session and later arrested.<sup>315</sup> In December 2017, **Mukunda Kattel**, Director of the Asian Forum for Human Rights and Development (FORUM-ASIA) was deported from Tiruchirappalli in Tamil Nadu and barred from entering India by the Immigration Department on the basis of a lookout notice against him for his involvement in ‘NGO Activities’.<sup>316</sup>

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308 NDTV, ‘After Gauri Lankesh, Former Judge BG Kolse Patil on list, alleged shooter said’, 27 June 2019. Available at: <https://bit.ly/3og2HxX>

309 The New Indian express, ‘Mumbai cops begin probe in threats to noted scholar Ram Puniyani’, 8 June 2019. Available at: <https://bit.ly/3dS7BMA>

310 Rights and Risks Analysis Group, ‘India: Media crackdown during COVID-19 lockdown’, 15 June 2020. Available at: <http://www.rightsrisks.org/banner/india-medias-crackdown-during-covid-19-lockdown-2/>

311 Human Rights Defenders Alert – India. Available at: <http://www.hrdaindia.org/>

312 Global Witness, ‘India focus: Worst year ever for environmental and land rights activists, at least 200 killed in 2016 as crisis spreads across globe’, 13 July 2017. Available at: <https://bit.ly/2ThXORw>

313 The Hindu, ‘Udayakumar stopped from flying to Nepal’, 17 September 2014. Available at: <https://bit.ly/3mdl98p>

314 NDTV, ‘Greenpeace campaigner skypes London from Delhi after travel ban’, 16 January 2015. Available at: <https://www.ndtv.com/india-news/greenpeace-campaigner-skypes-london-from-delhi-after-travel-ban-727911>

315 Hindustan Times, ‘Kashmiri activist Khurram Parvez detained day after being stopped at Delhi’s IGI’, 16 September 2016. Available at: <https://bit.ly/3mdtb15>

316 FORUM-ASIA, ‘India: FORUM-ASIA Director barred from entering the country; arbitrarily detained’, 22 December 2017. Available at: <https://www.forum-asia.org/?p=25357>

### *Harassment, threats and attacks on HRDs in Chhattisgarh*

In the recent years, several cases of attacks on HRDs were documented in the state of Chhattisgarh. The State has, over the last decade, witnessed two combative operations against Maoists led by the Indian State, namely Operation Green Hunt<sup>317</sup> and *Salwa Judum*,<sup>318</sup> that have allegedly led to severe human rights violations. These operations have established a large presence of para-military forces, within the ambit of an electoral democracy, for countering Maoists and providing a protective shield for large-scale corporate activities in the state. Several cases of killings, enforced disappearances, and sexual violence by the security forces have surfaced in the recent years. These individuals include HRDs such as **Soni Sori**,<sup>319</sup> **Malini Subramaniam**,<sup>320</sup> **Lingaram Kodopi**,<sup>321</sup> **Bela Bhatia**<sup>322</sup> and others who were intervening in the abovementioned instances; journalists reporting on these issues such as **Prabhat Singh**,<sup>323</sup> **Deepak Jaiswal**,<sup>324</sup> **Somaru Nag**,<sup>325</sup> **Santosh Yadav**<sup>326</sup> and others; and lawyers representing them and other victims in court such as **Shalini Ghera**<sup>327</sup> and **Isha Khandelwal**<sup>328</sup> were either evicted, arrested under fabricated cases, threatened, physically attacked, or forced to leave by State agencies and vigilante groups. Similar targeting of HRDs has also been recorded in other states such as Odisha, Jharkhand, and Tamil Nadu.

### *Targeting HRDs under the pretext of the violence at Bhima Koregaon in 2018*

Since April 2018, several HRDs across the country have been intimidated and threatened under the pretext of the violence at Bhima Koregaon near Pune on 1 January 2018. Several prominent HRDs and academics have been charged under the Unlawful Activities Prevention Act (UAPA) 1967 (amended in 2019), which was primarily developed as an anti-terrorism law. The threats commenced with the first set of raids conducted on 17 April 2018 at the residences of activists **Rona Wilson** in New Delhi, **Advocate Surendra Gadling** in Nagpur, and **Kabir Kala Manch** members: **Sudhir Dhavale**, **Harshali Potdar**, **Jyoti Jagtap**, **Ramesh Ghaichor**, and **Deepak Dhengle** in Pune.<sup>329</sup> **Advocate Gadling** is the

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317 The Hindu, 'Green Hunt: the anatomy of an operation', 15 December 2015. Available at: <https://www.thehindu.com/opinion/op-ed/Green-Hunt-the-anatomy-of-an-operation/article16812797.ece>

318 The Hindu, 'Salwa Judum is illegal, says Supreme Court', 5 July 2011 (updated 1 October 2016). Available at: <https://www.thehindu.com/news/national/Salwa-Judum-is-illegal-says-Supreme-Court/article13639702.ece>

319 BBC, 'Soni Sori: India's fearless tribal activist', 22 March 2016. Available at: <https://bbc.in/35pRTVt>

320 The Times of India, 'Chhattisgarh journo Malini Subramaniam forced to pack up, quit Bastar', 19 February 2019. Available at: <https://bit.ly/2ITCrcd>

321 The Tribune, 'An Adivasi, a journalist, threatens suicide', 27 March 2016. Available at: <https://www.tribuneindia.com/news/archive/column/an-ativasi-a-journalist-threatens-suicide-213833>

322 The Wire, 'Academic Bela Bhatia attacked, threatened in Bastar', 23 January 2017. Available at: <https://thewire.in/politics/bela-bhatia-attack-bastar-chhattisgarh>

323 Scroll, 'Journalist arrested in Chhattisgarh for posting comments on WhatsApp', 22 March 2016. Available at: <https://scroll.in/article/805521/journalist-missing-in-chhattisgarh-after-bastar-police-pick-him-up>

324 Scroll, 'Journalist Deepak Jaiswal arrested in Bastar', 26 March 2016. Available at: <https://scroll.in/latest/805734/journalist-deepak-jaiswal-arrested-in-bastar>

325 The Hoot, 'Arrested, tortured, jailed in South Bastar', 8 October 2015. Available at: <https://bit.ly/37zj3f1>

326 The Wire, 'Jailed for over a year, Chhattisgarh journalist Santosh Yadav granted bail', 27 February 2017. Available at: <https://thewire.in/law/chhattisgarh-journalist-santosh-yadav-granted-bail>

327 The Wire, 'Human rights lawyer in Bastar faces police harassment', 28 December 2016. Available at: <https://thewire.in/politics/human-rights-lawyer-bastar-police-harassment>

328 The Economic Times, 'Two women lawyers, Isha Khandelwal and Shalini Ghera, who were forced to leave Bastar, want to go back', 6 March 2016. Available at: <https://bit.ly/3e2QnfP>

329 The Hindu, 'Bhima-Koregaon clashes: police raid activists' homes', 18 April 2018. Available at: <https://bit.ly/3jKLlw5>

lawyer of **Dr GN Saibaba**, a 90 per cent disabled former Professor of English at the Delhi University, who was accused of having links with Maoists and sentenced to life imprisonment in March 2017.<sup>330</sup>

On 6 June 2018, the Pune and Maharashtra police again raided the premises of Advocate Gadling, Dhavale and Wilson, along with **Prof. Shoma Sen** and **Mahesh Raut** and followed with their arrests under the UAPA.<sup>331</sup> They were taken to Pune from various locations on transit remand by the Pune police amidst a prejudicial narrative in the mainstream media projecting them as ‘Maoist operatives’ to justify their arbitrary arrests. To continue this orchestrated targeting, on 28 August 2018, the Pune police once again launched simultaneous raids at the homes of several other HRDs, including activists, priests, writers, and lawyers based in Mumbai, New Delhi, Ranchi, Goa, and Hyderabad. Following these raids, the police also arrested **Advocate Sudha Bharadwaj**, **Gautam Navlakha**, **Vernon Gonsalves**, **Advocate Arun Ferreira**, and **Varavara Rao**.<sup>332</sup> Except Navlakha, all others are lodged in a Pune prison. Among those whose residences were raided, include **Advocate Susan Abraham**, journalist **Kranthi Tekula**, **Fr Stan Swamy**, and **Dr Anand Teltumbde**.<sup>333</sup>

On 2 February 2019, Dr Teltumbde was arrested from the Mumbai Airport despite having protection from arrest till 11 February 2019, after an order of the Supreme Court.<sup>334</sup> On 12 June 2019, an eight-member team of the Maharashtra police once again raided Fr Stan’s residence in Ranchi and searched his belongings without a valid search warrant and seized his articles like computers, hard disks, and internet modem and he was forced to handover passwords to his email and Facebook.<sup>335</sup>

Dr Teltumbde and Navlakha were arrested on 14 April 2020.<sup>336</sup> Despite the evident political manoeuvring to stifle dissent and the compromised nature of evidence, bail applications for both of them were rejected by the Supreme Court. Earlier, in January 2020, the Central Government had abruptly transferred the inquiry into the Bhima Koregaon case from the Maharashtra police to the National Investigation Agency (NIA), an institution directly under the Central Government, after a non-BJP government came to power in Maharashtra. The entire case is based on digital documents. Similarly, tampering by the ‘Pegasus’ software against many of the 11 HRDs arrested in this case, have raised serious concerns about their veracity. Recently, two other HRDs, **Prof. Hany Babu**<sup>337</sup> and Fr Stan<sup>338</sup> were arrested by the NIA in this case.

#### *Some other known cases of harassment of HRDs*

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330 The Wire, ‘UN Rights Experts urge India to release jailed university professor Saibaba’, 29 June 2018. Available at: <https://bit.ly/3jplgut>

331 Scroll, ‘Bhima Koregaon: What has happened to the five activists who were arrested a year ago’, 6 June 2019. Available at: <https://bit.ly/35mgtzE>

332 The Economic Times, ‘10 arrests in 8 months of Bhima-Koregaon riots’, 3 September 2018. Available at: <https://bit.ly/2TiuiQw>

333 Counterview, ‘arrests, raids on activists diversionary tactic to hide “terror activities” of Sanatan Sanstha, Hindu Janjaguti: WSS’, 29 August 2018. Available at: <https://bit.ly/3knbvzs>

334 Scroll, ‘Bhima Koregaon: Academic Anand Teltumbde arrested from Mumbai airport’, 2 February 2019. Available at: <https://scroll.in/latest/911748/bhima-koregaon-activist-anand-teltumbde-arrested-from-mumbai-airport>

335 The Wire, ‘Police raid Father Stan Swamy’s house again, take email, Facebook details’, 12 June 2019. Available at: <https://thewire.in/rights/police-raid-father-stan-swamys-house-again-take-email-facebook-details>

336 The Indian Express, ‘Elgar Parishad: Teltumbde, Navlakha surrender, arrested by NIA’, 15 April 2020. Available at: <https://indianexpress.com/article/india/elgar-parishad-teltumbde-navlakha-surrender-arrested-by-nia-6363054/>

337 The Print, ‘With DU Prof Hany Babu’s arrest, 4 academics now in custody in Bhima Koregaon violence case’, 9 August 2020. Available at: <https://bit.ly/2Hq7BaM>

338 The Telegraph, ‘Stan Swamy’s arrest politically motivated’, 12 October 2020. Available at: <https://bit.ly/3ofKuAh>

**Thirumurugan Gandhi**, one of the founders of the ‘May 17 Movement’, was arrested on 21 May 2017, and later on 29 May 2017, and charged with the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act (The Goondas Act) 1982. It is a restrictive law that has been widely used against HRDs in the state of Tamil Nadu.<sup>339</sup> The ‘May 17 Movement’ had called for a candle light vigil in memory of the Tamils killed in Sri Lanka and over 500 people had peacefully gathered for the vigil. He was arrested again on 9 August 2018 at Bangalore Airport upon his return from Europe, after attending the UN Human Rights Council (HRC) session in Geneva and meetings in Brussels and was charged with sedition.<sup>340</sup> He was released on bail the very next day, but was rearrested in another case.<sup>341</sup>

**Chandrashekhar Azad Ravan**, a young lawyer and co-founder of the ‘Bhim Army’, was arrested on 8 June 2017 and was framed under multiple charges under IPC sections of 147 (punishment for rioting), 148 (rioting armed with deadly weapon) and 153A, among others, for his alleged participation in riots that took place between two communities in Uttar Pradesh.<sup>342</sup> Although he was neither involved in the protests nor was he present during the riot, he was charged and detained. It was only after six months that on 2 November 2017, the Allahabad High Court granted him bail, as the police had failed to provide evidence of his involvement. However, within hours of his release, the Uttar Pradesh Government detained him under the NSA and held him in administrative detention until February 2018. In January 2018, his detention was extended until 2 May 2018 and then until 2 November 2018 by a non-judicial ‘advisory board’ established under the Act. This amounted to a gross violation of his rights guaranteed by the Constitution, including the right to a fair trial.<sup>343</sup>

**Sanjeev Bhatt** was the serving Deputy-Commissioner in-charge of Internal Security at the State Intelligence Bureau of Gujarat when the communal violence broke out in 2002. Bhatt claimed that at a high-level meeting on the night of 27 February 2002, at the *then* Chief Minister of Gujarat, Narendra Modi’s (now the Prime Minister) official residence in Gandhinagar, senior police officials were told to let people vent their anger for 72 hours and avenge the Godhra train-burning incident. In 2006, one Zakia Jafri, widow of Ehsan Jafri (killed in the massacre), filed a complaint, of which Bhatt was the chief witness. Bhatt had also moved the Supreme Court to file a detailed affidavit producing evidence of state complicity. In 2015, Bhatt’s tenure as a decorated police officer, came to a sudden end when he received his letter of termination for ‘*Unauthorised Absence*’ and the departmental enquiries held for his termination passed *ex-parte* orders. In September 2015, Bhatt was arrested by the Criminal Investigation Department (CID) in a 22-year-old drug planting case. In June 2019, a Jamnagar court sentenced him under Section 302 of the IPC relating to the death of a person in police custody in 1990, punishing him with life imprisonment. His wife has come on record to testify that the person, who is said to have died of custodial torture, was never in Bhatt’s custody.<sup>344</sup>

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339 India Today, ‘Tamil Nadu: 4 arrested under Goondas Act for holding candlelight march in support of Sri Lankan Tamils’, 30 May 2017. Available at: <https://bit.ly/35rT1aM>

340 The Hindu, ‘May 17 Movement leader Thirumurugan Gandhi held in Bengaluru on charges of sedition’, 9 August 2018. Available at: <https://bit.ly/2HiFwCv>

341 The News Minute, ‘Thirumurugan Gandhi released after 53 days of imprisonment in TN’, 3 October 2018. Available at: <https://bit.ly/34hZTbA>

342 FORUM-ASIA, ‘India: Open Letter to the National Human Rights Commission on continued arbitrary detention and harassment of Dalit rights activist, Chandrashekhar Azad Ravan’, 28 May 2018. Available at: <https://bit.ly/3kmCU4L>

343 The Wire, ‘After 15 months in jail, UP Government releases Bhim Army Chief Chandrashekhar Azad’, 14 September 2018. Available at: <https://thewire.in/rights/bhim-army-chief-chandrashekhar-azad-release-up-govt>

344 The Wire, ‘To Sanjiv Bhatt, a man who displayed the highest courage’, 26 June 2019. Available at: <https://thewire.in/rights/sanjiv-bhatt-sentenced-narendra-modi-gujarat-riots>

## Access to Information

Free access to information is enshrined as a corollary to the right to freedom of expression.<sup>345</sup> In May-June 2005, India enacted The Right to Information (RTI) Act with public authorities, meeting the criteria for 'duty holders' defined in the Act, having the primary responsibility for implementing it. International experts have rated India's RTI law as the seventh best among 128 countries based on a comparative assessment of the statutory provisions.<sup>346</sup> Publicly available statistics indicate that by 2019, more than 30 million information requests were received and processed at different levels of the Government.<sup>347</sup> Since 2005, there are several publicly reported instances of the RTI Act being used to secure the rightful entitlements of the underprivileged and marginalized segments of society,<sup>348</sup> to unearth petty and big-ticket corruption,<sup>349</sup> and to open up decision-making processes in public policy matters.<sup>350</sup> A snapshot view of some crucial developments since UPR-III are as follows:

### *Impinging on the autonomy of Information Commissions*

Since 2018, the ruling party had sought to amend the RTI Act in order to remove what it described as "an anomaly in the status of Information Commissions vis-à-vis other quasi-judicial tribunals".<sup>351</sup> The law as adopted by Parliament in 2005 protected the tenure and stipulated the remuneration payable to Information Commissioners appointed at the Central and State level. Every Information Commissioner could serve for a maximum of five years after appointment without any possibility of re-appointment, which safeguarded the operational autonomy. The 2018 amendment proposals sought to empower the Central Government to determine their tenure, remuneration and other service conditions. However, these amendments could not be effected due to strong resistance by civil society and political parties in the opposition.<sup>352</sup>

After re-election in the 2019 General Elections, the NDA Government used its absolute majority in the *Lok Sabha* (Lower House of the Parliament) and in the *Rajya Sabha* (Upper House of the Parliament) to push these amendments.<sup>353</sup> There were no public consultations nor vetting by a Standing Committee as is the regular practice.<sup>354</sup> As a result of the amendments, Commissioners can now be appointed for a term of three years initially and serve for another two, if re-appointed or elevated to the post of the Head of the Commission. Salaries and tenures are determined by the Central Government through subordinate legislation, which is implemented prior to obtaining *post facto*

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345 UNESCO, 'About Freedom of Information'. Available at: <https://bit.ly/35uNfp1>

346 'The Rating Results' on *The RTI Rating*: <https://www.rti-rating.org/> <accessed on 13 July 2020>

347 Deccan Herald, 'Over 3.02 crore RTI applications filed in last 15 years', 11 October 2019. Available at: <https://bit.ly/37BxzDc>

348 UNDP-India, 'From Entitlement to Reality: Tribal Communities Use the Right to Information Act to secure justice'. Available at: <https://bit.ly/3dPD16e>

349 Money Control, 'RTI success stories: 7 times the Act helped uncover scams and anomalies', 30 July 2019. Available at: <https://bit.ly/2TIZzSU>

350 IMODEV (Improving Public Policies in a Digital World), 'Public Tools for Open Governance: Review of Right to Information Act and Social Media in Indian Context' 2016. Available at: <https://bit.ly/2HvLn6S>

351 Commonwealth Human Rights Initiative (CHRI), 'The Right to Information (Amendment) Bill, 2018: A Critical Review of the Amendment Proposals and the Underlying Reasoning'. Available at: <https://bit.ly/3kuPYFm>

352 The Times of India, '22 Bills set to lapse with the dissolution of the Lok Sabha', 15 February 2019. Available at: <https://bit.ly/34nRZxd>

353 The Hindu, 'RTI Amendment Bill passed amid protests in Rajya Sabha', 25 July 2019. Available at: <https://bit.ly/3mfD26t>

354 The Wire, 'RTI Act amended without public consultation, but rules yet to be framed 3 months on', 23 October 2019. Available at: <https://bit.ly/31x4m8f>

approval of the Parliament.<sup>355</sup> The remuneration of newly appointed Information Commissioners has been reduced by Rs. 20,000 and other service conditions have been placed at par with that of senior bureaucrats.<sup>356</sup> The autonomy granted to the Commissions by the RTI Act 2005 has been brought to an end, destroying a core feature of the law.

### *Repeal of the progressive RTI law in Jammu and Kashmir*

The erstwhile state of Jammu and Kashmir (J&K) had enacted its own RTI law in 2009 as due to the special status guaranteed under the Constitution, all laws enacted by Parliament did not automatically extend to J&K.<sup>357</sup> Thousands of residents of J&K used this law to make public authorities more transparent and accountable.<sup>358</sup> In early August 2019, the Central Government brought in key constitutional amendments bifurcating the state of J&K into two union territories – J&K and Ladakh, putting an end to its special constitutional status and bringing it under the jurisdiction of the Central Government.<sup>359</sup> Scores of J&K-specific laws that were repealed, including the J&K RTI Act.<sup>360</sup> There was no public consultation whatsoever regarding these legislative changes. The State Information Commission was abolished and for several months there was no clarity about the fate of appeals and complaints that were pending under the erstwhile RTI Act.<sup>361</sup> After some persistent effort, the Central Information Commission has succeeded in persuading the administration of the two union territories to transfer these cases for their disposal.<sup>362</sup> The process of appointing public information officers and internal appellate authorities has been tardy.<sup>363</sup> The shutdown of internet services and postal system ensured that residents of J&K were unable to use the Central RTI Act for seeking information.<sup>364</sup>

### *Attacks on and threats to RTI Activists*

The RTI has been perhaps been the most powerful law that has empowered citizens and activists alike to demand accountability, transparency and good governance, thereby expanding the civil space. However, several RTI activists have come under direct attacks by the State and non-state actors for unearthing questionable policies, decisions and transactions. According to the data compiled by the Commonwealth Human Rights Initiative (CHRI),<sup>365</sup> since the RTI Act 2005 came into effect, 87 activists have been killed, 172 of them assaulted, 185 harassed or threatened, and seven died of suicide.<sup>366</sup>

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355 The Economic Times, 'Govt notifies RTI Rules: CIC tenure cut to 3 yrs, Govt to decide salary, other perks', 25 October 2019. Available at: <https://bit.ly/31BCOi7>

356 CHRI, 'Central Government's RTI Rules, 2019: Making a mess of things to gain a stranglehold on information commissions after misleading Parliament'. Available at: <https://bit.ly/3jwMYHf>

357 Comparison of J&K RTI Act 2009 and Central RTI Act 2005. Available at: <https://bit.ly/2J0B5wy>

358 Kashmir Observer, 'A successful decade of RTI Act', 18 November 2015. Available at: <https://bit.ly/3mduMUE>

359 The Citizen, 'J&K Bifurcated: A Huge Step Backward', 5 August 2019. Available at: <https://bit.ly/2FS21x9>

360 The Wire, 'Central RTI Law to now apply to J&K and Ladakh', 6 August 2019: <https://bit.ly/37Df0OK>

361 The Economic Times, 'As Jammu and Kashmir becomes a UT, there's no information on 400 RTI appeals', 7 August 2019. Available at: <https://bit.ly/37A2gsk>

362 The Print, 'CIC to deal with appeals, complaints pending under J&K RTI Act', 2 December 2019. Available at: <https://bit.ly/3jsqx5M>

363 The Northlines, 'Two months on, J&K still groping in the dark on RTI domain', 7 January 2020. Available at: <https://bit.ly/3mhra3X>

364 The Economic Times, 'No place to file RTI in J&K, Ladakh after becoming UTs', 14 November 2019. Available at: <https://bit.ly/2HuzE8U>

365 The Commonwealth Human Rights Initiative (CHRI). Available at: <https://www.humanrightsinitiative.org/index.php>

366 CHRI, Hall of Shame: Mapping Attacks on RTI Users. Available at: <http://attacksonrtiusers.org/> <accessed at 15:42 on 21 October 2020>



### *Poor implementation of proactive information disclosure provisions*

At the heart of India's RTI Act lies the "duty to publish."<sup>367</sup> However, a study commissioned by the Central Information Commission, that was completed in 2018, found several public authorities under the Central Government (including high constitutional authorities) deficient in complying with the statutory obligation of proactive information disclosure.<sup>368</sup> The poor levels of compliance were evident despite the circulation of detailed guidelines and templates for complying with the statutory requirements.<sup>369</sup> Although the said study was limited to public authorities under the Central Government, the state of affairs in public authorities under the state governments is no different with regard to compliance with proactive information disclosure obligation. A study conducted by civil society organizations earlier in 2018 identified this fact of poor compliance as a major cause for the increasing number of formal information requests from citizens.<sup>370</sup>

### *Challenges to the effective functioning of the oversight bodies*

The Central and State Information Commissions perform oversight functions under the RTI Act adjudicating over appeals and complaints and issuing recommendations to public authorities for their better compliance with the Act. They have the power to impose penal consequences for specified contraventions of the law. A recent study has highlighted a plethora of problems that adversely affect the functioning of these bodies reducing their efficacy.<sup>371</sup> Some of these problems are:

- a) appointment of Information Commissioners influenced by political considerations;
- b) undue preference for retired bureaucrats in the selection process despite the law prescribing a wide range of subject specialisation for eligible candidates;
- c) long-standing vacancies in Information Commissions and poor levels of work output resulting in huge levels of pendency in the large-sized States;
- d) lack of gender-parity and inadequate representation for socio-cultural diversity in appointments;
- e) long waiting period for the resolution of information access disputes running into more than a year in a large number of cases, thereby rendering the use value of the information to obsolescence;
- f) infrequent use of sanctions against contraventions of the law resulting in impunity;
- g) inadequate transparency in the day-to-day working of Information Commissions.

### *Other examples of roll-back of the transparency regime*

After India's UPR-III, several major policy changes were brought in by the Central Government that adversely impacted the overall levels of transparency essential for ensuring the continued good health of the democratic process. They include increased opacity in the funding of political parties in the

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367 Administrative Law Review (Volume 58, No. 1 (Winter)), American Bar Association, 'The Global Explosion of Freedom of Information Laws', 2016. Available at: <https://www.jstor.org/stable/40712005>

368 Central Information Commission – New Delhi, 'Transparency Audit of Disclosures u/s 4 of the Right to Information Act by Public Authorities', 2018. Available at: <https://bit.ly/2HrMgOz>

369 Ibid, p. 9.

370 Satark Nagrik Sangathan and Centre for Equity Studies, 'Adjudicating the RTI Act: Analysis of Orders of the Central Information Commission', 2018. Available at: <https://bit.ly/2Hz4U6r>

371 Satark Nagrik Sangathan and Centre for Equity Studies, 'Report Card of Information Commission in India', 2018-19. Available at: <https://snsindia.org/wp-content/uploads/2019/10/Report-Card-2019-FINAL.pdf>



country<sup>372</sup>; lack of transparency in defence deals<sup>373</sup> and human rights violations by security forces<sup>374</sup>; refusal to disclose details of the demonetization exercise<sup>375</sup>; and internet blockades and arbitrary detentions in J&K,<sup>376</sup> etc. Transparency has also been affected due to the COVID-19 pandemic and the resultant lockdown measures,<sup>377</sup> including with the relevant authorities showing resistance in providing information on management of the lockdown,<sup>378</sup> internal migrant crisis in India,<sup>379</sup> and the PM CARES Fund,<sup>380</sup> among other issues. There has also been a dilution of anti-corruption mechanisms in the country due to retrograde amendments to the Whistleblowers Protection Act 2014 in 2015<sup>381</sup> and the Prevention of Corruption Act 1989 in 2017<sup>382</sup> and due to the ineffective functioning of the *Lokpal* and *Lokayuktas* (anti-corruption grievance redressal mechanisms).<sup>383</sup>

### **Freedom of Assembly**

Another crucial aspect of democratic space in any country is the guarantee of freedom of assembly. This human right is also guaranteed under Article 19 of the Constitution of India. Although this right is not absolute in nature, it has been frequently restricted through the excessively broad application of Section 144 of the Code of Criminal Procedure (CrPC) which prohibits any assembly of five or more people in any designated area. It confers anticipatory powers upon the magistrates to issue an order absolute at once in urgent cases of nuisance or where danger is apprehended. Therefore, the invocation of this section should be based on manifest urgency or apprehension and its likelihood of preventing harmful consequences.

However, Section 144 is routinely used to prevent peaceful public gatherings, resulting in undue restrictions on protests and people's movements. There has been an increasing trend of public spaces being off-limits for peaceful protests. Authorities also demand protest organizers to obtain prior police permission or clearance for the right to assemble, impinging on the right to peaceful assembly. These include spaces for protests being demarcated in cities. Several protests pertaining to land and natural resources have witnessed brutal police actions against the protestors.

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372 Livemint, 'Government announces details of electoral bonds for political funding', 2 January 2018. Available at: <https://bit.ly/35n4l2v>

373 NDTV, 'Air Force declines RTI seeking details of Rafale deal, says it is confidential', 5 February 2017. Available at: <https://bit.ly/31BTHt9>; see also, Scroll, 'Rafale deal, CAG refuses to share audit details, cites parliamentary privilege rule', 15 January 2019. Available at: <https://bit.ly/3dQTjMg>

374 *Venkatesh Nayak v. Ministry of External Affairs*, Second Appeal No. CIC/MOEAF/A/2018/135506, decision dated 19 August, 2019: <https://bit.ly/3ojy1M7>; see also, Kashmir Times, 'CIC rejects access to files on denial of prosecution in 47 J&K AFSPA cases "in larger public interest"', 12 June 2020. Available at: <https://bit.ly/35qHjNM>

375 India Whispers, 'Demonetisation details can't be disclosed for country's economic interest, says Union Finance Ministry', 3 September 2019. Available at: <https://bit.ly/31ACIN4>

376 The Tribune, 'No info on curbs on telecom services: MHA in RTI reply', 8 October 2019. Available at: <https://bit.ly/3ojKRd7>

377 CHRI, 'Inactive State Information Commissions must resume work on the CIC model: CHRI's rapid telephonic survey findings', 28 April 2020. Available at: <https://bit.ly/3om1IMn>

378 The Hindu, 'Clamour for transparency of testing data grows shriller', 25 May 2020. Available at: <https://bit.ly/3koJx6z>

379 The Hindu, 'Government has no data of migrant workers' death, loss of jobs', 14 September 2020. Available at: <https://bit.ly/37yaCAv>

380 The Hindu, 'PM-CARES is not a public authority under the RTI Act: PMO', 30 May 2020. Available at: <https://bit.ly/35vMfki>

381 The Economic Times, 'Where the law stands on whistleblowers in India', 26 October 2019. Available at: <https://bit.ly/3jpPL4S>

382 The Indian Express, 'The limp arm of the law', 2 August 2018. Available at: <https://bit.ly/37yxgbY>

383 The Week, 'Watchdog on leash', 7 December 2019. Available at: <https://bit.ly/35oQdLO>

In the case of *Manzur Hasan v Muhammad Zaman*, the grounds for making a case under Section 144 were held to be<sup>384</sup>:

1. Urgency of the situation and the power is to be used for maintaining public peace and tranquillity;
2. Private rights may be temporarily overridden when there is a conflict between public interest and private rights;
3. Questions of title to properties or entitlements to rights or disputes of civil nature are not open for adjudication in a proceeding under Section 144;
4. Where those questions have already been decided by the civil courts or by judicial pronouncements, the Magistrate should exercise their power under section 144 in aid of those rights and against those who interfere with the lawful exercise thereof; and,
5. The consideration should not be that restriction would affect only a minor section of the community rather than a large section more vociferous and militant.

However, in practice, the implementation of this section has overlooked these grounds. The latest case of misuse of the provision was seen in New Delhi where several women lawyers and activists were detained by the Delhi police from outside the Supreme Court premises for protesting against the alleged “failure of due process” in a sexual harassment case against the *then* Chief Justice of India.<sup>385</sup>

The National Green Tribunal (NGT) had banned the protests at *Jantar Mantar*, a place legally marked for protests and peaceful assemblies in the heart of New Delhi. It has witnessed a series of protests on a range of social and political issues for over 25 years. The NGT recently directed the Delhi Government, the Delhi police and the New Delhi Municipal Council to stop all protests at *Jantar Mantar* and to remove the protesters sitting there to *Ramlila* Ground, a place far off from the central Delhi which is accessible to all, including the fourth estate of the democracy. While there were no charges for holding protests at *Jantar Mantar* earlier, the protesters now need to pre-book the *Ramlila* Ground, the new venue, by paying Rs. 50,000. No two ‘events’ can happen simultaneously.<sup>386</sup>

In another incident of clear violation of freedom of assembly, on 22 May 2018, 11 peaceful protestors were killed due to indiscriminate firing by police in the Thoothukudi District Collectorate allegedly because the protestors began pelting stones. Four others in the streets and one person immolated himself.<sup>387</sup> The day of the firing marked the 100th day of peaceful demonstrations against the *then* proposed expansion of Vedanta’s Sterlite Copper plant.<sup>388</sup>

### **Freedom of Association**

The third pillar of democratic space in the country, in addition to freedoms of expression and assembly, is the freedom of association. However, several organizations working on rights-based issues, especially those who possess valid licenses under the Foreign Contribution Regulation Act (FCRA) 2010, have come under severe legislative restrictions over the years. The 2010 Amendment to

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384 *Manzur Hasan v Muhammad Zaman*, AIR 1925 PC 36.

385 India Today, ‘CJI sexual harassment case: Section 144 outside SC after protests against clean chit to Gogoi’, 7 May 2019. Available at: <https://bit.ly/31wGVMi>

386 The Indian Express, ‘At Rs. 50,000 per day, dissent is not cheap at Ramlila Maidan’, 12 October 2017. Available at: <https://indianexpress.com/article/cities/delhi/at-rs-50000-per-day-dissent-is-not-cheap-at-ramlila-maidan-4885939/>

387 The Indian Express, ‘Tuticorin protests: Protestors killed by shots to head, chest; half from behind, reveal autopsies’, 22 December 2018. Available at: <https://bit.ly/3oiZZaP>

388 Further details with respect to this incident can be found in the chapter on Access to Justice in this report.

the FCRA made it compulsory for all NGOs receiving foreign grants to re-register every five years. It also empowered the Ministry of Home Affairs (MHA) to suspend, cancel or freeze the FCRA account of an organization if it determines that such organization has violated any provision of the FCRA. The amendments increased reporting requirements by NGOs. Similarly, Indian banks are compelled to report any funds received from foreign sources within 48 hours.<sup>389</sup> These provisions have made it easy for the authorities to target organizations that are critical of the Government's policies. Several organizations advocating for human rights and social justice, providing legal aid, etc. had their FCRA license either not renewed, renewed and then cancelled, or first suspended and then cancelled. These actions are initiated by the MHA solely on the basis of reports by the Intelligence Bureau; the organizations have not been given an opportunity to respond in this matter.

Between 5 May and 9 June 2015, the MHA cancelled the FCRA registration of 4,470 civil society organizations (CSOs) for violating the FCRA and justified its decision on the grounds that the CSOs had failed to submit their tax returns.<sup>390</sup> This action was followed by the cancellation of the licenses of 9,000 CSOs in April 2016 for FCRA violations.<sup>391</sup> In August 2017, as gathered from the MHA website, the FCRA licenses of over 11,000 organisations were cancelled.<sup>392</sup> Some of these organizations included Indian Social Action Forum,<sup>393</sup> Centre for Promotion of Social Concerns,<sup>394</sup> Lawyers Collective,<sup>395</sup> Sabrang Trust,<sup>396</sup> Centre for Justice and Peace,<sup>397</sup> Greenpeace India,<sup>398</sup> among others. Offices of Amnesty International India and Greenpeace were also raided in October-November 2018.<sup>399</sup> Many CSOs have not been able to function effectively as they are unable to receive any funding, which has impacted the human rights work in the country.<sup>400</sup>

In addition to this, on 4 October 2017, the MHA made it mandatory for all existing NGOs having FCRA accreditation and those seeking FCRA registration/prior permission in the future, to register on the NITI Aayog's NGO-Darpan portal and generate a unique identification number (UIDN),<sup>401</sup> although the FCRA and its rules do not mandate any such requirement. In the case of Lawyers Collective, the Central Bureau of Investigation (CBI) filed a First Investigation Report (FIR) against the organization, Senior Advocate Anand Grover (former UN Special Rapporteur on the right to health) and its other unnamed functionaries under various sections of IPC, FCRA, and Prevention of Corruption Act (PCA) 1988 on 13

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389 Ministry of Home Affairs – Government of India, Notification: The Foreign Contribution (Regulation) Amendment Rules 2015. Available at: [https://fcraonline.nic.in/home/PDF\\_Doc/doc00600120151214130739.pdf](https://fcraonline.nic.in/home/PDF_Doc/doc00600120151214130739.pdf)

390 The Wire, 'Home Ministry suspends FCRA licenses of four Christian associations', 7 September 2020. Available at: <https://thewire.in/government/home-ministry-suspends-fcra-license-ngos>

391 Hindustan Times, 'Home ministry cancels registration of 9,000 foreign-funded NGOs', 28 April 2015. Available at: <https://bit.ly/34kZjcX>

392 India TV, 'Modi government derecognises more than 11,000 NGOs for not renewing FCRA registration', 4 November 2016. Available at: <https://bit.ly/2Ht8PBK>

393 Indian Social Action Forum (INSAF). Available at: <https://www.insafindia.com/>

394 People's Watch. Available at: <https://www.peopleswatch.org/>

395 Lawyers Collective. Available at: <http://www.lawyerscollective.org/>

396 Sabrang India. Available at: <https://sabrangindia.in/>

397 Citizens For Justice and Peace (CJP). Available at: <https://cjp.org.in/>

398 Greenpeace India. Available at: <https://www.greenpeace.org/india/en/>

399 The Guardian, 'Greenpeace and Amnesty accuse Indian government of smear campaign', 25 December 2018. Available at: <https://bit.ly/3jmmZ4Q>

400 UN Human Rights Council, 42nd Regular Session, Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, 9 September 2019, A/HRC/42/30. Available at: <https://undocs.org/en/A/HRC/42/30>

401 NGO Darpan – Government of India. Available at: <https://ngodarpan.gov.in/>

June 2019.<sup>402</sup> The charges levelled against them were of criminal conspiracy, criminal breach of trust, cheating, false statement made in declaration, violation of FCRA 2010, and criminal misconduct under PC Act 1988, with the intention to intimidate and harass them for their human rights work over the years, including litigations against Mr Amit Shah, the present Minister of Home Affairs, in the Sohrabbudin case. They also represented the HRDs detained in the Bhima Koregaon case. These criminal charges were filed solely on the basis of an MHA report from January 2016 when the matter was still pending before the Bombay High Court.<sup>403</sup>

Further in September 2020, another set of amendments were enacted to the FCRA without any prior consultation with stakeholders; it was not referred to the Standing Committee; and was passed by a voice vote.<sup>404</sup> These amendments have imposed further restrictions: organizations receiving foreign funds will no longer be allowed to transfer them to smaller NGOs working at the grassroots; restricting the cap on administrative expenses from 50 per cent to 20 per cent; prohibiting certain categories of persons such as ‘public servants’ from accepting any foreign contribution; making Aadhaar card numbers of the NGO officials compulsory for registering for FCRA,<sup>405</sup> among other things. It must be noted that the constitutional validity of the Aadhaar scheme is presently being contested before the Supreme Court in a review petition.<sup>406</sup> The civil society fears that these amendments would effectively destroy the ability of the sector to collaborate and continue to do any meaningful work or research, especially for the grassroots organizations.<sup>407</sup> Simultaneously, on 10 September 2020, the Enforcement Directorate (ED) completely froze the bank accounts of Amnesty International India, following which the organization was forced to shut its offices in India.<sup>408</sup> Amnesty described this as “an incessant witch hunt of human rights organizations over unfounded and motivate allegations”.<sup>409</sup>

### **Protests against the Citizenship Amendment Act (CAA) 2019**

On 9 December 2019, Mr Amit Shah, the Minister of Home Affairs, introduced the Citizenship (Amendment) Bill 2019 in the *Lok Sabha*; with the absolute majority of the ruling party, the bill sailed through with very limited debate. In a quick succession, the *Rajya Sabha* also passed the bill on 11 December 2019; it received the Presidential assent on 12 December 2019. The Bill amended the Citizenship Act 1955 and made illegal migrants in India from Pakistan, Afghanistan, and Bangladesh eligible for Indian citizenship by:

- i. Granting amnesty to Hindus, Sikhs, Jains, Buddhists, Parsis (Zoroastrians) and Christians who had entered India before 31 December 2014, thereby opening a path to their naturalization as Indian citizens (Section 2); and

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402 Live Law, CBI registers FIR against Lawyers Collective for alleged FCRA violations; NGO terms it an attempt to silence them’, 18 June 2019. Available at: <https://bit.ly/34kDTNf>

403 Frontline Defenders, ‘Indian Government should withdraw criminal charges against NGO ‘Lawyers Collective’, and its representatives’, 26 June 2019. Available at: <https://bit.ly/35vhpsl>

404 Livemint, ‘Rajya Sabha passes the Foreign Contribution (Regulation) Amendment Bill 2020’, 23 September 2020. Available at: <https://bit.ly/3kngwbc>

405 Deccan Chronicle, ‘Lok Sabha clears FCRA bill that makes Aadhar must to register NGOs’, 22 September 2020. Available at: <https://bit.ly/34hkrkq>

406 The New Indian Express, ‘SC to take up June 9 pleas seeking review of verdict upholding the validity of Aadhar scheme’, 7 June 2020. Available at: <https://bit.ly/3mdhd7y>

407 The Wire, ‘Leading NGOs believe FCRA changes will ‘kill’ voluntary sector’, 22 September 2020. Available at: <https://thewire.in/rights/fcra-amendment-ngo-sector-impact-grassroots-activism>

408 Indian Express, ‘ED freezes its accounts, Amnesty shuts its India offices’, 30 September 2020. Available at: <https://indianexpress.com/article/india/amnesty-international-india-office-ed-6637010/>

409 The Times of India, ‘NGO slams govt for ‘incessant witch hunt’, 30 September 2020. Available at: <https://bit.ly/3kpkNen>

- ii. Relaxing the residence requirement for naturalization for these persons from 11 to five years. (Section 6).<sup>410</sup>

The law intends to protect persecuted minorities from the region, other than Muslims, and offer them shelter and citizenship in India.<sup>411</sup> It must be noted that the Act patently excludes Muslims, even from the persecuted sects in the neighbouring countries, and therefore, has been criticized by several bodies, including the OHCHR, for being fundamentally discriminatory in nature.<sup>412</sup>

The passing of the bill triggered massive protests, stemming from the eastern regions of India, which soon spread to different parts across the country, including New Delhi, Maharashtra, Karnataka, Uttar Pradesh, Rajasthan, West Bengal, and others.<sup>413</sup> On 15 December 2019, protests broke out across the state of Uttar Pradesh and witnessed a very strong student participation from Aligarh Muslim University (AMU). The police responded to the protesting students using indiscriminate attacks in the campuses, including in the hostels; firing tear gas, rubber bullets and water cannons; and destroying parked vehicles, all of which were also caught live on the television media.<sup>414</sup> It was reported that at least 60 students were hospitalized due to this police action.<sup>415</sup> Following the protests and brutal police violence in AMU, the entire state of Uttar Pradesh was put on alert with a blanket application of Section 144 of the CrPC, which practically amounted to a complete suspension of the fundamental right to freedom of peacefully assembly guaranteed by Article 19 of the Constitution. Such violence by the police was also widely witnessed in the universities and colleges in New Delhi such as the Jawaharlal Nehru University (JNU) and the Jamia Millia Islamia University.<sup>416</sup>

#### *Deaths in Police Action*<sup>417</sup>

There have been reports of 23 cases of deaths in police actions across the state of Uttar Pradesh alone due to bullet injuries. In the absence of reporting by state authorities, the information emerging is that most of the deceased are protestors. A senior police official allegedly confirmed to the media that the deaths of 14 of 16 people were from 'fire arm injuries'.<sup>418</sup>

#### *Arbitrary Arrests and Detentions*

While clamping down on peaceful protests against the CAA, the Uttar Pradesh police had arbitrarily arrested HRDs, political activists, journalists, lawyers, and others, without any evidence or without following the due process of law. As on 21 December 2019, per the statement of the Inspector General

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410 The Citizenship (Amendment) Act 2019, Sections 2 and 6. Available at: <http://egazette.nic.in/WriteReadData/2019/214646.pdf>

411 India Today, 'Will provide citizenship to persecuted minorities: Rajnath Singh', 8 December 2019. Available at: <https://bit.ly/2Tkiz40>

412 Office of the High Commissioner for Human Rights, Press briefing on India, 13 December 2019. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25425&LangID=E>

413 Hindustan Times, 'Nationwide protests against citizenship law continue; many booked', 21 December 2019. Available at: <https://bit.ly/3dQnm6C>

414 The Hindu, 'Aligarh Muslim University students seek answers from police over use of 'excessive force'', 26 December 2019. Available at: <https://bit.ly/3miznoH>

415 The Hindu, 'At least 60 injured in police crackdown at Aligarh Muslim University', 15 December 2019. Available at: <https://bit.ly/37CdYT8>

416 The Hindu, '51 people injured in JNU violence, 127 in Jamia protests', 5 February 2020. Available at: <https://bit.ly/2TIqUEM>

417 Further details with respect to this incident can be found in the chapter on Access to Justice in this report.

418 The Free Press Journal, 'CAA protest: 14 of 16 UP protestors died of bullet injury', 24 December 2019. Available at: <https://www.freepressjournal.in/india/caa-protest-14-of-16-upprotesters-died-of-bullet-injury>

(Law and Order), a total of 705 people were arrested for substantive offence and around 4,500 people were held in preventive detention and later released on a bond.<sup>419</sup> Similarly, 57 protestors were arrested and later released on bail in Varanasi, which included a 14-month-old baby.<sup>420</sup>

### *Targeting of HRDs, activists and student leaders critical of the CAA*

In addition to the excessive use of force by the police to quell the protests, the criminal justice system has been misused to target community members and HRDs, by slapping fabricated and exaggerated charges against them. This appears to aim at deterring further protests and coercing critics into silence. Apart from the students of AMU and the Banaras Hindu University,<sup>421</sup> several other HRDs were detained, arrested, assaulted, and ill-treated in custody.

On 13 December 2019, the Uttar Pradesh police booked and arrested **Dr Kafeel Khan** for “promoting enmity between different groups on ground of religion” under the IPC for allegedly making a provocative speech at the AMU campus in reference to the CAA. On 29 January 2020, he was arrested at the Mumbai Airport by the Special Task Force (STF) of the Uttar Pradesh police and Mumbai police. He was granted bail on 10 February 2020. However, even before he was released, on 14 February 2020, he was re-arrested under the NSA, which allows preventive detention of an individual for up to 12 months even without charges. He was detained in the Mathura Jail for nine months before being released. On 1 September 2020, the Allahabad High Court set aside the NSA order,<sup>422</sup> adjudged his detention as “illegal”, and called for his immediate release.<sup>423</sup>

**Sushil Gautam**, a Dalit rights activist, was picked up from his house for calling for a march against the CAA on 15 December 2019. Later, his father was detained and kept in the police station overnight without citing any reasons. Although he was charged under Section 151 (preventive detention) CrPC, which also gives him the right to get bail on the very same day, he was sent to jail and was asked to furnish a bail bond of over Rs. 2 lakhs (Rs. 200,000).<sup>424</sup>

**S.R. Darapuri**, a 76-year-old retired officer of the Indian Police Service (IPS), was put under house arrest on 18 December 2019. The police arrested him from his house the following day and did not tell the family about his whereabouts till 20 December 2019. He was booked under IPC sections relating to voluntarily causing hurt to deter public servant from duty, assault or criminal force to deter public servant, rioting, attempt to murder, and criminal conspiracy.<sup>425</sup>

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419 Video of the press conference on the official Twitter account of the UP police. Available at: <https://twitter.com/Uppolice/status/1208364406288945153?s=20>

420 Hindustan Times, ‘57 arrested in anti-CAA protests released on bail in Varanasi’, 2 January 2020. Available at: <https://bit.ly/2TgiOx2>

421 The Hindu, ‘Arrests stifle CAA protests in Banaras Hindu University’, 30 December 2019. Available at: <https://bit.ly/34pbTrU>

422 The Hindu, ‘Allahabad HC sets aside NSA order against Kafeel Khan, asks UP to release him forthwith’, 1 September 2020. Available at: <https://bit.ly/3dRE8Td>

423 NDTV, ‘UP Doctor Kafeel Khan’s Detention Under Tough Law NSA “Illegal”, Free Him: High Court’, 1 September 2020. Available at: <https://bit.ly/3dSDbdm>

424 News Click, ‘CAA-NRC will rob Dalits and Tribals of their rights, say activists’, 21 December 2019. Available at: <https://www.newsclick.in/caa-nrc-will-rob-dalits-and-tribals-their-rights-say-activists>

425 The Indian Express, ‘Retired IPS officer, held over anti-CAA protests, ‘works on rights issues’’, 29 December 2019. Available at: <https://bit.ly/34jzr1c>



Other HRDs such as **Mohammad Shoaib**,<sup>426</sup> **Robin Verma**,<sup>427</sup> **Pawan Rao Ambedkar**, **Dr Anoop Shramik**, **Sadaf Jafar**, and **Deepak Kabir** were all arrested on 19 December 2019 and accused of serious offences, including rioting with deadly weapons and obstructing public officials from discharging their duties and assaulting them. However, they were eventually granted bail after the prosecution failed to produce any evidence against them.<sup>428</sup>

**Sandeep Pandey**, a Magsaysay Awardee and social activist, was put under house arrest on 19 December 2019. He was arrested in February 2020 for distributing anti-CAA pamphlets.<sup>429</sup> **Omar Rashid**, the Uttar Pradesh correspondent of the national newspaper, *The Hindu*, was illegally detained and threatened by four unidentified men in plain clothes on 20 December 2019. He was released only after being questioned by the police.<sup>430</sup>

**Mohammad Faizal**, a 24-year-old advocate was arrested by the Uttar Pradesh police on 23 December 2019, when was visiting Shamli district to offer legal aid to the arrested anti-CAA protestors. He was detained at the Crime Branch till the evening and then the police arrested him on the pretext of having militant links and being a member of the organization, the Popular Front of India (PFI),<sup>431</sup> which the Uttar Pradesh police has sought a ban on.<sup>432</sup>

During the COVID-19 lockdown, New Delhi witnessed a large scale arrests of student leaders and HRDs, who were actively opposing the CAA. On 23 May 2020, officers from the North-East Delhi's Jaffrabad police station arrested student activists **Devangana Kalita**<sup>433</sup> and **Natasha Narwal**<sup>434</sup> from their homes. They are the founding members of the women's student organization, *Pinjra Tod*, and were arrested in connection with their alleged role in a sit-in protest against the CAA that took place at Jaffrabad metro station on 22-23 February 2020. They were initially arrested under several sections of the IPC, including 'obstructing public servant in discharge of public functions' and 'assault or criminal force to deter public servant from discharge of his duty'. Both were granted bail by a Delhi court on 24 May 2020, only to be immediately re-arrested by a Special Investigation Team of the Crime Branch for another FIR.<sup>435</sup> On 28 May 2020, they were remanded in judicial custody until 11 June 2020,

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426 Human Rights Defenders' Alert (HRDA) – India, 'Urgent appeal for action – Uttar Pradesh: Arbitrary arrest and detention of Advocate Mohammed Shoaib in Lucknow', 9 January 2020. Available at: <https://bit.ly/35xINHk>

427 The Hindu, 'Activist arrested during anti-CAA protest granted bail', 7 January 2020. Available at: <https://bit.ly/3onIHcO>

428 The Week, 'Lucknow anti-CAA protestors, including activist Sadaf Jafar, get bail', 3 January 2020. Available at: <https://www.theweek.in/news/india/2020/01/03/lucknow-anti-cao-protesters-get-bail.html>

429 Scroll, 'Magsaysay winner Sandeep Pandey arrested while distributing anti-CAA pamphlets', 17 February 2020. Available at: <https://bit.ly/35nU7EI>

430 The Hindu, 'A first person account by 'The Hindu' correspondent Omar Rashid of how he was picked up, threatened and released by cops', 23 December 2019. Available at: <https://bit.ly/2Tk5Iz2>

431 The Wire, 'UP police arrest Muslim lawyer offering legal aid to protestors, claim militant links', 25 December 2019. Available at: <https://thewire.in/law/up-police-muslim-lawyer>

432 The Wire, 'CAA Protests: Uttar Pradesh police seek ban on PFI for 'violence'', 1 January 2020. Available at: <https://thewire.in/communalism/uttar-pradesh-police-cao-protests-pfi>

433 Huffington Post, 'Delhi riots: Five months after arrest, Devangana Kalita not given access to video footage the police is using to build its case', 20 October 2020. Available at: <https://bit.ly/2TdKsdZ>

434 The Hindu, 'JNU student and activist Natasha Narwal charged under UAPA', 30 May 2020. Available at: <https://bit.ly/35qw5sr>

435 The Wire, 'Delhi police rearrest *Pinjra Tod* women activists as Court grants them bail', 25 May 2020. Available at: <https://thewire.in/rights/pinjra-tod-arrest-delhi-police-jaffrabad>



which was further extended. They were further booked under the UAPA.<sup>436</sup> Eventually, both were granted bail in September 2020.<sup>437</sup>

In another such case, **Meeran Haider**, a PhD student of Jamia Milia Islamia University, a member of the Jamia Coordination Committee and President of the Delhi Unit of the *Chhatra Rashtriya Janata Dal* (RJD), was arrested by the Delhi Police Special Cell after being called in for questioning on the anti-CAA protests in New Delhi. He was arrested although the FIR registered on 6 March 2020, with ‘secret sources’ as the source of information and a ‘sub-inspector’ as a complainant, did not name him and only referred to bailable offences under the IPC. Yet, on 2 April 2020, the Metropolitan Magistrate remanded Haider in police custody for four days, which was subsequently extended by nine more days. After the completion of almost 14 days in police custody, he was transferred to Delhi’s Tihar Jail. He was also charged under the UAPA.<sup>438</sup>

On 9 April 2020, **Gulfisha Fatima**, a recently graduated student of the Delhi University, who was actively involved in women’s led protest against the CAA in Seelampur in North-East Delhi, was arrested by officers from the Delhi Police Special Cell in Lodhi Colony for an FIR lodged at the Jaffrabad police station. On 10 April 2020, the Metropolitan Magistrate at the Mandoli Jail Complex remanded her in police custody for two days. Gulfisha was not given any legal representation for the remand hearings. On 12 April, she was taken to the Mandoli Jail and arrested under another. She was again remanded in police custody for four more days.<sup>439</sup> On 16 April 2020, she was remanded in judicial custody. Charged under the UAPA, her successive bail applications were rejected and she remains detained in the Tihar Jail.<sup>440</sup>

On 10 April 2020, **Safoora Zargar**, a MPhil student of Jamia Millia Islamia University and a member of the media wing of the Jamia Coordination Committee, was arrested at her residence by a dozen police officers in relation to the 22-23 February 2020 sit-in anti-CAA protest at the Jaffrabad metro station. She was interrogated overnight by seven-eight male police officers. She was 14 weeks pregnant at the time of her arrest. On 11 April 2020, she was remanded in police custody for two days and was granted bail on 13 April 2020.<sup>441</sup> However, she was immediately re-arrested and placed under another two days of police custody. Like Haider and Fatima, Zargar faces additional charges under the UAPA. On 15 April 2020, she was brought to the Tihar Jail, where she was placed in solitary confinement for almost two weeks, despite her pregnancy. After being denied bail thrice,<sup>442</sup> she was granted an interim bail on 23 June 2020 on ‘humanitarian grounds’ by the Delhi High Court.<sup>443</sup>

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436 The Quint, ‘Arrested *Pinjra Tod* activist Natasha Narwal now booked under UAPA’, 30 May 2020. Available at: <https://www.thequint.com/voices/women/pinjra-tod-activists-police-custody-extended-till-11-june>

437 Delhi HC grants Devangana Kalita of *Pinjra Tod* bail, says no proof of instigating riots’, 1 September 2020. Available at: <https://bit.ly/3kAMDEo>; see also, National Herald, ‘*Pinjra Tod* member Natasha Narwal gets bail in Delhi riots case’, 17 September 2020. Available at: <https://bit.ly/37MCbXd>

438 Huffington Post, ‘Delhi riots: Police books Umar Khalid, Meeran Haider, Safoora Zargar under UAPA’, 22 April 2020. Available at: <https://bit.ly/2Hyn2NN>

439 Scroll, ‘Delhi violence: Activist Gulfisha Fatima claims she is subjected to harassment in jail’, 22 September 2020. Available at: <https://bit.ly/3ojGdfn>

440 Outlook India, ‘Delhi riots: Court dismisses bail plea of Jamia student Gulfisha Fatima in UAPA case’, 1 September 2020. Available at: <https://bit.ly/35GwCXF>

441 World Organisation Against Torture (OMCT), ‘India: Safoora Zargar, pregnant and detained for protesting peacefully’, 14 May 2020. Available at: <https://www.omct.org/human-rights-defenders/statements/india/2020/05/d25833/>

442 The Quint, ‘Denying Safoora Zargar bail was wrong in law despite UAPA’, 5 June 2020. Available at: <https://bit.ly/34nMsXG>

443 The Print, ‘Delhi High Court grants bail to Safoora Zargar after police concedes on humanitarian grounds’, 23 June 2020. Available at: <https://bit.ly/3megKlv>

On 26 April 2020, **Shifa-ur-Rehman**, the President of the Alumni Association of Jamia Millia Islamia University and a member of the Jamia Coordination Committee, was detained in Mawana in Uttar Pradesh and was taken to New Delhi. He was denied permission to contact his lawyer and was forced to sign blank papers. His personal belongings, mobile phone, laptop, bank and other documents were seized without following proper procedures.<sup>444</sup> The Alumni Association's office was raided and literature, anti-CAA posters, membership fee receipts, and scholarship programme receipts were seized. After his remand in the police custody, he was put under judicial custody and remains detained in the Tihar Jail with charges under the UAPA, along with others.<sup>445</sup> Another student of the Jamia Millia Islamia, **Asif Iqbal**, was arrested on 17 May 2020 under multiple FIRs, along with the UAPA charges,<sup>446</sup> and remains detained.<sup>447</sup>

Similarly, **Kawalpreet Kaur**, the President of the All India Students' Association (AISA) – Delhi Unit, was arrested and booked by the police under the UAPA<sup>448</sup> and the police also seized her phone as a part of the investigation.<sup>449</sup> HRD **Akhil Gogoi** was arbitrarily detained under the UAPA, since 12 December 2019, for delivering a speech during a peaceful protest against the CAA at Jorhat in Assam.<sup>450</sup> He was ultimately released on bail on 1 October 2020.<sup>451</sup> On 23 March 2020, **Umar Khalid**, was arrested by Allahabad police and charged with sections under the IPC, the Epidemic Diseases Act 1897 as well as the UAPA. He was detained at the Central Jail in Allahabad until 27 May 2020, when he was released on bail. However, charges against him remain pending. He was recently re-arrested on 16 September 2020.<sup>452</sup> This alarming trend is only a part of the ongoing arbitrary detention and judicial harassment of several HRDs under the UAPA, including **Sharjeel Imam**,<sup>453</sup> **Khalid Saifi**,<sup>454</sup> and **Ishrat Jehan**,<sup>455</sup> seemingly in retaliation to their opposition to the CAA.

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444 The Wire, 'Cannot prevent someone from meeting their lawyer: Delhi High Court in Jamia Alumni President's case', 16 September 2020. Available at: <https://bit.ly/34kYGjv>

445 Scroll, 'Delhi violence: President of Jamia alumni association arrested under UAPA', 27 April 2020. Available at: <https://scroll.in/latest/960386/delhi-violence-president-of-jamia-alumni-association-arrested-under-uapa>

446 Deccan Herald, 'Delhi violence: Court allows Jamia student Asif Tanha to have legal interview in jail', 25 June 2020. Available at: <https://bit.ly/3mjXYsX>

447 Hindustan Times, 'Riots: Jamia student held under UAPA denied bail', 4 September 2020. Available at: <https://bit.ly/2HuuMRb>

448 The New Indian Express, 'AISA's Delhi head booked under UAPA by Crime Branch, mobile seized', 29 April 2020. Available at: <https://bit.ly/3oIEQN6>

449 The Indian Express, 'Police didn't refer to riots, protests before seizing my phone: Kawalpreet Kaur', 30 April 2020. Available at: <https://bit.ly/37GFqiu>

450 The Leaflet, 'Law regulates but politics governs: The sad case of Akhil Gogoi', 24 June 2020. Available at: <https://www.theleaflet.in/law-regulates-but-politics-governs-the-sad-case-of-akhil-gogoi/#>

451 The Hindu, 'Akhil Gogoi gets bail in NIA case related to protests over CAA', 1 October 2020. Available at: <https://bit.ly/2TILS6s>

452 The Quint, 'Guilty or not, Umar Khalid will be in jail for years. Here's why.', 17 September 2020. Available at: <https://www.thequint.com/news/law/no-bail-in-uapa-cases-regardless-of-evidence-watali-judgment-supreme-court>

453 Scroll, 'JNU student Sharjeel Imam charged under UAPA in connection with Jamia protests', 29 April 2020. Available at: <https://scroll.in/latest/960617/jnu-student-sharjeel-imam-charged-under-uapa-in-connection-with-jamia-protests>

454 India Today, 'Delhi police arrests Khalid Saifi in Chand Bagh violence case', 9 June 2020. Available at: <https://bit.ly/3dPaKwN>

455 The Wire, 'Delhi violence: HC dismissed ex-Councillor Ishrat Jahan's plea in UAPA case', 31 July 2020. Available at: <https://thewire.in/law/hc-dismisses-ishrat-jahans-plea-in-uapa>

## CHAPTER 5

### THE RIGHT TO HEALTH

#### Recommendations on the Right to Health - General<sup>456</sup>

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.175	Increase public spending on the health sector in accordance with the 2017 National Health Policy and take further steps to strengthen health facilities.	Kazakhstan	Supported	Not Implemented
161.178	Continue its efforts to ensure that the universal health care scheme covers disadvantaged groups, including persons with disabilities and persons living in remote rural areas, who still face obstacles in accessing basic health care services.	Lao People's Democratic Republic	Supported	Partially Implemented

The latest policy document of the Government of India towards the goal of “achieving the highest possible level of health and well-being...and universal access to good quality health care services without anyone having to face financial hardship as a consequence” is the National Health Policy 2017.<sup>457</sup> However, to realize this goal, the policy had recommended an increase in the Government's health expenditure by 2.5 per cent of the GDP by 2025 and state sector health spending to over eight per cent of the state budgets by 2020.<sup>458</sup> This amount in 2020-21 would be approximately Rs. 5,622.35 billion or Rs. 4,196 per capita; similarly, eight per cent of state budgets would mean Rs. 3,367 billion or Rs. 2,736 per capita with the burden across Centre and the states being 35 per cent and 65 per cent respectively.

These figures suggest the need for an immediate doubling of the public health expenditure in the country. It must be noted that the National Health Policy 2002 had also recommended an expenditure of two-three per cent of the GDP on public health.<sup>459</sup> However, since the turn of the new millennium, the public health spending in India has hovered around one per cent of GDP and recent trends show little change in the percentage share of GDP expenditure on public health. (See Table 1.1).

**Table 1.1: Trends in Public Health Expenditure (Exp) in India 2015-2021<sup>460</sup>**

456 OHCHR, Universal Periodic Review – India: Third Cycle, Matrix of Recommendations. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/INIndex.aspx>

457 Ministry of Health and Family Welfare (MoHFW) - Government (Govt) of India, 'National Health Policy 2017', para 2.1, p. 1. Available at: [https://www.nhp.gov.in/nhpfiles/national\\_health\\_policy\\_2017.pdf](https://www.nhp.gov.in/nhpfiles/national_health_policy_2017.pdf)

458 Ibid, para 2.4.3.1, p.5.

459 MoHFW - Govt of India, National Health Policy 2002. Available at: <https://bit.ly/3loUeq0>

460 Reserve Bank of India, 'State Health Expenditure from RBI 2019: State Finances – A study of Budgets 2019-20', September 2019, pp. 95 and 172. Available at: <https://bit.ly/35ajVAo>; Ministry of Finance - Govt of India, 'Centre's Health

Rs. in Billion	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
State Health Exp (SHE)	1100.78	1251.89	1463.83	1817.14	1966.61	2200.00*
Centre Health Exp (CHE)@	145.67	207.16	257.62	280.11	281.03	309.40
Total Health Expenditure	1246.45	1459.05	1721.45	2097.25	2247.64	2509.40
Per capita Health in Rupees	981.46	1139.88	1324.19	1600.95	1689.95	1872.69
% Centre share@	11.69	14.20	14.97	13.36	12.50	12.33
% SHE of State Budget	4.7	4.8	5.0	4.9	4.9	4.8
%SHE of GDP	0.80	0.81	0.86	0.96	0.96	0.98
%CHE of Centre Budget	0.7	0.9	1	1	0.9	0.9
%CHE of GDP	0.11	0.13	0.15	0.15	0.14	0.14
%Total Health of Budget	2.83	3.05	3.19	3.29	3.15	3.17
%Health of GDP	0.91	0.95	1.01	1.10	1.10	1.12

\*State Health Expenditure for 2020-21 estimated; @ CHE excludes grants by Centre to states and the latter is included in SHE because it is accounted in the State health budget –grants from the Centre account for about 15-20 per cent of state budgets and hence the gross share of the Centre is between 25-30 per cent of total public health spending.

Table 1.1 reflects a lack of adequate budgetary commitment, which has resulted in the following deficits in the public health system of India:

- Deficit of a demand-based planning (Programme Implementation Plans, District Planning Committees, Gram Panchayat Development Plans etc.): This highlights the need to strengthen devolution of budgets to facilitate bottom-up planning and involve key stakeholders at the local level in development of plans and budgets for the public health system per their local needs.
- Deficit in the primary health care (PHC) infrastructure and hospitals for secondary and tertiary care: The health care infrastructure needs to be upgraded to a minimum level as specified by the Indian Public Health Standards (IPHS) norms,<sup>461</sup> which requires the strengthening of Health and Wellness Centres through creation of mid-level healthcare providers; upgrading PHCs; strengthening of the sub-district hospitals and Community Health Centres (CHCs) as per IPHS; and upgrading the district hospitals to teaching hospitals.
- Deficit in health human resources: Doctors, nurses, and specialist doctors are grossly inadequate even within the existing public health infrastructure with vacancy of sanctioned positions being between 20-40 per cent for doctors and nurses and 60-80 per cent for specialists across states.<sup>462</sup>

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Expenditure from Union Budgets 2017-18 to 2020-21, Expenditure Budgets'. Available at: [https://www.indiabudget.gov.in/exp\\_budget.php](https://www.indiabudget.gov.in/exp_budget.php); GDP figures from Economic Survey 2019-20, Statistical Appendix. Available at: <https://www.indiabudget.gov.in/economicsurvey/doc/Statistical-Appendix-in-English.pdf>

461 MoHFW - Govt of India, 'Indian Public Health Standards'. Available at: <https://bit.ly/3pcXYNG>

462 MoHFW (Statistics Division) - Govt of India, 'Rural Health Statistics - 2018-19 National Health Mission'. Available at: [https://main.mohfw.gov.in/sites/default/files/Final%20RHS%202018-19\\_0.pdf](https://main.mohfw.gov.in/sites/default/files/Final%20RHS%202018-19_0.pdf)

While India does produce adequate human resources, a significant portion is diverted to the private sector or to other countries because of the phenomenon of brain drain.<sup>463</sup>

- Deficit of governance and implementation: the top-down decision-making does not work for the public health sector, which needs to be more local-oriented. Decision-making and management should be left to the local governments instead of a top-down bureaucratic mechanism.
- Deficit of accountability and legislative oversight: There is an accountability deficit for the Executive, which leads to neglect and failure of effective public service delivery and implementation. Community oversight through Community-Based Monitoring and Planning (CBMP) needs to be implemented across the board. The model followed in 14 districts of Maharashtra has shown how CBMP can help reclaim the public health system.<sup>464</sup>
- Deficit of political will and executive commitment.
- Deficit of an effective health care policy that is pivoted on the principle of access to health care as a public good.

These deficits also need to be viewed in light of the large, expanding private health sector in India. For out-patient care, over 70 per cent of cases are treated by the private sector at an average cost of Rs. 1,062 per episode. For in-patient care, this number is at 58 per cent with an average cost of Rs. 31,845 per hospitalization.<sup>465</sup> Private health expenditure based on National Accounts Statistics<sup>466</sup> is estimated at Rs. 6,000 billion for 2019-20, which amounts to three per cent of the GDP for the year. Private health insurance accounts for about seven per cent of this private health spending, which covers eight per cent of the population for hospitalizations.<sup>467</sup> Additionally, about 27 per cent of the population is covered for hospitalizations under public health insurance schemes, the premia for which come out of the public health budget under *Ayushman Bharat Prime Minister Jan Aarogya Yojana* (PM-JAY)<sup>468</sup> and about two-third of it flows into the private health sector.<sup>469</sup> There is further segmentation in access to health care with privileges for about 10 per cent of the organized sector workforce, especially government employees. For example, in sharp contrast to the Rs. 1,800 per capita health spending for common people, Central Government employees and Parliamentarians get benefits at over Rs. 9,000 per capita under the Central Government Health Scheme.<sup>470</sup> This contributes to discrimination and goes against the principle of equal and universal access to health care.

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463 Health Affairs, Vol. 25 No. 2: Global Health Priorities, 'Doctors For The World: Indian Physician Emigration', <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.25.2.380>

464 Community-Based Monitoring and Planning in Maharashtra (Supported by the National Health Mission). Available at: <https://bit.ly/3n7XcA2>

465 Ministry of Statistics and Programme Implementation (National Statistical Office) - Govt of India, 'National Sample Survey (NSS) 75th Round: Key Indicators of Social Consumption in India – Health 2017-18'. Available at: [http://www.mospi.gov.in/sites/default/files/publication\\_reports/KI\\_Health\\_75th\\_Final.pdf](http://www.mospi.gov.in/sites/default/files/publication_reports/KI_Health_75th_Final.pdf)

466 Ministry of Statistics and Programme Implementation – Govt of India, 'Press Note: First revised estimates of National Income, Consumption Expenditure, Saving and Capital Formation 2018-19', 31 January 2020. Available at: [http://www.mospi.gov.in/sites/default/files/press\\_release/Press\\_Note\\_NAD\\_31012020.pdf](http://www.mospi.gov.in/sites/default/files/press_release/Press_Note_NAD_31012020.pdf)

467 Insurance Regulatory and Development Authority of India (IRDAI), 'Annual Report 2018-19', p.46 onwards. Available at: <https://bit.ly/35aLa2w>

468 *Ayushman Bharat Prime Minister Jan Aarogya Yojana* (PM-JAY) is the Prime Minister's Programme for Public Health. It is a project of the Government of India to provide free health care access to at least 40% of the people in the country. Available at: <https://pmjay.gov.in/>

469 MoHFW - Govt of India, 'PMJAY Annual Report 2018-19', p.23. Available at: <https://bit.ly/35amK9c>

470 MoHFW - Govt of India, 'National Health Profile 2019', p.186. Available at: <https://bit.ly/3kecxNg>

However, some states have substantially increased their public health spending in line with the National Health Policy recommendations. This has translated into better access to health care, as seen in Table 1.2, which compiles health services access data along with public health spending per capita. It has been seen that states with higher per capita spends also have better access to health care facilities in terms of availability of government doctors, public hospital beds, and PHCs per 1,00,000 persons. High spending states (and union territories) such as Sikkim, Mizoram, Arunachal Pradesh, Meghalaya, Nagaland, Himachal Pradesh, Goa, Delhi, and Puducherry have also performed well on the parameter of access to health care. These states, however, lack tertiary health care services. While Kerala's health budget is not very high, it has a long history of robust investment in public health care, which has led to a strong public health system. In contrast, high income states of Maharashtra, Gujarat, Punjab, and some others like Uttar Pradesh, West Bengal, and Bihar (because of their lower budgetary commitments to health care) have inadequate public health infrastructure. In these states, private health sector dominates in sharp contrast to the former states, where the private health sector (except in Delhi and Kerala) is significantly less. During the COVID-19 pandemic, it has been observed that states that have spent more on public health care have also managed to better contain the crisis.

**Table 1.2: Public Health Spending and Healthcare Services Access across States<sup>471</sup>**

	Per capita Health Expenditure in Rupees			% Public Health Expend to State Budget	Hospital Beds per lakh <sup>472</sup> Population	Government Doctor per lakh Population	PHCs/lakh Population
States / UTs	2019-20	2018-19	2017-18				
Arunachal Pradesh	10869	10563	6985	6.70	179	41	10.67
Goa	6091	4905	4605	7.00	151	32	1.25
Sikkim	5971	7483	7683	4.80	260	45	4.00
Mizoram	5145	6027	5540	5.30	200	44	5.70
Meghalaya	3938	3411	2507	7.10	159	21	3.86
Himachal Pradesh	3768	3622	2786	6.20	172	21	8.00
Puducherry	3653	3317	2965	8.30	210	41	1.41
Jammu and Kashmir	3448	3578	2443	5.10	58	32	5.06
Nagaland	3200	3156	2538	5.50	78	14	5.25
Delhi	3145	2584	2123	12.50	109	41	0.81 <sup>473</sup>
Manipur	2680	2844	2231	4.70	55	42	3.50
Tripura	2568	2575	2013	5.50	114	32	2.77

471 Health Expenditure from RBI State Finances Report 2019-20 (pp. 95 and 172); Hospital Beds, Govt Doctors and PHC data for 2017/2018; MoHFW - Govt of India, 'National Health Profile 2019'. Available at: <http://www.cbhidghs.nic.in/showfile.php?lid=1147>; Population data used from Registrar General India's Population Projections; The Hindu Businessline, '2020: States that Spend more on healthcare less affected by COVID impact', 3 June 2020. Available at: <https://bit.ly/2U9nsgF>

472 For reference: One lakh = 1,00,000 (10<sup>5</sup>).

473 Information about the Delhi Mohalla clinics is available at: <https://bit.ly/359912r>



Uttarakhand	2380	2008	1499	5.60	79	12	2.38
Andhra Pradesh	2150	1396	1228	5.10	44	10	2.21
Assam	2086	2167	1342	7.20	52	18	2.86
Kerala	1985	1952	1800	4.80	106	15	2.36
Chhattisgarh	1820	1913	1512	5.30	36	6	2.99
<b>ALL INDIA</b>	<b>1765</b>	<b>1601</b>	<b>1334</b>	<b>3.15</b>	<b>55</b>	<b>9</b>	<b>2.00</b>
Tamil Nadu	1756	1759	1491	4.70	111	10	2.00
Haryana	1730	1565	1198	4.20	40	9	1.30
Rajasthan	1700	1605	1335	5.60	63	10	2.77
Gujarat	1642	1598	1326	5.30	31	9	2.30
Odisha	1557	1413	1143	4.90	43	10	2.99
Karnataka	1505	1542	1280	4.10	110	8	3.72
Punjab	1381	1164	928	3.30	61	11	1.46
Telangana	1320	1799	1359	3.50	57	11	1.74
Madhya Pradesh	1279	960	931	4.70	39	6	1.46
Maharashtra	1266	1297	995	3.90	42	6	1.49
Jharkhand	1175	1152	831	4.90	31	5	0.87
Uttar Pradesh	1032	909	751	5.10	34	5	1.61
West Bengal	975	951	906	4.50	80	9	0.93
Bihar	845	748	579	4.60	11	3	1.79

- **Note:** States organized in above table based on high to low per capita public health spending. For reference: One lakh means 1,00,000 ( $10^5$ ).

However, this chapter is not implying any direct causality between health expenditure and the COVID-19 pandemic management as several factors contribute to the spread of virus like international travellers, population density, population mobility, etc. Therefore, despite having adequate health care facilities and capacities with private sector dominance, metropolitan cities such as Mumbai, Delhi, Chennai, and others have seen a disproportionately large number of COVID-19 cases as well as fatalities. The pandemic has, in fact, exposed the weakness of the public health care system. While states are making efforts to improve facilities such as availability of Intensive Critical Care Units (ICCU), ventilators, and bed capacities, there is little evidence of substantive budgetary increases. This expansion is largely happening at the cost of other health programmes such as the National Health Mission (NHM), strengthening the district health facilities, and upgrading health facilities to IPHS norms. The states have also failed to rein in the private health sector in these difficult times both because of poor regulatory mechanisms and lack of political will to take strong action.

Thus, the minimum budgetary commitment demanded by the National Health Policy 2017 to establish a robust primary health care system, with good referral support, has not been fulfilled. The budgetary allocation required for this purpose would be Rs. 5,600 billion in order to substantially reduce the out-of-pocket burden on households, to bring in universal access to comprehensive primary health care, and to create equity in access. To ensure this both as a human right and for the public good, a legislation and/or a constitutional amendment establishing health care as a fundamental right is imperative. The



draft National Health Policy 2015 had recommended a National Health Rights Act,<sup>474</sup> but this was disregarded in the National Health Policy 2017. Such a legislation needs to be brought back into the national health strategy so that universal access to health care can be guaranteed.

#### **Recommendations on Reproductive Health and Sterilization<sup>475</sup>**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.102	Prohibit forced sterilization in line with requests by the Special Rapporteurs on torture, violence against women, and the right to health, and in line with the National Population Policy.	Iceland	Supported	Partially Implemented <sup>476</sup>
161.103	Take concrete steps to prevent coercive, unsafe and abusive sterilization and create greater accountability for these practices, including ensuring free and full consent prior to conducting the procedure and compliance with international standards.	Sweden	Supported	Partially Implemented
161.179	Continue furthering the sexual and reproductive health and rights of all women by putting an end to camp-based sterilization operations in accordance with the Supreme Court order of 14 September 2016, by ensuring all women access to counselling on and access to the full range of modern contraceptives in a voluntary, safe and quality manner, and by providing comprehensive sexuality education.	Finland	Supported	Partially Implemented

The Government of India's allocations to the Ministry of Health and Family Welfare (MoHFW) increased by 13 per cent from Rs. 5,60,450 million in 2018-19 to Rs. 6,32,980 million in 2019-20. The

<sup>474</sup> MoHFW - Govt of India, 'Draft National Health Policy 2015', para 12.2, p.56. Available at: <https://bit.ly/2U6R7an>

<sup>475</sup> This aspect with reference to the sexual and reproductive health rights is also separately discussed in the chapter on the 'Rights to (I) Women and (II) Sexual and Gender Minorities' in this report.

<sup>476</sup> The landmark judgment by the Supreme Court in the case of *Devika Biswas and Ors. v. Union of India* had directed the Government to phase out sterilization camps by 2019, however, there has been anecdotal evidence that under the garb of 'fixed day approach' or 'sterilization targets', such drives continue to take place. For example: The Hindu, 'MP rescinds sterilization target order for health workers', 22 February 2020. Available at: <https://bit.ly/35wDZkh>

share of funds for the Reproductive Child Health (RCH) Flexipool out of the total approved funds for NHM, however, has declined significantly over the last two years, from 40 per cent in 2016-17 to only 15 per cent in 2018-19.<sup>477</sup> The RCH Flexipool, which was created to fund maternal and child health, family planning, and the *Janani Suraksha Yojana* (JSY),<sup>478</sup> now also includes the Immunization Flexipool for financing routine immunization, pulse polio immunization, and the National Iodine Deficiency Disorders Control Programme (NIDDCP).<sup>479</sup>

Despite India's commitment to increase the provision of and target free access to family planning,<sup>480</sup> the targets for sterilization and two-child policy have been found to be disproportionately focusing on women, especially from socially-marginalized communities.<sup>481</sup> Private Members' Bills regarding population control introduced in the Parliament<sup>482</sup> and of the two-child policy<sup>483</sup> in many states are egregious violations of sexual and reproductive health rights (SRHR).<sup>484</sup> The two-child policy is coercive, discriminatory, and disempowering as it employs penalties that create barriers to access maternity benefits<sup>485</sup>; participation in governance by women and men, particularly by young people and those from marginalized communities; access to government jobs; and imposing control over people's reproductive autonomy. The misplaced perceptions of and references to<sup>486</sup> 'population explosion' — despite twenty states and union territories having a replacement level fertility rate at 2.23, only marginally above the desired level of 2.1<sup>487</sup> — aggravate discrimination and further marginalize women, particularly those from vulnerable communities.

#### *Access to Sterilization and Contraceptive Services*

India supported all three recommendations with respect to sterilizations in UPR-III. While this is a welcome step, it is important to note that data indicates<sup>488</sup> that the most common method of family planning still remains female sterilization (35.7%), while male sterilization is the most uncommon

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477 MoHFW - Govt of India, 'Notes on Demands for Grants 2020-21', Demand No.42. Available at: <https://bit.ly/3pbRb6Y>; Demand No.43. Available at: <https://www.indiabudget.gov.in/doc/eb/sbe43.pdf>

478 *Janani Suraksha Yojana* is a safe motherhood intervention under the NHM implemented with the objective of reducing maternal and neonatal mortality by promoting institutional delivery among poor pregnant women.

479 Centre for Policy Research, 'Budget Briefs, Vol 11/Issue 8, National Health Mission 2019-20'. Available at: [http://www.cprindia.org/system/tdef/policy-briefs/NHM\\_2019\\_20.pdf?file=1&type=node&id=7563&force=1](http://www.cprindia.org/system/tdef/policy-briefs/NHM_2019_20.pdf?file=1&type=node&id=7563&force=1)

480 Human Rights Watch, 'India: Target-Driven Sterilization Harming Women', 12 July 2012. Available at: <https://bit.ly/3mYUsvk>; see also, Family Planning 2020, 'India's Commitments'. Available at: <https://www.familyplanning2020.org/india> <accessed on 27 September 2020>.

481 Sama – Resource Group for Women and Health and Partners Law in Development, 'Country assessment on human rights in the context of sexual health and reproductive health rights undertaken for the National Human Rights Commission – 2018'. Available at: <https://bit.ly/38pUfXq>

482 The Wire, 'Population Explosion: The Myth that Refuses to Go', 30 August 2019. Available at: <https://thewire.in/rights/population-explosion-rakesh-sinha-bill>; see also, The Telegraph, 'Population scare: What Modi said, what numbers say', 17 August 2019. Available at: <https://bit.ly/3eEEywi>

483 The Private Member Bills seek to debar people with more than two living children from being chosen as an MP, MLA or a member of any body of the local self-government and the other penalties include reduction in subsidies on loans and interest rates on saving instruments, reduction in benefits under the public distribution system and higher than normal interest rates for availing loan from banks and financial institutions.

484 The Indian Express, 'Private member's bill calls for two-child norm', 13 July 2019. Available at: <https://bit.ly/3p3NuQK>

485 Ibid.

486 References to "population explosion creating various problems for the coming generations", commending those who "follow the policy of the small family" as contributing to the development of the country and as a form of patriotism, in a speech by the Prime Minister on 15 August 2019. see also, The Telegraph, 'Population scare: What Modi said, what numbers say', 17 August 2019. Available at: <https://bit.ly/3eEEywi>

487 MoHFW - Govt of India, 'National Family Health Survey (NFHS)-IV (2015-16)'. Available at: <https://bit.ly/38BTjiP>

488 Ibid.

method (0.3%).<sup>489</sup> Of the total 1,473,418 sterilization procedures, only 6.8 per cent were male sterilizations, while 93.1 per cent were female sterilizations.<sup>490</sup> This reflects the inequality in the burden of contraception and bias in the state policy. The National Family Health Survey (NFHS)-IV (2015-16) clearly shows the gendered focus on long-term sterilization with 36 per cent women being subjected to long-term sterilization as opposed to only 0.3 per cent men.<sup>491</sup> It also highlights that 12.9 per cent of the total need of family-planning is unmet nationally. The lack of availability and accessibility of information and services for a range of safe contraceptive services for women impinges on the right to decisional autonomy, informed consent, and reproductive rights.<sup>492</sup>

Noting the many instances of violations in camp-based sterilization services, the Supreme Court order dated 14 September 2016 in the case of *Devika Biswas v. Union of India*<sup>493</sup> declared a moratorium on these services, while also making several recommendations for the diligent functioning of the Quality Assurance Committees at the state and district levels<sup>494</sup> and access to counselling and a full range of modern contraceptives in a voluntary, safe, and quality manner. The Court also took cognizance of the continued sterilization deaths of several women in Bilaspur, Chhattisgarh (2014) and raised questions about the implementation of the Family Planning Indemnity Scheme (FPIS).

Evidence indicates that women who access sterilization were the least likely to be informed about the consequences of the method, possible alternatives, and ways to address its possible side effects.<sup>495</sup> In terms of the quality of family planning services, latest available data shows that 46.5 per cent users experienced side effects of the method they were using.<sup>496</sup>

#### *The Family Planning Indemnity Scheme (FPIS)*

Since 2013, the FPIS has mandated that states and union territories would process and pay claims to acceptors of sterilization in the event of death, failures, and complications, and provide indemnity cover to doctors and health facilities providing sterilization services.<sup>497</sup> In September 2016, the Supreme Court directed state governments to update their websites with the audit reports of deaths

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489 Sama – Resource Group for Women and Health and Partners Law in Development, ‘Country assessment on human rights in the context of sexual health and reproductive health rights undertaken for the National Human Rights Commission – 2018’. Available at: <https://bit.ly/38pUfXq>

490 The Indian Express, ‘At 93 per cent, women bear burden of sterilization, says NHM report’, 19 June 2018. Available at: <https://bit.ly/38nLrkB>

491 The Telegraph, ‘Gender Bias in Sterilization’, 12 July 2018. Available at: <https://bit.ly/3k7KejP>

492 Sama – Resource Group for Women and Health and Partners Law in Development, ‘Country assessment on human rights in the context of sexual health and reproductive health rights undertaken for the National Human Rights Commission – 2018’. Available at: <https://bit.ly/38pUfXq>; As per paragraph 7.3, of International Conference on Population and Development’s (ICPD 1994) Program of Action, reproductive rights are “the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.”

493 *Devika Biswas and Ors. v. Union of India* (2016) 10 SCC 726. Available at: <https://bit.ly/3eERHFH>

494 Ibid.

495 NFHS-III (2005-06). Available at: <https://bit.ly/3eDeodo>

496 NFHS-IV (2015-16). Available at: <https://bit.ly/38BTjiP>

497 MoHFW - Govt of India, ‘Manual for Family Planning Indemnity Scheme 2013’. Available at: <https://bit.ly/3pd2vQc>. It is envisaged that states/UTs would make suitable budget provisions for implementation of the scheme through their respective state/UT Program Implementation Plans (PIPs) under the National Rural Health Mission (NRHM) and the scheme may be renamed “Family Planning Indemnity Scheme.” They may plan for the payment of compensation to sterilization acceptors as per the scheme, under Budget Head A.3.5.4 –Other Strategies/activities Sub-Head A.3.5.4.1.

following sterilization procedures and the status of claims under the FPIS.<sup>498</sup> While the Union Health Ministry has created a webpage to comply with the order, it only has the limited data on it indicating the lack of full compliance. *“For instance, in Punjab, in five cases of post-sterilization death, the victims’ families were paid Rs. 0.7 million instead of Rs. 1 million as stated in the FPIS guidelines. In Tamil Nadu, death audits were not done in three cases and no action was taken in the case of four deaths.”*<sup>499</sup>

Post-partum family planning is gradually receiving impetus, with incentives provided for the Post-Partum Intra-Uterine Contraceptive Device (PPIUCD) insertion following institutional deliveries. There are several cases of PPIUCD insertion without the knowledge as well as free and informed consent of women.<sup>500</sup> Similar to the PPIUCD scheme, the Post Abortion IUCD (PAIUCD) services following surgical abortion were introduced in 2017.<sup>501</sup> However, no data is available in the public domain on the use and discontinuation rates of these post-partum contraceptive methods.

### *Access to Safe Abortion Care*

Out of the annually estimated 15.6 million abortions that take place in India, 73 per cent are through non-facility based medical abortion drugs, 16 per cent in private, six per cent in public health facilities, and five per cent through other methods.<sup>502</sup> 6.4 million abortions performed each year in India are unsafe contributing between nine and 13 per cent of maternal mortality.<sup>503</sup> Less than one per cent of PHCs provide abortion services. 95 per cent facilities do not have a trained doctor; other necessary infrastructure and equipment are unavailable in most of the facilities.<sup>504</sup>

In terms of legal status, the requirement of mandatory consent of the guardians of girls below 18 years seeking abortion under the Medical Termination of Pregnancy (MTP) Act and mandatory reporting of request for abortion services for all girls due to criminalization of all sexual relationships below 18 years have posed barriers to access safe abortion services. These legal barriers also include Section 312 of the Indian Penal Code (IPC)<sup>505</sup> and the Protection of Children from Sexual Offences (POCSO) Act.<sup>506</sup> The passing of the MTP (Amendment) Bill 2020 on 17 March 2020 in the *Lok Sabha* (Lower House of the Parliament) — without public consultations with women’s rights groups — amounts to

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498 The Scroll, ‘One year on, states have not complied with the Supreme Court’s sterilization surgery guidelines’, 25 August 2017. Available at: <https://bit.ly/32rgvrN>

499 Ibid.

500 Sama – Resource Group for Women and Health and Partners Law in Development, ‘Country assessment on human rights in the context of sexual health and reproductive health rights undertaken for the National Human Rights Commission – 2018’. Available at: <https://bit.ly/38pUfXg>; see also, The Journal of Obstetrics and Gynaecology of India, ‘Critical Factors Influencing the Acceptability of Post-placental Insertion of Intrauterine Contraceptive Device: A Study in Six Public/ Private Institutes in India’, 69(4) (2019), pp.344-349. Available at: <https://bit.ly/2WIHCVX>

501 MoHFW - Govt of India, ‘Extension of the existing PPIUCD incentive scheme also covering post abortion IUCD (PAIUCD)’, 29 March 2017. Available at: <https://bit.ly/32rh74T>

502 Sama – Resource Group for Women and Health and Partners Law in Development, ‘Country assessment on human rights in the context of sexual health and reproductive health rights undertaken for the National Human Rights Commission – 2018’. Available at: <https://bit.ly/38pUfXg>

503 Ipas, ‘COVID-19 restrictions compromised abortion access for 1.85 million women in India’, 11 June 2020. Available at: <https://bit.ly/2U8wPgM>

504 Ibid.

505 Section 312 of the Indian Penal Code: Causing miscarriage—“Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.” Available at: <https://bit.ly/3n6pPxc>

506 POCSO Act criminalizes all sexual relations below 18 years even when consensual and obliges mandatory reporting of instances of sexual abuse of minor, including by the health system. Available at: <https://bit.ly/3ldDXEi>

a curtailment of their reproductive rights. The Bill falls short of the existing reproductive rights mandates outlined by the Supreme Court<sup>507</sup> on decisional autonomy, bodily integrity, and privacy.<sup>508</sup>

Similarly, despite the National Health Policy 2017 acknowledging the aspect of gender-based violence and the MoHFW issuing protocols for survivors of sexual violence,<sup>509</sup> their implementation and health system's response remains poor. The NHM has no budgetary allocation for a health system that is responsive to gender-based violence; merely eight or nine states are currently implementing the guidelines and protocols for medico-legal care for survivors of sexual violence issued by MoHFW in 2014, six years after their issuance.<sup>510</sup>

### *Violation of the Right to Sexual and Reproductive Health Care in the COVID-19 Context*

COVID-19 and the consequent national lockdown further exacerbated the shortfalls in access to sexual and reproductive health care, as both public and private hospitals have had to divert their resources towards combating the pandemic and providing emergency medical care. An estimated 1.85 million women's access to safe abortion services was curtailed during the COVID-19 lockdown in India.<sup>511</sup> This was coupled with a reported increase in domestic violence and absence of requisite health care and psycho-social support. Out of the 3,027 complaints received during April-May 2020 by the National Commission for Women (NCW) across 22 categories of crimes against women, 1,428 (47.2%) were related to domestic violence, compared with 871 (20.6%) received during January-March 2020.<sup>512</sup> Essential reproductive health care mandated by MoHFW guidance note<sup>513</sup> was not universally and proactively implemented, nor did it address the care for gender-based violence.<sup>514</sup> This led to both denials and delays in health care provision leading to serious health consequences for a range of sexual and reproductive health issues.

### **Recommendations on Maternal Mortality and Access to Health Care**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
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- 507 *Suchita Srivastava v. Chandigarh Administration* (2009) 14 SCR 989. Available at: <https://bit.ly/35bzRHj>
- 508 *Puttaswamy v. Union of India* (2017) 10 SCC 1. Available at: <https://bit.ly/3eD3WCR>; *Navtej Singh Johar and Ors. v. Union of India, The Secretary, Ministry of Law and Justice*, (2018) 7 SCC 192. Available at: <https://bit.ly/3n6qxKS>; *Joseph Shine v. Union of India*, 2018 SC 1676. Available at: <https://bit.ly/3eLEHyb>
- 509 MoHFW - Govt of India, 'Guidelines and protocols medico legal care for survivors victims of sexual violence – 2014'. Available at: <https://bit.ly/2U73CCT>
- 510 Indian Journal of Medical Ethics, 'Need for gender sensitive health system responses to violence against women and children', DOI: 10.20529/IJME.2018.011. Available at: <https://bit.ly/3eD4uZr>
- 511 Ipas, 'Compromised Abortion Access due to COVID-19: A model to determine impact of COVID-19 on women's access to abortion', 28 May 2020. Available at: <https://bit.ly/32sLxDX>. This was due to repurposing of health facilities to COVID only services, shifts in responsibilities of health care providers to COVID related interventions, irregular / absence of supply of MA drugs and suspended mobility of those seeking abortion services due to non-availability of transport.
- 512 The Times of India, 'Domestic violence accounts for over 47% complaints to NCW, Ambika Pandit', 2 June 2020. Available at: <https://bit.ly/2lh34lg>
- 513 MoHFW - Govt of India, 'Enabling Delivery of Essential Health Services during the COVID 19 Outbreak: Guidance Note', 13 April 2020. Available at: <https://bit.ly/2lggkNa>
- 514 MoHFW - Govt of India, 'Guidance Note on Provision of Reproductive, Maternal, Newborn, Child, Adolescent Health Plus Nutrition (RMNCAH+N) services during and post COVID-19 Pandemic', 24 May 2020. Available at: <https://bit.ly/219yNv7>

161.87	Allocate adequate resources to realize the Sustainable Development Goal targets to reduce maternal mortality and end preventable deaths of new borns and children under 5.	Norway	Supported	Partially Implemented
161.177	Take steps towards improving access to health, especially access to maternal health and to adequate obstetric delivery services so as to reduce maternal and child mortality.	Zimbabwe	Supported	Partially Implemented

### *Resources for Attaining the Sustainable Development Goals (SDGs)*

The NFHS-IV (IIPS 2016<sup>515</sup>) had exposed significant gaps in access to health care — including maternal and child health services — along with divides across rural-urban lines, socio-economic categories, and regions. As mentioned earlier, the fiscal allocations for maternal and child health, covered within the allocations for the RCH Flexipool,<sup>516</sup> have been declining sharply in the last two years between 2018–19 and 2019–20 (revised estimates).<sup>517</sup> The share of the NHM in the total health budget of the Central Government declined from 60.25 per cent in 2018–19 to 52.12 per cent in 2020–21. The budget cuts and under-spending indicate a lack of proactive efforts towards achieving SDG 5, which needs the total health budget to be a minimum of Rs. 4.19 trillion and a 60 per cent allocation for NHM and PHCs (at least Rs. 2.51 trillion) to achieve targets related to maternal and child health.<sup>518</sup>

### *Preventable Maternal and Child Mortality*

Child mortality, in its various forms, remains a monumental challenge for India in the face of the aspirational targets to be attained by 2019.<sup>519</sup> The Infant Mortality Rate in 2018 was at 32 per 1,000 live births,<sup>520</sup> with a considerable disparity between rural and urban areas (36 and 23 respectively). The Maternal Mortality Ratio estimate is reducing at 122 deaths per 1,00,000 live births as of 2017<sup>521</sup> with wide inter-state variations ranging from 46 (Kerala) to 237 (Assam).<sup>522</sup> However, beyond these large-scale national estimates, the Government does not regularly publish data, actual numbers, and reports on maternal and child deaths.

515 NFHS-IV (2015-16). Available at: <https://bit.ly/38BTjiP>

516 Centre for Policy Research, 'Budget Briefs, Vol. 11/Issue 8, National Health Mission 2019-20'. Available at: <https://bit.ly/2GJZzcE>

517 Govt of India, 'Union Budget 2020-21: Expenditure Budget'. Available at: <https://bit.ly/3loongp>

518 Sahaj, 'The Fiscal underpinnings of Gender Equity 2018'. Available at: <http://www.sahaj.org.in/technical-report.php>

519 MoHFW - Govt of India, 'The National Health Policy 2017'. Available at: <https://bit.ly/3kgci4h>. It aspired to reduce under-five mortality (U5MR) to 23 by 2025, infant mortality rate (IMR) to 19 by 2019, neonatal mortality rate (NMR) to 16, and still-birth rates to single digits by 2025.

520 Ministry of Home Affairs (MHA) - Govt of India (Vital Statistics Division), SRS Bulletin Vol. 53 No., 1 May 2020. Available at: <https://bit.ly/32q7lji>

521 MMR has reduced from 130 (2014-16) to 122 (2017) SRS Special Bulletin November 2019. Available at: <https://bit.ly/2JJEFVD>

522 MoHFW - Govt of India, Central Bureau of Health Intelligence, 'National Health Profile (2019)'. Available at: <https://bit.ly/3n6kLcs>. These figures refer to data from 2014-2016 estimates.

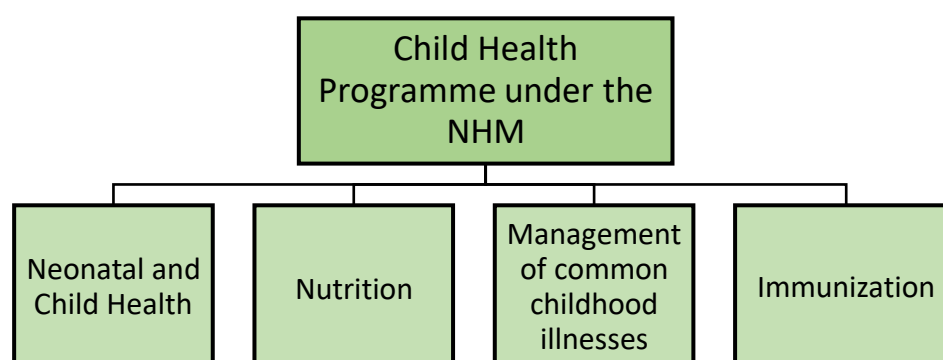


Globally, 18 per cent deaths of pregnant women are caused by uncontrolled bleeding (haemorrhage).<sup>523</sup> In India, this percentage is as high as 38 per cent. It has been found that anaemia occurs commonly in over 50 per cent of pregnant women and 58 per cent of breastfeeding women in India.<sup>524</sup> States with the highest rates of maternal deaths also happen to have 15-17 per cent women of childbearing age, who are moderately or severely thin.<sup>525</sup> The average weight gain during pregnancy in India is worrying at just seven kilogrammes — rather than 13-18 kilogrammes for thinner women — which is a key factor for neonatal and infant mortality.<sup>526</sup>

This situation could be effectively addressed through nutritious supplementary food, income security, and social protection. Yet the total allocation for the Supplementary Nutrition Programme that feeds pregnant women and young children at *Anganwadi* centres<sup>527</sup> stood at Rs. 176.48 billion against an estimated requirement of Rs. 404.23 billion in 2019-20.<sup>528</sup> Maternity benefits were enhanced by the Government in 2017,<sup>529</sup> but this applied to only four per cent of women workers. The National Food Security Act (2013) promised a minimum of Rs. 6,000 to all pregnant women, and would have required an allocation of about Rs. 170 billion, but it has not been implemented. The substitute, *Pradhan Mantri Matru Vandana Yojana*,<sup>530</sup> allocated meagre budgets of Rs. 24-27 billion, which has resulted in the scheme being both inadequate and exclusionary and has benefited only 15 per cent women.<sup>531</sup>

### Children's Access to Health

The NHM places four thrust areas under the Child Health programme<sup>532</sup>:



523 The Lancet Maternal Health, September 2016. Available at: <https://bit.ly/2GFrASv>

524 NFHS-IV (2015-16). Available at: <https://bit.ly/38BTjiP>

525 Registrar General - Govt of India, 'Sample Registration Survey - Maternal Mortality In India: 1997-2003 Trends, Causes And Risk Factors', 2006. Available at: <https://bit.ly/3fLHpE>

526 The Hindu, 'The mother of non-issues: on maternity entitlements', 19 November 2019. Available at: <https://bit.ly/38p0ue3>

527 *Anganwadi* centres are government-run crèches/ children's day-care centres.

528 Centre for Policy Research, 'Budget Briefs, Vol. 12/Issue 4, National Health Mission 2019-20'. Available at: <https://bit.ly/3k5kjuu>

529 Maternity Benefit (Amendment) Act 2017. Available at: <https://bit.ly/3nblQP7>

530 Press Information Bureau, 'Maternity Benefits under PMMVY', 6 December 2019. Available at: <https://bit.ly/2U99rQ4>

531 The Hindu, 'The mother of non-issues: on maternity entitlements', 19 November 2019. Available at: <https://bit.ly/38p0ue3>; see also, Centre for Policy Research, 'Budget Briefs, Vol. 11/Issue 3, PMMVY and JSY', 12 July 2019. Available at: <https://bit.ly/2GHzMlp>

532 MoHFW - Govt of India, 'National Health Mission: Reproductive, Maternal, Newborn, Child and Adolescent Health Strategy'. Available at: <https://bit.ly/3k8VbBy>



Although neonatal mortality forms the bulk of infant mortality, there is no data on the status of facility-based new born care since 2017. Despite several efforts through the Intensified Mission *Indradhanush*<sup>533</sup> districts, the full immunization coverage is only 69 per cent. One-fifth of the children in the country have remained ‘wasted’ for the last decade<sup>534</sup> without much improvement. Yet around half the children from three-six years do not receive crucial supplementary nutrition under the Integrated Child Development Services (ICDS).<sup>535</sup> 11 out of 21 states and union territories had coverage rates of 50 per cent or less in June 2019; the actual numbers of children covered under the services decreased by 20 per cent between 2014-19.

### *Access to Maternal Health and Adequate and Quality Obstetric Delivery Services*

Despite supporting the recommendation calling to take steps to improve access to health, including maternal health and adequate obstetric delivery services, India’s *Janani Suraksha Yojana* (JSY)<sup>536</sup> has failed to improve the availability, accessibility, and quality of care. Access to basic health care has remained grossly inadequate. Emergency obstetric care is not readily available, especially to the most marginalized: use of the life-saving Caesarean-section (C-section) is worryingly low at eight per cent for tribal / Indigenous women and less than five per cent for women in the poorest wealth quintile, as compared to 36 per cent in the highest wealth quintile. C-section delivery is higher in urban than in rural areas, and educated women are more likely to undergo such deliveries.<sup>537</sup>

There are significant cost barriers for socio-economically disadvantaged women in accessing life-saving care during childbirth: tribal women paid an average of Rs. 2,500 and Dalit women paid Rs. 3,400 for care in a public health facility. In a private facility, the costs of normal childbirth are between Rs. 13,000-18,000; whereas a C-section procedure — for which 63 per cent have to take recourse to a private hospital — could cost between Rs. 30,000-40,000.<sup>538</sup> Studies from across the country have found that despite the *Janani Shishu Suraksha Karyakram* (JSSK)<sup>539</sup> mandating free hospital care,<sup>540</sup> families incur heavy out-of-pocket expenditure on drugs, medical services, and referral transport for women and infants, among other things.<sup>541</sup>

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533 Intensified Mission *Indradhanush* aims to achieve targets of full immunization coverage in 272 districts in 27 states and at block levels in Uttar Pradesh and Bihar among remote and tribal populations.

534 NFHS-IV (2015-16) [Fig.10.1, p.291]. Available at: <https://bit.ly/38BTjiP>

535 Ibid.

536 Centre for Policy Research, ‘Budget Briefs, Vol. 11/Issue 3, PMMVY and JSY’, 12 July 2019. Available at: <https://bit.ly/2GHZMlp>

537 NFHS-IV (2015-16) [p.241]. Available at: <https://bit.ly/38BTjiP>

538 Ministry of Statistics and Programme Implementation (National Statistical Office) - Govt of India, ‘National Sample Survey (NSS) 75th Round: Key Indicators of Social Consumption in India – Health 2017-18’. Available at: <https://bit.ly/3elup1Y>

539 *Janani Shishu Suraksha Karyakram* is a MoHFW initiative to eliminate out-of-pocket expenses for both pregnant mothers and sick infants.

540 MoHFW - Govt of India, ‘National Health Mission: Mother and Child Protection Programme’. Available at: <https://bit.ly/2li8KS4>

541 Major sources:

- a. Akhtar F, Awasthi S, Singh RK, Bano M, Rawat CS. *Study on Utilization of Free Neonatal Services Under Janani Shishu Suraksha Karyakram at Government Health Facilities in Haldwani Block, District Nainital, Uttarakhand*. Indian Journal of Public Health Research & Development. 2018;9(3):55-8.
- b. Rout SK, Mahapatra S. *Has the Public Health System Provided Adequate Financial Risk Protection for Child Birth Conditions - Evidences From an Eastern Indian State*. Int J Health Policy Manag. 2019;8(3):145-149. Published 2019 Mar 1. doi:10.15171/ijhpm.2018.111

The dearth of services is further exacerbated in tribal areas<sup>542</sup> suggesting that equity remains an unaddressed concern.<sup>543</sup> Pregnant women from marginalized communities face extraordinary vulnerability.<sup>544</sup> It was also reported that the health of Muslim women was jeopardized by violence and backlash faced due to the resistance to the Citizenship Amendment Act (CAA) 2019. During the communal violence that took place in Delhi in February 2020, it was reported that pregnant women were caught without any access to health care due to the atmosphere of fear and brutality and disruption of health services.<sup>545</sup>

A survey among 1,118 women who had given birth in the last six months across five states shows that less than 50 per cent of the women received the mandated antenatal care (ANC) services in northern states of the country; only 24 per cent women received four antenatal check-ups, limited to the Iron Folic Acid (IFA) tablets. Of the 85 per cent women who delivered at institutions, 88 per cent had to bear out-of-pocket expenses and 22 per cent spent more than Rs. 5,000 for hospital childbirth. Only 32 per cent women received ambulance services and 44 per cent of them received no or just one post-partum visit from a health worker.<sup>546</sup>

Gross human resource shortages affect the availability of public health services: in place of four nurses per doctor, India has 1.5 nurses. There is a shortfall of 81 per cent specialists in CHCs: only nine per cent CHCs have a combination of all four specialists and only four per cent PHCs have four or more doctors, coupled with a 40 per cent shortfall of laboratory technicians at both CHCs and PHCs.<sup>547</sup> Over 74 per cent PHCs do not have a female doctor.<sup>548</sup> There are four times more health professionals in urban than rural areas, and the private sector has 85 per cent of India's doctors.

Despite widespread concern about unethical and even negligent treatment by India's private health care sector,<sup>549</sup> the Government has been relying on public-private partnership in district hospitals and in the *Ayushman Bharat Yojana* since 2017.<sup>550</sup> The data for this universal scheme shows that its

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- c. Agrawal R, Negi R, Kaushal SK, Misra SK. *Out of pocket expenditure and its associated factors in neonates admitted to neonatal intensive care unit of tertiary care government hospital of Agra district, Uttar Pradesh*. Indian J Public Health 2020;64: 60-5.
  - d. Using NFHS-IV data, researchers also find that when it comes to reproductive, maternal, neonatal and child health coverage, almost half of the districts in India had a coverage gap index (CGI) greater than the national average, while the poorest households had a CGI 2.5 times that of the richest households (Panda BK, Kumar G, Awasthi A. *District level inequality in reproductive, maternal, neonatal and child health coverage in India*. BMC Public Health. 2020;20(1):58. Published 2020 Jan 14. doi:10.1186/s12889-020-8151-9).
  - 542 Sama – Resource Group for Women and Health and Partners Law in Development, 'Country assessment on human rights in the context of sexual health and reproductive health rights undertaken for the National Human Rights Commission – 2018'. Available at: <https://bit.ly/38pUfXq>
  - 543 International Journal for Equity in Health, 'Beyond the template: the needs of tribal women and their experiences with maternity services in Odisha', 2018. Available at: <https://doi.org/10.1186/s12939-018-0850-9>
  - 544 Huffington Post, 'Upper caste villagers thrash and kill 8-month pregnant Dalit woman for touching and 'defiling' bucket', 26 October 2017. Available at: <https://bit.ly/3lfr4F9>
  - 545 News 18, 'Bruises, Fear & An Uncertain Future: Pregnant Women, New Mothers Recall Horror of Delhi Riots', 29 February 2020. Available at: <https://bit.ly/3p3VTUi>
  - 546 National Alliance for Maternal Health and Human Rights (NAMHHR), 'Status of Maternal Health Services: 2019', 29 June 2020. Available at: <https://namhhr.blogspot.com/2020/06/status-of-maternal-health-services.html>
  - 547 MoHFW - Govt of India, 'National Health Mission: The Rural Health Statistics for 2017-18'. Available at: <https://bit.ly/3pczPaj>
  - 548 Economic and Political Weekly (EPW), 'Decoding Ayushman Bharat: A Political Economy Perspective', Vol. 55, Issue No. 25, 20 June 2020. Available at: <https://bit.ly/3kcZf3Q>. The CHCs alone have more than 80% shortage of all specialists (surgeons, obstetricians and gynaecologists, physicians and paediatricians). Only 11% of SHCs, PHCs, and CHCs each qualify on the IPHS.
  - 549 'Dissenting Diagnosis', Penguin India, 2016.
  - 550 EPW, 'Health Payments and Household Well-being: How Effective Are Health Policy Interventions?', Vol 52, No 16, pp. 54-65. Available at: <https://bit.ly/2lglR6o>

coverage is not adequate and does not cover out-patient expenses.<sup>551</sup> Although maternal health services are to be provided free in public hospitals, under this scheme, the cost for C-sections is being “covered” by the Government,<sup>552</sup> which may concerningly promote the use of unindicated C-sections.

### *Situation During the COVID-19 Pandemic*

With the COVID-19 pandemic, as the country abruptly went into a stringent lockdown in late March 2020, there were no plans announced for the estimated 70,000 women who are due to give birth each day in the country.<sup>553</sup> It was only three weeks later that the MoHFW issued a guidance note<sup>554</sup> on enabling delivery of essential health services including reproductive, maternal, neonatal, and child health, among other things.

However, implementation problems remained<sup>555</sup>: essential services were expected to be provided *via* mobile medical units or through tele-medicine, which were scarce across the country. Immunization and ANC services were to be reorganized and those requiring them were expected to travel to the health centres despite the transportation restrictions and total lockdown. The Accredited Social Health Activists (ASHAs) were supposed to engage in home visits, despite their engagement in COVID-19 activities and the overall shortage of workers.

Although the governments had directed that maternal health services shall continue as essential services, ANC services were interrupted; ambulances were unavailable; and in some places, it was reported that women were turned away from facilities.<sup>556</sup> The later guidelines for essential services, dated 27 May 2020, suggested that these services would, however, remain disrupted in the COVID-19 containment zones.<sup>557</sup> As a result, there are apprehensions of this having grave consequences on child malnutrition and health in the long-term.

Due to facilities being diverted to emergency COVID-19 response and unavailability of human resources, pregnant women in labour were also reported to be turned away from facilities and forced to deliver at home or private facilities; some mothers and infants did not survive.<sup>558</sup> Significant differentials remained evident in access to care between socio-economic groups. For example, migrant women returning home from big cities under excruciatingly tenuous circumstances have given birth on the highways.<sup>559</sup> Muslim women reportedly faced police brutalities and overt

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551 NITI Aayog, ‘Public Private Partnership for NCDs in District Hospitals—2017’. Available at: <https://bit.ly/3l7kBAO>

552 Down To Earth, ‘In Poor Health: Thanks to Ayushman Bharat, free institutional delivery now costs Rs 9,000’, 12 September 2018. Available at: <https://bit.ly/2U9LqIG>

553 The Hindu, ‘Maternal Health Matters’, 18 June 2020. Available at: <https://bit.ly/35aXYG8>

554 MoHFW - Govt of India, ‘Enabling Delivery of Essential Health Services during the COVID-19 Outbreak’, 2020. Available at: <https://bit.ly/2lggkNa>

555 The Federal, ‘Missing in lockdown: lakhs of pregnant women and new borns’, 1 July 2020. Available at: <https://bit.ly/3elwllE>

556 Hindustan Times, ‘With hospitals overwhelmed, pregnant women left with no care or place to give birth’, 3 May 2020. Available at: <https://bit.ly/2l83cKf>

557 MoHFW - Govt of India, ‘Enabling Delivery of Essential Health Services during the COVID-19 Outbreak’, 2020. Available at: <https://bit.ly/2lggkNa>

558 The Times of India, ‘Pregnant woman with COVID symptoms not admitted by 8 hospitals, dies in ambulance’ 7 June 2020. Available at: <https://bit.ly/3n6Rb6t>; Firstpost, ‘Pregnant woman in Noida dies in ambulance after running between hospitals for 13 hours; probe ordered’, 26 June 2020. Available at: <https://bit.ly/3mZ67U6>; see also, [Hyderabad](#), [New Delhi](#), and [Mumbai](#)

559 India Times, ‘Pregnant woman delivers baby on road after being forced to walk from Telangana to Chhattisgarh’, 6 May 2020. Available at: <https://bit.ly/2U5dYTB>; The Times of India, ‘Madhya Pradesh: Woman gives birth on roadside, and marches on for 160 km’, 10 May 2020. Available at: <https://bit.ly/2U6OFAJ>; India Today, ‘Odisha-bound bus leaves migrant worker, wife on highway where she gives birth to a baby girl’, 4 May 2020. Available at: <https://bit.ly/2llcYsr>;

discrimination at health facilities due to the gross communal undertones to the pandemic response, including denial of care, maltreatment, and even resorting to home births due to the apprehension of being detained in hospitals.<sup>560</sup> Private hospitals demanded exorbitant sums for testing and treatment,<sup>561</sup> while others denied services to patients who could not prove that they were COVID negative leading to further complications and even maternal deaths.<sup>562</sup>

A study had estimated that the lockdown in India will lead to over 8,00,000 unsafe abortions and 1,750 maternal deaths among 2.3 million unintended pregnancies.<sup>563</sup> The condition of health care for young children has worsened since the onset of COVID-19. In the absence of formal data, anecdotal evidence indicates that routine immunization and *Anganwadi* services remained suspended or disrupted.<sup>564</sup>

### **Recommendations on Health Care For Elderly And Other Disadvantaged Groups**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.176	Continue to provide health services for elderly under the National Program for health care of the elderly.	Colombia	Supported	Partially Implemented
161.178	Continue its efforts to ensure that the universal health care scheme covers disadvantaged groups, including persons with disabilities and persons living in remote rural areas, who still face obstacles in accessing basic health care services.	Lao People's Democratic Republic of	Supported	Partially Implemented
161.240	Continue efforts aimed at improving the access of persons with disabilities to education, vocational training and health care.	Oman	Supported	Partially Implemented

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New Indian Express, 'Migrant woman travelling to UP in truck gives birth on Mumbai-Agra Highway', 12 May 2020. Available at: <https://bit.ly/3p9119R>

560 The Wire, 'This Pregnant Woman Was Denied Treatment at a Buxar Govt Hospital – and She's Not Alone', 24 May 2020. Available at: <https://bit.ly/36eUNwx>; News 18, 'How Lockdown & Apathy from Authorities Are Taking a Toll on Jharkhand's Pregnant Women & Their Babies', 21 April 2020. Available at: <https://bit.ly/3eCfAOm>; The Week, 'Maternity, child health services crumble during COVID-19 pandemic', 1 June 2020. Available at: <https://bit.ly/3eFTxX9>; The Quint, 'Gujarat Cops Barged in, Hit Me with Sticks: Pregnant Muslim Woman', 16 May 2020. Available at: <https://bit.ly/358U1Se>

561 International Health Policies Newsletter, 'COVID-19 and unregulated private hospitals: Lessons for Private Sector Engagement', 18 June 2020. Available at: <https://bit.ly/36IE9LP>

562 EPW, 'Regulating the private sector to eliminate COVID 19', Vol. 55, Issue 13, 28 March 2020, Available at: <https://bit.ly/3mY0eqm>

563 Foundation for Reproductive Health Services in India, 'Impact of COVID 19 on India's Family Planning Program - Policy Brief', May 2020. Available at: <https://bit.ly/3lLMdX>

564 Hindustan Times, 'COVID-19 fuelling mother and child mortality rates', 16 June 2020. Available at: <https://bit.ly/36aPEFu>

161.246	Continue to the endeavour to facilitate the access of elderly persons to preventive services and necessary treatment.	Oman	Supported	Partially Implemented
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### *Health Care for the Elderly*

The *Ayushman Bharat Yojana* and PM-JAY cover hospitalization costs of up to Rs. 5,00,000 per family for beneficiaries who are enrolled on the basis of ‘deprivation criteria’, that is, those who are included in the Socio-Economic and Caste Census (SECC) for rural and urban areas. The Scheduled Castes, Scheduled Tribes, other tribal communities, manual scavenger families, and persons with disabilities are some of the disadvantaged groups included in the programme.<sup>565</sup> In 2011, India’s population aged 60 years or above (“elderly”) was 104 million,<sup>566</sup> amounting to 8.6 per cent of the total population. By 2025, this percentage is projected to rise to 12 per cent.<sup>567</sup> The growth rate of the population of the elderly is higher than the rest of the population; the percentage of age-group of persons over 80 years is projected to grow the fastest.<sup>568</sup>

According to the MoHFW, elderly persons in India suffer from a number of non-communicable and infectious diseases as well as disabilities. These include hypertension; diabetes; cardiovascular disease; urinary tract infections; respiratory ailments such as asthma, chronic obstructive pulmonary disease and tuberculosis; cataract; hearing impairment; musculo-skeletal pain, including arthritis, fall/fractures, and injuries<sup>569</sup>; and loco-motor and visual disability.<sup>570</sup> Independent studies also confirm the prevalence of neurological disorders such as dementia,<sup>571</sup> depression,<sup>572</sup> delirium, Parkinson’s

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565 National Health Authority, Information, Education and Communication (IEC), Guidebook for SHA Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (PM-JAY), November 2018, p.23. Deprivation criteria in the rural areas are D1- Only one room with kucha walls and kucha roof; D2- No adult member between ages 16 to 59; D3- Households with no adult male member between ages 16 to 59; D4- Disabled member and no able-bodied adult member; D5- SC/ST households; D7- Landless households deriving a major part of their income from manual casual labour; In urban areas the occupational criteria include Ragpicker; Beggar; Domestic worker; Street vendor/ Cobbler/hawker / other service provider working on streets; Construction worker/ Plumber/ Mason/ Labour/ Painter/ Welder/ Security guard/ Coolie and other head-load worker; Sweeper/ Sanitation worker/ Mali; Home-based worker/ Artisan/ Handicrafts worker/ Tailor; Transport worker/ Driver/ Conductor/ Helper to drivers and conductors/ Cart puller/ Rickshaw puller; Shop worker/ Assistant/ Peon in small establishment/ Helper/Delivery assistant / Attendant/ Waiter; Electrician/ Mechanic/ Assembler/ Repair worker/ Washer-man/ Chowkidar.

566 Ministry of Statistics and Programme Implementation - Govt of India, Central Statistics Office (Social Statistics Division), ‘Elderly in India 2016’, pp. 14-15. Available at: <https://bit.ly/2U9OLHW>

567 MoHFW, Govt of India, ‘Operational Guidelines: National Programme for Health care of the Elderly (NPHCE)’. Available at: <https://bit.ly/3pc9poP>

568 Ministry of Statistics and Programme Implementation - Govt of India, Central Statistics Office (Social Statistics Division), ‘Elderly in India 2016’, pp. 16-17. Available at: <https://bit.ly/2U9OLHW>

569 MoHFW - Govt of India, ‘Average Life Expectancy’ 13 March 2020. Available at: <https://bit.ly/32ttGg1>

570 Ministry of Statistics and Programme Implementation - Govt of India, Central Statistics Office (Social Statistics Division), ‘Elderly in India 2016’, pp. 80-81. Available at: <https://bit.ly/2U9OLHW>

571 Journal of Geriatric Mental Health, ‘Geriatric mental health: The challenges for India’ 2018, Vol.5 Issue 1, pp.16-29. Available at: <https://bit.ly/3k6mQDa>

572 Indian Journal of Psychiatry, ‘Implications of Mental Healthcare Act 2017 for geriatric mental health care delivery: A critical appraisal’, April 2019; 61( Suppl 4): S763-S767, doi:10.4103/psychiatry.IndianJPsychiatry\_100\_19. Available at: <https://bit.ly/3ldLiUD>

disease,<sup>573</sup> cerebral stroke, and epilepsy.<sup>574</sup> Debility and loss of autonomy on account of illnesses are other main challenges for older people.

The Maintenance and Welfare of Parents and Senior Citizens Act 2007 includes provision of health care under the definition of 'maintenance' that a parent above the age of 60 years may claim from his or her adult children<sup>575</sup> as well as 'welfare' that the Government must secure for senior citizens.<sup>576</sup> Particularly, the Government has the responsibility to ensure that senior citizens have access to hospital beds, separate queues, facilities for chronic, degenerative and terminal illnesses, and specialized geriatric care.<sup>577</sup>

The National Policy of Older Persons 1999 was revised in 2011 into the National Policy on Senior Citizens. It identified the following challenges in relation to health care for the elderly: (i) growing population of the 'oldest' old, that is, persons above 80 years; (ii) feminization of the elderly population confirmed by demographic studies showing that between 2013-17, life expectancy among females was 70.4 years as compared to 67.8 among males<sup>578</sup>; and (iii) access for the rural poor,<sup>579</sup> with over 70 per cent of the elderly population residing in rural areas in the country.<sup>580</sup>

The National Programme for Health Care of the Elderly (NPHCE) was launched in 2011 and is supplemented by other national programmes, including those for the Prevention and Control of Cancer, Diabetes, Cardiovascular Diseases and Stroke and for Palliative Care.<sup>581</sup> Associated services such as old-age homes, day-care centres, mobile medical units, physiotherapy clinics, and helplines are provided by NGOs, through grants from the Ministry of Social Justice and Empowerment under the Integrated Programme for Older Persons.<sup>582</sup>

The NPHCE aims at providing: (i) prevention – through outreach and home visits to the elderly, health and nutritional advice, screening, and elementary care at PHCs and sub-centres, which have been renamed 'health and wellness centres' under *Ayushman Bharat Yojana*<sup>583</sup>; (ii) diagnosis and management of illnesses at bi-weekly clinics in CHCs and separate out-patient services at district hospitals with at least 10 beds earmarked for the elderly; (iii) specialized tertiary care – at regional geriatric centres with 30 beds each, and after 2016, also at national centres for the ageing with 200

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573 Narayana Health, 'Parkinson's Disease and the Ageing Indian Population', 4 May 2015. Available at: <https://bit.ly/36l7UvU>

574 Acta Neurologica Belgica, 'Clinical and etiological profile of epilepsy in elderly: a hospital-based study from rural India', March 2017; 117(1):139-144. Available at <https://pubmed.ncbi.nlm.nih.gov/27878560/>

575 The Maintenance and Welfare of Parents and Senior Citizens Act 2007, Sections 2(a), (b), (d), (h), 4, 5, 6, 9, 11, 12 and 13. Available at: <https://bit.ly/3n2w19F>

576 Ibid, Sections 2(k), 19, 20 and 21(iii).

577 Ibid, Section 20.

578 MoHFW - Govt of India, 'Average Life Expectancy', 13 March 2020. Available at: <https://bit.ly/32ttGg1>

579 Ministry of Social Justice and Empowerment - Govt of India, 'National Policy of Older Persons 1999'. Available at: <https://bit.ly/3kedi9f>

580 Ministry of Statistics and Programme Implementation - Govt of India, Central Statistics Office (Social Statistics Division), 'Elderly in India 2016', pp. 14-15. Available at: <https://bit.ly/2U9OLHW>

581 MoHFW - Govt of India, 'National Health Mission: Non-Communicable Disease Control Programmes'. Available at: <https://nhm.gov.in/index1.php?lang=1&level=1&sublinkid=1041&lid=614>

582 Ministry of Social Justice and Empowerment - Govt of India, 'Integrated Programme for Older Persons'. Available at: <https://bit.ly/3p7ylho>

583 MoHFW - Govt of India, 'Ayushman Bharat: Comprehensive Primary health Care through Health and Wellness Centres: Operational Guidelines'. Available at: <https://bit.ly/2U7urqv>



beds each and research facilities; and (iv) creation of a dedicated cadre of health care workers trained in geriatric medicine.<sup>584</sup>

Despite laudable provisions, independent surveys reveal that health care for the elderly has not improved significantly<sup>585</sup> and remains inaccessible and unaffordable.<sup>586</sup> Health care costs in India are primarily borne out of household income / savings,<sup>587</sup> and therefore, for elderly persons who are not working and are financially dependent on their families,<sup>588</sup> treatment is often restricted. It has been found that funds secured for the NPHCE are not being adequately utilized by states; only seven per cent of the total funds were reported to be used.<sup>589</sup>

As of 2019, 24 states and union territories did not have a geriatric centre in each district and had not earmarked beds for the elderly in district hospitals,<sup>590</sup> in violation of the 2007 Act as well as the NPHCE advisories. Similarly, 19 regional geriatric centres and two national centres for ageing had been approved by the MoHFW.<sup>591</sup> Most geriatric health facilities are located in urban areas leading to the exclusion of a vast majority of older people who live in rural India.<sup>592</sup> Similarly, for the elderly persons enrolled in *Ayushman Bharat Yojana* and PM-JAY, the costs of out-patient treatment are not covered in addition to dental treatment, including prosthetics and implants.<sup>593</sup>

The NPHCE proposed a postgraduate course in geriatric care,<sup>594</sup> following which the Medical Council of India (MCI) introduced Doctor of Medicine (MD) degree in Geriatrics in 2012.<sup>595</sup> However, only eight medical colleges offer the degree with a cumulative of 42 seats,<sup>596</sup> which is grossly insufficient for the rapidly increasing number of older people in the country. The NPHCE also overlooked the medical needs of elderly women, whose vulnerability is characterized by destitution, alienation, and social, economic, and emotional insecurity.<sup>597</sup> Women over 60 years continue to suffer under deeply entrenched gender norms and discriminatory practices that deny them equal opportunities and resources. Older women are also found to be less aware of these government schemes.<sup>598</sup> The elderly

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584 MoHFW - Govt of India, 'National Programme for Health Care of the Elderly (NPHCE). Available at: <https://bit.ly/3kambk7>

585 Agewell Foundation. Available at: <https://bit.ly/3eIXnyK>

586 The Tribune, 'Healthcare of elderly inaccessible, unaffordable', 16 March 2019. Available at: <https://bit.ly/3lcBHNz>

587 Ministry of Statistics and Programme Implementation (National Statistical Office) - Govt of India, 'National Sample Survey (NSS) 75th Round: Key Indicators of Social Consumption in India – Health 2017-18', p.16. Available at: <https://bit.ly/3elup1Y>

588 Ministry of Statistics and Programme Implementation - Govt of India, Central Statistics Office (Social Statistics Division), 'Elderly in India 2016', pp. 45-55. Available at: <https://bit.ly/2U9OLHW>

589 Indiaspend, 'India is Ageing, but states use just 7% of central Funds for elderly Healthcare' 4 April 2018. Available at: <https://bit.ly/2Uadj3k>

590 HelpAge India, 'Home Care for the Elderly in India: A Call to Action', p.9. Available at: <https://bit.ly/38wJTES>

591 MoHFW - Govt of India, Lok Sabha Starred Question No. 373, Answered on 13 December 2019. Available at: <https://bit.ly/3eFhGwG>

592 Journal of Gerontology and Geriatrics, 'Ageing in India: Some Social Challenges to Elderly Care', Res 2016, 5:2 doi: 10.4172/2167-7182.1000e136. Available at: <https://bit.ly/2GFZ9DZ>

593 National Health Authority – Govt of India, 'Ayushman Bharat PM-JAY: Exclusion Policy', April 2020. Available at: <https://bit.ly/2UbGitS>

594 MoHFW - Govt of India, 'National Programme for Health Care of the Elderly (NPHCE). Available at: <https://bit.ly/3kambk7>

595 Pharmabiz.com, 'MCI adds MD in geriatrics following ministry of health's focus on ageing population care', 22 September 2012. Available at: <https://bit.ly/32onC8l>

596 Medical Council of India (now replaced by the National Medical Commission since 25 September 2020). Available at: <https://www.nmc.org.in/>

597 Agewell Foundation, 'Older Women In India'. Available at: <https://bit.ly/3p9YM5Y>

598 Hindustan Times, 'India is no country for older women', 4 August 2018. Available at: <https://bit.ly/3liSA9K>

also show greater preponderance to mental health problems.<sup>599</sup> According to a national survey in 2017-18, more elderly women reported ill-health as compared to men, but fewer received hospitalization or institutional care.<sup>600</sup>

Despite provisions in the Mental Health Care Act (MHCA) 2017 that require the Government to provide old age mental health services and ensure that older persons have access to such services close to their place of residence,<sup>601</sup> geriatric mental health has not received due attention in India.<sup>602</sup> High levels of elderly abuse have been reported in India, including domestic violence, harassment, and neglect by family members, which inevitably affect the physical and mental health of elderly persons.<sup>603</sup> Remedies provided under the 2007 Act are either inaccessible or unsatisfactory<sup>604</sup> and existing health programmes are not equipped to specifically address elderly abuse.

- *COVID-19 Response*

Elderly persons are at higher risk of contracting the COVID-19 infection due to poor immunity and body reserves as well as multiple associated comorbidities such as diabetes, hypertension, chronic kidney disease, and chronic obstructive pulmonary disease further resulting in higher mortality.<sup>605</sup> In order to protect the elderly, while it was necessary to reverse isolate them<sup>606</sup> — especially those living in a joint family setup — no such programme has been launched actively by most state governments, barring a few such as Kerala, where its implementation has been coerced by locking up elderly persons or restricting them to work under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) 2005.<sup>607</sup>

Amid the stringent lockdown restrictions, there has been a reported increase in cases of elderly isolation, neglect, mistreatment, verbal abuse, as well as ignoring their daily needs, denying proper food and medical support, and physical and emotional violence by families and society.<sup>608</sup> But the absence of a specific protocol for relocation of the elderly in abusive situations, coupled with restricted entry of new inmates in old-age homes, has worsened their condition.<sup>609</sup> It must be noted that there

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599 Journal of Geriatric Mental Health, 'Geriatric mental health: The challenges for India', 2018, Vol. 5 Issue 1, pp. 16-29. Available at: <https://bit.ly/2IIBWYH>

599 HelpAge India, 'Elder Abuse in India- 2018: Changing cultural ethos and impact of technology – 2018'. Available at: <https://bit.ly/3IczUIz>

600 Ministry of Statistics and Programme Implementation (National Statistical Office) - Govt of India, 'National Sample Survey (NSS) 75th Round: Key Indicators of Social Consumption in India – Health 2017-18', pp.8 and 12. Available at: <https://bit.ly/3elup1Y>

601 The Mental Health Care Act 2017, Sections 18(4)(e) and 18 (5)(d). Available at: <https://bit.ly/3kbDfX3>

602 Journal of Geriatric Mental Health, 'Geriatric mental health: The challenges for India', 2018, Vol. 5 Issue 1, pp. 16-29. Available at: <https://bit.ly/2IIBWYH>

603 HelpAge India, 'Elder Abuse in India- 2018: Changing cultural ethos and impact of technology – 2018'. Available at: <https://bit.ly/3IczUIz>

604 HelpAge India, 'Preliminary Study on Effectiveness of the Maintenance and Welfare of Parents and Senior Citizens Act 2007', December 2017. Available at: <https://bit.ly/38vifbH>

605 MoHFW - Govt of India, 'Health Advisory for Elderly Population of India during COVID 19'. Available at: <https://bit.ly/2IbyY9c>

606 Hindustan Times, 'Kerala begins reverse quarantine to protect vulnerable from COVID-19', 3 May 2020. Available at: <https://bit.ly/3n10moQ>

607 Hindustan Times, 'Kerala's reverse quarantine worries elderly, calls grow for its dilution', 27 June 2020. Available at: <https://bit.ly/2JH9PTY>

608 Livemint, 'COVID-19 pandemic worsened situation of elderly in India: Report', 13 June 2020. Available at: <https://bit.ly/3eHd44>

609 The Indian Express, 'Elderly hesitate to open up', 27 April 2020. Available at: <https://bit.ly/3kcLl5T>

were two government health advisories<sup>610</sup> for the elderly during COVID-19. However, they are general instructions in the nature of basic “do’s and don’ts” with no special emphasis on diet counselling,<sup>611</sup> the virus symptoms specific to the elderly,<sup>612</sup> or other such specific information.

### *Health Care for Persons with Disabilities (PwDs)*

In 2018, there were estimated 26.4 million PwDs in India.<sup>613</sup> The Rights of Persons with Disabilities Act (RPD Act) 2016 recognizes 21 disabilities (as opposed to seven disabilities earlier),<sup>614</sup> including disfigurement due to acid attack, intellectual disabilities, disabilities caused due to chronic neurological conditions, and blood disorders.<sup>615</sup> It also requires the State to provide free health care, especially in rural areas, priority in treatment, annually screen children to identify at-risk cases, and health care during natural disasters.<sup>616</sup> Similarly, there are other legislations that provide for support to PwDs by ensuring appointment of guardians for them,<sup>617</sup> minimum standards of training for professionals working with them,<sup>618</sup> and equal access to mental health care at state institutions.<sup>619</sup>

- *Accessibility to health services and treatment*

International human rights obligations, specifically under the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>620</sup> and RPD Act 2016<sup>621</sup> require the State to ensure and review the accessibility to physical environment, including barrier-free access to public and private health care institutions. Despite this, basic amenities such as public transport system,<sup>622</sup> toilets,<sup>623</sup> reception desks, examination tables in hospitals, etc. are not disabled-friendly. Health care centres lack ramps necessary for convenient access.<sup>624</sup> Several states, including conflict areas — where disability may be

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610 MoHFW - Govt of India, ‘Health Advisory for Elderly Population of India during COVID 19’. Available at: <https://bit.ly/2lbyY9c>; and, MoHFW – Govt of India and the National Institute of Mental Health and Neuro Sciences, ‘Taking care of Mental Health of elderly during COVID- 19’. Available at: <https://bit.ly/36fPZHb>

611 The Times of India, ‘COVID-19: Diet to Boost Immunity in older people’, 27 May 2020. Available at: <https://bit.ly/3pbfXnS>

612 CNN, ‘Seniors with COVID-19 show unusual symptoms, doctors say’, 23 April 2020. Available at: <https://cnn.it/3eGi5z3>

613 The World Bank : India. Available at: <https://www.worldbank.org/en/country/india/overview#1>

614 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, Section 2(i). Available at: <https://bit.ly/3karT5x>

615 The Rights of Persons with Disabilities Act 2016, The Schedule. Available at: <https://bit.ly/38vjveV> (Notified in 2019)

616 Ibid, Section 25.

617 The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act 1999. Available at: <https://bit.ly/3k5TTY4>

618 The Rehabilitation Council of India Act 1992. Available at: <https://bit.ly/3n5HC7L>

619 The Mental Health Care Act 2017. Available at: <https://bit.ly/3kbDfx3>

620 International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12. Available at: <https://bit.ly/36eZHTu>; see also, CESCR General Comment No. 14: The Right to Highest Attainable Standard of Health. Available at: <https://bit.ly/38vKxri>

621 The Rights of Persons with Disabilities Act 2016, Section 25(1)(b). Available at: <https://bit.ly/38vjveV> (Notified in 2019); see also The Rights of Persons with Disabilities Rules 2017, Rules 15-16. Available at: <https://bit.ly/3586BBk> (Amended in 2019)

622 Hindustan Times, ‘With just 3% of India’s buildings accessible, our disabled are at a huge disadvantage’, 23 March 2018. Available at: <https://bit.ly/2lgiY9x>

623 The Times of India, ‘80% public buildings lack ramps for the disabled’ 29 January 2017. Available at: <https://bit.ly/3kfdMHk>

624 The Economics Times, ‘India’s first accessibility audit revealed that several hospital have poor accessibility including not having proper ramps’, 8 June 2016. Available at: <https://bit.ly/2JQZ2Xx>

conflict-induced — have costs as well as inadequacy of essential services and transportation that are top barriers for PwDs in accessing health facilities.<sup>625</sup>

Despite the National Health Policy's explicit recognition of disability as a health issue being neglected,<sup>626</sup> in the periodic review of the RPD Act 2016, India continues to ignore health aspects of disabilities.<sup>627</sup> Sexual and reproductive health rights of women with disabilities are also often neglected. Women and girls with intellectual disabilities are forced into mental institutions, subjected to forced treatment and sterilization,<sup>628</sup> and are frequently reported to suffer physical and sexual violence.<sup>629</sup> Such women and girls, especially rape survivors, face poor access to health care with lack of sign interpreters to explain the medical tests,<sup>630</sup> despite guidelines mandating such services.<sup>631</sup>

To provide physical, social, and psychological rehabilitation of PwDs, the Ministry of Social Justice and Empowerment introduced assistance scheme for purchase / fitting of aids.<sup>632</sup> However, it is only available to those with an income of less than Rs. 20,000 per annum. As a result, it excludes a considerable population of PwDs from receiving this support. Assistive devices such as electronic communication boards, travel kits, or specialized intervention for chronic neurological conditions or blood disorders, are still not available under this scheme. The reach of the scheme is very low with only 13.3 per cent persons with locomotor disability, 8.2 per cent persons with visual disability and 19.8 per cent persons with hearing disability having acquired aids in 2018.<sup>633</sup>

- *Affordability*

The PMJAY<sup>634</sup> does not provide specific coverage to PwDs in urban areas and only covers rural households having a member with disability.<sup>635</sup> With few interventions related to sickle cell anaemia, glaucoma, cataract surgery, and mental disorders covered,<sup>636</sup> the scheme leaves much to be desired in responding to disability-related health needs. State-sponsored health insurance, *Niramaya*, provides only limited cover of up to Rs. 1,00,000, which is on a reimbursement basis.<sup>637</sup> Another state-subsidized health insurance for PwDs, the *Swavlamban Health Insurance Scheme* — with 46,758

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625 World Health Organization (WHO) and The World Bank, 'World Report on Disability 2011'. Available at: <https://bit.ly/3kcSQWr>; The Wire, 'Use of Pellet Guns Has Caused a Public Health Crisis in Kashmir', 29 March 2017. Available at: <https://bit.ly/3l7NIUF>

626 MoHFW – Govt of India, 'National Health Policy 2017', p. 26. Available at: <https://bit.ly/3kgci4h>

627 Press Information Bureau, '3rd Meeting of Central Advisory Board on Disability Held', 19 September 2019. Available at: <https://bit.ly/3l7NWLv>

628 News Deeply, 'The Fight to End Forced Sterilization of Girls with Disabilities', 19 December 2017. Available at: <https://bit.ly/3n14iG8>

629 Human Rights Watch, "'Treated Worse than Animals": Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India', December 2014. Available at: <https://bit.ly/3lbXPbb>

630 Human Rights Watch, 'Invisible Victims of Sexual Violence, Access to Justice for Women and Girls with Disabilities in India', April 2018, p. 8. Available at: <https://bit.ly/3kgCv2O>

631 MoHFW – Govt of India, 'Guidelines & Protocols, Medico-legal care for survivors/victims of Sexual Violence', 19 March 2014. Available at: <https://bit.ly/3leji2W>

632 Ministry of Social Justice and Empowerment – Govt of India, 'Scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids/Appliances (ADIP Scheme)'. Available at: <https://bit.ly/3n6UoDe>

633 Ministry of Statistics and Programme Implementation (National Statistical Office) - Govt of India, 'National Sample Survey (NSS) 76th Round: July – December 2018'. Available at: <https://bit.ly/358Hoql>

634 National Health Authority – Govt of India, 'Ayushman Bharat – PMJAY', Available at: <https://pmjay.gov.in/>

635 National Health Authority – Govt of India, 'Ayushman Bharat – PMJAY: Branding Guidelines'. Available at: <https://bit.ly/38kgxd0>

636 National Health Authority – Govt of India, 'Ayushman Bharat – PMJAY: Health Benefit Package 2.0'. Available at: <https://bit.ly/36m4nNY>

637 *Niramaya* Health Insurance Scheme, <http://thenationaltrust.gov.in/content/scheme/niramaya.php>

families with PwD members enrolled — was abruptly suspended in 2018 without any explanation leaving the registered persons in a complete lurch.<sup>638</sup>

- *Prevention*

Despite National Health Policy's commitment to support prevention programmes for sickle cell anaemia/thalassemia,<sup>639</sup> the programmes are yet to include these and other disabilities specifically recognised under the RPD Act 2016. The reach of preventive care and eradication programmes covering visual<sup>640</sup> and hearing disabilities<sup>641</sup> need to be scaled up with 92.9 per cent of blindness and 96.2 per cent visual impairment cases found due to avoidable causes. Out of these, 68.1 per cent cases of blindness and 85.7 per cent of those whose visual impairment were treatable.<sup>642</sup> Similarly, despite the control programme,<sup>643</sup> due to which leprosy was stated to have been eradicated from India over a decade ago, 1,35,485 new cases were detected during the year 2016-17.<sup>644</sup> The implementation of child health screening and early intervention programme<sup>645</sup> has also been limited with District Early Intervention Centres (DEIC) functioning only in 92 of the 718 districts across country.<sup>646</sup>

- *COVID-19 response*

The State's action to safeguard the health of PwDs during the COVID-19 lockdown has not been adequate. The *Comprehensive Disability Inclusive Guidelines for protection and safety of persons with disabilities (Divyangjan) during COVID 19*<sup>647</sup> issued by the Government directs provision of accessible information and essential support to PwDs, exempting them from essential services work and prioritize easy movement of their caregivers. Despite these guidelines, caregivers were unable to reach the PwDs during the lockdown.<sup>648</sup> Similarly, it has been reported that there is shortage of blood for thalassemia patients<sup>649</sup> and lack of support for persons with intellectual disability to self-isolate.<sup>650</sup>

Barriers to health-related information such as lack of visual and hearing disability-friendly COVID-19 information,<sup>651</sup> difficulty in procuring hygiene products,<sup>652</sup> inability to procure household essentials

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638 The New Indian Express, 'Disabled people left in the lurch as Centre winds up Swavlamban health plan', 23 December 2018. Available at: <https://bit.ly/32qGROU>

639 MoHFW – Govt of India, 'National Health Policy 2017', p. 26. Available at: <https://bit.ly/3kgci4h>

640 National Programme for Control of Blindness. Available at: <https://npcbvi.gov.in/>; National Programme for Control of Blindness and Visual Impairment. Available at: <https://bit.ly/2le8cMW>

641 National Programme for Prevention and Control of Deafness. Available at: <https://bit.ly/38mA1O8>

642 MoHFW – Govt of India (National Programme for Control of Blindness and Visual Impairment), 'National Blindness and Visual Impairment Survey 2015-2019: A Summary Report'. Available at: <https://bit.ly/3kdzXCG>

643 National Leprosy Eradication Programme (NLEP). Available at: <https://bit.ly/3eGtq2j>

644 MoHFW – Govt of India (Central Leprosy Division), 'NLEP Annual Report 2016-17'. Available at: <https://bit.ly/3p9wzvj>.

645 Rashtriya Bal Swasthya Karyakram. Available at: <https://rbsk.gov.in/RBSKLive/>

646 Press Information Bureau, 'Year Ender 2018: Ministry of Health and Family Welfare', 11 January 2019. Available at: <https://bit.ly/3lelWWq>

647 Ministry of Social Justice and Empowerment – Govt of India, Department of Empowerment of Persons with Disabilities (Divyangjan). Available at: <http://disabilityaffairs.gov.in/content/page/whats-new.php>

648 The Times of India, 'How COVID-19 lockdown has hit disabled people hard', 6 April 2020. Available at: <https://bit.ly/3eHkIAU>

649 National Herald, 'How COVID-19 is endangering the lives of Thalassemia patients', 8 May 2020. Available at: <https://bit.ly/3kcln1>

650 India Development Review (IDR), 'COVID-19 has further marginalised people with disabilities', 10 June 2020. Available at: <https://bit.ly/2U9QqwU>; see also, The Indian Express, 'Pandemic and a lockdown: Persons with disabilities grapple with more challenges', 26 May 2020. Available at: <https://bit.ly/3paTXJJ>

651 The Hindu, 'Make COVID-19 info accessible to persons with disabilities', 24 March 2020. Available at: <https://bit.ly/2GG9T5h>; see also, The Hindu, 'Make COVID-19 info accessible to persons with disabilities', 24 March 2020. Available at: <https://bit.ly/2GG9T5h>

652 International Disability Alliance, 'COVID-19 in Rajasthan (India): What are women with disabilities' main challenges?', 7 May 2020. Available at: <https://bit.ly/35dd3qw>



and medicines<sup>653</sup> during the lockdown have been exacerbated by poor disbursement of state disability pension.<sup>654</sup> However, it must be noted that the mid-term report submitted by the National Human Rights Commission (NHRC) omits to mention the failure of the state health care schemes to address the health needs of PwDs.

### *Health Care for Sexual and Gender Minorities*

Independent researchers estimate that the population of lesbian, gay, bisexual, and transgender (LGBT) persons in India is 45.4 million.<sup>655</sup> While there is no official enumeration of their population, the 2011 census estimated the population of transgender persons to be 0.488 million,<sup>656</sup> which is acknowledged to be under-reported.<sup>657</sup> LGBT individuals in India experience unique health disparities, which have not been fully examined.<sup>658</sup>

In 2014, the Supreme Court had observed that transgender persons are one of the most marginalized sections and suffer widespread discrimination in accessing health services.<sup>659</sup> The Court directed the Government to, among other things, “*take proper measures to provide medical care to transgender persons in hospitals*”.<sup>660</sup> In a study commissioned by the NHRC, 52 per cent ‘transgender’ respondents reported to have faced violations of their right to health.<sup>661</sup>

LGBT persons’ access to health care, whether generally or for their specific gender needs, is dismal.<sup>662</sup> Neglect and self-medication are common<sup>663</sup> as transgender patients avoid public health facilities on account of transphobia and discrimination,<sup>664</sup> sometimes in the form of derogatory remarks, violation of privacy,<sup>665</sup> sexual harassment,<sup>666</sup> and refusal to treat.<sup>667</sup> Lack of transgender friendly wards and toilets in government hospitals impedes access.<sup>668</sup> Transgender men are even more invisible and their

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653 The Vice, ‘For People with Disabilities, India’s Coronavirus Lockdown Adds Extra Challenges’, 2 April 2020. Available at: <https://bit.ly/3eFFOPN>

654 The Times of India, ‘Blind girl dies due to want of food grains, financial help: Delhi HC seeks AAP govt stand’, 7 July 2020. Available at: <https://bit.ly/3lcr5yz>

655 Indian Journal of Psychiatry, ‘The possible role of the psychiatrist: The lesbian, gay, bisexual, and transgender population in India’, 2018; 60 (4): pp. 489-493. doi:10.4103/psychiatry.IndianJPsychiatry\_83\_17. Available at: <https://bit.ly/3n8HTai>

656 Press Information Bureau, ‘Ministry of Social Justice and Empowerment: Welfare of Transgenders’, 25 June 2019. Available at: <https://bit.ly/3p87CkI>

657 NHRC, ‘Study on Human Rights of Transgender as a Third Gender: submitted by Kerala Development Society’, February 2017, p. 58. Available at: <https://bit.ly/36gJK62>

658 Health Research and Policy Systems, ‘A health equity research agenda for India: Results of a Consultative Exercise’, October 2018, 16 (S1), doi: <https://doi.org/10.1186/s12961-018-0367-0>. Available at: <https://bit.ly/3kabEVZ>.

659 *National Legal Services Authority v. Union of India* (2014) 5 SCC 438 (hereinafter “NALSA”), paras 1, 48, 50, 62, 67, 116.1, 116.2, 118, 124, and 135.3. Available at: <https://bit.ly/2U9S2qs>

660 Ibid, para 135.6.

661 NHRC, ‘Study on Human Rights of Transgender as a Third Gender: submitted by Kerala Development Society’, February 2017, p. 43. Available at: <https://bit.ly/36gJK62>

662 Lancet, ‘Transgender people: health at the margins of society’, 17 June 2016, pp. 388, 390–400. Available at: <https://bit.ly/3p6lpY9>

663 Scroll, ‘How could you have been raped?’: New study on how India’s transgender people face bias from doctors’, 2 November 2017. Available at: <https://bit.ly/2JRaUZB>

664 Livemint, ‘Accessing healthcare still an ordeal for LGBTQ in India’, 16 July 2018. Available at: <https://bit.ly/3naCy1R>

665 Queerala, ‘Gender-Affirmative Healthcare in Kerala, A Preliminary Report’, August 2019, p.8. Available at: <https://bit.ly/2liif3X>

666 Saathi: LGBTIQ+ Inclusion India, ‘Trans woman stigmatized and sexually propositioned at government general hospital (Case Study, Kerala)’, 2 September 2018. Available at: <https://bit.ly/3keur2q>

667 Saathi: LGBTIQ+ Inclusion India, ‘Denial of health services based on marital status and gender identity’, (Case Study, Tamil Nadu), 4 November 2019. Available at: <https://bit.ly/3naTMMR>

668 Sappho for Equality, ‘A Good Practice Guide to Gender-Affirmative Care’, 2017, p.7. Available at: <https://bit.ly/32niYaQ>



health needs are seldom met.<sup>669</sup> Similarly, lesbian and bisexual women face negative attitudes while accessing gynaecological care.<sup>670</sup> Discrimination against sexual and gender minorities in health settings is unfortunate but unsurprising: sexuality is introduced in the medical curriculum only in forensic medicine under ‘sexual offences and sexual deviations’.<sup>671</sup> Medical education in India has not been informed by sexual orientation and gender identity (SOGI) rights.<sup>672</sup>

The LGBT individuals in the country also report high rates of depression and anxiety, which confirm ‘minority stress’ that is heightened psychological stress experienced by them due to pervasive violence, stigma and discrimination.<sup>673</sup> Despite the widespread prevalence of mental illness, access to services is poor.<sup>674</sup> Mental health professionals are often viewed with mistrust, many LGBT individuals have experienced forcible psychiatric treatment, ‘conversion therapy’ and other abusive practices.<sup>675</sup> This is in spite of the Mental Healthcare Act 2017 precluding diagnosis of mental illness on the basis of non-conformity to social or cultural norms<sup>676</sup> and prohibiting discrimination on the grounds of, *inter alia*, gender, sex and sexual orientation.<sup>677</sup> Minority stress exacerbates vulnerability to HIV.<sup>678</sup> Nationally, *hijras* and transgender people report prevalence of 3.14 per cent, while the rate of infection among men who have sex with men (MSM) is 2.69 per cent<sup>679</sup> as compared to 0.22 per cent among the general population.<sup>680</sup> Repeated calls to integrate mental health care in government-funded HIV prevention programmes for MSM and transgender persons<sup>681</sup> have gone unheeded.

Gender-affirming health care refers to a range of medical interventions such as psychiatric counselling, hormone therapy, surgical and cosmetic procedures to alter primary and secondary sex characteristics that help transgender individuals affirm and express their gender identity and mitigate gender incongruence. Few government hospitals provide such care, forcing transgender persons to approach private facilities, which are both costly and unregulated.<sup>682</sup> In the absence of treatment protocols, transgender persons have had to suffer botched up surgeries and resultant medical complications

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669 Queerala, ‘Gender-Affirmative Healthcare in Kerala, A Preliminary Report’, August 2019, p.13. Available at: <https://bit.ly/2liif3X>.

670 Culture, Health and Sexuality, ‘Perceived health concerns among sexual minority women in Mumbai, India: an exploratory qualitative study’, 12 February 2016, Vol. 18 Issue 7, pp. 826-840. Available at: <https://bit.ly/3pbvRi4>.

671 Sage Publications India and Yoda Press, Arvind Narain and Vinay Chandran (ed.), ‘Nothing to Fix: Medicalization of Sexual Orientation and Gender Identity’, p.77.

672 RHIME, ‘Are we being trained to discriminate? Need to sensitize doctors in India on issues of gender and sexuality’, 2018, pp. 35-43. Available at: <https://bit.ly/3pdUaf4>.

673 Transgender Health, ‘Violence and Mental Health Among Gender-Diverse Individuals Enrolled in a Human Immunodeficiency Virus Program in Karnataka, South India’, 2019, Vol.4 Issue 1. Available at: <https://bit.ly/3n3RRtm>.

674 Psychology, Health and Medicine, ‘Suicidality, clinical depression, and anxiety disorders are highly prevalent in men who have sex with men in Mumbai, India: Findings from a community-recruited sample’, 2011, Vol.16 Issue 4, pp. 450-462. Available at: <https://bit.ly/3pbwR5O>.

675 The Hindu, ‘Torture, hypnotism as ‘corrective therapy’ for LGBT persons in some Kerala hospitals’, 26 June 2019. Available at: <https://bit.ly/3eDstl1>.

676 The Mental Health Care Act 2017, Section 3(3)(b). Available at: <https://bit.ly/3kbDfx3>.

677 Ibid, Section 18(2).

678 Culture, Health and Sexuality, ‘Stigma, violence and HIV vulnerability among transgender persons in sex work in Maharashtra, India’, 2017, Vol. 19 Issue 8, pp. 903-917. Available at: <https://bit.ly/3k8G0sd>.

679 MoHFW – Govt of India (National AIDS Control Organisation), ‘HIV Sentinel Surveillance 2016-17, Technical Brief’, p.18. Available at: <https://bit.ly/3n4yi8b>.

680 MoHFW – Govt of India (National AIDS Control Organisation), ‘HIV Estimations 2017, Technical Report’, pp.20-21. Available at: <https://bit.ly/3p4F1ga>.

681 Global Public Health, ‘Syndemics of depression, alcohol use, and victimisation, and their association with HIV-related sexual risk among men who have sex with men and transgender women in India’, 2017, Vol.12 Issue 2, pp. 250-265. Available at: <https://bit.ly/32rrHJj>.

682 Queerala, ‘Gender-Affirmative Healthcare in Kerala, A Preliminary Report’, August 2019, pp. 8 and 14. Available at: <https://bit.ly/2liif3X>.

with no mechanisms to complaint or seek redress.<sup>683</sup> Exclusive transgender clinics have opened up in some states,<sup>684</sup> but these are privately run<sup>685</sup> and have not been adopted in the public health system.

The National Health Policy 2017 acknowledges that ‘transgender health’ is a neglected issue, on which the Government will promote research.<sup>686</sup> However, till date, no measures have been taken in this regard. The Policy proposes universal health access<sup>687</sup> and envisages every household having a ‘family health card’ to access medical services.<sup>688</sup> As previously mentioned, the Government’s health assurance programme, the *Ayushman Bharat* or the PM-JAY enlists families belonging to poor, needy and vulnerable sections based on the Socio-Economic and Caste Census (SECC) as beneficiaries for availing free health services. Sexual and gender minorities are not considered ‘vulnerable’, despite experiencing health care inequities. Most LGBT persons are either estranged from their families<sup>689</sup> or their living arrangements (e.g. same-sex partnerships, *hijra gharanas*) are not recognized as a ‘family’ under the Indian law. For lesbian and bisexual women, family is often the site of violence and oppression<sup>690</sup> and routing health care through such arrangements has an adverse impact on access. Transgender persons are barred from availing hormone therapy, sex reassignment surgery, or any treatment related to gender incongruence, which is a clear case of exclusion under the PM-JAY.<sup>691</sup>

The Transgender Persons (Protection of Rights) Act 2019 was enacted despite protests from transgender activists,<sup>692</sup> who claimed that the law violated their fundamental rights. Provisions addressing health care include prohibition of discrimination, government’s obligation to provide health services like counselling, hormone therapy, reassignment surgery, and imposition of penalty for harming the health or well-being of a transgender person.<sup>693</sup> If and how these measures will improve transgender persons’ health and well-being remains to be seen.

- *COVID-19 response*

The LGBT persons were hit hard by the lockdown. Restrictions on social activities, including wedding celebrations, singing, dancing, and sex work, left many transgender persons with no earnings, food, or amenities.<sup>694</sup> Government aid was inaccessible without gender-congruent identity documents.<sup>695</sup> Those undergoing gender affirmative procedures were unable to access hormone therapy, since it was not considered as ‘essential’ care. Transgender women avoided COVID-19 related care out of fear of

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683 Ibid, pp. 8-9

684 The Hindu, ‘For the cause of a transgender clinic’, 8 June 2015. Available at: <https://bit.ly/2UIArw9>

685 For example, Mahatma Gandhi Medical College and Research Institute (MGMCRI), Puducherry. Available at: <https://bit.ly/38oE7VT>; see also, Peerless Hospital, Kolkata. Available at: <https://bit.ly/3ldDVMS>

686 MoHFW – Govt of India, ‘National Health Policy 2017’, para 25.1, p. 26. Available at: <https://bit.ly/3kgci4h>

687 Ibid, para 2.1, p. 1; para 2.2, IV, p. 2.

688 Ibid, para 2.3.1, p.3; para 3.3.1, p. 9.

689 Independent Study Project (ISP) Collection, ‘The Transgender Community in Bangalore: Health Issues and Factors Negatively Affecting Outcomes’, 2016. Available at: <https://bit.ly/3leVdsP>

690 Journal of Psychosexual Health, ‘What Do We Know About LGBTQIA+ Mental Health in India?: A Review of Research From 2009 to 2019’, 2020, Vol.2 Issue 1, pp. 26–36. Available at: <https://bit.ly/32qX7zk>

691 National Health Authority – Govt of India, ‘PMJAY: Guidelines for Unspecified Packages’, 17 July 2019. Available at: <https://bit.ly/3leis6z>

692 Sampoorana: For Trans\* and Intersex Indians By Trans\* and Intersex Indians Across The Globe, ‘SPWG Statement on Transgender Persons (Protection of Rights) Bill 2019. Available at: <https://bit.ly/3m9Fvzo>; see also, Scroll, ‘Why India’s transgender people are protesting against a Bill that claims to protect their rights’, 26 November 2019. Available at: <https://bit.ly/3mcfxeH>

693 Transgender Persons (Protection of Rights) Act 2019, Sections 3(d), 15 and 18. Available at: <https://bit.ly/32rqVvU>

694 Policy Corps, ‘The existential crisis of Indian transgender community’, 19 May 2020. Available at: <https://bit.ly/32u2Lkd>

695 International Journal of Research in Pharmaceutical Sciences, ‘Impact of COVID-19 on the Socioeconomic life and Psychology of Transgenders: Insights from India’, 2020, Vol. 11 SPL1. Available at: <https://bit.ly/3pcHRi9>

being kept in 'male wards'.<sup>696</sup> Only two states: West Bengal<sup>697</sup> and Manipur<sup>698</sup> had earmarked COVID-19 related facilities for transgender persons.

### *Health Care for Adivasi and Dalit Communities*

Adivasis and Dalits<sup>699</sup> remain excluded from critical health determinants resulting in high levels of morbidity, mortality, and undernutrition.<sup>700</sup> They also utilize relatively less preventive and curative services and receive poor quality of services. In many instances, status-based health inequities of Adivasi and Dalit communities are found even after adjusting for education and income.<sup>701</sup> Dalits constitute 16.6 per cent of the population, but face persistent discrimination in spite of constitutional protections. Deep-rooted societal bias, impunity to the perpetrators of caste atrocities — State and non-state — together with intersections of caste and other social inequalities, further aggravate this discrimination and pose barriers to their access to health determinants and health care.<sup>702</sup>

- *Health situation of the Scheduled Castes (SCs) / Dalits*

Most Dalit women face a three-fold disadvantage because of their caste, gender, and poverty. Utilization of health care services by the Dalit community continues to be poor, especially for ANC services.<sup>703</sup> The average age at death for Dalit women was 39.5 years<sup>704</sup> as against 54.1 years for upper caste women.<sup>705</sup> Dalit patients experience more apathy, denial, and avoidant behaviour from health service providers as compared to non-Dalits, which is attributed to the flaws in the health delivery system.<sup>706</sup> Some of this is partly explained by the predominance of non-Dalit health workforce.<sup>707</sup>

Despite the Prohibition of Employment as Manual Scavengers (and their Rehabilitation) Act 2013, over eight per cent of Dalit women are forced to clean human excrement with their bare hands for little to no wages,<sup>708</sup> even in the public sector. Rehabilitation of manual scavengers, as promised by the Act,

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696 Health and Human Rights Journal, 'Living on the Edge: COVID-19 Adds to Distress and Discrimination of Indian Transgender Communities', 26 March 2020. Available at: <https://bit.ly/38mmztH>

697 Mirror Now, '10 beds reserved for transgender community in Kolkata to prevent harassment', 28 April 2020. Available at: <https://bit.ly/3eRNxe1>

698 Hindustan Times, 'COVID-19 Update: Dedicated quarantine centres for transgenders in Manipur', 21 May 2020. Available at: <https://bit.ly/3kdh4Qe>

699 Adivasi and Dalit are being interchangeably used with Scheduled Castes (SC) and Scheduled Tribe (ST)/tribal respectively.

700 International Dalit Solidarity Network (ISDN), 'The India Exclusion Report 2013–14: Centre for Equity Studies', which explores exclusion in four "public goods" – education, urban housing, decent work in labour markets and legal justice concerning anti-terror legislation. Available at: <https://bit.ly/2lnQExK>

701 For detailed discussion on the inequities in health in India and Dalit and Adivasi Populations, please refer to: Springer, 'Health Inequities in India – A synthesis of recent evidence', 2018, pp. 97-120. Available at: <https://bit.ly/3n9Laps>

702 The National Alliance of Women (NAWO) – India, Report to the CEDAW, 2014. Available at: <https://bit.ly/32tLL3>

703 BMC Public Health, 'Inequalities in the utilisation of maternal health Care in Rural India: Evidences from National Family Health Survey III & IV', 2020, 20:369. Available at: <https://bit.ly/2GGBZNN>

704 EPW, 'Caste, Religion and Health Outcomes in India, 2004-14', Vol.53 Issue 10, 10 March 2018. Available at: <https://bit.ly/2leDe7o>

705 NFHS-IV (2015-16). Available at: <https://bit.ly/38BTjiP>; see also, DailyO, 'Why your caste decides how healthy you are, and how long you live', 13 April 2018. Available at: <https://bit.ly/32rAD1k>; The Indian Express, 'On average, a Dalit woman dies 14 years younger than one from upper caste: UN report', 16 February 2018. Available at: <https://bit.ly/32rKJiJ>

706 EPW, 'Reconciliations of caste and medical power in rural public health services', Vol. 54 Issue 40, 5 October 2019. Available at: <https://bit.ly/36k3e9S>

707 Population Association of America, 'Household Social Capital and Health Care Utilization and Expenditures in India: Does Caste Make a Difference?', 2019. Available at: <https://bit.ly/2lnCsF1>.

708 ABC News, 'In India, manual scavenging is a deadly job. Could a Bandicoot and a Sewer Croc help?', 23 October 2019. Available at: <https://ab.co/3n08Rk6>

is still far from complete as of mid-2020.<sup>709</sup> The Indian Council of Medical Research (ICMR) has documented a range of adverse medical conditions associated with manual scavenging, including exposure to poisonous gases, infectious and respiratory diseases, and fatal musculo-skeletal conditions, especially as most manual scavengers work without protective gear or equipment.<sup>710</sup>

- *Health status of the Scheduled Tribes (STs) / Adivasis*

Geographical isolation, widespread poverty, illiteracy, malnutrition, absence of safe drinking water and sanitary living conditions, poor maternal and child health services, and ineffective coverage of national health and nutritional services are contributing factors to dismal health conditions of the tribal population in India.<sup>711</sup> Despite constitutional guarantees, earmarked budgets, and focused policy initiatives for over six decades, tribal communities face chronic and escalating immiseration as evidenced by Government reports such as NFHS-IV and the Report on Tribal Health of the MoHFW.<sup>712</sup>

About half of the states with Indigenous populations have 27-40 per cent fewer health sub-centres, PHCs, CHCs, and health personnel than are necessary.<sup>713</sup> Tribal communities continue to lag far behind the national average on several vital public health indicators, with women and children being the most vulnerable. Moreover, despite the high reliance of the tribal communities on the public health care system, the latter continues to be characterized by low output, quality, and outcome delivery system, often targeting wrong priorities.

Tribal and Indigenous persons carry a triple burden of diseases that includes communicable, non-communicable, and nutrition-related illnesses.<sup>714</sup> The NFHS-IV showed that mortality under the age of five years (U-5 Mortality) among the tribal population was 57.2 per 1000 live births, as compared to 38.5 among others, and the infant mortality rate (IMR) 44.4 per 1000 live births versus 32.1 among others.<sup>715</sup> Child malnutrition rates are also significantly higher.<sup>716</sup> A child born in a tribal family in India has 19 per cent higher risk of dying in the neonatal period and 45 per cent greater risk of dying in the post-neonatal period compared with other communities and groups.<sup>717</sup>

Tribal communities, which comprise about eight per cent of India's population, are nearly 70 per cent of those affected by *Plasmodium falciparum* and 47 per cent of the total malarial deaths in the

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709 The New Indian Express, 'Manual scavenging: No one rehabilitated in over 2 decades', 26 January 2020. Available at: <https://bit.ly/3li6aKk>

710 Workplace Occupational Safety Health (WorkOSH), 'Occupational Health Issues of Sewage and Sanitary Workers', April-June 2015. Available at: <https://bit.ly/32qp0rj>; see also, Asia Times, 'India's Dalit women lack access to healthcare and die young', 15 June 2018. Available at: <https://bit.ly/38oYgew>

711 MoHFW – Govt of India, 'Tribal Health Report: First Comprehensive report on tribal health in India', 2018. Available at: <http://tribalhealthreport.in/>; (2000). Health Population Perspectives, 'Dimensions of Tribal Health in India', 2000, Issues 23(2), pp. 61-70. Available at: <http://medind.nic.in/hab/t00/i2/habt00i2p61.pdf>

712 Ibid.

713 Ibid.

714 SAMA Resource Group for Women and Health, 'From the margins to the centre: A study on the health inequities among the tribal communities in selected districts of Chhattisgarh, Jharkhand and Odisha', 2018. Available at: <https://bit.ly/3ka8Rfz>

715 NFHS-IV (2015-16). Available at: <https://bit.ly/38BTjiP>; MoHFW and Ministry of Tribal Affairs, 'Report of the expert committee on tribal health, tribal health in India: Bridging the gap and roadmap for the future-Policy brief – 2018'. Available from: <https://bit.ly/36dWESa>

716 Ministry of Tribal Affairs, 'Report of the high level committee on socio-economic, health and educational status of tribal communities of India'. Available at: <https://bit.ly/2UcmXSY>

717 Lancet, 'Indigenous and tribal peoples' health (The Lancet-Lowitja institute global collaboration): A population study', 10 December 2016, 388 : 131-157. Available at: <https://bit.ly/2GHnrgW>

country.<sup>718</sup> The prevalence of tuberculosis (TB) among tribal populations (at 703 per 1,00,000) is significantly higher than the national average (at 256 per 1,00,000).<sup>719</sup> Unique conditions such as haemoglobinopathies and thalassaemia also pose important health challenges.<sup>720</sup>

Almost 50 per cent adolescent tribal girls are underweight or have a BMI of less than 18.5 and tribal women are twice as likely to be moderately/severely thin as compared to women from upper castes (18% versus 10%).<sup>721</sup> They are especially disadvantaged in terms of the determinants of maternal mortality<sup>722</sup> such as anaemia, nutritional status, and distance from a functioning hospital.

The Particularly Vulnerable Tribal Groups (PVTG) have the worst set of health and nutrition parameters. Restrictions in family planning services currently apply for some groups hindering their reproductive rights,<sup>723</sup> while others are in dire need of infertility care and/or safe abortion services. Diseases such as rheumatic heart disease, leprosy, and deaths due to snake and rabid animal bites remain disproportionately higher among them.<sup>724</sup>

- *COVID-19 response*

The COVID-19 pandemic has added another complex dimension to the lives of Dalits and Adivasis with chronic illnesses. Those who only have access poor health systems are at a clear disadvantage in terms of recovery, if they contract the virus. Such groups need to be protected by reverse isolation so that they do not get exposed to the infection, as has been tried in Kerala<sup>725</sup> and in Ahmedabad<sup>726</sup> city in Gujarat, though its effectiveness has not yet reported.

The ICMR approved 122 government and 47 private testing centres, as of 28 March 2020.<sup>727</sup> Only a few of these are located in tribal regions. Shortage of proper testing facilities, high waiting time at health centres, and poor or restricted road connectivity and terrain, are likely to delay the test results even further.<sup>728</sup> The sanitation workers, who are disproportionately Dalits, have been working in and outside hospitals without adequate protective gear have also been affected. This is in spite of the

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718 Indian Journal of Medical Research (IJMR), 'Malaria situation in India with special reference to tribal areas', 2015, Vol. 141 Issue 5, pp. 537-545. Available at: <https://bit.ly/32rFcJ0>; see also, IJMR, 'Neglected *Plasmodium vivax* malaria in north-eastern states of India', 2015, Vol. 141 Issue 5, pp. 546-55. Available at: <https://bit.ly/35a6MvO>

719 IJMR, 'Pulmonary tuberculosis among tribals in India: A systematic review & meta-analysis', 2015, Vol. 141 Issue 5, pp. 614-623. Available at: <https://bit.ly/3lpDj6l>

720 IJMR, 'Haemoglobinopathies in tribal populations of India', 2015, Vol. 141 Issue 5, pp. 505-508. Available at: <https://bit.ly/3kaIOVt>

721 Indian Journal of Community Medicine, 'Nutritional status of adolescent girls in tribal blocks of Maharashtra', 2019; 44(3), pp. 281-284. Available at: <https://bit.ly/2UcpbSk>

722 National Alliance for Maternal Health and Human Rights (NAMHHR), Coalition for Maternal-Neonatal Health and Safe Abortion and *Jan Swasthya Abhiyaan* (People's Health Movement – India), 'Joint stakeholder report to the UNHRC for India's UPR-III', 22 September 2016. Available at: <https://bit.ly/3kcpKqa>

723 Reproductive Health Matters, 'Denying access of Particularly Vulnerable Tribal Groups to contraceptive services: a case study among the Baiga community in Chhattisgarh, India', 2018, 26:54, pp. 84-97. Available at: <https://bit.ly/38vZAMV>.

724 IJMR, 'Burden & pattern of illnesses among the tribal communities in central India: A report from a community health programme', 2015, Vol. 141 Issue 5, pp.663-672. Available at: <https://bit.ly/38rSbOG>

725 The New Indian Express, 'Kerala opts for reverse quarantine to flatten COVID-19 curve', 14 April 2020. Available at: <https://bit.ly/3lfkUJN>

726 The Indian Express, 'Rural. Ahmedabad: 'Reverse quarantine' for pregnant women and the elderly, says govt', 3 June 2020. Available at: <https://bit.ly/32ogxEP>

727 Science The Wire, 'Indigenous communities are at high risk of getting COVID-19', 26 April 2020. Available at: <https://bit.ly/38qlq4k>

728 Ibid.

Central Government Guidelines on disinfection of common public places including offices and Guidelines on rational use of Personal Protective Equipment (PPE).<sup>729</sup>

## **Conclusion**

There is an urgent need to revisit the budgetary commitment to the public health system in the country as realizing the right to health is necessary for the enjoyment and exercise of other human rights. It is necessary to revisit the system and structure of health care strategy and policy-making. An important reform would be to equip community-based health care systems to support and complement the public health care system in the long run. This would be key in dealing with unprecedented health care crises, such as the COVID-19. It is key to focus on ensuring supply and provision of safety kits for sanitation workers. There is also a need to create greater awareness in local languages about testing labs, free testing, and treatment of COVID-19 to prevent private practitioners from exploiting and deceiving the poorest sections by charging money.<sup>730</sup> The health policy should also look at the specific vulnerabilities and needs of the marginalized groups for meaningful and equitable access and use of the health care system.

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729 MoHFW – Govt of India, ‘Novel Coronavirus Disease 2019 (COVID-19): Guidelines on rational use of Personal Protective Equipment’. Available at: <https://bit.ly/35cG1H9>

730 The Hindu, ‘Protecting the poor from getting poorer’, 27 April 2020. Available at: <https://bit.ly/358NE1o>



## CHAPTER 6

### THE RIGHT TO FOOD

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.153	Continue strengthening efforts aimed at promoting food security and eradicate all forms of malnutrition, particularly among children under five.	Libya	Supported	Partially Implemented
161.154	Continue its programmes for the promotion of socio-economic development, with a particular focus on the country's rights-based approach to food security targeting the most vulnerable groups.	Sri Lanka	Supported	Partially Implemented
161.168	Continue its fight against poverty, lack of adequate food, safe water and sanitation, while paying special attention to the need to introduce a child rights-based approach in all policies.	Bulgaria	Supported	Partially Implemented

The prevalence of malnutrition — encompassing both undernutrition and over-nutrition — is an important indicator of a country's health. Those who are malnourished often cannot participate and perform productively in different aspects of social life. Malnutrition has been a grave problem affecting the lives of millions of people, especially children, in India.

Some places such as Malkangiri in Odisha, and Nandurbar, Palghar, and Melghat in Maharashtra have reported a high number of child deaths, primarily due to malnutrition.<sup>731</sup> Recently, the epidemic of Acute Encephalitis Syndrome (AES) in Bihar in the summer of 2019 claimed lives of more than 150 children; the medical community attributed their deaths to malnutrition. Severe Acute Malnutrition (SAM) is the most extreme and visible form of undernutrition, which often leads to abdominal swelling, spindly legs, and affects the immunity of children making them more susceptible to infection, disease, and death. It is understood that the prevalence of SAM increases with factors such as chronic poverty, lack of education among mothers, inadequate and low-nutrient diet, and lack of clean drinking water and sanitation.

In the Global Hunger Index (GHI) released in 2019, India ranked 102nd out of 117 countries, which reflected data from 2014–18. In the Index published in 2020, it ranked 94th out of 107 countries,

<sup>731</sup> The Times of India, 'Too many children are still in the grip of severe acute malnutrition: Why existing interventions have failed them', 15 October 2019. Available at: <https://bit.ly/2JITRc0>

behind other countries in the region such as Bangladesh, Pakistan, and Nepal.<sup>732</sup> The GHI is based on the following parameters: proportion of a country's child population that is undernourished; the share of children under five years of age who have insufficient weight for their height or whose height is not commensurate to their age; and the under-five mortality rate. The GHI Report 2019 stated: "Because of its large population, India's Global Hunger Index indicator values have an outsized impact on the indicator values for the region. India's child wasting rate is extremely high at 20.8 per cent - the highest wasting rate of any country in this report."<sup>733</sup> Similarly, the GHI also revealed that 9.6 per cent of children between six and 23 months in India were fed a minimum acceptable diet, while a recent survey by the Ministry of Health and Family Welfare (MoHFW) had in fact put that figure even lower, at 6.4 per cent.<sup>734</sup> Another report found that six of the 10 districts with the highest rates of stunted growth are in the state of Uttar Pradesh.<sup>735</sup>

Through the Integrated Child Development Services (ICDS), the Government of India aimed at providing energy-dense blended food as take-home ration (THR) to children between six and 36 months.<sup>736</sup> "While this food does have the stipulated amount of calories, a large chunk of it comes from high sugar, which is not very healthy and does not help the cause of tackling malnutrition in the country," said Shariqua Yunus Khan, nutrition head at the UN-World Food Programme.<sup>737</sup>

UNICEF supported the development of maternal nutrition-specific interventions and guidelines related to balanced energy protein supplementation (THR) and micronutrient interventions (iron-folic acid, calcium, and deworming) for pregnant/breastfeeding mothers, which were included in the ICDS and National Health Mission plans.<sup>738</sup> In 2019, India amended the Maternity Benefits Act 1961 and increased the mandated paid leave for mothers to 26 weeks from the initial 12 weeks.<sup>739</sup>

### **Status of Implementation: Schemes to Eradicate Malnutrition and Ensure Food Security**

A number of promising schemes have been implemented by the government to eradicate malnutrition and ensure food security. The National Nutrition Mission (NNM) aims at reducing stunting, under-nutrition, and anaemia among young children, women, and adolescent girls, in addition to reducing low birth weight. More than 100 million people are expected to benefit from NNM, which is backed by the National Nutrition Strategy prepared by the NITI Aayog with the goal of attaining *Kuposhan Mukh Bharat* or Malnutrition Free India by 2022. The policy looks at mapping various schemes that address malnutrition and setting up a robust convergence mechanism, along with an information and communications technology-based, real-time bound monitoring system which would incentivize

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732 Global Hunger Index (GHI) 2020, India's GHI Score: 27.2 (Category: Serious). Available at: <https://bit.ly/359oLCF>

733 Global Hunger Index 2019: India. Available at: <https://bit.ly/2Ja8R2s>; see also, Outlook, 'India ranks 102 on Global Hunger Index, behind Pakistan, Bangladesh', 16 October 2019. Available at: <https://bit.ly/3kcerhu>

734 The Times of India, India falls to 102 in hunger index, 8 ranks below Pakistan', 16 October 2019. Available at: <https://bit.ly/3eJMRrO>

735 The Times of India, 'Malnutrition rates in India not going down fast enough...we must move for a healthier India', 21 November 2019. Available at: <https://bit.ly/2GIwRZH>

736 The India Nutrition Initiative (TINI), 'Take-Home Rations: A Compendium', p.7. Available at: <https://bit.ly/2JRrV5W>

737 The New Indian Express, 'Experts flag need for upgrading food under ICDS', 17 October 2019. Available at: <https://bit.ly/36ipCQL>

738 United Nations Children's Fund (UNICEF), Annual Report 2017: India'. Available at: <https://uni.cf/38rX9uO>

739 The Wire, 'How maternity benefits can be extended to informal women workers', 6 February 2019. Available at: <https://bit.ly/36jokVJ>

states and union territories to meet their targets. However, the scheme has not fully utilized allocated funds (only 22% of allocated resources for 2018–19 were spent).<sup>740</sup>

### *National Food Security Act*

The enactment of the National Food Security Act (NFSA) 2013<sup>741</sup> marks a paradigm shift in the approach to food security from a welfare to a rights-based approach. The law was enacted with the objective “to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity”. The Act entitles up to 75 per cent of the rural population and 50 per cent of the urban population (about two-thirds of the total population) to receive subsidized food grains under a Targeted Public Distribution System (TPDS)<sup>742</sup> in which items such as wheat, rice, kerosene, and others, are offered through a network of fair price shops. The NFSA 2013 is being implemented across states and union territories of India. For the year 2020–21, the amount allocated for food subsidy is Rs. 1,155.70 billion.<sup>743</sup> Of the maximum envisaged coverage of 813.5 million people, about 800 million people have been covered under NFSA, for receiving highly subsidized food grains.<sup>744</sup> The Central Government is responsible for the allocation and transportation of required food grains and for assisting states and union territories for delivery of food grains. They are primarily responsible for the effective implementation of the Act, including the necessary strengthening of TPDS.

While *Antyodaya Anna Yojana* households, which constitute the poorest of the poor, are entitled to 35 kilogrammes of food grains per family per month, priority households are entitled to 5 kilogrammes per person per month.<sup>745</sup> The NFSA 2013 provides for reforms in TPDS, including schemes such as cash transfers for provisioning of food entitlements. In order to enable provisions under Section 12 of NFSA for cash transfers, the government notified the Cash Transfer of Food Subsidy Rules 2015.<sup>746</sup> Direct Cash Transfer in food was started in the union territories of Chandigarh and Puducherry since September 2015, and a part of the union territory of Dadra and Nagar Haveli since March 2016.<sup>747</sup> The NFSA is implemented in a manner where the cash equivalent of the subsidy is transferred into the bank accounts of eligible households enabling them to purchase food grains from the open market.

### *Kuposhan Mukh Bharat (Malnutrition Free India)*

The budget proposed for nutrition-related programmes for the year 2020–21 is Rs. 37 billion.<sup>748</sup> *POSHAN Abhiyaan* (Prime Minister’s Overarching Scheme for Holistic Nourishment) was launched in

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740 The Hindu Business Line, ‘Most states laggards in using funds released under nutrition mission’, 2 July 2019. Available at: <https://bit.ly/38s2NNs>

741 The National Food Security Act (NFSA) 2013. Available at: <https://bit.ly/2U8zJIF>

742 Ibid.

743 Business Standard, ‘Budget 2020: Govt’s subsidy bill pegged higher at Rs.2.27 trn for FY21’, 1 February 2020. Available at: <https://bit.ly/2lctn2q>

744 Ministry of Consumer Affairs, Food and Public Distribution – Govt of India, Percentage coverage under the NFSA. Available at: <https://dfpd.gov.in/nfsa-act.htm>

745 Press Information Bureau, ‘Ministry of Consumer Affairs, Food and Public Distribution: Digitisation of APL and BPL Cards’, 19 July 2019. Available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1579501>

746 Press Information Bureau, ‘Ministry of Consumer Affairs, Food and Public Distribution: Implementation of DBT Scheme’, 7 February 2020. Available at: <https://bit.ly/38tHGtY>

747 Ministry of Consumer Affairs, Food and Public Distribution – Govt of India, Direct Benefit Transfer (DBT). Available at: <https://dfpd.gov.in/pds-dbt.htm>

748 Outlook, ‘Budget 2020: Govt allocating Rs. 35,600 crore for nutrition-related programmes a welcome move’, 1 February 2020. Available at: <https://bit.ly/35e1HCE>

March 2018 with an overall budget of Rs. 94.6 billion to fight against *kuposhan* (malnutrition) with the following objectives:

- Ensuring three per cent yearly reduction of underweight prevalence in children till three years of age, by 2022.<sup>749</sup>
- Promoting healthcare and nutrition by providing bi-Annual Vitamin-A supplements to children from nine months to five years.
- Bringing down the stunting of children in the age group of zero to six years from 38.4 per cent to 25 per cent by 2022, which has also been a key focus of the Ministry of Women and Child Development.
- Improving the nutritional status of adolescent girls, pregnant women, and lactating mothers.

India faces persistently high levels of maternal and child undernutrition and anaemia, characterized by an intergenerational cycle, and compounded by multiple deprivations caused due to poverty, social exclusion, and deeply-entrenched gender discrimination. According to National Family Health Survey (NFHS)-IV (2015–16), about 35.7 per cent of children under the age of five years were underweight and 38.4 per cent were stunted, indicating a reduction from the previous data captured in NFHS-III (2005–06), which reported 42.5 per cent children under five as underweight and 48 per cent as stunted, indicating an improvement in the nutritional indicators of children (0–59 months).<sup>750</sup>

#### *Pradhan Mantri Matru Vandana Yojana*<sup>751</sup>

The budget allocated to *Pradhan Mantri Matru Vandana Yojana* (PMMVY), a national maternity benefit scheme, has been increased from Rs. 23 billion to Rs. 25 billion for the year 2020–21.<sup>752</sup> Under the programme, Rs. 6,000 is given to pregnant women and lactating mothers for the birth of the first living child. The ICDS scheme, previously referenced, is an effective umbrella programme for early childhood care and development, and benefits children up to six years, pregnant women, and lactating mothers. It offers: supplementary nutrition; pre-school, non-formal education; nutrition and health education; immunization; health check-ups; and referral services. Its objective is to break the vicious cycle of malnutrition, morbidity, reduced capacity, and mortality. The allocation for child protection services under ICDS has been increased from Rs. 13.50 billion to Rs. 15 billion,<sup>753</sup> under which 70.37 million children from six months to six years, and 17.18 million pregnant women and lactating mothers were provided nutritious food, as of 31 March 2019.

The financial allocation for the National Crèche Scheme, which aims at enabling working women to safely leave their children in a crèche while they are at work, has been increased from Rs. 500 million to Rs. 750 million. THR and hot cooked meal-supplementary food are provided to lactating mothers and children between six and 35 months.

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749 NITI Aayog, POSHAN Abhiyaan. Available at: <https://niti.gov.in/poshan-abhiyaan>

750 Ministry of Women and Child Development – Government of India, ‘Annual Report 2019–20’, p.43 Available at: <https://bit.ly/2lkxqJo>

751 *Pradhan Mantri Matru Vandana Yojana* is a maternity benefit programme run by the Government of India and implemented by the Ministry of Women and Child Development.

752 Outlook, ‘Women and child development ministry’s budget hiked by 14 per cent’, 1 February 2020. Available at: <https://bit.ly/2lnHFwU>

753 Ibid.

### *Anaemia Mukta Bharat Programme (Anaemia Free India Programme)*

The *Anaemia Mukta Bharat* Programme to fight the prevalence of anaemia has been recognized as one of the best programmes to address malnutrition, implemented by governments across the world. The 6X6X6 strategy (six target beneficiary groups, six interventions, and six institutional mechanisms) of the programme has been highlighted for using anaemia testing and treatment as the entry point to provide information on healthy diets. The Mid-Day Meal Scheme, run by the Ministry of Human Resource Development (MHRD), is considered as the world's largest school meal programme serving hot and freshly cooked meals to emaciated children. In 2018–19, the scheme reached out to 91.7 million children studying in approximately 1.13 million schools across the country. However, the budget allocated for the Mid-Day Meal Scheme for the year 2019–20 was Rs. 110 billion, which remains the same for the year 2020–21.<sup>754</sup>

The SDG Index Score for Goal 2 ranges between 22 and 76 for states, and between 12 and 73 for union territories. Goa and Chandigarh are the top performers among states and union territories, respectively. Seven states and two union territories bagged a position in the “Front Runners” category (with Index score higher than/equal to 65). However, 20 states and three union territories have lagged behind in the “Aspirants” category (with Index score less than 50).<sup>755</sup>

These schemes and programmes indicate positive steps taken by the Government. However, they also need to be viewed from the perspective of their impact and reach, both of which have been limited. They have not yet been implemented with full ‘CCIQ’ or ‘Coverage, Continuity, Intensity, and Quality’. Despite favourable case law from the Supreme Court, along with an intensive court-run programme designed to mandate states to distribute food according to the welfare schemes in place, legitimizing and guaranteeing the right to food as a legal entitlement through NFSA, there are bothering gaps between these commitments on paper and their implementation in practice. A significant portion of the population still remains excluded from the benefits under these programmes due to errors in the methodology used to categorize people above and below the ‘poverty line.’ There is a general lack of emphasis on access to safe drinking water, sanitation, health care, and education, which are all complementary conditions for nutritional absorption, along with inadequacy of budgetary allocations for these various schemes.

### **Recommended Steps to Implement the Right to Food in India**

Legal action is strongly recommended as an effective tool, particularly when coupled with a strategic objective to promote the right to food and when linked to public advocacy campaigns. While there are several schemes promoting food security, a mechanism is needed to coordinate them to ensure coherence in policy-making and implementation. Some states are yet to introduce the Mid-Day Meal Scheme, while in states such as Bihar and Orissa — where the poverty ratio is very high — poor implementation of nutritional programmes has had a significant impact on food security.<sup>756</sup>

Revamping the existing direct nutrition programmes to enable the involvement and management by women's self-help groups (SHGs) and/or local bodies is required, along with orientation and training

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754 NDTV, ‘Budget 2020: Budget allocation shows an increase for nutritional schemes but a steep drop in food subsidy’, 4 February 2020. Available at: <https://bit.ly/2Jl7oAy>

755 Niti Aayog, ‘SDG India: Index and Dashboard 2019-20’, p. 36. Available at: <https://bit.ly/38rK4kP>

756 Iranian Journal of Public Health, ‘Challenges in achieving Food Security’, 31 December 2011, 40(3), pp. 31-36. Available at: <https://bit.ly/3p9h4V3>

of community health workers, *Panchayati Raj* Institution (PRI) members, opinion leaders, caregivers, and other stakeholders which, if addressed, could yield positive results. Community-based nutrition programmes (CBNP), creating a scope for community participation, must be facilitated by effective policy implementation. The state of Uttar Pradesh is making efforts to tackle malnutrition in this manner, for example in Banda District.<sup>757</sup> India has put in place policies to address malnutrition by providing food to several children through *Anganwadi* centres.<sup>758</sup> With the Skill India and Make In India Initiatives, it should not be a challenge to locally manufacture food for children suffering from SAM, ensuring a protocol of global standards with sufficient human and material resources.

However, it is important to take steps towards better realization of the right to food and to fight malnutrition effectively. These include: universalizing ICDS; forming specific guidelines under ICDS related to balanced energy-protein supplementation and micronutrient interventions to address malnutrition; ensuring that NFSA is inclusive and its benefits extend to poor migrant labourers, who may not have the documents to support their claim under TPDS; and, providing culturally-appropriate food to individuals and communities, depending on their own region.

### **Status of Implementation of Schemes to Eradicate Rural Poverty**

The National Rural Livelihoods Mission (NRLM) (now renamed as the *Deen Dayal Antyodaya Yojana*) is another scheme, created with the objective of reducing poverty through the promotion of diversified and gainful self-employment and skilled wage employment opportunities. The funds allocated to NRLM comprise 7.7 per cent of the finances of the rural development department of the Ministry.<sup>759</sup> It envisages universal coverage of all 80–90 million rural poor households to be organized into 7–7.5 million SHGs and their federations at the village and cluster levels by the year 2024–25.<sup>760</sup> The *Pradhan Mantri Jan Dhan Yojana* was launched on 28 August 2014 to provide access to financial services to all —in urban and rural areas — in an affordable manner.<sup>761</sup> The Prime Minister *Ujjwala Yojana* 2016, which aims at distributing gas connections to women belonging to BPL families, has covered over 715 districts, releasing connections to around 80 million people in September 2019.<sup>762</sup>

### **Conclusion**

India has repeatedly expressed its commitment to reduce and eventually eliminate poverty at the highest level. However, the progress has not been satisfactory. Though the proportion of the population living in poverty has declined over time, it is important to acknowledge that the poverty lines were set low and the decline was not as rapid as expected. If poverty lines are considered at a more realistic — instead of subsistence — level, many more citizens will be categorized as ‘poor,’ with a significant proportion of those just above the poverty line being more vulnerable to poverty. Several schemes have been implemented for poverty alleviation through generating work and providing healthcare, education, nutrition, and support to the vulnerable groups. Despite this, a sizable population still lives in poverty for several reasons. There is no systematic attempt to identify people

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757 Outlook, ‘Community-led initiatives helping Banda improve nutrition status’, 20 February 2020. Available at: <https://bit.ly/35asuQw>

758 *Anganwadi* centres are government-run crèches/ children’s day-care centres.

759 Ibid.

760 Highlights of Union Budget 2020-21. Available at: <http://bit.ly/35c81dU>

761 Ibid.

762 Ibid.



who live in poverty and determine their needs, address them, and enable them to move above the poverty line. Similarly, the poverty alleviation programmes have failed to be effective in most parts of the country on account of lack of proper implementation and right targeting.

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## CHAPTER 7

### THE RIGHT TO WATER AND SANITATION

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.170	Continue to increase access to safe and sustainable drinking water in rural areas and to improve sanitation coverage, especially for women and girls.	Singapore	Supported	Partially Implemented <sup>763</sup>
161.168	Continue its fight against poverty, lack of adequate food, safe water and sanitation, while paying special attention to the need to introduce a child-rights based approach in all policies.	Bulgaria	Supported	Partially Implemented <sup>764</sup>

The Government of India had committed itself to improving access to safe and sustainable drinking water and sanitation in rural India, primarily through the effective implementation of the National Rural Clean Water Mission, the *Swachh Bharat Mission* (SBM – Clean India Mission) and *Namami Gange* (Clean Ganga River) programme. Similarly, the *Swajal Yojana* aims to provide adequate safe water for drinking, cooking, and other domestic basic needs. The Union Minister for Drinking Water and Sanitation announced that the scheme, in 115 aspirational districts of the country, will involve an outlay of Rs. 7 billion through ‘flexi-funds’ under the existing National Rural Drinking Water Programme (NRDWP) budget.<sup>765</sup> It also aims to provide villages with piped water supply, powered by solar energy, and modernize 2,000 water quality testing laboratories across the country. It was proposed that (Rs. 10 billion will be earmarked for addressing the drinking water needs of 27,544 arsenic and fluoride-affected habitations of the country in 2020, under the National Water Quality Sub-Mission (NWQSM)).<sup>766</sup>

These programmes committed to certain outcomes on performance measures, proposed as indicative of rural India’s access to clean water and sanitation. A review of these programmes on their defined performance indicators, thus, would provide a good basis to assess the progress made towards realizing the goals of access to safe and clean water and sanitation in rural India.

<sup>763</sup> While there has been progress on the plans and schemes implemented to improve access to safe drinking water and sanitation, especially in rural areas, there was a gap in the actual performance (extent and impact) and the objectives sought to be achieved and the commitments made by the Government in this regard, as explained in the narrative analysis of the theme.

<sup>764</sup> Ibid.

<sup>765</sup> Press Information Bureau, ‘Ministry of Drinking Water and Sanitation: Swajal Launched in 115 Aspirational Districts of India; Centre to spend Rs. 1,000 crores to provide clean drinking water to 27,500 quality-affected habitations’, 14 June 2018. Available at: <https://bit.ly/2ikZiNy>

<sup>766</sup> Press Information Bureau, ‘Ministry of Jal Shakti: Jal Jeevan Mission: A reservoir of clean water and employment opportunities’, 5 August 2020. Available at: <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1643529>

The Department of Drinking Water and Sanitation is responsible for the monitoring and implementation of the National Rural Clean Water Mission (NRCWM) and the *Swachh Bharat Mission – Gramin* (Rural) (SBM-G). The Department has been allocated Rs. 215.18 billion, accounting for 71 per cent of the Ministry's allocation, which was a 17 per cent increase over the revised budget estimates of 2019–20.<sup>767</sup> Over the last 10 years, the expenditure by the Department increased at an annual growth rate of nine per cent. From 2011–12 (since the Department's creation) to 2014–15, the Department's expenditure was focused mainly on drinking water. From 2015–19, this focus shifted to rural sanitation. Since 2019–20, the allocation for both schemes has been approximately the same.

### **National Rural Clean Water Programme (NRCWP) (also known as *Jal Jeevan Mission*)**

The Government of India launched the National Rural Drinking Water Programme (NRDWP) in April 2009, by modifying the Accelerated Rural Water Supply Programme (ARWSP) and subsuming the earlier sub-missions/schemes. One of the goals of the programme is to put in place a strategic roadmap that will provide piped water supply to 90 per cent of rural households by 2022. For the period of 2012–17, the programme—in furtherance of this plan—put forth certain objectives to improve access to safe drinking water in rural India. The objectives that were stated as key deliverables under the programme were expected to be achieved by 2017. They included:

- All rural habitations, government schools, and *anganwadis* (government run crèches/ children's day-care centres) to have access to safe drinking water;
- 50 per cent of the rural population to be provided potable drinking water (55 litres per capita per day [lpcd]) through piped water supply; and,
- 35 per cent of rural households to be provided household tap connections.

A funding budget of Rs. 899.56 billion was earmarked for the plan, of which 48 per cent was to be contributed by the Central Government and the remaining 52 per cent was supposed to be pooled in by various state governments. The Comptroller and Auditor General (CAG) of India audited the NRCWP based on these objectives for the period of 2012–17 and concluded that, as against these stated objectives, the coverage of rural habitations increased only by eight per cent at 40 lpcd and 5.5 per cent at 55 lpcd during 2012–17, despite the expenditure of Rs. 811.68 billion amounting to 90 per cent of the total budgetary allocation. Only 44 per cent of rural households and 85 per cent of government schools and *anganwadis* were provided access to safe drinking water. Similarly, only 18.33 per cent of the rural population was provided potable drinking water (55 lpcd) by piped water supply and only 17 per cent of rural households received household tap connections.<sup>768</sup>

The CAG Report concluded that the substantial gap between actual performance and the plan on paper was primarily due to the fact that the Annual Action Plans of states lacked a bottom-up approach.<sup>769</sup> The mechanism to execute the project work and contract management was weak. This has not only lead to incomplete, abandoned, or non-operational outcomes, but has also resulted in unproductive expenditure with a financial implication of approximately Rs. 22.13 billion and underutilized funds to the tune of 10 per cent of the planned allocation. The report also pointed out

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767 Demand for Grant Analysis 2020–21 – Rural Development. Available at: <https://bit.ly/2U5XKK4>; see also, Demand for Grant Analysis 2020–21 – Rural Development. Available at: <https://bit.ly/2U5XKK4>

768 Office of the Comptroller and Auditor General (CAG) of India, 'Press release: CAG's performance audit report no. 15 of 2018 on the National Rural Drinking Water Programme', 7 August 2018. Available at: <https://bit.ly/2lgKHTA>.

For full audit report, please see: <https://cag.gov.in/en/audit-report/details/46268>

769 Ibid.

the lack of a monetary and oversight framework to supervise the effectiveness and execution of the plan and its lack of involvement with the impacted communities.<sup>770</sup> The Central Government had committed to support the continuation of the NRCWP till 2020 and the current progress on its implementation will only be made available by 2021. However, in the last two years, there is limited evidence to suggest any significant alteration in the implementation approach that could change the ability of the programme to cover the gaps between stated goals and actual performance.

Moreover, experts have also opined that mere 'access to clean water' through various means is qualitatively different from 'availability of water.' The metrics that have been devised to measure access to clean water in rural areas are "obscure". The "dry pipe problem" is a reference to the non-availability of water despite the existence of an asset. Especially due to seasonality, many villages still depend on water supply through tankers, says Veena Srinivasan, a Fellow at the Ashoka Trust for Research in Ecology and Environment.<sup>771</sup> She adds that India needs to look beyond the quantity of water supply to its quality and reliability as well. This view has been seconded by Karthik Seshan, Manager of the WATSAN Programme Arghyam, who says that unless the approach is inclusive of the parameters of quality, quantity, access, and reliability, as measures for water security, the programmes will only result in creating assets.

The Estimates Committee, in its report on 'Evaluation of Rural Drinking Water Programmes' (2015), had noted that NRDWP was over-dependent on groundwater, including that which is affected by arsenic and other contaminants in several districts of the country. As of January 2019, 3.6 per cent (61,551) of the total habitations (1,724,423) were affected by groundwater contamination. The NWQSM was launched in March 2017 to provide safe drinking water to 27,544 arsenic and fluoride-affected rural habitations in the country, over a span of four years. The Standing Committee on Drinking Water and Sanitation (2019–20) observed that out of these affected habitations, 11,884 (43%) have been covered under the scheme and 4,100 (15%) have been found to have improved their quality on retesting or covered under state schemes.<sup>772</sup>

In 2019, the Central Government restructured and subsumed NRDWP into the *Jal Jeevan Mission* (JJM).<sup>773</sup> In the Financial Year 2020–21, it has been allocated Rs. 115 billion, which is an increase of 15 per cent from the revised budget estimates of 2019–20; in 2019–20, the scheme was allocated Rs. 100 billion which remained the same in the revised estimate stage. Under JJM, the following objectives were outlined to be achieved by 2024:<sup>774</sup>

- In-village water supply infrastructure for tap water connection to the every household;
- Reliable drinking water source development/augmentation of existing sources;
- Transfer of water (where there are quantity and quality issues in the local water sources);
- Technological intervention for treatment to make water potable (where water quality is an issue, but quantity is sufficient);
- Retrofitting of completed and ongoing piped water supply schemes to provide functional household tap connection and raise the service level;

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770 Ibid.

771 IndiaSpend, 'National Rural Drinking Water Programme 'Failed' To Achieve Targets: Government Auditor. Here's Why', 26 November 2018. Available at: <https://bit.ly/2lotbwo>

772 Standing Committee on Water Resources, Demand for Grants (2019-20), 'ODF villages across India, Swachh Bharat Mission', p. 23. Available at: <https://bit.ly/3eEYwHk>

773 Jal Jeevan Mission. Available at: [https://jalshakti-ddws.gov.in/sites/default/files/JJM\\_note.pdf](https://jalshakti-ddws.gov.in/sites/default/files/JJM_note.pdf)

774 Ibid.

- Grey water management;
- Capacity building of stakeholders and support activities to facilitate the implementation.

### **Swachh Bharat Mission (SBM)**<sup>775</sup>

The Government of India launched the *Swachh Bharat Abhiyaan* or *Swachh Bharat Mission (SBM)* in 2014 with the aim of achieving universal sanitation coverage, improving cleanliness and hygiene, and eliminating open defecation in the country. The programme was announced to run from 2014–19, and has continued since, with the aim of eradicating open defecation and building closed toilets for households in both rural and urban India. In 2020–21, the SBM has been allocated Rs. 99.94 billion, which is an increase of 20 per cent from the revised estimate of 2019–20.<sup>776</sup> It is committed to make progress on the following key measures that concerned sanitation goals in rural India:

- Number of new toilets built in houses under the Individual Households Latrine Scheme (IHHL).
- Number of Districts/Villages/Panchayats that declared themselves ‘Open Defecation Free’ (ODF).

Since 2017, the progress of SBM<sup>777</sup> on both these measures has been promising. According to the Census of India 2011, there are a total of 187 million households in the country.<sup>778</sup> Since the functioning of the SBM-G in 2014 until May 2017, a cumulative total of 40.3 million new toilets were built in rural households. The total number of toilets built has increased to 102.9 million as of September 2020.<sup>779</sup> There has been a reported 61.25 per cent increase in the number of households with a toilet under the Mission, which is reported to have 100 per cent overall coverage in rural households. This progress was primarily achieved through the IHHL scheme that promised free construction of toilets for individual households.

Enabled by the progress of the IHHL scheme, villages across the country underwent a self-assessment and review, and began to declare themselves ODF. In 2016, 46,963 villages (7.2 per cent of the total villages in India) had declared themselves ODF. This number has increased to 603,177 villages (nearly 94 per cent of total villages in India) in September 2020. The National Annual Rural Sanitation Survey (NARSS) 2018–19 undertaken by an independent verification agency, under the World Bank, has confirmed these claims.<sup>780</sup> The agency, during its survey between November 2018 and February 2019, found that 93.1 per cent of rural households had toilets and 96.5 per cent of the population was using these toilets.<sup>781</sup> According to the Management Information System of SBM-G, a total of 6,03,177 villages across 706 districts and 35 states and union territories have been declared ODF, as of November 2020.<sup>782</sup>

Given the low base (lack of toilets and the awareness towards ODF as a starting point in 2014), the focus of SBM-G towards building toilets and assessing ODF has certainly and positively altered the

775 Swachh Bharat Mission – *Gramin*, Dashboard. Available at: <https://sbm.gov.in/sbmdashboard/>

776 The Wire, ‘Budget 2020 sets India on the path to meet SDG targets for water and sanitation’, 27 February 2020. Available at: <https://bit.ly/32t7EKf>

777 Down To Earth, ‘Swachh Bharat Mission: Let the toilet revolution live long’, 30 September 2019. Available at: <https://bit.ly/2lgOT5N>

778 Census of India 2011, Housing. Available at [https://censusindia.gov.in/census\\_and\\_you/housing.aspx](https://censusindia.gov.in/census_and_you/housing.aspx).

779 Ministry of Jal Shakti – Govt of India, ‘Swachh Bharat Mission – *Gramin* (All India). Available at: <https://bit.ly/3lrIEMl>

780 Ministry of Jal Shakti – Govt of India, ‘National Annual Rural Sanitation Survey (NARSS) Round-2 (2018-19). Available at: <https://bit.ly/35f4kEB>

781 Ibid.

782 Swachh Bharat Mission – *Gramin*, ‘Dashboard: ODF villages across India’. Available at: <https://bit.ly/3eI9U5o> <accessed on 15 November 2020>

perception of Indian rural society towards sanitation. The coverage and claims can be debated, but the consensus is that the SBM-G has progressively moved the reference on rural sanitation both in terms of access to closed toilets and use. However, going forward, SBM-G needs to create a new baseline of measures to assess the actual efficacy of the constructed toilets.

The construction of a toilet<sup>783</sup> does not necessarily imply adequate access to sanitation. It also does not indicate active usage of the toilet or the nature of the onward movement of human excreta from these toilets, and that could have serious implications. The toilet may not be functional for lack of access to the drainage system or water supply, or have compromised construction quality. A faulty drainage system may pose a separate set of challenges in the disposal of human excreta and thus towards realizing the human right to sanitation. If they are not built to specification, the manner in which they discharge human waste may pose multiple challenges of soil and groundwater contamination and extended exposure of habitants to open sewage. The 2021 Census of India is expected to analyse some of these aspects, in addition to the need for SBM-G to define new measures and a monitoring framework.

### **Namami Gange Programme**<sup>784</sup>

The *Namami Gange* Programme is an Integrated Conservation Mission that was approved as a 'Flagship Programme' by the Central Government in June 2014 with a budget outlay of Rs. 200 billion to accomplish the following twin objectives:

- Effective abatement of pollution; and,
- Conservation and rejuvenation of the River Ganga that is severely polluted.

The programme<sup>785</sup> aims at implementing multiple initiatives, involving sewage and effluent treatment, cleaning, capacity-building, and research and development. Among these initiatives, the focus on sanitation in villages situated on the banks of the river was developed under the *Ganga Gram* project. This project was allocated Rs. 17.60 billion, amounting to 8.7 per cent of the total budget for the *Namami Gange* Programme. The aim was to develop the approximately 4,470 villages on the banks of River Ganga into "model villages" with effective solid and liquid waste management, water conservation projects, renovation of ponds and water resources, and organic farming. As it is only in the pilot stage, with the limited data available, it is not possible to comment on its progress thus far.

### **Conclusion**

Access to safe water is necessary for the protection of lives and livelihoods. Despite several efforts, water supply coverage is not good enough, although there has been an improvement in sanitation facilities, especially in rural areas. It is important to implement a bottom-up approach and to provide technical support to selected districts to demonstrate that sanitation can be delivered at the scale of a district in a sustainable manner. District-wide approaches are required, which are tailored to a particular state and support the strengthening of state governments' institutional capacity to roll out successful models to other districts to help achieve desired goals.

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783 Down To Earth, 'Swachh Bharat Mission: The Last Push', 28 September 2019. Available at: <https://bit.ly/36lLxXd>.

784 *Namami Gange*: Status Update, March 2016. Available at: <https://bit.ly/3kkvbU4>.

785 Pradhan Mantri Yojana, 'Ganga Gram Namami Gange Yojana Project 2020', 23 August 2020. Available at: <https://bit.ly/35hIDUt>.



## CHAPTER 8

### HOUSING AND LAND RIGHTS

#### **Recommendations on the Rights to Adequate Housing and Land**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.155	Implement a human rights-based approach to ensure access to adequate housing as well as to adequate water and sanitation, also for marginalized groups, including Dalits/scheduled castes, homeless, landless, scheduled tribes, religious and ethnic minorities, persons with disabilities, and women.	Germany	Supported	Not Implemented
161.156	Expand the "Housing of all" scheme to realise the right to adequate housing for vulnerable people and eliminate homelessness by 2030.	South Africa	Supported	Partially Implemented
161.157	Continue the "Housing for all" policy led by the Government to eradicate by 2030 the problem of homelessness, in conformity with Goal 11 of the 2030 Agenda.	Algeria	Supported	Partially Implemented

#### **Recommendations on the Right to Development (Socio-Economic and Sustainable Development) and Poverty Eradication**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.85	Consolidate the progress made towards reaching the Sustainable Development Goals, and in the improvement of human development indicators.	Vietnam	Supported	Partially Implemented
161.86	Continue efforts in the implementation of sustainable development strategies for the year 2030.	Brunei Darussalam	Supported	Partially Implemented

161.166	Continue efforts to reduce poverty, improve the well-being of the people, protect and enforce the rights of vulnerable groups of population.	Uzbekistan	Supported	Partially Implemented
161.167	Continue its efforts to achieve sustainable development and eradicate poverty.	Yemen	Supported	Partially Implemented
161.169	Continue national efforts to realize social and economic development and eradicate poverty, and achieve comprehensive sustainable development for all.	Egypt	Supported	Partially Implemented
161.173	Continue promoting sustainable economic and social development and raising the living standard of its people so as to lay down a firm basis for the enjoyment of human rights by its people.	China	Supported	Partially Implemented

#### **Recommendations on Rural Development and Rights of Farmers / Peasants**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.245	Continue strengthening the policies in favour of the rights of peasants and other persons working in rural areas.	Plurinational State of Bolivia	Supported	Partially Implemented

During its UPR-III, India received several recommendations related to the promotion of economic, social, and cultural rights. While three specific recommendations were made on the right to adequate housing, there were no recommendations particularly on land. However, several recommendations related to sustainable urban and rural development and farmers'/peasants' rights are linked to the need for secure land rights. This chapter provides an overview of the status of implementation of these recommendations made to India as of November 2020.

The UPR-III recommendations on housing and sustainable development and accepted by India are in line with those made by other UN bodies, including the UN Committee on Economic, Social and Cultural Rights (CESCR), and the Special Rapporteur on Adequate Housing. The UPR also provided an opportunity for India to strengthen its monitoring and implementation of existing schemes related to housing. While India has not upheld the right to housing as a human right in its policy framework and programme implementation, progress with regard to its national housing schemes also continues to be slow and not as inclusive as required in order to meet the goal of 'Housing for All by 2022.'

### **Status of Implementation of the *Pradhan Mantri Awas Yojana* / Housing for All Scheme**

The *Pradhan Mantri Awas Yojana* (PMAY)<sup>786</sup> or the ‘Housing for All’ scheme, mentioned in two UPR-III recommendations made to India, is a Central Government scheme launched in 2015 with the aim of providing ‘Housing for All’ by the year 2022, which marks 75 years of India’s independence. As per the scheme guidelines, it aims to, “Provide every family with a *pucca* (permanent) house, water connection, toilet and 24x7 electricity supply.” The scheme has two components – urban and rural. At the launch of the urban scheme in 2015, the Government set a target of providing 20 million houses in urban areas by 2022. In 2017, this target was revised to 11 million, based on a claim by the Ministry of Housing and Urban Affairs that a state-wise demand survey had revealed this reduced figure.<sup>787</sup> The findings of these surveys are not available in the public domain. In response to a question asked in February 2020 in *Lok Sabha* (Lower House of the Parliament), the Government confirmed that the “validated demand” for housing is 11.2 million houses.<sup>788</sup>

According to official data, as of November 2020, about 10.8 million housing units had been sanctioned for construction under PMAY-Urban, across 28 states and eight union territories,<sup>789</sup> with an investment of Rs. 6,520 billion (about USD 88 billion<sup>790</sup>).<sup>791</sup> Of these sanctioned units, 6.68 million units had been “grounded for construction” while only 3.81 million units had been completed and handed over to beneficiaries.<sup>792</sup> A large number of constructed houses, reportedly, are unoccupied.

Under the rural component (PMAY-Gramin), as of November 2020, 17.2 million houses had been sanctioned for construction, of which only 1.18 million houses had been built.<sup>793</sup> The Government set a target of 19.5 million houses to be constructed in the financial year 2020–21, while claiming that “a habitat approach has been adopted through convergence to convert houses into homes.”<sup>794</sup> According to official data, around 1,46,000 landless beneficiaries also received houses under the scheme and the target of constructing 29.5 million houses is “expected to be achieved by March 2022.”<sup>795</sup>

Reports from a few states also highlight lacunae in the implementation of the scheme. For instance in Maharashtra, delays in the disbursement of funds under the Beneficiary-led Construction component of the scheme resulted in the completion of only 22,000 of the 2,19,000 sanctioned houses. Thousands of families, thus, have been forced to make temporary adjustments to be able to live in their semi-

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786 The *Pradhan Mantri Awas Yojana* is the Prime Minister’s Housing Scheme for All.

787 Press Information Bureau, ‘Ministry of Housing and Urban Affairs: Housing Sector shortage close to 10 million units - to be addressed through PMAY: Puri’, 15 November 2017. Available at: <https://bit.ly/3leDbXQ>

788 Ministry of Housing and Urban Affairs - Govt of India, Lok Sabha unstarred question number 854, 6 February 2020. Available at: <https://bit.ly/2laArg0>

789 Government of India, States and Union Territories. Available at: <https://knowindia.gov.in/states-uts/>

790 On 3 November 2020, one US Dollar (USD) was equivalent to about 74 Indian Rupees (INR or Rs).

791 Ministry of Housing and Urban Affairs – Govt of India, ‘Pradhan Mantri Awas Yojana (Urban) – Housing for All (HFA) State-wise Progress (since 2014),’ 2 November 2020. Available at: <https://bit.ly/3n8FdJG>

792 Ibid.

793 Ministry of Rural Development – Govt of India, ‘Pradhan Mantri Awas Yojana – Gramin: Physical Progress Report’. Available at: [http://ruraldiksha.nic.in/RuralDashboard/PMAYG\\_NEW.aspx](http://ruraldiksha.nic.in/RuralDashboard/PMAYG_NEW.aspx) <accessed on 3 November 2020>

794 Press Information Bureau, ‘Ministry of Rural Development: Year End Review of the Ministry of Rural Development,’ 28 December 2019. Available at: <https://www.pib.gov.in/PressReleaseDetail.aspx?PRID=1597435>

795 Press Information Bureau, ‘Ministry of Rural Development: Average completion time for houses under restructured *Pradhan Mantri Awas Yojana-Gramin* comes down to 114 days; 1.10 crore houses completed which includes houses to 1.46 lakh (1,46,000) landless beneficiaries,’ 24 July 2020. Available at: <https://bit.ly/3eKkqt0>

constructed houses.<sup>796</sup> A report of the Comptroller and Auditor General (CAG) of India also identified poor implementation of PMAY-*Gramin* in Rajasthan,<sup>797</sup> where physical verification of houses declared “completed” revealed that 49.15 per cent of them did not have toilets.<sup>798</sup> The report also highlighted discrepancies in convergence of the scheme with other welfare schemes.<sup>799</sup>

In Uttar Pradesh, reports indicate a lack of integration between PMAY-*Gramin* and the erstwhile *Indira Awas Yojana* (IAY) that PMAY-*Gramin* replaced. Beneficiaries who were eligible for IAY funds complained about discrepancies in receiving financial instalments under PMAY-*Gramin*. This resulted in incomplete houses, forcing families to live in inadequate conditions.<sup>800</sup>

Despite a marked rise in the number of houses sanctioned, the lack of equitable access to land remains a significant challenge in achieving the aim of ‘housing for all.’ Landless families in rural areas continue to remain out of the purview of the scheme as data from the Ministry of Rural Development stated that of the 11.03 million houses sanctioned, as of July 2019, only 6.3 million landless beneficiaries had been given houses.<sup>801</sup>

Apart from PMAY, several states across India have schemes under which housing is being constructed for the urban and rural poor. For instance, in Andhra Pradesh, the state government launched a ‘Housing for All the Poor’ scheme that aims to construct 3 million houses in the state by 2024.<sup>802</sup> In Kerala, as of September 2020, 179,222 beneficiaries had been approved<sup>803</sup> and 226,490 houses had been constructed<sup>804</sup> under the Livelihood Inclusion and Financial Empowerment (LIFE) Mission that aims to provide the ‘houseless with land.’

The National Housing for All by 2022 scheme, though notable in its intent, has been more about providing houses to some; it is not a comprehensive scheme aimed at ensuring the realization of the right to housing for all or of addressing India’s acute housing problems. Its overreliance on the private sector, which further promotes the financialization of housing to deliver through public-private partnerships, and its failure to provide access to housing for marginalized groups such as those living in homelessness, further limit its benefits.

### **Forced Evictions in India**

Despite the Government’s goal of providing ‘housing for all,’ forced evictions and demolitions of homes by state authorities are widespread across the country. Advances made in providing new housing are thus offset by state-sponsored destruction of housing of the urban and rural poor.

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796 The Indian Express, ‘Pradhan Mantri Awas Yojana subsidy delayed, thousands of beneficiaries forced to live in shanties or half-finished houses’, 10 October 2020. Available at: <https://bit.ly/2lhB8DK>

797 Report of the Comptroller and Auditor General of India on General and Social Sector for the year ended 31 March 2019, Government of Rajasthan, 2020. Available at: <https://bit.ly/2lfmpcu>

798 The Indian Express, ‘CAG report on Rajasthan: In ODF state, toilets missing in half of PMAY houses surveyed’, 31 August 2020. Available at: <https://bit.ly/2UbsiKl>

799 Ibid.

800 Firstpost, ‘Houses under Indira Awaas Yojna stand forgotten, as government struggles to integrate beneficiaries to the restructured PMAY-G’, 20 December 2018. Available at: <https://bit.ly/3ldZtZz>.

801 Ministry of Rural Development – Govt of India, ‘Press Release: Beneficiaries Under PMAY(G)’, 9 July 2019. Available at: <https://rural.nic.in/press-release/beneficiaries-under-pmayg>

802 Times Now News, ‘AP CM directs officials to expedite process, 30 lakh beneficiaries to get house by 2024’, 8 July 2020. Available at: <https://bit.ly/2ljreBw>

803 Physical Progress Report of Phase 2- Houseless with Land, LIFE Mission, Government of Kerala, September 2020. Available at: <https://lifemission.kerala.gov.in/ml/article/910>

804 News Click, ‘Amid allegations, Kerala’s Life Mission Project provides a lifeline to the homeless,’ 29 September 2020. Available at: <https://www.newsclick.in/Allegations-Kerala-Life-Mission-Project-Provides-Lifeline-Homeless>

Housing and Land Rights Network (HLRN) has documented that from 2017-19, state and central government authorities demolished over 1,17,770 houses in urban and rural India, thereby forcefully evicting over 5,68,000 people. This implies that over the last three years, on average, state authorities demolished at least 108 homes every day or evicted 22 people every hour.<sup>805</sup> The research also reveals that almost 15 million people across India are threatened with the risk of eviction and displacement.<sup>806</sup>

Even during the COVID-19 pandemic, when people have been asked to stay at home to stay safe and maintain physical distancing, the central and state governments have continued to forcibly evict the urban and rural poor, demolish their homes without due process, and render people homeless. This had the effect of directly increasing their vulnerability and risk to their health and lives. Despite guidance from the UN Special Rapporteur on Adequate Housing<sup>807</sup> to issue moratoria on evictions during this public health emergency and despite a few High Court orders calling for suspension of evictions and demolitions during the COVID-19 crisis, the Government has not yet ordered a moratorium on evictions but is responsible for evicting and exacerbating the plight of the poor, who are already suffering from pandemic-induced loss of livelihoods and income and growing hunger. Data compiled by HLRN reveals that state authorities have forcibly evicted over 54,000 people during the pandemic (between 15 March and 31 October 2020).<sup>808</sup> It is likely that evictions are being carried out during this time to take advantage of the exceptional circumstances that make it more difficult for affected persons to resist evictions or to access remedy, relief, and justice.

Most evictions in India have not been carried out for “exceptional circumstances” and do not comply with other procedural requirements of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.<sup>809</sup> The large majority of evicted persons have not been resettled by the State either because they do not meet the requisite ‘eligibility criteria’ or because they are termed ‘illegal encroachers’ even when they have official documents to prove their residence at a particular site. Where provided, they are often resettled on peripheries of cities that are devoid of basic services and adequate housing. Such relocation results in increased impoverishment and marginalization, including the loss of education, health, livelihoods, and income for affected families.<sup>810</sup>

India is estimated to have the highest number of people displaced as a result of ostensible ‘development’ projects — between 65 and 75 million — since 1947. Of those displaced, 40 per cent are Indigenous / tribal peoples, while 20 per cent are Scheduled Castes/Dalits.<sup>811</sup>

Forced evictions, displacement, and inadequate resettlement disproportionately affect women, children, and older persons. They result in the violation of multiple human rights, including *inter alia*,

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805 Housing and Land Rights Network (HLRN), ‘Forced Evictions in India in 2019: An Unrelenting National Crisis’, August 2020. Available at: [https://www.hlrn.org.in/documents/Forced\\_Evictions\\_2019.pdf](https://www.hlrn.org.in/documents/Forced_Evictions_2019.pdf)

806 Ibid.

807 OHCHR, ‘COVID-19 Guidance Note: Prohibition of Evictions by the UN Special Rapporteur on the right to adequate housing’, 28 April 2020. Available at: <https://bit.ly/3ke8osS>; see also, OHCHR, ‘Ban evictions during COVID-19 pandemic, UN expert urges’, 18 August 2020. Available at: <http://bit.ly/3ldtbxT>

808 Housing and Land Rights Network, ‘Press Release: Over 54,000 people in India forcibly evicted during the COVID-19 pandemic (15 March to 31 October 2020)’, 19 November 2020. Available at: <https://bit.ly/3afVitC>

809 OHCHR, ‘Basic Principles and Guidelines on Development-based Evictions and Displacement – Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living’, A/HRC/4/18, February 2007. Available at: <https://bit.ly/3eF3cx3>

810 For example, Housing and Land Rights Network, ‘Forced to the Fringes: Disasters of ‘Resettlement’ in India’, 2014. Available at: <https://bit.ly/3p6dSjX>

811 Ministry of Rural Development (Department of Land Resources) – Govt of India, ‘Report of the Standing Committee on Rural Development (2011–2012)’, Available at: <https://bit.ly/2GJsVYH>

the human rights to adequate housing, health, work / livelihood, water, food, sanitation, information, participation, and freedom of movement and residence. They also violate the human right to security of the person and home and increase vulnerability of evicted / displaced persons, especially of women and children, to a range of violations, including sexual violence and abuse and trafficking. In some instances, early marriage of adolescent girls has been reported in the aftermath of an eviction, as parents, worried for their daughters' safety, prefer to marry them off rather than have them live on the streets or in insecure and remote resettlement sites. Evictions, displacement, and relocation also adversely impact affected persons' right to work / livelihood, particularly of women. They also contribute to an increase in the incidence of homelessness. There is thus an urgent need for the Government of India to impose a moratorium on evictions across the country, as also recommended by the Special Rapporteur on Adequate Housing in her mission to India report.<sup>812</sup>

### **Homelessness**

Independent experts estimate that at least one per cent of India's urban population or about four million people living in urban areas are homeless, without even the most basic form of shelter. While the National Urban Livelihoods Mission – Scheme of Shelters for the Urban Homeless lays down standards and guidelines for the establishment of homeless shelters in urban areas, with budgetary allocations, it is not adequately implemented. Furthermore, state response is restricted to the provision of shelters, which are only an emergency, humanitarian response to the crisis of homelessness. Solutions along a 'continuum of housing rights' need to be explored, including through the provision of hostels, short-stay homes, rental housing options, collective housing options, and access to finance for home ownership for homeless persons. The Government's recent announcement to create Affordable Rental Housing Complexes for the urban poor is noteworthy but is predicated on the Public-Private Partnership model that could exclude those who cannot afford such housing. Unless homeless persons are brought within the ambit of all Government housing schemes and provided housing on a priority basis, the goal of Housing for All by 2022 will be a distant reality. India will also not be able to meet its commitments under the SDGs, especially Goal 11.

The cities of Delhi and Chennai have undertaken impressive measures to address the crisis of homelessness. Delhi, for example, has the highest number of homeless shelters (about 200) in the country as well as improved services for homeless persons living in these shelters. Efforts of the government to respond to emergency needs of homeless population are noteworthy. There is, however, now an urgent need to move from shelters to durable housing solutions with stronger social protection systems for different groups of homeless people, especially women, older persons, children, people with disabilities, and people living with mental illness and chronic illness.

The COVID-19 pandemic has further exacerbated challenges faced by persons living in homelessness around the country. During India's stringent lockdown, a large number of people living on the streets were forcefully relocated to temporary shelters, including schools and community halls. While the intention of the Government was to provide them with protection, the process and facilities provided in these shelters were highly inadequate. HRLN has documented that in many instances this relocation was not preceded by prior information, consultation, and consent. It resulted in fear and separation from family members, loss of personal belongings, and an increase in non-coronavirus health

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812 OHCHR, Report of the Special Rapporteur on Adequate Housing, Mission to India, January 2017, A/HRC/34/51/Add.1. Available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/51/Add.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/51/Add.1)



complaints.<sup>813</sup> Despite the easing of lockdown restrictions, livelihood loss and hunger continue to present acute challenges to the health of homeless persons, especially during the winter months when they require safe and secure shelters with adequate space and facilities for physical distancing.

### **Rights of Farmers/Peasants**

With regard to the implementation of the recommendation on protecting the rights of peasants and others working in rural areas, the Government has several schemes across different states. The agrarian crisis and the living conditions of farmers, however, have significantly worsened over the last five years. This is also reflected in the growing number of farmer suicides, including that of women farmers. Data of the National Crime Records Bureau (NCRB) reveals that 3,53,802 farm suicides took place in India between 1995 and 2018, with about 86 per cent of these being of men. During this period, 50,188 female farmer suicides were also recorded.<sup>814</sup> In 2019, NCRB recorded that 10,281 persons “involved in the farming sector” died by suicide. Of the 5,957 farmer/cultivator suicides recorded, 394 were of female farmer/cultivators.<sup>815</sup> Studies show that suicides were high amongst landless and small and marginal farmers, and where there was an absence of protective irrigation.<sup>816</sup>

The agrarian crisis impacts farmers in multiple ways and forces them into a spiral of debts.<sup>817</sup> Women farmers in these farm suicide-affected families suffer disproportionately, especially widows who inherit the debt of their husbands but not their land/property and have to contend with ostracism, stigma, discrimination, and multiple human rights violations. While schemes exist in all states for families of farm suicide-affected families, these are not always implemented adequately and the benefits do not reach women, especially women living in remote parts of the country. The plight of women farmers is not being adequately addressed by the central and state governments. Though more than 70 per cent of agricultural operations are carried out by women, they are still not recognized as farmers and do not own or have any rights over the land that they cultivate.

Land distribution and ownership continues to be highly unequal in the country. India has still not fulfilled its post-independence agenda to undertake equitable land and agrarian reforms. Of the 170.92 million rural households across the country, about 101 million households (56%) do not own any agricultural land.<sup>818</sup> The draft National Land Reforms Policy 2013 has still not been finalized and approved. The National Right to Homestead Bill 2013 has not yet been introduced in Parliament. Moreover, about 7.3 million people in India are affected by land-related conflicts.<sup>819</sup>

At the state level, Madhya Pradesh is the only state that passed a homestead law in 2017, which aims at guaranteeing land for housing and subsistence livelihoods to landless persons. To effectively address rural poverty and food insecurity, homestead legislation across India is urgently required. Living conditions in rural areas for a large majority are inadequate, especially with displacement for infrastructure projects threatening rural livelihoods, including of Indigenous / tribal peoples.

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813 Housing and Land Rights Network, ‘Human Rights Assessment of India’s COVID-19 Lockdown’, May 2020. Available at: <https://bit.ly/3n3QDyI>

814 Livemint, ‘The march of women farmers’, 31 October 2020. Available at: <https://bit.ly/2GI4Ock>

815 Crime in India 2019 – National Crime Records Bureau (NCRB) India, Chapter-2, ‘Suicides in India: Accidental Deaths and Suicides in India’, September 2020. Available at: <https://bit.ly/38u5uhk>

816 Mahila Kisan Adhikar Manch (MAKAAM) ‘Women Farmers and Farm Suicides: Policy Brief,’ September-October 2020. Available at: <https://bit.ly/2Uav2YA>

817 Ibid.

818 Socio-economic and Caste Census 2011. Available at: <http://secc.gov.in/reportlistContent>

819 Land Conflict Watch, November 2020. Available at: <https://www.landconflictwatch.org/>

Vulnerable communities in rural areas continue to face neglect of their housing and land rights. Large dams, oil exploration, mining projects, and construction of new highways and roads threaten to displace millions, especially in India's North-Eastern states.

Measures thus need to be taken to urgently address India's severe agrarian crisis and the lack of adequate investment in rural development, including in rural livelihoods. A stronger, integrated development approach is required to ensure that urban and rural are seen as two ends of the same habitat continuum, and to link urban and rural housing, land, and development policies, including through better inter-ministerial coordination.

### **Marginalized Groups and Discrimination in Access to Housing and Land**

In India, several individuals, groups and communities face great discrimination in accessing their rights to land and adequate housing, most commonly on the intersecting axes of caste, gender, age, religion, marital status, physical ability, and income. The most affected groups include single women, Muslims, Dalits / Scheduled Castes, Schedules Tribes/Adivasi/Indigenous/tribal peoples, religious and gender minorities, migrants and internally displaced persons, and, homeless and landless persons. Particularly, transgender and gender non-conforming individuals face many barriers in securing adequate housing, due to societal stigma and prejudice against them and the apathy of the State.

Land ownership and use has been historically linked to caste status in India. As per the Socio-Economic Caste Census 2011, in rural India, at least 54.71 per cent of Scheduled Caste households are landless, nearly 70 per cent of Dalit farmers are labourers on farms owned by others,<sup>820</sup> while only 17.69 per cent Scheduled Caste households own a house.<sup>821</sup> According to the India Land and Livestock Holding Survey 2013, almost 60 per cent of Dalit households do not own any farmland. Moreover, according to Agriculture Census 2015–16, 78.18 per cent of Scheduled Castes owned land are marginal holdings with an area less than two hectares.<sup>822</sup> Thus, not only do Dalits own less land compared to their share in population, their land holdings are much smaller in size often forcing them into endemic economic distress.<sup>823</sup> Moreover, Dalits directly suffer from landlessness and homelessness due to the violence and discrimination historically perpetuated against them. Decades of land reforms and government programmes aimed at providing land to Dalits and other oppressed communities have, unfortunately, not shown desired results.

These numbers in relation to the Scheduled Tribes are even more telling. In rural India, only 10.5 per cent people belonging to Scheduled Tribes own a house,<sup>824</sup> while 40.6 per cent of houses of Scheduled Tribe communities are characterized as 'good,' 53 per cent are considered 'liveable,' and 6.4 per cent are classified as 'dilapidated.'<sup>825</sup> Of the rural Scheduled Tribe households, 35.65 per cent are landless and depend on manual casual labour for their livelihoods.<sup>826</sup> Only 13.06 per cent of the land in rural areas is owned by Scheduled Tribes, with the average size of each land-holding being 0.65 hectares.<sup>827</sup>

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820 Scroll, 'Across India, Dalits are still fighting to claim lands promised to them', 9 June 2019. Available at: <https://bit.ly/36gB7bD>

821 Socio-Economic and Caste Census 2011. Available at <http://secc.gov.in/reportlistContent>

822 Agriculture Census 2015-16. Available at: [http://agcensus.nic.in/document/agcen1516/T1\\_ac\\_2015\\_16.pdf](http://agcensus.nic.in/document/agcen1516/T1_ac_2015_16.pdf)

823 News Click, 'Caste Stranglehold in Agriculture,' 10 October 2018. Available at: <https://bit.ly/3n7i75Z>

824 Socio-Economic and Caste Census 2011. Available at: <https://secc.gov.in/reportlistContent>

825 Ministry of Tribal Affairs – Govt of India, 'Annual Report 2017–18', pp. 34-36. Available at: <https://bit.ly/2laFVaA>

826 Socio-Economic and Caste Census 2011. Available at: <https://secc.gov.in/reportlistContent>

827 Ministry of Statistics and Programme Implementation – Govt of India (National Sample Service Office), 'Household Ownership and Land Holdings in India', 2013. Available at: <https://bit.ly/3p9kHdz>

Nomadic and semi-nomadic communities also suffer from extreme deprivation and marginalization, including with regard to accessing their livelihoods as well as land and housing. According to the Renke Commission Report 2008 submitted to the National Commission for Denotified, Semi-nomadic and Nomadic Tribes, about 89 per cent of denotified tribes and 98 per cent of nomadic/semi-nomadic communities do not own land, while only 11 per cent of nomadic communities and eight per cent of de-notified tribes have habitations on public land. Fifty-seven per cent of these families live in temporary structures. The overwhelming majority are deprived of basic amenities, such as water, sanitation, and electricity.<sup>828</sup>

The acquisition of tribal land by non-tribals has continued despite the constitutional provisions of the Fifth Schedule and Sixth Schedules and the Supreme Court order in the 1997 *Samatha* case,<sup>829</sup> which prohibits transfer of tribal land to non-tribals. The report of the high-level Xaxa Committee on the status of tribal communities in India highlights the prevalence of armed conflict that affects tribal habitations spanning from central to North-East India.<sup>830</sup>

### **The Human Right to Adequate Housing, Access to Justice, and Role of the Judiciary**

The Indian judiciary, on several occasions, has recognized the right to shelter / housing as an integral component of the right to life guaranteed under Article 21 of the Constitution. However, in the absence of a legislative or constitutional framework defining the contours of the right, the courts have treated violations of the right merely as procedural lapses. The lack of human rights-based remedies has prevented the courts from providing relief against homelessness and from directing the State to fulfil its positive obligations towards the right to adequate housing. However, in the last three years, some courts have proactively provided relief against forced evictions of the vulnerable groups.

For instance, in *Ajay Maken v. Union of India*, the Delhi High Court recognized and upheld the human right to adequate housing while preventing the further eviction of over 5,000 people whose houses had been demolished in the extreme cold without due process in Delhi's Shakur Basti settlement. The Court laid down guidelines to determine the legality of evictions after referring to General Comment 4 of the CESCR as well as India's obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to guarantee the human right to adequate housing.<sup>831</sup> In *Udal v. Delhi Urban Shelter Improvement Board*, the Delhi High Court directed the provision of alternative housing to extremely marginalized families affected by forced evictions, who could not maintain documents or records that are normally required to determine eligibility for resettlement under State schemes.<sup>832</sup>

### **Human Rights Defenders**

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828 Ministry of Social Justice and Empowerment – Govt of India, 'Report by the National Commission for Denotified, Nomadic, and Semi-nomadic Tribes', June 2008. Available at: <https://bit.ly/2U8e8dd>; see also, Housing and Land Rights Network, 'The Human Rights to Adequate Housing and Land in India: Report to the United Nations Human Rights Council for India's Third Universal Periodic Review', 2016 (reprinted in 2018). Available at: <https://bit.ly/3eF8mJr>.

829 *Samatha v. State of Andhra Pradesh and Ors.* AIR 1997 SC 3297. Available at: <https://bit.ly/3n8zUd7>; see also, Housing and Land Rights Network, 'Housing and Land Rights in India: Status Report for Habitat III', 2016. Available at: <https://bit.ly/3p8h86T>

830 Ministry of Tribal Affairs – Govt of India, 'Report of the High Level Committee on Socio-economic, Health and Educational status of Tribal Communities of India', May 2014. Available at: <https://bit.ly/3oSvqbq>

831 *Ajay Maken v. Union of India* W.P. (C) 11616/2015. Available at: <https://bit.ly/3lgwzbn>

832 *Udal v. Delhi Urban Shelter Improvement Board* W.P. (C) 5378/2017. Available at: <https://bit.ly/38nPE80>

Individuals defending the human rights to land, housing, and the environment continue to be targeted by the State as well as non-state actors through misuse of laws, arbitrary arrests and detention, defamation, intimidation, sexual harassment, and violence.<sup>833</sup> Especially, the Scheduled Castes / *Dalits* and *Adivasis* / Indigenous/ tribal peoples, suffer disproportionately from development-induced displacement and environmental destruction and face great oppression while defending their right to land.<sup>834</sup> Women land rights defenders and activists who seek information under the Right to Information (RTI) Act 2005 to expose irregularities in development projects face great risk to their lives and lack protection from the State.

### **Important Legal and Policy Developments**

While the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARR Act)<sup>835</sup> was enacted to ensure some degree of equity and justice in land acquisition proceedings, subsequent amendments by many state governments have nullified its intent. For instance, in Gujarat, where a number of Dalit, *Adivasi* / Indigenous /tribal peoples and Other Backward Class (OBC)-led movements have resisted forceful acquisition of land,<sup>836</sup> the state law exempts most projects from the application of these important provisions. Similar provisions came into effect in Telangana<sup>837</sup> and Tamil Nadu<sup>838</sup> in 2017 to bypass the LARR Act.

In October 2017, the Haryana state legislature passed the Haryana Consolidation of Project Land (Special Provision) Act 2017<sup>839</sup> that allows the state government to acquire left-out pockets of private land and bars the jurisdiction of civil courts to entertain or decide any matter pertaining to the law. The National Capital Territory of Delhi Laws (Special Provisions) Act 2011, which protects certain forms of “unauthorized developments” in Delhi, including low-income settlements from punitive action,<sup>840</sup> was extended until the year 2020.<sup>841</sup> While the Central and state government schemes for the regularizing the “unauthorized colonies” in Delhi have been announced, they are without clear definitions and procedural / implementation guidelines.

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833 Front Line Defenders Global Analysis 2019, p.4. Available at: <https://bit.ly/38rcZpe>

834 For example, Scroll, ‘Odisha: Relative of tribal group chief opposing Vedanta mines arrested on charges of being Maoist’, 3 May 2017. Available at: <https://bit.ly/36hm4OJ>

835 DNA, ‘State land acquisition laws weakened provision of consent’, 9 July 2017. Available at: <https://bit.ly/3k9PraR>; see also, Centre for Policy Research, ‘Mapping dilutions in a Central Law: A comparative analysis of rules made under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act 2013’, 2016. Available at: <https://bit.ly/2le5PK1>

836 News Click, ‘Gujarat’s BJP govt. snatches farmers’ land to give to corporates’, 28 November 2017. Available at: <https://bit.ly/3eHQxJR>

837 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement LARR (Telangana Amendment) Act 2016, Section 10A. Available at: <https://bit.ly/36nJJKm>

838 Tamil Nadu Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2017. Available at: [http://cms.tn.gov.in/sites/default/files/rules/300\\_Ex\\_III\\_1a\\_0.pdf](http://cms.tn.gov.in/sites/default/files/rules/300_Ex_III_1a_0.pdf)

839 NDTV, ‘Haryana passes bill for acquiring land for government projects’, 26 October 2017. Available at: <https://bit.ly/3eHQNbN>

840 The National Capital Territory of Delhi Laws (Special Provisions) Act 2011. Available at: <https://bit.ly/2ikiRWL>

841 National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act 2017. Available at: <https://bit.ly/3leWJvf>

Since UPR-III, a few laws have been adopted at the state level, which demonstrate the possibility of integrating a human rights approach to housing. These include the Odisha Land Rights to Slum Dwellers Act 2017,<sup>842</sup> the Punjab Slum Dwellers (Proprietary Rights) Act 2020,<sup>843</sup> and the Madhya Pradesh Housing Guarantee (for Lower Income Groups and Economically Weaker Sections) Act 2017.<sup>844</sup> Adopting similar legislation at the national level or in other states would help towards improving housing and living conditions in both urban and rural areas. This is all the more urgent given the reverse migration to rural areas as a result of the pandemic-induced lockdown and economic crisis in the country. Secure land rights would help promote employment as well as food security.

## **Conclusion**

The Government's goal of providing 'housing for all' is commendable and in line with the UPR-III recommendations on this issue. However, unless a strong human rights approach is adopted and the focus of the Government shifts from mere construction of 'houses' to facilitating the provision of 'adequate housing' for all, with a focus on the most marginalized, the scheme will not be able to realize its targets meaningfully and the related UPR-III recommendations will not be fully implemented. Much more work needs to be done to implement other recommendations related to rural land and farmers'/peasants' rights. Housing and land need to be recognized and upheld as human rights with provision of tenure security — especially for women — and adequate budgetary allocations and access to finance for the urban and rural poor.

Overall, the UPR-III recommendations have only been partially implemented, while some acts of commission or omission by State authorities have only served to counter advances made. The COVID-19 pandemic has reiterated the importance of adequate housing as a key determinant of health, safety, livelihood, and life. Any state that is concerned about economic and social justice and is serious about meeting its legal obligations must uphold the right to adequate housing of its people, including urgently addressing the crisis of forced evictions. The Government of India should, in line with its obligations and commitments, actively work towards implementing these recommendations and involve civil society in its work as well as its reporting for the next UPR cycle.

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842 Odisha Land Rights to Slum Dwellers Act 2017. Available at: <https://govtpress.odisha.gov.in/pdf/2017/1652.pdf>

843 PTC News, 'Punjab government's bonanza for slum dwellers', 9 March 2020. Available at: <https://bit.ly/2UaxVsg>

844 Madhya Pradesh Housing Guarantee (for Lower Income Groups and Economically Weaker Sections) Act 2017. Available at: <https://bit.ly/3eH2zTt>

## CHAPTER 9

### LABOUR RIGHTS

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.39	Consider ratifying the ILO Domestic Workers Convention 2011 (No.189).	Uruguay	Supported	Not Implemented
161.174	Accelerate the process of consolidating existing labour laws to, <i>inter alia</i> , promote the right to equal opportunities for work and at work, as well as to achieve occupational safety.	Zimbabwe	Supported	Partially Implemented
161.194	Continue its efforts to ensure women's equal participation in the workforce and generate employment opportunities for women in rural areas.	State of Palestine	Supported	Partially Implemented

#### **Recommendations on ratifying the ILO Domestic Workers Convention 2011 (No. 189)**

Over the last two decades, domestic workers in India have gained visibility and their movements have impelled the Government to respond. However, the measures that have been taken so far are not satisfactory. The ILO started a process of consultation with Member States, including India, for drafting international labour instruments for domestic workers way back in 2009.<sup>845</sup> In its 99th Session (June 2010), the ILO held a discussion on “Decent Work for Domestic Workers” and whether the International Labour Conference (ILC) should pass a Convention or a Recommendation or a Convention with both binding and non-binding parts in this respect.<sup>846</sup> During the discussion, the Government of India stated officially: *“As there are many countries with no laws regulating and safeguarding the working conditions of domestic workers, a convention might be difficult to ratify and would not have the desired impact. A ‘Recommendation’, however, would enable Member States to develop feasible and practical standards and policies, and the ILO could assist Member States in developing strategies.”*<sup>847</sup> Eventually, the ILO in its 100th Session (June 2011) passed Convention No. 189, the Convention on Domestic Workers (C189), that was supported by the Government of India.<sup>848</sup>

<sup>845</sup> International Labour Organization (ILO), ‘Report IV(1): Decent work for Domestic Workers’, 2 April 2009. Available at: <https://bit.ly/3eLfsvR>

<sup>846</sup> ILO, ‘Decent work for domestic workers’. Available at: <https://bit.ly/3mZMprs>

<sup>847</sup> Concept Note, Regional Conference On “Human Rights of Domestic Workers: Issues And Challenges”, 30 August 2019.

<sup>848</sup> Weigo Law and Informality, ‘Domestic Workers’ Laws and Legal Issues in India’, November 2014. Available at: <https://bit.ly/3pfeWuT>



Since then, there has been no move to ratify the Convention. The Labour Minister has stated on record that India has not ratified the Convention “because the necessary laws are not in place.”<sup>849</sup> However, the delays are to be seen in the light of the fact that ratification of the Convention will enjoin an obligation on the State to enact laws in accordance with the provisions of C189 with the aim of regulating working conditions of domestic workers, setting labour standards and providing them with social protection.

#### *The Unorganized Workers’ Social Security (UWSS) Act 2008*

The report of the National Commission for Enterprises in the Unorganized Sector (NCEUS) recommended the enactment of a separate legislation for regulating working conditions and providing social security benefits to the unorganized non-agricultural workers. The UWSS Act 2008 covers domestic workers in different occupations which are listed in Schedule I of the Act. However, there has been a criticism of putting all groups of domestic workers under a single, umbrella term as it fails to take cognizance of the varied and specific characteristics of domestic work. Additionally, working conditions remain unregulated, no rights are conferred, and no funds have been made available by the virtue of the Act. It merely stipulated that state governments should set up ‘Welfare Boards’, and formulate and implement social security schemes.

Subsequently, the previously crafted welfare schemes by the Central Government such as the National Old Age Pension Scheme, the National Family Benefit Scheme, *Janani Suraksha Yojana*, *Aam Aadmi Bima Yojana*, *Rashtriya Swasthya Bima Yojana*, and more recently, *Atal Pension Yojana*, *Pradhan Mantri Jeevan Jyoti Bima Yojana*, and *Pradhan Mantri Suraksha Bima Yojana* are made available to the citizens who meet their respective eligibility criteria. These schemes have been shown as being implemented for domestic workers under the Act. However, little data is publicly available about how many domestic workers have benefited from these schemes.

#### *Task Force*

The discussion at the ILO Session in 2009 had led the Government to set up a Task Force to create and evolve a policy framework for domestic workers addressing the need for both regulatory mechanisms and social security. It was also tasked with developing a country paper in this respect for the 99th Session (June 2010). Eventually, the Task Force made some recommendations in its First Report of March 2010, which also extended its tenure. Its final report was released in September 2011.<sup>850</sup>

The Task Force decided to look at the regulatory mechanisms in what it termed as ‘Phase II’ and concentrate on welfare aspects because of the “need for extensive consultation and interaction with different stakeholders”. It was in favour of “extending welfare benefits through existing, well-established schemes and channels” and recommended three sets of benefits: health and maternity, death and disability, and old age. However, the only welfare scheme for domestic workers is the *Rashtriya Swasthya Bima Yojana*, which was notified in June 2011.<sup>851</sup> However, its benefits are restricted only to Below Poverty Line (BPL) beneficiaries. Some other recommendations included:

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849 The Economic Times, ‘India doesn’t ratify ILO convention on domestic workers: Bandaru Dattatreya’, 18 March 2018. Available at: <https://bit.ly/2lnA69w>

850 Ministry of Labour and Employment (MoLE) – Govt of India (Director General Labour Welfare), ‘Realising Decent Work: Final Report of the Task Force on Domestic Workers’, September 2011. Available at: <https://bit.ly/2ljNhZf>

851 Government of India – National Portal, *Rashtriya Swasthya Bima Yojana*. Available at: <https://bit.ly/3a6gXo8>

- Registration: The Task Force recommended the registration of all paid domestic workers. However, this is restricted to only those states where welfare boards were set up for unorganized sector workers.
- Minimum Wages: States should amend their schedules to include paid domestic work as a category under the Minimum Wages Act 1948 as a matter of priority. In some states such as Karnataka, Andhra Pradesh, Bihar, Rajasthan, and Kerala, the inclusion pre-dates the Task Force's recommendation; others such as Odisha, Jharkhand, Meghalaya, Haryana, Punjab, Dadra and Nagar Haveli, and Tripura have included domestic workers in the scheduled list of workers in recent years. Despite a strong movement towards such inclusion, Delhi and Maharashtra have not yet included them.
- Placement Agencies: Another recommendation called for a mandatory registration of all placement agencies under the Shops and Establishments Act 1953. However, in spite of the Central Directive of October 2010, no state-wise record of progress is available.
- Skill Development: The Task Force recommended undertaking skill upgradation under the National Skill Training Programme to add professionalization and value addition to the wages of these domestic workers. In 2015, the Domestic Workers Sector Skill Council was set up to establish a national institutional network and develop a Labour Market Information System (LMIS) with information on profiles, market demand, and relevant organizations. It planned to certify 25 lakh (2.5 million) domestic workers by 2026. However, the information available as of 2018 shows that it has trained only 500 persons.<sup>852</sup>
- Code of Practice: Another key recommendation was to draft a National Policy for Domestic Workers covering welfare, regulatory and skill development issues. The Policy was also to include a Code of Practice to serve as a guideline for protecting domestic workers and effectively regulating their work conditions and wages.

#### *National Policies for Domestic Workers 2011 and 2015*

In its final report of September 2011, the Task Force presented a National Policy for Domestic Workers 2011 with a stated aim to “promote domestic workers’ human rights and fundamental principles and rights at work *by bringing them in the ambit of labour legislations and relevant labour policies and schemes that are available to other workers in India*”. However, the entire final report of the Task Force, including the Policy, has remained in cold storage for several years.<sup>853</sup>

A new National Policy for Domestic Workers 2015 was informally made available to the trade unions in 2016, along with a ‘Code of Standard Practices for Employment of Domestic Workers in India’.<sup>854</sup> According to this Code, domestic workers are to be registered under the UWSS Act 2008 and given a portable smart card (identity card) to facilitate their access to social security schemes. Every domestic

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852 ILO, ‘Persisting servitude and gradual shifts towards recognition and dignity of labour: A study of employers of domestic workers in Delhi and Mumbai’, 2017, pp.73-74. Available at: <https://bit.ly/38x2gKd>

853 Centre For Women’s Development Studies, ‘Working Paper No.9 – Action Research on Women’s Labour Migration in India’, December 2017-July 2018., p.29. Available at: <https://bit.ly/2KmrQHU>.

854 Firstpost, ‘Govt readies domestic workers policy, proposes Rs. 9,000 minimum pay with benefits’, 17 August 2015. Available at: <https://bit.ly/2U9dVGx>

worker was to be entitled to a life insurance and a disability insurance policies,<sup>855</sup> a health insurance policy<sup>856</sup> (RSBY/ESIC), and an old age pension scheme.<sup>857</sup> Maternity benefit, which is of prime importance given the overwhelming number of women in this sector, is to be “per prevailing national policy”, but does not provide any further clarity. According to the Code, social security contributions for these schemes are to be recovered from the employer. However, there is no mention of a special redressal mechanism to deal with errant employers who may renege or refuse. The standard contract laid out includes details of terms and conditions, including remuneration, methods of payment, weekly rest periods, working hours, different types of leave, and accommodation.

This draft Policy signalled a move away from the framework of labour legislation with its thrust on the Code of Practices within the framework of contractual agreements that will be enforceable in the courts of law in India governed by the Indian Contract Act 1872 and through a grievance redressal mechanism that will employ conciliation and arbitration methods. The latter is governed by the Arbitration and Conciliation Act 1996. However, its practicality is difficult to envisage as it puts the onus on the already poor domestic workers, many of whom have few educational qualifications, to understand and demand the enforcement of these contracts. It also overlooks that fact that a majority of domestic workers in the country consists of those who work for a few hours in several households (defined as “part time” in the draft policy). Therefore, it will be virtually impossible for them to enter into multiple contracts with all their employers. As a result, the draft Policy of 2015 (circulated in 2016), has been criticized as it enhances the bargaining capacity of the employers to the detriment of domestic workers.

### *Employees’ State Insurance Corporation (ESIC) Scheme*

The Government of India rolled out a pilot scheme covering domestic workers under the ESIC in August 2016.<sup>858</sup> However, this decision was critiqued for several reasons:

- It is voluntary and leaves it to the discretion of the domestic worker to enrol herself / himself.
- It provides for only partial medical benefits to be applicable, and maternity benefits are denied.
- It is not portable across states.
- There is no employer contribution, while the domestic worker has to pay Rs. 200 per month.
- The age-limit for enrolment is 60 years, thereby excluding elderly domestic workers.

Thus, the scheme discriminated between domestic and other workers. Additionally, for the purposes of the scheme, domestic workers are classified as ‘self-employed’, a term that questions the employment relationship that is so critical to the definition of paid domestic services. Since the UWSS Act 2008 explicitly states that it will exclude those who benefit from the ESIC Scheme, it is necessary to amend both the Acts simultaneously to ensure their complementarity with one another. Some of the domestic workers’ organizations that have been created over the last few years have demanded

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855 Employees’ Provident Fund (EPF)/ *Pradhan Mantri Suraksha Bima Yojana* (PMSMY) / *Pradhan Mantri Jeevan Jyoti Bima Yojana* (PMJJBY) / *Aam Aadmi Bima Yojana* (AABY).

856 *Rashtriya Swasthya Bima Yojana* (RSBY) / Employees’ State Insurance Corporation (ESIC).

857 *Atal Pension Yojana* / Employees’ Provident Fund (EPF).

858 MoLE - Govt of India, (Director General Labour Welfare Office), Order No X-11 /14/4/2016 – P&D, 21 September 2016; see also, The Economic Times, ‘Domestic workers to be brought under ESIC fold’, 29 October 2016. Available at: <https://bit.ly/35aRGGz>

full benefits under the ESIC Scheme: employee contribution of 1.75 per cent, and employer contribution of 4.75 per cent of the wages paid according to the norms applicable for other workers.<sup>859</sup>

#### *Draft National Policy for Domestic Workers 2017*

The Government of India drafted another National Policy for Domestic Workers July 2017,<sup>860</sup> its third in the last decade. However, the 2017 Policy retained the lacunae in its predecessors. It does not clearly define 'domestic work' as work done *within* the household. By using terms such as "Part Time" and "Full Time", it fails to recognise the fact that the working day of many domestic workers extends beyond 12 hours as they have to work in several households in order to earn an adequate income. While the Policy recognizes the need to protect overseas migrant domestic workers, it ignores inter-state migrant workers within the country. Similarly, it does not recommend a national floor minimum wage for domestic workers that will encourage state governments to follow suit. It also includes a clause that provides legitimacy to the employers to pay wages in kind. Additionally, it provides for registration of workers, but there is no provision for registration of employers or their inclusion in the regulatory framework. It creates the 'Code of Practice' for the government, employers, and their organizations rather than a legal framework holding them accountable in the courts of law.

There is no clarity regarding the synthesis of this Policy with the UWSS Act 2008. It proposes an extension of the social security schemes or inclusion of welfare boards set up in different states without critically reviewing their experience. It mentions model contracts, but does not impose penalties for any breach of contracts. The Policy also completely overlooks the various discriminatory practices faced by domestic workers, including those based on caste and religion. Similarly, it does not provide any concrete measures to raise the financial resources necessary for its implementation.

An Implementation Committee was to produce implementation plans within six months of adopting the policy and advise the Ministry of Labour and Employment (MoLE) on its progress. However, a criticism has been that it does not adequately assert the rights of workers and has a tone and tenor that is conciliatory using terms such as "amicable settlement of disputes" and "constructive social dialogue". The MoLE issued a notice in seeking public opinion on the draft National Policy in October 2017,<sup>861</sup> after the draft had already been put for discussion in the ILO session of July 2017.

#### *Private Member's Bill 2017*

The Domestic Workers (Regulation of Work and Social Security) Bill 2017 was introduced as a Private Member's Bill in the *Lok Sabha* and the *Rajya Sabha* due to the efforts of the National Platform of Domestic Workers (NPDW).<sup>862</sup> However, it has continued to remain pending without any proactive move towards enacting a protective legislation for domestic workers.<sup>863</sup>

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859 ILO, 'Report of the Consultation with Trade unions and Domestic Workers Organizations on Extension of ESIC', 30 November 2016; see also, Employees' State Insurance Scheme. Available at: <https://bit.ly/2U9DYxl>

860 MoLE - Govt of India (Director General Labour Welfare), National Policy for Domestic Workers 2017 (Draft for Discussion). Available at: [https://labour.gov.in/sites/default/files/MX-M362N\\_20171013\\_135443.pdf](https://labour.gov.in/sites/default/files/MX-M362N_20171013_135443.pdf)

861 Ibid.

862 The Domestic Workers (Regulation of Work and Social Security) Bill 2017 (introduced in the Lok Sabha on 21 July 2017). Available at: <https://bit.ly/36f6KCi>

863 PRS Legislative Research, Member of Parliament – Sankar Prasad Datta: Private Member Bills. Available at: <https://bit.ly/36j41rF>

## *Labour Codes and Domestic Workers*

- Wage Code

The Schedule appended to the Draft Rules of the Wage Code does not mention ‘domestic workers’ in any of the skill categories.<sup>864</sup> While payment slips, paid rest periods, leave, and bonus are mentioned in the Rules, the manner in which the Code would be made applicable to domestic workers is unclear. Similarly, the Code does not make any provision for representation of women in the Technical Committee to be set up for categorization of occupations into different skill categories.

- Draft Code on Social Security and Welfare

The Draft Code on Social Security and Welfare is available on the MoLE website. However, it is available only in English.<sup>865</sup> This language barrier has led to the exclusion of a majority of workers from responding to its proposals. The Code conflates all into one monolithic section, which is particularly detrimental to domestic workers in India in light of their complex work specificities. It also assumes that all workers are in a position to negotiate or bargain with their employers, without taking into account their particular vulnerabilities.

The Code proposes a centralized structure consisting of the National Social Security Council of India with Central and state boards vested with substantial administrative, regulatory and financial powers. The National Council makes a provision for only three employee representatives (of which one is to be a woman) in a total of 21 members to be nominated. The Central and state boards, however, do not specifically provide for such representation of women workers. The method of nomination is highly subjective and has the effect of side-lining the trade unions have been totally side-lined. Since the visibility of workers in the informal sector and the limited benefits available to them are due to the efforts of their unions, it seems unlikely for them to find any voice in such a centralized structure.

The Code seeks to introduce the two-child norm as an eligibility criterion for availing maternity benefits; it also restricts eligibility to those who have “worked in an establishment for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery”. Therefore, irregular workers (seasonal and contract workers) are automatically excluded. Similarly, every employer, employee and employer-employee relationship is to be registered, with no provision for self-declaration. As a result, workers in the unorganized sector or informal economy with multiple employers will find it laborious to register for coverage. There is a provision for licensing of intermediate agencies (such as fund manager, service delivery agency, benefit disbursement, facilitation, etc), thereby opening the door for privatisation of service delivery and possibilities increasing hardship in accessing welfare benefits. It is important to note that the Code eschews the language of rights and uses the framework of benefits. Therefore, although the Government of India had supported the passage of C189, its lack of ratification has meant an absence of concrete steps to ensure these rights in the near future.

### **Recommendations on accelerating the process of consolidating existing labour laws and ensuring women’s equal participation in the workforce**

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864 The Code on Wages 2019, 8 August 2019. Available at: <https://bit.ly/2GNv1qu>; see also, Draft Code on Wages (Central) Rules 2020, 7 July 2020. Available at: <https://bit.ly/3eGPM3y>

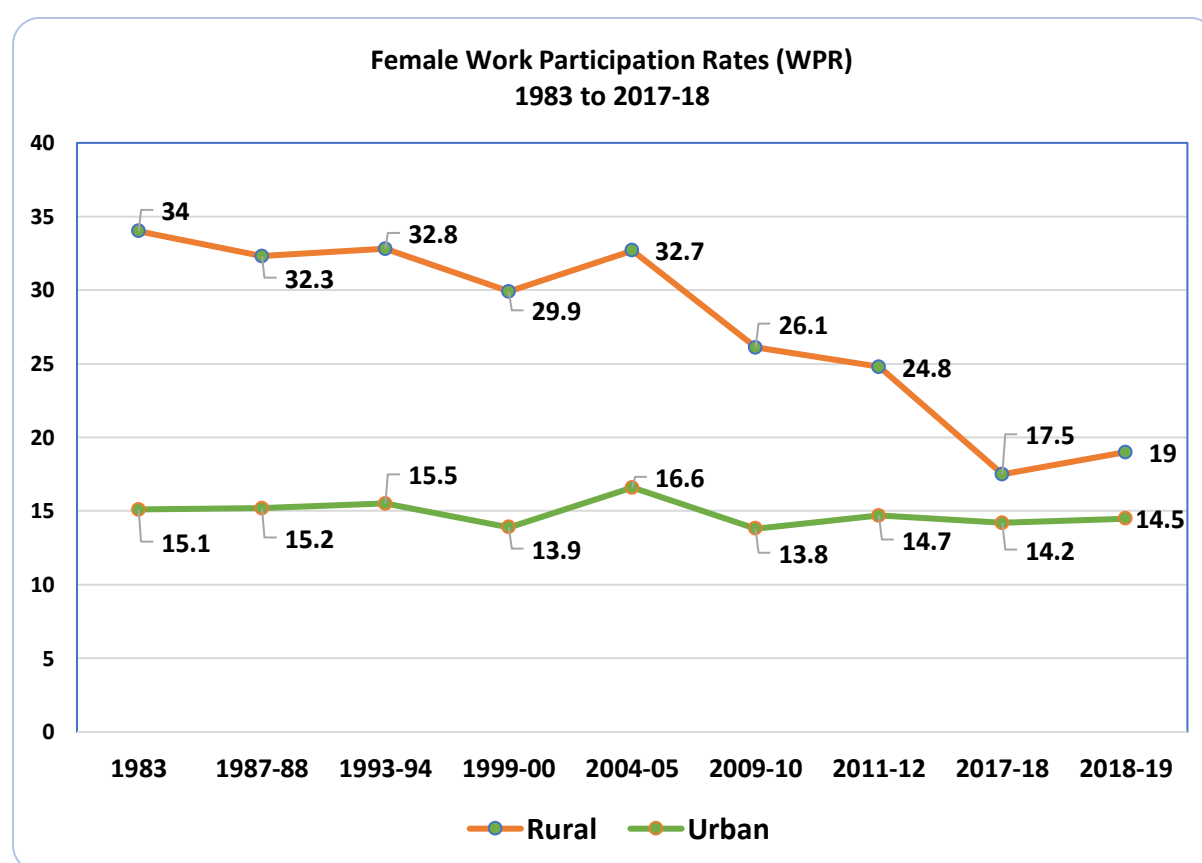
865 Draft Code on Social Security 2019, 17 September 2019. Available at: <https://bit.ly/3keKCNh>

The Constitution of India ensures rights of all workers — equal and living wages, safe and humane conditions of work, maternity relief, etc. However, recent changes in labour laws have undermined the existing rights, especially of women workers. The visible decline in female work participation over the last few years is accompanied by a continued concentration of women workers in the low-paid and unorganized segments, rising gender-based wage differentials, persistent non-recognition of large sections of women workers by the Government itself, and the unequal burden of unpaid work.<sup>866</sup>

### *Status of Women's Employment*

A major issue confronting employment reality is the lack of published data: several reports have not been officially released; when they have been, the methodological changes have made comparison problematic over time. There has been a discernible fall in the overall employment of women. As seen in Graph I, the sharpest decline has been in the last few years, apart from the period of global recession. Especially rural rates have fallen the most in the six years between 2011-12<sup>867</sup> and 2017-18, from an already low 24.8 per cent to 17.5 per cent. The rise of 1.5 per cent in 2018-19 is primarily due to redefinition of 'work', which now includes those registered under EPF schemes. These rates have seen a drastic fall of close to 47 million between 2004-05 and 2017-18.<sup>868</sup>

**Graph I**



866 Action Aid India and UN Women, 'Invisible Work, Invisible Workers: The Sub-Economies of Unpaid Work and Paid Work', (First Edition 2017; Second Edition 2019). Available at: <https://bit.ly/3eFGvbS>

867 Indian Journal of Agricultural Economics, 'Keynote Address: Contextualising & Visibilising Gender and Work in Rural India: Economic Contribution of Women in Agriculture', Vol.71, No.1, March 2016. Available at: <https://bit.ly/36jsFlr>

868 National Statistical Office – Govt of India, 'Periodic Labour Force Survey 2017-18', Available at: <https://bit.ly/3kiCHvy>



The pattern of women's employment is telling as far as their status in the labour hierarchy. The largest category in the rural sector are unpaid workers: 38.7 per cent in 2017-18, falling marginally to 37.9 per cent in 2018-19. The comparative proportions for the urban sector are 11 per cent and 9.6 per cent respectively. The largest category of women's employment in the urban sector is of regular workers at an overwhelming 54.7 per cent. However, this category includes domestic workers and other service sector employees who, in practice, are not regular workers and are often without minimum wages and secure terms. As many as 65 per cent of regular, salaried workers and 96 per cent of casual workers have no written employment contract. According to the Periodic Labour Force Survey of 2017-18, unemployment rates doubled in the last six years: from 5.2 per cent in 2011-12 to 10.8 per cent in usual status and from 6.7 per cent to 12.8 per cent in the current weekly status.<sup>869</sup>

**Graph II**

**Rural Female Employment by Industry: 1993-94 to 2017-18**

Broad Industry Division	Rural Female Employment					
	50th NSS Round	55th NSS Round	61st NSS Round	66th NSS Round	68th NSS Round	PLFS
	1993-94	1999-2000	2004-05	2009-10	2011-12	2017-18
<b>Agriculture</b>	86.2	85.4	83.3	79.4	74.9	73.2
<b>Mining and Quarrying</b>	0.4	0.3	0.3	0.3	0.3	0.2
<b>Manufacturing</b>	7.0	7.6	8.4	7.5	9.8	8.1
<b>Electricity, Water etc.</b>	-	-	0.0	0.0	0.1	0.0
<b>Construction</b>	0.9	1.1	1.5	5.2	6.6	5.3
<b>Trade, Hotel and Restaurant</b>	2.1	2.0	2.5	2.8	3.0	4.0
<b>Transport, Storage and Communications</b>	0.1	0.1	0.2	0.2	0.2	0.3
<b>Other Services</b>	3.4	3.7	3.9	4.6	5.2	8.9
<b>ALL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

<sup>869</sup> Ibid.

**Graph III**

**Urban Female Employment by Industry: 1993-94 to 2017-18**

Broad Industry Division	Urban Female Employment					
	50th NSS Round 1993-94	55th NSS Round 1999-2000	61st NSS Round 2004-05	66th NSS Round 2009-10	68th NSS Round 2011-12	PLFS 2017-18
<b>Agriculture</b>	24.7	17.7	18.1	13.9	10.9	9.1
<b>Mining and Quarrying</b>	0.6	0.4	0.2	0.3	0.3	0.2
<b>Manufacturing</b>	24.1	24.0	28.2	27.9	28.7	25.2
<b>Electricity, Water etc.</b>	0.3	0.2	0.2	0.4	1.0	0.6
<b>Construction</b>	4.1	4.8	3.8	4.7	4.0	4.1
<b>Trade, Hotel and Restaurant</b>	10.0	16.9	12.2	12.1	12.8	13.0
<b>Transport, Storage and Communications</b>	1.3	1.8	1.4	1.4	2.7	3.3
<b>Other Services</b>	35.0	34.2	35.9	39.3	39.6	44.4
<b>ALL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>99.9</b>

The gender wage gap has remained high, contrary to Article 39 of the Constitution: The 2011-12 National Sample Survey report reveals that the wages of rural regular, salaried men workers are 57 per cent higher than that of women; this gap is about 27 per cent higher in urban areas. For casual workers, the gap is 43 per cent in rural areas and 55 per cent in urban areas. The gender wage gap is become sharper in the last five years, as seen in Graph IV, especially for self-employed workers in urban areas.<sup>870</sup> There is no data on independent wages for women when piece wages are paid for products of family units of labour.

870 Centre for Women's Development Studies, 'Political Economy of New Labour Regime: A Focus on Women Labour in India - Working Paper #3', 2018. Available at: <https://bit.ly/2GJNowt>

Graph IV

### Median Daily Earnings, 2017-18 (₹)



### Labour Codes through a Gender Lens

Over the last five years, the Government of India has sought to amalgamate laws relating to all categories of workers in various sectors for ‘rationalization’ and ‘ease of doing business’. However, its impact has been a dilution of labour rights over the decade through four simultaneous processes:

- i. *Procedural changes* in labour administration directed at curtailing inspections to check on compliance with labour laws; exemptions and self-certification by employers;
- ii. *Legislative, executive changes* to increase flexible in employment relations, allowing employers to go for temporary (contract / casual) rather than permanent employees;
- iii. *Restructuring of premises and principles of social security* for workers by reducing employers’ contributions; greater emphasis on limited private insurance; and linking benefits with market behaviour rather than assured public provisioning;
- iv. *Imposition of additional conditions and restraints* on registration of trade unions and collective bargaining institutions.<sup>871</sup>

### • The Code on Wages

In January 2019, an Expert Committee appointed by the MoLE submitted a report on determining a methodology for fixing the National Minimum Wage.<sup>872</sup> Subsequently, the Code on Wages (CoW) was passed as an Act of the Parliament *vide* the Ministry of Law and Justice on 8 August 2019, thereby repealing and replacing four laws: Payment of Wages Act 1936, Minimum Wages Act 1948, Payment of Bonus Act 1965 and Equal Remuneration Act 1976. However, the definitions of several terms such as ‘work’, ‘worker’, and ‘workplace’ under the CoW include an employee or worker only in relation to an establishment or industry, precluding private households. This denies ‘worker’ status to interns and apprentices, domestic and home-based workers, an overwhelming majority of whom are women.

871 EPW, ‘Crossroads and Boundaries: Labour migration, Trafficking, and Gender’, 16 May 2020, Vol. 55 No.20, pp.66-75. Available at: <https://bit.ly/35e3zM0>

872 MoLE – Govt of India, ‘Report of the Expert Committee on Determining the Methodology for Fixing the National Minimum Wage’, January 2019. Available at: <https://bit.ly/3n7W3lr>

For illustration, *beedi* workers are now denied minimum wages, equal remuneration, protection from excessive deductions through product rejection, and other benefits such as bonus or increment. Similarly, the criteria for calculating minimum wages as laid down by the Indian Labour Conference (ILC) and Supreme Court is completely missing from the CoW. While equal remuneration for equal work is retained, the Advisory Board for Minimum Wages and the Committee for Increasing Employment Opportunities for Women are merged into a single board, with one-third being women, representing a reduction from the 50 per cent stipulated under the Equal Remuneration Act 1976.

- *Code on Occupational Safety, Health and Working Conditions*

The Code on Occupational Safety, Health and Working Conditions (COSHWC) introduced in the *Lok Sabha* as Bill No. 186 of 2019. It replaces 13 laws: (1) The Factories Act 1948; (2) Mines Act 1952; (3) Dock Workers (Safety, Health and Welfare) Act 1986; (4) Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996; (5) Plantations Labour Act 1951; (6) Contract Labour (Regulation and Abolition) Act 1970; (7) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979; (8) Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act 1955; (9) Working Journalist (Fixation of rates of wages) Act 1958; (10) Motor Transport Workers Act 1961; (11) Sales Promotion Employees (Condition of Service) Act 1976; (12) Beedi and Cigar Workers (Conditions of Employment) Act 1966; and (13) Cine Workers and Cinema Theatre Workers Act 1981. The Code was passed by both the houses of the Parliament in September 2020<sup>873</sup> by a voice vote.<sup>874</sup>

Similar to the CoW, employment in private households is omitted from the CoSHWC, yet again leaving out all home-based and domestic workers. Existing health provisions in relation to creches under the Factories Act have been dropped. Plantation managements have been given an option to transfer liabilities and responsibilities to the government and *panchayats* for provision of medical facilities, housing, food supplies and such other essentials that they had an obligation to provide under the Plantation Labour Act 1951. The Code also permits night work for women workers (after 19:00 and before 06:00) “with their consent”, without any obligation on the employers to provide safe transportation. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (POSH Act) has been left out of the framework, thereby neither addressing nor ensuring safe environment for women workers, even in the organized sector. In this context, it is crucial to identify the impact of violence, including domestic violence, on women’s participation in the workforce. According to NFHS-IV (2015-16) with a sample-size of approximately 5,68,200 households, over 33 per cent of Indian women experience spousal / intimate partner abuse in India. Domestic violence impacts women in the labour force in various ways:

1. By being compelled to leave the workforce altogether;
2. By often compelling her to take time off from work when severely affected, both in the paid labour market and when involved in home-based production;
3. By domestic violence not being recognised as a ‘valid’ reason for applying for leave either in the formal or informal employment sectors;
4. When levels of domestic violence are high, by interrupting her career opportunities in the formal labour market;

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873 The Occupational Safety, Health and Working Conditions Code 2020. Available at: <https://bit.ly/3n9dqbX>

874 The Leaflet, ‘New Labour Codes: No Protection Against ‘Hire and Fire’ Regime’, 3 October 2020. Available at: <https://bit.ly/2JK4hlo>

5. By reducing her capacity to work both physically and emotionally;
6. By reducing her production levels, especially when payment of wages is based on piece-rate;
7. By decreasing her levels of concentration and reducing her physical and mental strength.

- *Code on Social Security*

The Code on Social Security (CoSS) introduced in the Parliament as Bill No. 375 of 2019 replaces 15 laws: (1) Unorganised Workers' Social Security Act 2008; (2) Mica Employees' Compensation Act 1923; (3) Employees' State Insurance Act 1948; (4) Employees' Provident Funds and Miscellaneous Provisions Act 1952; (5) Maternity Benefit Act 1961; (6) Payment of Gratuity Act 1972; (7) Unorganised Mines Labour Welfare Fund Act 1946; (8) Limestone and Dolomite Mines Labour Welfare Fund Act 1972; (9) Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act 1976; (10) Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act 1976; (11) Beedi Workers Welfare Cess Act 1976; (12) Beedi Workers Welfare Fund Act 1976; (13) Cine Workers Welfare (Cess) Act 1981; (14) Cine Workers Welfare Fund Act 1981; and (15) Building and Other Construction Workers Cess Act 1996.

It must, however, be noted that as a code focusing on social security, the CoSS lists no measures whatsoever and merely states that all schemes 'as may be framed' under existing social security mechanism such as EPF, Employees Insurance, etc. will apply. However, it defines an 'unorganized worker', including home-based and domestic workers, as a 'wage worker'. All Cess Welfare Funds have been abolished ostensibly to make way for the Goods and Services Tax (GST): these include *beedi*, iron, manganese, chrome, mica, salt pan, limestone and dolomite mine workers. These Cess Welfare Funds had been set up over the years through arduous struggles by trade unions and included payment of a matching contribution by the employer. The section on Maternity Benefit in CoSS reiterates the provision for 26 weeks' paid maternity leave by employers, as introduced by the 2017 amendment to the Maternity Benefit Act 1961. It also reiterates the provision of creches with four visits a day for establishments with 50 or more workers and such other health protective provisions under the original Act. However, all these provisions are applicable only to the organized sector.

- *The Code on Industrial Relations*

The Code on Industrial Relations, notified in September 2020,<sup>875</sup> was introduced as Bill No. 364 of 2019. It repeals three earlier laws: (1) Trade Union Act 1926; (2) Industrial Employment (Standing Order) Act 1946; and (3) Industrial Disputes Act 1947. However, the changes envisaged have been criticized on the following grounds: the Code extends restrictions on strikes and mass casual leave in all sectors beyond public utility services. These constraints include 60 days' prior notice, prohibiting strikes during pendency of proceedings before a conciliation officer or tribunal, and permitting any individual to go to a tribunal to prevent a strike, among others.

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875 The Industrial Relations Code 2020. Available at: <http://egazette.nic.in/WriteReadData/2020/222118.pdf>

## CHAPTER 10

### THE RIGHT TO EDUCATION

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.181	Increase the Government expenditure in the field of education.	Iraq	Supported	Not Implemented
161.187	Increase investment in the universal, mandatory and free education by giving priority to measures to eradicate discrimination and exclusion that affect girls, children with disability, Dalits and marginalized persons.	Mexico	Supported	Not Implemented
161.182	Continue its efforts to ensure that all children have access to education at all levels and all categories.	Lao People's Democratic Republic	Supported	Partially Implemented
161.183	Continue to take steps on providing inclusive and quality education for all.	Myanmar	Supported	Partially Implemented
161.184	Continue its efforts in implementing its comprehensive policies to ensure quality education for all children.	Qatar	Supported	Partially Implemented
161.189	Continue to ensure access to education for all, especially children of scheduled castes and tribes.	Holy See	Supported	Partially Implemented <sup>876</sup>
161.101	Step up its efforts against caste-based violence, discrimination and prejudice, including by eradicating all forms of caste-based discrimination in the educational system.	Czechia	Noted	Not Implemented <sup>877</sup>

<sup>876</sup> This issue with respect to the right to education of children belonging to the scheduled castes and scheduled tribes has been discussed at length in the chapter on 'Dalit and Adivasi Rights' in this report.

<sup>877</sup> Ibid.



161.185	Promote children's right to education, especially the education on climate change adaptation and mitigation.	Viet Nam	Supported	Not Implemented
161.186	Step up its efforts to carry out the second phase of its Education For All programmes to focus on providing affordable and quality secondary education in the country.	Brunei Darussalam	Supported	Partially Implemented
161.188	Accept more efforts to increase girls' secondary education including ensuring that schools are girl-friendly in all parameters.	Kyrgyzstan	Supported	Partially Implemented <sup>878</sup>
161.244	Ensure that girls with disabilities are afforded the same right to education as all children.	Australia	Supported	Partially Implemented

#### *Developments / Issues Post UPR-III:*

The Right to Education was introduced as a fundamental right under Article 21A of the Constitution by way of a constitutional amendment in 2002. Prior to the amendment, it was only a non-enforceable directive principle.<sup>879</sup> The Right to Education Act 2009 was enacted to specifically implement the right to free and compulsory education for all.<sup>880</sup> Several schemes were undertaken by the Government under the auspices of the Act such as the *Sarva Shiksha Abhiyaan*,<sup>881</sup> *Rashtriya Madhyamik Shiksha Abhiyaan*<sup>882</sup> and Teachers' Education, among others, responding to social realities.<sup>883</sup> However, the right to education has faced structural and systemic barriers over the years despite these efforts.

The condition of school education has remained in a *status quo* over 2017-19. While there has been an improvement under certain indicators essential to assess the condition of school education, other indicators show worrying trends. The presence of schools across the country has witnessed a decline from 15,58,940 in 2017-18 to 15,50,006 in 2018-19.<sup>884</sup> The decline is often seen as a result of school mergers introduced through a set of guidelines in 2017.<sup>885</sup> However, this consolidation has not

878 Some aspects of this issue with respect to the education of girl children has been discussed at length in the chapter on 'Child Rights' in this report.

879 The Constitution (Eighty-Sixth Amendment) Act 2002. Available at: <https://bit.ly/32u1F7Z>.

880 The Right of Children to Free and Compulsory Education Act (RTE) 2009. Available at: <https://bit.ly/3pfyl9B>

881 *Sarva Shiksha Abhiyaan* is a programme aimed at universalization of primary education – "education for all".

882 *Rashtriya Madhyamik Shiksha Abhiyaan* is a programme sponsored by the Central Government for the development of secondary education in public schools throughout the country.

883 Press Information Bureau, 'Ministry of Education: Steps taken by Government to provide education to poor students', 11 July 2019. Available at: <https://bit.ly/2JVqh3n>

884 A major blow of this reduction has been faced by schools in Rural Areas which has seen a significant decline in school numbers from 1311997 in 2017-18 to 1304063 in 2018-19. This shift is crucial to be noted because deprivation of education in rural areas leaves an externality of increase in child-marriage and trafficking. Please see: Ministry of Education, UDise+: Dashboard. Available at: <https://bit.ly/3eEmeUg> <as accessed on 11 June 2020>

885 The data produced by draft guidelines in 2015-16, which depicted how 187,006 primary schools and 62,899 upper primary schools were running with less than 30 students. On top of this 7,166 schools had zero enrolment and 87,000

produced any extraordinary results in delivering the best educational environment. On the contrary, it has been pointed out that the consolidation policy has managed to secure only marginal improvements in school infrastructure at primary level and in fact might have been responsible for an increase in the number of school drop-outs across social categories. The most severe impact has been on children with disabilities with a drop-out rate of 22 per cent in consolidated schools.<sup>886</sup>

There has been no noticeable change in the Pupil-Teacher Ratio (PTR) since 2017. In case of PTR for primary, upper-primary, and secondary schools, there has either been a marginal drop or no change at all.<sup>887</sup> Getting children to schools and ensuring their retention has been a formidable challenge that both the Government and educationists had realised for a long time. One of the progressive policies that has managed to incentivize enrolment and discourage drop-outs has been the Mid-Day Meal Scheme.<sup>888</sup> However, there has been a declined attention towards this well-formed policy. The budget allocated for the Scheme has stagnated at Rs. 110 billion in the last two years.<sup>889</sup> The enrolment number for children coming from marginalized communities has also seen a decline from 2017-18 to 2018-19, which registered a fall of 1.69 per cent, 0.61 per cent, and 1.48 per cent among the children from the Scheduled Castes, the Scheduled Tribes, and Other Backward Classes categories respectively.<sup>890</sup> In order to improve the education system in the country, an increase in the budgetary expenditure on education in the total financial budget is inevitable. Currently, the education sector continues to survive on 2.18 per cent of the total Union budget.<sup>891</sup>

#### *Government of India's Response:*

The Union Cabinet of India approved the New Education Policy (NEP) recently in July 2020 to outline a vision for bringing about a major overhaul in India's education system. There are high hopes from the policy as it brings in amendments at the infrastructural level, in the curriculum framework, as well

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schools were with a single teacher. Thus, the guideline for 'Rationalization of Small Schools across States for better efficiency' was adopted. Available at: <https://bit.ly/2GJQBfn>; see also, <https://bit.ly/38vtFfl>

886 Centre for Policy Research, 'School Consolidation: Catalyst for Change or an Inequitable Policy?', Available at: <https://bit.ly/2U7jh54>. A study was also conducted in 11,000 schools of Rajasthan pointed to a disturbing decline in the enrolment numbers for children with disabilities after the consolidation process as schools were often far away from their residence. It also violated the rule of presence of a school within 1km radius put forth by the RTE. Please see: Hindustan Times, 'Enrolment of students declined after merger of govt schools, finds study', 27 October 2019. Available at: <https://bit.ly/35fldPa>

887 Ministry of Education, UDise+: Pupil-Teacher Ratio'. Available at: <https://bit.ly/3khQyVM> <accessed on 11 June 2020>

888 Certain aspects of the Mid-Day Meal Scheme have been specifically discussed in the chapters on 'The Right to Health' and 'The Right to Food' in this report.

889 HAQ: Centre for Child Rights, 'Budget for Children 2020-21'. Available at: <https://bit.ly/3lg4XmH>. There have also been reports highlighting misuse of the budget allocated towards Mid-Day Meal Schemes in different states. A report in 2019 created shockwaves across the country showed how children were only getting 'roti aur namak' in the Mid-Day meals. For example, please see: [India Today](#); [The Hindu](#); and [Scroll](#)

890 Ministry of Education, UDise+: Social Category Wise Enrolment'. Available at: <https://bit.ly/3khQyVM>. <as accessed on 11 June 2020> Caste-based discrimination does not limit itself to enrolment numbers. There have been reports from across the country showing instances of children being discriminated on the basis of caste in schools. A recent case from Tamil Nadu showed how children were made to wear caste-based wrist bands of different colours leading to segregation and discrimination at various levels within the school premises. Educationists and anti-caste activists have consistently argued for introducing courses enabling conversations on discrimination and the need to eradicate this. To example, please see: [The Hindu](#); [Firstpost](#); [The New Indian Express](#); and [Livemint](#)

891 HAQ: Centre for Child Rights, 'Budget for Children 2020-21'. Available at: <https://bit.ly/3lg4XmH>

as in teacher management.<sup>892</sup> While some concerns have been raised about the implementation of the policy,<sup>893</sup> its concrete results can only be witnessed and analyzed in the time to come.

### **Impact of the COVID-19 Pandemic on the Right to Education**

With the national lockdown imposed due to the COVID-19 pandemic, which necessitated observance of physical distancing norms, schools and other educational institutions across India were closed down. However, this necessary measure adversely affected approximately 320 million learners in the country.<sup>894</sup> The teaching eventually moved on the virtual grid with the aim to prevent further impediments in guaranteeing and realizing the right to education. The Ministry of Human Resource and Development (MHRD) had released free online learning resources<sup>895</sup> to improve and facilitate access by the end of March 2020.<sup>896</sup> The Ministry of Finance also introduced measures to boost the education sector to 'ensure reach of quality education to farthest corners of the country'.<sup>897</sup>

While these efforts were significant, the transition to e-learning overlooked, and in some cases, exacerbated the digital divide and socio-economic-regional inequities in the country. The amenities involved in the process of e-learning could be afforded only by students belonging to a certain background, which had the effect of excluding children belonging to lower-income families as well as those based in remote and rural regions devoid of the necessary technological accessories such as mobile networks, internet services, smart phones, tablets, or television sets.<sup>898</sup> As per the Government of India's survey on Key Indicators of Household Social Consumption on Education in India (2017-18),<sup>899</sup> less than 15 per cent rural households in the country have internet access, as opposed to 42 per cent urban Indian households. There is both a regional and gendered aspect to this digital divide.<sup>900</sup> In Odisha, West Bengal, and Karnataka, less than nine per cent rural households had internet access.<sup>901</sup>

Similarly, access to electricity, which is crucial to digital education, has also proved to be a significant barrier in this respect.<sup>902</sup> While the Government claims that 99.9 per cent of Indian households have

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892 Ministry of Human Resource and Development (MHRD) - Govt of India, 'Draft National Education Policy 2019'. Available at: [https://mhrd.gov.in/sites/upload\\_files/mhrd/files/Draft\\_NEP\\_2019\\_EN\\_Revised.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/Draft_NEP_2019_EN_Revised.pdf)

893 Observer Research Foundation, 'The National Education Policy 2020: A policy for the times', 6 August 2020. Available at: <https://bit.ly/38pPUDk>; see also, Hindustan Times, 'Much to welcome in National Education Policy but...': Shashi Tharoor highlights some challenges', 30 July 2020. Available at: <https://bit.ly/3kg2Yh5>; Outlook, 'National Education Policy evokes mixed reactions among academicians', 29 July 2020. Available at: <https://bit.ly/2GPY81a>

894 World Economic Forum, 'How COVID-19 deepens the digital education divide in India', 5 October 2020. Available at: <https://bit.ly/3kgEfsK>

895 MHRD - Govt of India, 'Online learning Resources of MHRD', Available at: <https://bit.ly/32sLJ5T>

896 Press Information Bureau, 'MHRD: Access to the National Online Education Platform SWAYAM and other Digital Initiatives of the HRD ministry has tripled in last one week', 27 March 2020. Available at: <https://bit.ly/36otNkU>

897 Press Information Bureau, 'Ministry of Finance: Union Finance Minister announces several initiatives to boost education sector', 18 May 2020. Available at: <https://bit.ly/3n5j2E4>

898 Opinio Juris, 'India: A backbencher in the education sector during COVID-19', 26 June 2020. Available at: <https://bit.ly/2lI7NbG>

899 Ministry of Statistics and Programme Implementation (National Statistical Office) - Govt of India, 'National Sample Survey (NSS) 75th Round: Key Indicators of Social Consumption in India - Education 2017-18', p.59. Available at: <https://bit.ly/3elup1Y>

900 World Economic Forum, 'How COVID-19 deepens the digital education divide in India', 5 October 2020. Available at: <https://bit.ly/3kgEfsK>

901 Scroll, 'As classes go online, how can the Right to Education be guaranteed for students without net access?', 16 July 2020. Available at: <https://bit.ly/3eJt5Ma>

902 Scroll, 'Indian education can't go online - only 8% of homes with young members have computer with net link', 5 May 2020. Available at: <https://bit.ly/36i4muB>.

been electrified under its *Saubhagya* scheme,<sup>903</sup> the same does not hold true for the quality, consistency, and the number of hours for which it is available every day, especially in rural areas.<sup>904</sup> A nationwide survey conducted by the Ministry of Rural Development in 2017-18 showed that 16 per cent of Indian households received only one to eight hours of electricity per day; 33 per cent received it between nine and 12 hours, while 47 per cent received it for over 12 hours a day.<sup>905</sup> This inequity of access and affordability has been a detriment to realising and fulfilling the right to education. Whereas some governments such as Kerala took measures to mitigate the divide,<sup>906</sup> most others continued to face these difficulties.<sup>907</sup>

Another important concern that was raised in this respect is that the essential measure of closure of schools also prevented about 119.98 million students from availing the benefit of the aforementioned Mid-Day Meal Scheme, especially those from low-income families. Since the Scheme has contributed to increasing the enrolment and retention rates in schools,<sup>908</sup> it has been feared that the closure of schools might lead to an increase in the drop-out rates as well as other issues such as child, early and forced marriages<sup>909</sup> as well as child labour.<sup>910</sup> Thus, it has been argued that while closure of schools was essential in light of the public health hazard posed by COVID-19, the online education policy of the Government overlooked the socio-economic, access, and infrastructure realities of the country. Further efforts should have been made towards making such virtual learning more accessible in addition to the other measures that were introduced by the Government.

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903 Ministry of Power – Govt of India, ‘*Pradhan Mantri Sahaj Bijli Har Ghar Yojana: Saubhagya Dashboard*’. Available at: <https://saubhagya.gov.in/> <accessed on 23 October 2020>. The *Saubhagya* Scheme is a project of the Central Government aimed at electrification of all the households in the country.

904 Scroll, ‘Indian education can’t go online – only 8% of homes with young members have computer with net link’, 5 May 2020. Available at: <https://bit.ly/36i4muB>

905 Livemint, ‘The curious case of electrification in India amid discom blackouts’, 11 March 2019. Available at: <https://bit.ly/32s0WnX>

906 The Wire, ‘How the Kerala Model of Bringing Classrooms Home Works’, 7 July 2020. Available at: <https://bit.ly/38sY1PE>

907 Firstpost, ‘In Delhi, remote learning during COVID-19 leaves less well-off grappling with digital divide and teachers ruing lack of training’, 9 August 2020. Available at: <https://bit.ly/38rHOKH>

908 Business Today, ‘Mid-day meal scheme: Food for thought’, 6 January 2013. Available at: <https://bit.ly/3eJlzQs>

909 Scroll, ‘In India’s villages, some desperate parents see child marriage as a means to survive the pandemic’, 10 September 2020. Available at: <https://bit.ly/38xxdxT>

910 The Week, ‘COVID-19 pandemic may cause spike in child labour: CRY’, 12 June 2020. Available at: <https://bit.ly/2U783h4>

## CHAPTER 11

### THE FREEDOM OF RELIGION AND MINORITY RIGHTS

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.49	Bring into law the Prevention of Communal and Targeted Violence Bill (2013)	United Kingdom of Great Britain and Northern Ireland	Noted	Not Implemented <sup>911</sup>
161.66	In the spirit of its Constitution, which guarantees equal rights to all minorities, further invest in dedicated human rights training of police officials to register and investigate cases of discrimination and violence and hold them accountable when they fail to do so.	Finland	Supported	Partially Implemented
161.71	Intensify efforts to guarantee equality and non-discrimination in line with its international obligations by developing public human rights awareness programmes and taking concrete steps to advance the rights of women and girls, <b>members of religious minorities</b> , and lesbian, gay, bisexual, transgender and intersex persons and to combat caste-based discrimination, including to: criminalize marital rape; decriminalize consensual same-sex relations; and establish appropriate policies and practices for registering, investigating and prosecuting violence against women, girls	Ireland	Noted	Partially Implemented <sup>912</sup>

911 Referring to the recommendation of the National Human Rights Commission in UPR-II, the *then* Government of India had the Working Group of the National Advisory Council (NAC) draft the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill 2011. However, till date, the Bill has not been placed before any house of the Parliament for consideration. The draft bill is available at: <https://bit.ly/2UcJUWe>

912 The Sachar Committee recommendations aimed at addressing the social, economic and educational condition of the Muslim community in India were partially implemented as of 2019. Available at: <https://bit.ly/3kaRVFX>; with reference to the part of the recommendation addressing the LGBTI community, a detailed discussion on the issue is presented in the chapter on 'Rights of (I) Women and (II) Sexual and Gender Minorities' in this report.

	and <b>members of religious minorities.</b>			
161.72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of all religious minorities, scheduled castes, tribes and other vulnerable populations.	United States of America	Supported	Partially Implemented <sup>913</sup>
161.73	Take effective measures to combat rising instances of religious intolerance, violence and discrimination.	Kazakhstan	Noted	Not Implemented
161.99	Prevent and pursue through the appropriate judicial means all violent acts against religious and tribal minorities, Dalits and lower castes.	Holy See	Supported	Partially Implemented
161.100	Strengthen efforts for the prevention of cases of intercommunal violence.	Russian Federation	Supported	Not Implemented
161.126	Strengthen efforts to guarantee freedom of religion and belief, especially by retracting so-called anti-conversion laws.	Holy See	Noted	Not Implemented
161.127	Take all necessary measures to protect the rights of persons belonging to religious minorities, and repeal laws which restrict religious conversion.	The Netherlands	Noted	Partially Implemented <sup>914</sup>
161.128	Abolish anti-conversion laws and grant access to justice to victims of religious violence and discrimination.	Italy	Noted	Not Implemented <sup>915</sup>
161.129	Repeal the requisite legislation to stop violence and discrimination against religious minorities.	Kenya	Noted	Not Implemented
161.130	Take visible policy and other measures to ensure the freedom of religion and belief and address the alarming trend of racism, racial discrimination,	Pakistan	Noted	Not Implemented

913 There are constitutional protections and laws; however, they are not adequately and proactively implemented.

914 Anti-conversion laws have not been repealed and continue to exist in at least eight Indian states.

915 Ibid.



	xenophobia and related intolerance including mob violence committed, incited and advocated by right-wing parties and affiliated extremist organizations against minorities, particularly Muslims, Christians, Sikhs and Dalits.			
161.132	Continue to develop laws and make efforts to ensure freedom of religion and belief.	Lebanon	Supported	Not Implemented <sup>916</sup>
161.133	Guarantee freedom of religion or belief by implementing existing laws to better protect individuals belonging to minority groups from hate speech, incitement to religious violence, discrimination on religious grounds and forcible conversions.	Canada	Noted	Not Implemented
161.144	Continue its efforts to protect religious freedom and the rights of minority groups based on its Constitution and other relevant laws.	Republic of Korea	Supported	Partially Implemented

The Preamble to the Constitution of India has proclaimed the country as a sovereign, socialist, 'secular', democratic, republic.<sup>917</sup> Articles 25 to 28 guarantee the fundamental right to profess one's religion. Secularism in the Indian context was envisaged to mean not just separation of the State and religion, but also the principle that State will not discriminate, patronize, or interfere in the practice and profession of any religion. Article 25 provides that "*all persons are equally entitled to freedom of conscience and the right to freely profess, practise, and propagate religion subject to public order, morality, and health.*" Similarly, Article 26 permits all denominations to manage their affairs in matters of religion and these rights are only to be regulated by the State.<sup>918</sup> The interpretation of international standards on freedom of religion and belief includes the freedom to worship and manifest one's religion or faith; freedom to adopt, change, and renounce a religion or belief; freedom from coercion; observance of holidays; and teaching and disseminating one's religious beliefs.<sup>919</sup>

India is the world's second-most populous country with over 1.33 billion people and continues to be a land of diverse faiths and sects and is the birthplace of four major religions: Hinduism, Buddhism, Sikhism, and Jainism. Other religions such as Christianity, Islam, and Zoroastrianism have amalgamated into the Indian culture forming the modern Indian diaspora. Islam and Christianity are

916 No such specific law ensuring freedom of religion and belief was enacted.

917 The Constitution of India 1950, Preamble. Available at: <http://legislative.gov.in/constitution-of-india>

918 Ibid, Articles 25-26.

919 OHCHR, 'International standards on freedom of religion or belief'. Available at: <https://bit.ly/2Ib6IU9>

the second and third largest religions in the country and have seen a presence for several centuries in the country. The ideal of 'unity in diversity' and the aspiration of creating a progressive nation was promoted by the freedom fighters which resulted in independent India being a secular State, while guaranteeing the right to freedom of religion. While the State does not constitutionally have an official religion, in addition to the general laws, India retains personal laws which regulate certain civil matters such as marriage, divorce, maintenance, adoption, inheritance, and succession. These laws are influenced by religious customs and practices of different communities.<sup>920</sup>

In order to promote social cohesion between and development of all communities, it was necessary to examine and act upon the specific needs of different groups. One such attempt was in 2005, by the *then* Government of India under Dr. Manmohan Singh, who appointed a committee led by a former Chief Justice of the Delhi High Court, Rajinder Sachar, to examine the social, economic, and educational status of India's Muslim community. The Committee's report, which came out in 2006, concluded that the community "exhibits deficits and deprivation in practically all dimensions of development... Poor roads and lack of proper transport, sanitation, water, electricity, and public health facilities pervade Muslim concentration localities." The report also set out some recommendations to improve the findings on different parameters.<sup>921</sup> The implementation status of these recommendations has been reviewed periodically. The latest implementation status as of 2019 is available on the website of the Ministry of Minority Affairs.<sup>922</sup>

### **Protection of religious freedom in the country**

As aforementioned, Article 25 of the Constitution states that "all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion in a manner that does not adversely affect public order, health, or morality."<sup>923</sup> Under the National Commission for Minorities Act (NCMA) 1992 empowers the Central Government to notify 'religious minorities' on a national level.<sup>924</sup> Accordingly, six groups — Buddhists, Christians, Jains, Muslims, *Parsis* (Zoroastrians), and Sikhs — have been notified as 'minorities',<sup>925</sup> comprising about one-fifth of India's population. The Constitution provides for minorities to profess, practise, and promote their faiths, including through by establishing their own educational institutions.<sup>926</sup> Majority of India's 90 "Minority Concentration Districts" are in present in four states: Assam, Bihar, Uttar Pradesh, and West Bengal.<sup>927</sup>

### ***"Minorities": A Term Not Defined in the Constitution***

Freedom of religion and protection of minorities is explicitly spelled out in the Constitution; Articles 29, 30, 350A, and 350B use both the word "minority" and its plural form.<sup>928</sup> However, the Constitution does not define the term. Over the years, there has been a serious deliberation on the question of

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920 Constitution in the Classroom #3.1: Worksheets on Religion and Personal Laws. Available at: <https://bit.ly/3eiwtx8>

921 Ministry of Minority Affairs – Govt of India, 'Implementation of the Sachar Committee recommendations: Status up to 31 March 2017'. Available at: <https://bit.ly/32u4h5V>

922 Ministry of Minority Affairs – Govt of India, 'Status of follow-up action on the decisions of the Government on Sachar Committee recommendations: Status up to 31 March 2019'. Available at: <https://bit.ly/3kaRVFX>

923 The Constitution of India 1950, Art. 25. Available at: <http://legislative.gov.in/constitution-of-india>

924 The National Commission For Minorities Act 1992. Available at: <https://bit.ly/3lahQPf>

925 Ministry of Minority Affairs – Govt of India. Available at: <https://bit.ly/3n8ABTP>

926 The Constitution of India 1950, Art. 26. Available at: <http://legislative.gov.in/constitution-of-india>

927 Ministry of Minority Affairs – Govt of India, 'List of Minority Concentration Districts (Category 'A' and 'B')'. Available at: <https://bit.ly/35bUHX0>

928 The Constitution of India 1950. Available at: <http://legislative.gov.in/constitution-of-india>

which community constitutes a minority and whether such designated minorities should be based not on the national census but on the localized demographics of the states.<sup>929</sup> In 2002, the Supreme Court in *TMA Pai Foundation and Ors. v. State of Karnataka and Ors.* had held that for the purpose of Article 30 of the Constitution, “a minority—whether linguistic or religious—is determinable concerning a state and not by taking into consideration the population of the country as a whole.”<sup>930</sup>

Due to this position, some minorities have faced difficulties in their status being recognized at the national level by the Central Government. One such example is that of the Jain community, who are recognized as a religious minority in several states (Jharkhand, Maharashtra, Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, and Uttarakhand). Through the petition in the case of *Bal Patil and Anr. v. Union of India and Ors.*, the community sought a writ of mandamus from the Supreme Court to direct the Central Government to give a parallel recognition as a ‘minority’ at the national level. This demand was also endorsed by the National Commission for Minorities. However, the Supreme Court left the matter to the Central Government for notification is an executive act.<sup>931</sup> Ultimately, it was only in 2014 that the Central Government notified Jains as a national minority.<sup>932</sup>

In August 2020, a petition was filed before the Supreme Court challenging the validity of the Minority Education Institution Act 2004 for not recognizing minorities at the state level. It alleged that Hindus were in fact a minority in nine states, but did not get benefits such as reservation in employment or establishing their educational institutions etc. The Supreme Court has directed the Central Government to respond and frame guidelines for identifying minorities at the state level.<sup>933</sup>

### *Positive Developments*

While other serious concerns remain and are outlined further in this chapter, there have also been some positive developments in the last few years that should be noted. These include an active role of the judiciary in protecting the rights of minorities and for their betterment, at times citing provisions guaranteeing the right to freedom of expression under the Constitution and prohibiting imparting religious instruction in state-funded schools in keeping with the secular character of the Constitution.<sup>934</sup> The Ministry of Minority Affairs and the National Commission for Minorities have been addressing issues of security, education, and employment for religious minorities. In 2018, the Union Budget saw a 62 per cent increase in the funds for minority affairs.<sup>935</sup> Similarly, data suggests that between 2014-19, 31.4 million minority students received government scholarships, which was a seven per cent increase in beneficiaries than from the previous five years. About 23.7 million Muslim students got such scholarships, with the Government having spent Rs. 87.15 billion on education

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929 The Times of India, ‘SC rejects PIL seeking minority status for Hindus in some states’, 18 December 2019. Available at: <https://bit.ly/2lmtwzK>

930 *TMA Pai Foundation and Ors. v. State of Karnataka and Ors.*, AIR 2003 SC 355.

931 *Bal Patil and Anr. v. Union of India and Ors.*, 2002 (8) SCC 481. Available at: <https://bit.ly/32plWMO>

932 NDTV, ‘Jains granted minority status by Central Government’, 20 January 2014. Available at: <https://bit.ly/3lgKxtM>

933 Scroll, ‘SC directs Centre to respond to PIL asking for identification of minorities at state level’, 28 August 2020. Available at: <https://bit.ly/3n8BwDL>; see also, The Hindu, ‘SC notice to Centre on PIL to frame guidelines for identifying minorities at state level’, 28 August 2020. Available at: <https://bit.ly/3kd0Ruj>

934 Bar and Bench, ‘Promotion of a particular religion by private schools defies the secular character of the Constitution: Kerala HC’, 24 January 2020. Available at: <https://bit.ly/3leHUZr>

935 The Times of India, ‘62% increase in funding for minority affairs in union budget’, 1 February 2018. Available at: <https://bit.ly/35RnGi2>

scholarships for minorities.<sup>936</sup> The Annual Report 2018-19 published by the Ministry of Minority Affairs listed some of these developments.<sup>937</sup>

In 2017, in the landmark case of *Shayara Bano v. Union of India and Ors.*, the Supreme Court passed a judgment which declared the practice of instant triple *talaq* among Muslims (a practice that allowed Muslim men to divorce their wives instantaneously and irrevocably) to be unconstitutional, discriminatory, and violative of the fundamental rights of Muslim women.<sup>938</sup> This was considered as a significant reform and a progressive step towards advancing the rights of Muslim women in the country.<sup>939</sup> Soon after the judgment, the ruling party brought in and passed the Muslim Women (Protection of Rights on Marriage) Act 2019, which prohibited and criminalized the pronouncement of triple *talaq* in any form with imprisonment of up to three years for the husband.<sup>940</sup> The decision of prohibiting the practice received wide support, but criminalizing it divided the its opponents, including members of the Muslim community, feminist scholars, and activists in the country.<sup>941</sup>

### **Communally Divisive and Majoritarian Political Discourse**

India has a faced its significant share of strengths and challenges due to its pluralistic composition; however, this identity has noticeably transformed over years. Systematically shrinking communal peace, coupled with hostile and divisive discourse against minorities, has increased over the years. The communal undertones in the 'Hindu nationalist initiatives' promised by the current ruling party and its allies in their manifesto have polarized the public opinion even further, thereby marginalizing minority communities, especially the Muslim community.<sup>942</sup> Over the years, there has been a rise in the exclusionary conception of national identity based on religion, which has led to instances of hate speech, harassment, and targeted violence against minorities, by both State and non-state actors.<sup>943</sup>

While Prime Minister Narendra Modi has made statements decrying mob violence, other leaders and members of the *Bharatiya Janata Party* (BJP), members of other political parties, and Hindu affiliate groups have repeatedly used discriminatory language against religious minorities. The Government's own statistics indicate that communal violence has increased sharply over years. In 2017, the Ministry of Home Affairs (MHA) reported 111 deaths and 2,384 injuries in 822 incidents of communal violence in the country in a single year<sup>944</sup> marking an increase of 28 per cent since 2014.<sup>945</sup>

### ***The Ideology of Hindutva and Religious Nationalism***

Over the last few years, the ideology of *Hindutva*, which essentially seeks to assert the majoritarian beliefs and sees India as a 'Hindu Nation', has surged. It finds its roots in the history of the sub-

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936 The Print, 'More Muslims got govt scholarships under Modi govt than during Congress-led UPA-2', 21 October 2019. Available at: <https://bit.ly/3kgdrZV>

937 Ministry of Minority Affairs – Govt of India, 'Annual Report 2018-19'. Available at: <https://bit.ly/2U7FvE2>

938 *Shayara Bano v. Union of India and Ors.* (2017) 9 SCC 1. Available at: <https://bit.ly/3lggQT4>

939 ESCR-Net, 'Shayara Bano and Ors. V. Union of India and Ors. Writ Petition (C) No.118 of 2016. Available at: <https://bit.ly/2lmbGNg>

940 The Muslim Women (Protection of Rights on Marriage) Act 2019. Available at: <https://bit.ly/3lgRN8W>

941 Quartz, 'India's triple talaq law has divided even those who oppose the practice', 16 September 2019. Available at: <https://bit.ly/3kgUINL>

942 The New Leam, 'The danger of identity politics arises when the proponents of an oppressed identity go to the extent of almost dehumanising the oppressor, says Dr. Amir Ali', 14 July 2020. Available at: <https://bit.ly/36mpMGS>

943 Forbes, 'Religious Freedom Is On The Decrease In India', 12 January 2019. Available at: <https://bit.ly/2GO7pIA>

944 The Hindu, '111 killed in 822 communal incidents in 2017: Govt', 6 February 2018. Available at: <https://bit.ly/2lnS3Ex>

945 Firstpost, 'Communal violence rose by 28% from 2014 to 2017, but 2008 remains year of highest instances of religious violence', 9 February 2018. Available at: <https://bit.ly/38sdQ9a>

continent which was largely politically dominated by Muslim rulers or invaders before the rise of the British and other colonial powers. Many Hindu nationalists, along with some historians, insist that Hindu traditions and institutions were systematically suppressed during this period, although Hindus form nearly 80 per cent of the population. This ideology was essentially developed to “correct these historic wrongs” and reclaim the Hindu culture.<sup>946</sup> This ideology also sees “secularism” envisaged in the Constitution as a superimposed concept inapplicable to the Indian context, which they argue was not originally included in the Constitution by its drafters, but inserted later by the 42nd Amendment to the Constitution in 1976<sup>947</sup> for “appeasing the minority communities.”<sup>948</sup>

It views acceptability of and adherence to Hinduism as concurrent with nationalism with the core belief being that India is an inherently Hindu Nation, even if the establishment of a ‘Hindu State’ is not a goal.<sup>949</sup> This has led to normalization of fear, hatred, and negative stereotypes against ‘others’, especially of ‘proselytizing religions such as Islam and Christianity, which are represented as a threat to the idea of a “Hindu Nation” and to the Hindu community. While the BJP has evolved as the largest political party in the country, at its core remain the ideals of ‘Hindu nationalism’ with the motive to protect India’s Hindu identity from the perceived threats “of coerced conversion to other religions and their cultural invasion of India.” The ideology of the *Rashtriya Swayamsevak Sangh* (RSS) and its affiliates has become widely accepted by the masses. In addition to their social-service oriented work, members of these many of these affiliated organizations have been accused of, implicated or complicit in, or incited some violent incidents in the country, including killing of ideological opponents, hate speeches, and endorsing supremacist views. This is also true of many leaders and office bearers of other political parties and community leaders. But it is the elected members and leaders of the ruling party with such wide support who are also promoting acrimonious and divisive ideas — without any admonition from the top echelon of leadership in most cases — which is particularly concerning.

Adherents of this ideology have staunchly opposed ‘forceful’ conversion of Hindus to other religions. They believe that Indian Muslims and Christians were originally Hindus, whose ancestors were forced or coerced into accepting other religions by the ‘invaders’ and ‘colonialists’. Therefore, these organizations have been persistent in demanding a nation-wide ban on religious conversions by enacting anti-conversion laws. Some affiliates such as the *Vishwa Hindu Parishad* (VHP) have also been organizing “*Ghar wapsi*” (“home coming”) or reconversion ceremonies facilitating Indian Muslims and Christians to return to their “original” religion. They have expanded their efforts towards shaping the national identity by rewriting and teaching the Indian history in the educational curricula “to restore India’s lost glory”. This has also been done through Government policies, which essentially has the effect of denying the pluralistic and egalitarian identity of modern India, inclusive of the various civilizations that emerged through societal assimilation due to invasions as well as migrations over centuries.<sup>950</sup> This includes narrativizing events and revising textbooks; renaming public places and monuments after Hindu historical figures and leaders, which were earlier named after ‘Muslim’

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946 Springer Link, ‘Hindu Nationalism in India, 2011, pp. 1-17. Available at: <https://bit.ly/2Uelf3u>; Reuters, ‘By rewriting history, Hindu nationalists aim to assert their dominance over India’, 6 March 2018. Available at: <https://reut.rs/3eFohaG>

947 The Indian Express, ‘Secularism: Why Nehru dropped and Indira inserted the S-word in the Constitution’, 27 December 2017. Available at: <https://bit.ly/2lfgYUx>

948 Ibid; see also, The Statesman, ‘Inflicting dogma on the Constitution’, 6 August 2020. Available at: <https://bit.ly/38xEePf>

949 Carnegie Endowment for International Peace, ‘The Fate of Secularism in India’, 4 April 2019. Available at: <https://bit.ly/3kc6Orn>

950 Reuters, ‘By rewriting history, Hindu nationalists aim to assert their dominance over India’, 6 March 2018. Available at: <https://reut.rs/3eFohaG>

invaders and rulers; insisting that ancestors of all persons of Indian origin, including that of Muslims, were Hindu; and conflating nationalism with religious affiliation and reinforcing the identity divide.

### *Role of Hindutva in Governance and Policy-making*

The BJP and the ideology of *Hindutva* have consistently pushed for certain political goals, which they believe would help redefine the Indian national identity. These political goals were laid out in the BJP's election manifesto before general elections in 2014 as well as 2019, which received a strong support from Hindu nationalist organizations as well as a considerable majority of the population in the country. This led to a landslide victory for the party in both these consecutive elections. These aspirations, some of which have now become the State policy, are:

- Establishing a Uniform Civil Code: by replacing the personal laws based on religious customs by standardizing civil laws for all in matters of marriage, divorce, inheritance etc.
- Repealing Article 370 of the Constitution, which grants special status and limited autonomy to the state of Jammu and Kashmir: *This was effected in August 2019 by amending the Constitution and enacting the Jammu and Kashmir Reorganisation Act 2019, thereby creating two union territories of 'Jammu and Kashmir' and 'Ladakh'.*
- Redrafting public school textbooks to remove what are alleged to be glorifying Muslim rulers and invaders of the past and insulting to Hindu gods and culture.
- Constructing a Ram Temple on the *Ramjanmabhoomi* site in Ayodhya in place of the *Babri Mosque* that was razed in 1992: *The Supreme Court settled the matter after several years of litigation and unanimously held that the disputed site in Ayodhya belongs to Hindus and be given to a trust for the construction of the temple, and a suitable land be given to the Sunni Wakf Board to build a mosque.*<sup>951</sup> *In August 2020, the foundation stone of the Ram temple was laid by Prime Minister Narendra Modi. Further, in September 2020, all the key 32 persons, including prominent BJP leaders, accused for the demolition of the Babri Masjid in 1992,*<sup>952</sup> *which had sparked widespread communal violence,*<sup>953</sup> *were acquitted by a special court which concluded that the demolition was a spontaneous and not a planned act.*<sup>954</sup> *There have been demands by activists and other political parties calling the Central Bureau of Investigation (CBI) to immediately challenge the verdict before the higher judiciary.*<sup>955</sup>
- Preventing, prohibiting, and punishing cow slaughter through legislation as cows are revered and worshipped in the Hindu faith.

Another concerning development over the years has been that any protest against or opposition to the majoritarian policies adversely affecting the minorities or a view contrarian to the majority is being

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951 Supreme Court verdict on the Ayodhya dispute: *M Siddiq (D) Thr Lrs v. Mahant Suresh Das and Ors.* 2019 SCC Online 1440. Available at: [https://www.sci.gov.in/pdf/JUD\\_2.pdf](https://www.sci.gov.in/pdf/JUD_2.pdf)

952 The Indian Express, 'Babri Masjid conspiracy case: How the demolition trial progressed over the years', 5 October 2020. Available at: <https://bit.ly/3pcoHdg>

953 Scroll, 'Babri Masjid revisited: No, we cannot just decide that it's done and dusted and move on', 15 November 2019. Available at: <https://bit.ly/35eK2uF>

954 Scroll, 'No one guilty': How front pages covered Babri Masjid demolition verdict', 1 October 2020. Available at: <https://bit.ly/3kf8ZF>; see also, The Wire, 'While BJP celebrates Babri verdict, others criticise CBI for diluting evidence', 30 September 2020. Available at: <https://bit.ly/3lgBt8r>

955 The Wire, 'Babri Masjid demolition case: 'CBI should immediately challenge the verdict'', 2 October 2020. Available at: <https://bit.ly/36ip2m5>



viewed as ‘seditious’ and ‘anti-national’. Muslim political representation in the Parliament and state legislatures has also showed a decline over the years.<sup>956</sup> Muslim representation in the *Lok Sabha* (Lower House of the Parliament) was at 10 per cent in 1980 and dropped to less than four per cent in 2014.<sup>957</sup> Currently, after the 2019 general elections, out of the 552 seats in the *Lok Sabha*, there are 26 Muslim members of the Parliament belonging to various political parties. It has been reported, however, that the nominations of Muslim candidates by major parties has decreased from 10 per cent in 2014 to eight per cent in 2019, with the overall drop coming from regional parties for legislative assembly elections in different states.<sup>958</sup> For example, in Uttar Pradesh legislative assembly elections, a state with substantial Muslim population, their representation plummeted from 17.1 per cent in 2012 to 5.9 per cent in 2017. Out of the 24 Muslim members who were elected, not one is a woman.<sup>959</sup> In addition to the polarizing discourse, other factors such as split-voting and other internal socio-political barriers within the community have played a part in limiting their political representation.<sup>960</sup>

### **Anti-Conversion Laws and Forced Conversions**

The Constitution of India provides freedom of religion, including the choice to convert to another religion. However, six Indian states have the autonomy of the religious conviction acts which standardize religious conversions. These laws are enacted with an objective of precluding the use of intimidation, incentive, coercion, or religious influence in the concentration of community command and premised on the belief of the segments of the Hindu majority that the socio-economically deprived and uneducated are forcibly converted. Historically, these laws can be traced to the British era; however, the ones enacted after independence were rooted on the notion that forced and induced conversions are illegal and need to be prevented.<sup>961</sup> It was also seen as an attempt to ensure that Hindu population in India does not decline. A list of anti-conversion, ‘Freedom of Religion’ laws in various states is as follows:

- The **Orissa** (now Odisha) Freedom of Religion Act 1967.<sup>962</sup>
- **Madhya Pradesh** *Dharma Swatantrya Adhiniyam* or Freedom of Religion Act 1968<sup>963</sup>: It was amended in 2013 and provided for higher penalties and fines than were stipulated in the original legislation<sup>964</sup> and by requiring people desirous of converting to a different religion to give a one month’s prior notice to the authorities.<sup>965</sup>
- The **Arunachal Pradesh** Freedom of Religion Act 1978.<sup>966</sup>

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956 Quartz, ‘Why is Muslim political representation declining in India?’, 22 May 2019. Available at: <https://bit.ly/3pg2FpY>; see also, Statista, ‘Number of Muslim MPs Stagnating Despite Faith Growing’, 4 March 2020. Available at: <https://bit.ly/3eHZe6C>

957 Ibid.

958 The Wire, ‘Muslim representation in UP Assembly plummets with 2017 elections’, 14 March 2017. Available at: <https://bit.ly/35eq4iZ>

959 Bloomberg Quint, ‘Muslims in Uttar Pradesh Assembly Down To 5.9%, From 17.1% in 2012’, 14 March 2017. Available at: <https://bit.ly/2UaaAa7>

960 Hindustan Times, ‘Muslims’ under-representation in Parliament is not a consequence of the BJP’s rise’, 30 May 2019. Available at: <https://bit.ly/36oFC3K>

961 Journal of Human Rights Law and Practice [Vol.2, Iss.1], ISSN:2581-8155. Available at: <https://bit.ly/32uWYuO>

962 The Orissa Freedom of Religion Act 1967. Available at: <https://bit.ly/3pnHyT0>

963 The Madhya Pradesh Freedom of Religion Act 1968. Available at: <https://bit.ly/3k9cqmg>

964 The Indian Express, ‘MP govt moves Bill to make anti-conversion law stringent’, 10 July 2013. Available at: <https://bit.ly/32oVDFR>

965 BBC, ‘Conversions harder in Indian state’, 26 July 2006. Available at: <https://bbc.in/2GPP47K>

966 The Arunachal Pradesh Freedom of Religion Act 1978. Available at: <https://bit.ly/3lrGuLa>

- **Chhattisgarh** retained the Madhya Pradesh Freedom of Religion Act 1968 after it was carved out as a separate state and adopted it as the Chhattisgarh Freedom of Religion Act 1968. It was amended in 2006 and required people wanting to convert to another religion to give an advance 30-day notice to and seek permission from the District Magistrate.<sup>967</sup>
- **Gujarat** Freedom of Religion Act 2003, which prohibited conversion from one religion to another by use of force, allurement, or fraudulent means and stipulates punishment and fine for violation of its provisions.<sup>968</sup>
- **Himachal Pradesh** Freedom of Religion Act 2006, which prohibits and criminalizes conversion by misrepresentation, force, undue influence, coercion, inducement, marriage, or any fraudulent means a cognizable offence.<sup>969</sup>

The commonality between these state legislations is that they have made forced or fraudulent conversion a cognizable offence under Sections 295A and 298 of the Indian Penal Code (IPC). However, the laws have been used for a diverse range of actions and their constitutional validity has been challenged before the judiciary.

In the amendment to the Chhattisgarh legislation in 2006, there was a provision which exempted Christians intending to reconvert to Hinduism from the requirement of prior notice and approval. However, since the Governor did give his assent, that particular provision is not yet in force.<sup>970</sup> The laws in Madhya Pradesh and Odisha were challenged in *Rev. Stanislaus v. State of Madhya Pradesh* citing violation of Article 25. However, the Supreme Court upheld their constitutional validity by ruling that the fundamental right to practice and propagate religion does not include the right to convert.<sup>971</sup>

The state of Tamil Nadu passed the Prohibition of Forcible Conversion of Religion Ordinance in October 2002, which was replaced by the Tamil Nadu Prohibition of Forcible Conversion of Religion Act 2002 and was modelled after the Orissa (now Odisha) Freedom of Religion Act 1967.<sup>972</sup> However, the Government revoked it in 2006 due to public outcry against it.<sup>973</sup> Such law was passed in Rajasthan in 2006, which was only in case of conversion from the original religion, but does not include the cases of reconversion to the religion of one's ancestors. It was, however, returned by the Centre as it deviated from the national policy.<sup>974</sup> In several states, prosecutions have been launched under these Acts against Christian missionaries, who have often been accused of incentivizing and forcing conversions, especially in tribal areas.<sup>975</sup> While the conviction rates have been very low, cases are registered under these laws frequently.<sup>976</sup> There have also been attacks against the Christian

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967 The Times of India, 'Chhattisgarh Christian Association claimed conversion to be legal', 7 March 2016. Available at: <https://bit.ly/3kb4WPP>

968 The Gujarat Freedom of Religion Act 2003. Available at: <https://bit.ly/38o8egh>

969 The Himachal Pradesh Freedom of Religion Act 2006. Available at: <https://bit.ly/2lptB5>

970 Two Circles, 'Chhattisgarh governor blocks anti-conversion bill', 10 September 2007. Available at: <https://bit.ly/35c8Q6l>

971 *Rev. Stanislaus v. State of Madhya Pradesh* 1977 SCR (2) 611. Available at: <https://bit.ly/32rpCNg>

972 LatestLaws.com, 'Tamil Nadu Prohibition of Forcible Conversion of Religion Act 2002. Available at: <https://bit.ly/2lObXS>

973 Tamil Nadu Prohibition of Forcible Conversion of Religion (Repeal) Act 2006. Available at: <https://bit.ly/3eFWcA5>

974 The Hindu, 'Rajasthan conversion Bill returned by Centre', 16 November 2017. Available at: <https://bit.ly/3eHdz3n>

975 The Print, 'Christianity hasn't failed in India. Conversion isn't the only goal', 12 September 2020. Available at: <https://bit.ly/32sfjZr>

976 Journal of Human Rights Law and Practice [Vol.2, Iss.1], ISSN:2581-8155. Available at: <https://bit.ly/32uWYuO>; see also, The Hindu, 'MP court acquits 8 Christians of forced conversion charges', 21 February 2020. Available at: <https://bit.ly/36itS2J>

missionaries under the pretext of their suspected involvement in ‘forcible’ conversions.<sup>977</sup> Similarly, the “*Ghar wapsi*” or reconversion ceremonies facilitating Indian Muslims and Christians to return to their “original” religion have been carried out and even publicized.<sup>978</sup>

The definition and understanding of what implies conversion and what would imply ‘fraudulent means’ is ambiguous. Mindful of the vulnerabilities in the Indian context, the provision of public inquiry into conversions and mandatory intimation amounts to infantilization of citizens, creates scope for misuse, and violates the right to privacy, which has now been recognized as a fundamental right, although subject to certain restrictions.<sup>979</sup> It has also been argued that the IPC has provisions, such as Section 153A, which prohibit ‘promoting, by words or symbols, “feelings of enmity, hatred or ill-will” against religious groups, committing acts prejudicial to the harmony of religious groups, or organizing activities with the intent that participants train to use force or use force against religious groups’ to work as protective measures.<sup>980</sup>

Although these laws were formally enacted as protective measures meant to shield vulnerable individuals from being coerced or induced into changing their faith, they have created a hostile atmosphere against religious minorities for perceived proselytizing activities. Over the last few years, media and majoritarian organizations have started reporting on allegations of what they term as “*love jihad*”, which fears intentional and systematic design by “Muslim extremists” to coerce Hindu women, or women belonging to other religions, into marrying Muslim men and converting them to Islam.<sup>981</sup> It is important to note that the UN Special Rapporteur on freedom of religion or belief in his annual report of 2019 had stated that anti-conversion laws often “violate both *forum internum* and *forum externum* aspects<sup>982</sup> of the right to freedom of religion or belief.”<sup>983</sup>

### **Cow Slaughter and Vigilantism**

Cows are sacred in the Hindu culture. The Constitution, in the directive principle under Article 48, provides: “*The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.*”<sup>984</sup> 21 of India's 28 states have laws restricting or banning the killing of cows. Cow slaughter has been classified as a criminal offence punishable with imprisonment from six months up to 14 years. Some of these laws

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977 Asia News, ‘Northern India: Christian pastors beaten and arrested for ‘forced conversions’, 29 January 2020. Available at: <https://bit.ly/2lq7M60>

978 Financial Express, “Ghar-wapsi’: VHP says ‘reconverted’ 25,000 Muslims, Christians in 2018’, 26 October 2019. Available at: <https://bit.ly/2UetXic>

979 Mondaq, ‘India: Supreme Court declares right to privacy a fundamental right’, 31 August 2017. Available at: <https://bit.ly/3lfu497>

980 Journal of Human Rights Law and Practice [Vol.2, Iss.1], ISSN:2581-8155. Available at: <https://bit.ly/32uWYuO>

981 Deccan Chronicle, ‘Kerala ‘love jihad’: The curious case of Hadiya aka Akhila’, 8 March 2018. Available at: <https://bit.ly/35gxYcC>; see also, The Indian Express, ‘BJP leader wants ‘love jihad’ law in Karnataka, ministers advise caution’, 5 November 2020. Available at: <https://bit.ly/35c9Yai>

982 The right to freedom of religion can be understood in terms of its ‘internal’ or private aspect with respect to the choice of an individual to form, propagate or change his beliefs, which is absolute in nature. This is called as *forum internum*. Similarly, an individual also has the right to express or manifest his religious beliefs outwardly either alone or as a part of a community. This aspect can, however, be limited by the State under certain specific circumstances. This is the *forum externum* aspect of the right to freedom of religion or belief.

983 OHCHR, Report of the Special Rapporteur on freedom of religion or belief, 5 March 2019, para 31. Available at: <https://bit.ly/36zPfgn>

984 The Indian Express, ‘Directive principles, not right: How cow protection became part of the Constitution’, 1 June 2017. Available at: <https://bit.ly/35efjxW>

faced constitutional challenges. However, in October 2005, the Supreme Court upheld the constitutional validity of these laws, while stating that they could not be interpreted to mean that any permission to kill bovine cattle was by itself unconstitutional.<sup>985</sup> However, the rising narrative is that Hindu beliefs are disregarded and the majority Hindu population is at a disadvantage as minorities get privileged treatment. This has fostered a climate of suspicion, hate, and discrimination against minorities, especially Muslims and Dalits, leading to a rise in vigilante attacks and mob lynching in some parts of the country in the name of cow protection.<sup>986</sup>

The RSS had called for a nationwide ban on cow slaughter. As the demand mobilized, in May 2017, the Ministry of Environment imposed a blanket ban on sale and purchase of cattle for slaughter under Prevention of Cruelty to Animals statutes.<sup>987</sup> This decree was viewed by some as an imposition of an indirect ban on beef consumption. Several state governments such as Kerala, West Bengal, Arunachal Pradesh, Meghalaya, Mizoram, Manipur, Nagaland, etc. opposed and refused to follow the decree which was ‘arbitrary’ and ‘undermined their way of life.’<sup>988</sup> However, ultimately, the Supreme Court suspended this ban on the sale of cattle in July 2017 providing relief to those engaged in beef and leather industries whose livelihoods were adversely impacted by it.<sup>989</sup> Most of those affected and economically marginalized were Muslims and Dalits.

### *Mob Violence and Lynching*

Enforcement of laws banning beef and cow slaughter has taken the form of vigilante justice with an increase in the number of often self-proclaimed ‘*gau rakshaks*’ (cow protectors) who voluntarily act as the ‘eyes and ears’ of the administration. However, increasingly these groups have also become dispensers of instant justice and targeting primarily Muslims and Dalits over mere suspicion or accusation of violating the ban. Over the last few years, several such incidents of lynching and mob violence, especially against Muslims, over suspected cow slaughter, have come to light. Very often, such vigilante actions have resulted due to disinformation or rumours spread through social media. From 2010-17, there were 63 reported cow vigilante attacks killing 28 Indians — 24 among them being Muslims — and injuring over a 100 people.<sup>990</sup> Incidents from 2017-20 were reported predominantly in Rajasthan, Assam, Uttar Pradesh, Karnataka, Jharkhand, Delhi, West Bengal, Bihar, and Haryana.

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985 *State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat and Ors.* (2005) 8 SCC 534. Available at: <https://bit.ly/3n8smqH>; see also, The Indian Express, ‘SC: Laws prohibiting cow slaughter constitutional’, 30 March 2006. Available at: <https://bit.ly/3leW0tP>

986 These two communities are particularly vulnerable due to their traditional engagement with this work. Many slaughter houses and meat shops in India are run by Muslims. Similarly, some of the Dalit communities historically have carried out jobs of disposing cattle carcasses and skinning them for commercial purposes such as leather and leather goods.

987 Hindustan Times, ‘Centre bans sale of cows for slaughter at animal markets, restricts cattle trade’, 19 July 2017. Available at: <https://bit.ly/2JHGwAH>

988 Scroll, ‘“This is dictatorial”: Kerala, Bengal and North-East, new cattle rules meet with opposition’, 30 May 2017. Available at: <https://bit.ly/2JMIMqI>

989 Reuters, ‘Supreme Court suspends ban on trade in cattle for slaughter’, 12 July 2017. Available at: <https://reut.rs/2JTAIV1>

990 Reuters, ‘Protests held across India after attacks against Muslims’, 28 June 2017. Available at: <https://reut.rs/3eG1ifH>

The killings have not been adequately condemned by the senior leaders of the ruling party. In fact some political leaders have denied such instances,<sup>991</sup> implicitly supported,<sup>992</sup> or even justified the actions<sup>993</sup> of those implicated in such lynching.<sup>994</sup> It has also been reported that instead of taking prompt legal action against the attackers, police frequently filed complaints against the victims under laws banning cow slaughter<sup>995</sup> or simply did not take timely action.<sup>996</sup> In mid-2017, even after Prime Minister Narendra Modi condemned such violence, the RSS announced plans to recruit 5,000 "religious soldiers" to "control cow smuggling and *love jihad*." The Government had also planned to reassure the Dalits attacked by cow vigilantes of further protection from such atrocities.<sup>997</sup> The Government reiterated its official condemnation of such violence in August 2018 with Prime Minister Narendra Modi condemning such vigilantism and mob justice by stating that such lynching is a crime and will not be tolerated.<sup>998</sup> The Centre also constituted high level-committees to address such incidents and make recommendations to effectively deal with the issue.<sup>999</sup> In 2019 alone, there were 11 reported cases of cow vigilantism with eight killed and 18 injured. Two such incidents were recently reported in 2020 during the COVID-19 pandemic: first in Mangalore in June,<sup>1000</sup> and another in Gurugram in August 2020. In these cases, Muslim drivers, transporting cattle and carrying buffalo meat respectively, were brutally beaten by a mob.<sup>1001</sup>

On the other hand, in August 2020, due to an allegedly derogatory social media post about Prophet Muhammed, riots ensued and destructive violence resulted in Bengaluru. Amidst the pandemic, an angry Muslim mob attempted to barge into the house person who wrote the post (a Congress legislator's relative), demanding him to be arrested.<sup>1002</sup> As many as 2,000 people took to the streets pelting stones, torching vehicles, vandalising property<sup>1003</sup> and even attacking the police that were

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- 991 Scroll, 'Adityanath says mob lynching incidents are being given unnecessary importance', 25 July 2018. Available at: <https://bit.ly/3kFB6JU>; see also, Scroll, 'Alwar lynching: Mukhtar Abbas Naqvi denies any incident of cow vigilantism in Rajasthan', 6 April 2017. Available at: <https://bit.ly/32KOcZV>
- 992 India Today, 'Union minister Jayant Sinha garlands 8 convicted for Ramgarh mob lynching', 6 July 2018. Available at: <https://bit.ly/3pa7bqa>; see also, News 18, 'Year after garlanding Jharkhand lynching accused, Jayant Sinha reveals BJP paid their legal fees', 3 May 2019. Available at: <https://bit.ly/2GKus0t>
- 993 The New Indian Express, 'Controversial statements by BJP leaders on. Dadri lynching incident', 3 October 2015. Available at: <https://bit.ly/2lo6UyN>
- 994 The Times of India, 'Lawless UP: Bulandshahr attack on police follows a systemic emboldening of cow vigilantes', 5 December 2018. Available at: <https://bit.ly/38rmHb7>
- 995 The Hindu, 'Cow vigilantes beat up three in MP for possession of beef; police arrest victims first', 25 May 2019. Available at: <https://bit.ly/32q5QI9>
- 996 Firstpost, 'Gurugram: Police watch as cow vigilantes assault man on suspicion of transporting beef; one arrested', 1 August 2020. Available at: <https://bit.ly/3pg8qUH>
- 997 The Economic Times, 'BJP plans to reassure Dalits attacked by cow vigilantes', 2 June 2017. Available at: <https://bit.ly/2lb2EDp>
- 998 India Times, 'PM Modi Condemns Cow Vigilantism and Mob Justice, Says Lynching Is A Crime No Matter What', 6 October 2018. Available at: <https://bit.ly/2lqep8o>
- 999 The Hindu, 'Centre constitutes high-level committees to deal with mob violence, lynching', 23 July 2018. Available at: <https://bit.ly/3khhbxt>
- 1000 Times Now News, '[WATCH] Vigilantes stop tempo carrying cattle, brutally thrash driver in Karnataka's Mangaluru', 15 June 2020. Available at: <https://bit.ly/2lcc393>
- 1001 The Print, 'Better to have killed me' – man thrashed by cow vigilantes says won't transport meat again', 6 August 2020. Available at: <https://bit.ly/3lgmcV7>
- 1002 The Print, 'Post about Prophet Muhammed triggers riots in Bengaluru, 3 killed as police open fire', 12 August 2020. Available at: <https://bit.ly/3phplki>
- 1003 The Hindu, '2000-strong mob goes on rampage in Bengaluru; 3 killed as police open fire', 13 August 2020. Available at: <https://bit.ly/2lmpPhe>

trying to control the unrest. The police resorted to using tear gas and opened fire, killing three and injuring some more. 110 people were reportedly arrested for arson, stone pelting, and assault.<sup>1004</sup>

#### *Denying Accountability: Failure to Investigate and Prosecute*

Many states and union territories such as Uttar Pradesh, Uttarakhand, Rajasthan, Punjab, Himachal Pradesh, Gujarat, Haryana, Puducherry, and Goa, among others have stricter laws that make cow slaughter both a cognizable and non-bailable offence, with the burden of proof on the accused in clear violation of the right to be presumed innocent. Some of these laws also provide severe punishments for the crime, including life imprisonment. This has encouraged the vigilante groups and “cow protection committees” who—sometimes alongside police—patrol streets and highways at night, stop and search vehicles for cattle without any legal authority, and often commit assaults on mere suspicion. Pinning down instigators and perpetrators is a difficult task in respect of a crime committed by an often faceless mob. The police themselves feel threatened by these politically protected groups. In some cases, the police have been accused of partaking in such violence.<sup>1005</sup> This has led to a vicious cycle of impunity.<sup>1006</sup> In one such incident, a police official on duty, who was also in charge of investigating another infamous lynching case that took place in Dadri, was assaulted and shot dead by a mob in December 2018. All the accused in this case were released on bail.<sup>1007</sup> An equally disturbing incident of brutal lynching and murder of two Hindu seers and their aide on the rumoured suspicion of them being child-lifters took place in Palghar, Maharashtra. The incident was rightly condemned in all quarters.<sup>1008</sup> Videos showed the inaction of the police present there; three policemen were held accountable and dismissed from service.<sup>1009</sup> 101 people, including nine minors were arrested.<sup>1010</sup> It is important that all incidents of lynching are investigated and prosecuted, and that condemnation of such violence is not selective based on the religious affiliations of the victims.

As previously noted, there are reports of police failing to intervene in time and investigate such cases and prosecuting perpetrators; in at least a third of these cases, the police first filed complaints against victims and their family members under laws banning cow slaughter. There have been reports of counter complaints and intimidation against witnesses and victims’ families as well as witnesses turning hostile under pressure from the accused or, at times, even from the authorities. The police has also been accused of impropriety in such cases: delay in filing the First Information Reports (FIRs), violating procedures, filing a false report<sup>1011</sup> and allegedly even diluting the investigation,<sup>1012</sup> or even

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1004 Arré, ‘Hurt sentiments can’t justify violence: How a Facebook Post Led To A Mob Attack in Bengaluru’, 12 August 2020. Available at: <https://bit.ly/3pp7wFI>

1005 Hindustan Times, ‘Rajasthan cop admits to ‘mistake’ in Alwar lynching case, suspended’, 23 July 2018. Available at: <https://bit.ly/3n0lx9E>

1006 The Quint, ‘The Making of Lynchistan: Inside India’s Deadly Gau Raksha Network’, 21 November 2018. Available at: <https://bit.ly/36jDmLg>

1007 The Hindu, ‘Bulandshahr killing was planned lynching of an officer on duty’, 3 December 2019. Available at: <https://bit.ly/3n7OwJJ>

1008 The Palghar lynching was aptly condemned by all quarters, including political leaders from all major parties such as the Indian National Congress (INC), the Nationalist Congress Party (NCP), the Communist Party of India [Marxist] (CPI-M), the Bharatiya Janata Party (BJP), the Samajwadi (Socialist) Party, Hindu and Muslim leaders and other prominent public figures.

1009 The Hindu, ‘Palghar lynching case: Three cops dismissed from service’, 31 August 2020. Available at: <https://bit.ly/3pdhiKV>

1010 The Indian Express, ‘Palghar lynching: A recap of what happened’, 24 April 2020. Available at: <https://bit.ly/3IkBxUz>

1011 The Wire, ‘Police complicit in Hapur lynching, forced us to write false complaint: victim’s family’, 16 July 2018. Available at: <https://bit.ly/32tcmrw>

1012 The New Indian Express, ‘Police diluted Pehlu Khan lynching case, finds independent probe’, 26 October 2017. Available at: <https://bit.ly/2U7vuH7>



complicity in committing<sup>1013</sup> and covering up the crime. However, in one such case that took place in Jharkhand, the police and the prosecution acted swiftly, and for the first time in the country, 11 cow vigilantes were convicted and sentenced to life imprisonment in 2018 for lynching a man to death.<sup>1014</sup>

It is vital to end the impunity for the perpetrators, instigators, and sympathizers of public lynchings and other hate crimes. While there are laws and policies restricting the buying and selling of cattle, there are two things that must be given due importance: first, their enforcement is the responsibility of the authorities; groups — without any constitutional and statutory status — taking the law in their hands must not be tolerated, promoted, and encouraged; and secondly, the laws and policies must be reviewed in light of their disproportionate or even discriminatory impact on the minority communities to ensure their compatibility with their right to livelihood and other human rights.

### **The Citizenship (Amendment) Act (CAA) 2019<sup>1015</sup>**

The CAA was passed on 11 December 2019, and received assent the next day by the President. The CAA amended the Citizenship Act 1955; it made Hindu, Sikh, Jain, Buddhist, *Parsi* (Zoroastrian), and Christian migrants from Pakistan, Afghanistan, and Bangladesh — who had entered India before 31 December 2014 — eligible for Indian citizenship by granting amnesty. It thereby opened a path to their naturalization as Indian citizens (Section 2) and eased the residence requirement for naturalization of persons belonging to these communities from 11 to 5 years. (Section 6).<sup>1016</sup> The law intends to protect persecuted minorities from the region, other than Muslims, and offer them shelter and citizenship in India.<sup>1017</sup> It must be noted that the Act patently excludes Muslims, even those belonging to the persecuted sects in the neighbouring countries. The rationale put forth was that these specific communities have been historically persecuted in Pakistan, Afghanistan, and Bangladesh and do not have any other safe haven in the region.<sup>1018</sup> This was also seen as a part of a larger exercise to identify and deport illegal immigrants with speculations of other such steps in the pipeline such as creating a National Register of Citizens (NRC) and its relationship to the updating of the National Population Register (NPR) for the entire country.<sup>1019</sup>

The law as it was laid out was criticised by several bodies, including the Office of the UN High Commissioner for Human Rights (OHCHR), for being fundamentally discriminatory in nature.<sup>1020</sup> The Act saw equally powerful opposition and support within the country. There were over 140 petitions filed in the Supreme Court: some to challenge the constitutional validity of the Act as it violated Article

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1013 Hindustan Times, 'Rajasthan cop admits to 'mistake' in Alwar lynching case, suspended', 23 July 2018. Available at: <https://bit.ly/3n0Ix9E>

1014 The Print, 'How India managed to punish cow vigilantes for the first time in a beef-lynching case', 23 March 2018. Available at: <https://bit.ly/36fTv4i>

1015 Detailed analysis and discussion on the fallout of the CAA, including violations of freedoms of expression and assembly, targeting of protestors and human rights defenders, and issues of police brutality and complicity in violence can be referred to in the chapters on: (i) 'Human Rights Defenders and Civic Space: Freedoms of Expression, Assembly and Association' and (ii) 'Access to Justice' in this report.

1016 The Citizenship (Amendment) Act 2019, Sections 2 and 6. Available at: <https://bit.ly/3eGDGaJ>

1017 India Today, 'Will provide citizenship to persecuted minorities: Rajnath Singh', 8 December 2019. Available at: <https://bit.ly/2Tkiz40>

1018 The Hindu, 'CAA will not end in illegal migrants' expulsion, MHA tells Supreme Court', 17 March 2020. Available at: <https://bit.ly/35dXhf4>

1019 India Today, 'Dhoondte Reh Jaoge: How many illegal residents are there in India?: RTI query', 17 December 2019. Available at: <https://bit.ly/2JTzmtl>; see also, EPW, 'Marking Territories: Illegal immigrants, The Citizenship (Amendment) Act and the NRC', 18 December 2019. Available at: <https://bit.ly/3pcDyV4>; India Today, 'CAA, NPR and NRC: Confusion and connection explained', 26 December 2019. Available at: <https://bit.ly/3n6c01W>

1020 OHCHR, Press briefing on India, 13 December 2019. Available at: <https://bit.ly/3kheEjz>

14 of the Constitution,<sup>1021</sup> while others were to have it declared as constitutionally sound.<sup>1022</sup> However, the Supreme Court refused to stay the CAA, first in January 2020 (without hearing the Government),<sup>1023</sup> in May 2020,<sup>1024</sup> and finally in August 2020. It gave four weeks to the Government to respond and ordered High Courts not to admit cases on the issue till it is pending adjudication.<sup>1025</sup>

There was significant amount of misinformation and contradictory statements<sup>1026</sup> on the procedural aspect of how the CAA was to be implemented (with reference to the NRC and the NPR) which gave rise to a considerable confusion and apprehensions of statelessness in an uncertain future.<sup>1027</sup> Another prominent concern was with respect to lack of documentation: several homeless persons, Indigenous peoples, those living in remote areas, or undocumented communities such as *Gorkhas* and Tibetans that have lived in India for generations,<sup>1028</sup> may not have all the identity papers<sup>1029</sup> or ‘common documents’ as required under the exercise.<sup>1030</sup> Several people protested against the law across the country. Ironically, there were also rallies supporting the legislation which had already been assented. Organized protests against the CAA were met with brute force from the police; protestors were arrested, including some prominent human rights defenders and student leaders who were preventively detained<sup>1031</sup>; permissions for assemblies and peaceful protests were denied<sup>1032</sup>; and curfews under Section 144 of the Code of Criminal Procedure (CrPC) imposed to prevent demonstrations and protests.<sup>1033</sup> The fallout, including the targeting of student protestors in universities and activists who publicly opposed the CAA, has continued till date.<sup>1034</sup>

The heated protests for and against the law ultimately also led to the wanton violence in North-Eastern parts of New Delhi in February 2020, which led to the death of 53 people (both Hindus and

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1021 The Quint, ‘Even without the NRC, here’s why the CAA is unconstitutional’, 24 January 2020. Available at: <https://bit.ly/32r01nS>

1022 Hindustan Times, ‘Supreme Court declines to put CAA on hold, gives Centre 4 weeks to respond’, 30 August 2020. Available at: <https://bit.ly/38t9xl2>

1023 The Hindu, ‘Supreme Court refuses to say Citizenship Amendment Act without hearing government’, 23 January 2020. Available at: <https://bit.ly/2U7xWxi>

1024 The Economic Times, ‘Supreme Court refuses to stay CAA yet again’, 21 May 2020. Available at: <https://bit.ly/36hUffl>

1025 Hindustan Times, ‘Supreme Court declines to put CAA on hold, gives Centre 4 weeks to respond’, 30 August 2020. Available at: <https://bit.ly/38t9xl2>

1026 Deccan Herald, ‘Modi, Shah making contradictory statements over NRC’, 24 December 2019. Available at: <https://bit.ly/2UogXqJ>

1027 India Today, ‘CAA, NPR and NRC: Confusion and connection explained’, 26 December 2019. Available at: <https://bit.ly/3n6c01W>; Herald, ‘In the absence of clarity, there is only ambiguity’, 26 January 2020. Available at: <https://bit.ly/3eF9HzW>

1028 Business Standard, ‘Implementation of NRC and CAA: Why a bureaucratic nightmare may be at hand’, 20 December 2019. Available at: <https://bit.ly/2lgZzkK>

1029 The Citizen, ‘How will CAA and NRC affect India’s tribal population?’, 31 December 2019. Available at: <https://bit.ly/3n8YA5j>

1030 The Hindu, ‘Common documents enough to prove citizenship: Home Ministry’, 20 December 2019. Available at: <https://bit.ly/3eGjlgj>

1031 Detailed discussion on this, including violations of freedoms of expression and assembly, targeting of protestors and human rights defenders, and issues of police brutality and complicity in violence can be referred to in the chapters on: (i) ‘Human Rights Defenders and Civic Space: Freedoms of Expression, Assembly and Association’ and (ii) ‘Access to Justice’.

1032 The Tribune, ‘Permission denied for CAA protest march to Parliament’, 2 March 2020. Available at: <https://bit.ly/32ul2wz>; see also, The Hindu, ‘Denied permission, anti-CAA rally called off’, 4 January 2020. Available at: <https://bit.ly/2UaHqrr>; The New Indian Express, ‘Cops deny permission for anti-CAA protest, again’, 16 February 2020. Available at: <https://bit.ly/3lgPBPO>

1033 The Hindu, ‘Section 144 enforced in all of UP ahead of CAA protest’, 19 December 2019. Available at: <https://bit.ly/3pgkV2u>; see also, The Times of India, ‘Anti-CAA protests: Heavy security deployed, Section 144 imposed in Mandi House area’, 24 December 2019. Available at: <https://bit.ly/3pggeWs>

1034 Refer to in the chapters on: (i) ‘Human Rights Defenders and Civic Space: Freedoms of Expression, Assembly and Association’ and (ii) ‘Access to Justice’ in this report.

Muslims).<sup>1035</sup> While each side to the violence blamed the other for conspiring and instigating it,<sup>1036</sup> several lives were lost, houses and shops burnt, and property destroyed.<sup>1037</sup> It is interesting to note that the chargesheet was filed by the police only against the anti-CAA protestors for instigating violence and they were booked for ‘sedition’ and under the anti-terrorism law, the Unlawful Activities (Prevention) Act (UAPA) 1967.<sup>1038</sup> However, many political figures, including sitting members of the Parliament from the ruling party, openly and publicly made communally divisive remarks,<sup>1039</sup> gave provocative slogans,<sup>1040</sup> and made hate speeches,<sup>1041</sup> video recordings of which are available.<sup>1042</sup> They were not named in the chargesheet by the police.<sup>1043</sup> The Delhi High Court eventually directed the police to register FIRs against these leaders for their inflammatory remarks.<sup>1044</sup> No action was taken by the party, while some other party leaders condemned them.<sup>1045</sup> The hate speeches made by these ‘leaders’ have reportedly been used to frame the hate-speech policy by a popular social media portal.<sup>1046</sup> While the violence by itself destroyed the lives, peace, and property of the common residents in these neighbourhoods,<sup>1047</sup> both Hindus and Muslims,<sup>1048</sup> the latter report ‘continuing harassment’ and have been selling their houses to move elsewhere.<sup>1049</sup> Further consequences of these developments remain to be seen, but these incidents definitely contributed to a rise in communal tensions in many parts of the country.

### **Communal Undertones and Prejudice: COVID-19 Pandemic**

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- 1035 India Today, ‘Delhi violence: A story of politics, police and riot-ready mob’, 26 February 2020. Available at: <https://bit.ly/2JRPNg6>
- 1036 The Print, ‘Anti-CAA protestors wanted to engineer Delhi riots, not just block roads, says chargesheet’, 16 September 2020. Available at: <https://bit.ly/3eM1CJU>; The Wire, ‘Delhi Riots 2020: There was a conspiracy, but not the one the police alleges’, 15 July 2020. Available at: <https://bit.ly/3keFoBj>
- 1037 Scroll, ‘Explainer: What do we know about the communal violence that left 53 dead in Delhi in February 2020?’, 6 March 2020. Available at: <https://bit.ly/2ImeyKr>
- 1038 The Times of India, ‘17,000 page chargesheet filed against 15 for riots conspiracy’, 17 September 2020. Available at: <https://bit.ly/3lf9TYZ>
- 1039 The Quint, ‘Senior BJP leaders are giving India a free tutorial in hate speech’, 14 January 2020. Available at: <https://bit.ly/2UomAFn>
- 1040 Scroll, ‘Once Trump leaves, Muslims will not be safe’: Violent Hindutva crowds roam North-East Delhi’, 25 February 2020. Available at: <https://bit.ly/2UeLbvS>
- 1041 Firstpost, ‘Shoot the traitors’: BJP’s Anurag Thakur leads crowd in chant against anti-CAA protestors at BJP rally in New Delhi’, 27 January 2020. Available at: <https://bit.ly/3eGGNPQ>; see also, The Economic Times, ‘Hate speeches made by BJP leaders using ‘fear of rape as campaign message’: Women’s groups to PM’, 3 February 2020. Available at: <https://bit.ly/36p0dF6>
- 1042 Karwan-e-Mohabbat, ‘Hate speeches by BJP leaders against anti-CAA protests’, 19 January 2020. Available at: <https://bit.ly/3kevOhG>
- 1043 NDTV, ‘Delhi Riots Chargesheet Skips Hate Speeches By BJP Leaders’, 9 June 2020. Available at: <https://bit.ly/2UaLtnJ>
- 1044 The Economic Times, ‘Delhi HC directs police to register FIR against Kapil Mishra and other for inflammatory speech’, 27 February 2020. Available at: <https://bit.ly/3lgy6ON>
- 1045 The Quint, ‘BJP Does Not Approve’: Law Min Prasad on Kapil Mishra’s Remarks’, 28 February 2020. Available at: <https://bit.ly/3eGVoe2>; see also, NDTV, ‘“Kapil Mishra’s Speech Unacceptable”: BJP’s Gautam Gambhir on Delhi Violence’, 25 February 2020. Available at: <https://bit.ly/3lIXCIS>; India Today, ‘Hate speech cost BJP Delhi elections, people like Kapil Mishra should be removed: Manoj Tiwari’, 23 February 2020. Available at: <https://bit.ly/35g5DmB>
- 1046 The Print, ‘Zuckerberg uses Kapil Mishra’s ‘Delhi riots threat’ to outline Facebook’s hate speech policy’, 4 June 2020. Available at: <https://theprint.in/india/zuckerberg-uses-kapil-mishras-delhi-riots-threat-to-outline-facebooks-hate-speech-policy/435845/>
- 1047 Karwan-e-Mohabbat, ‘Chronicling Truth, Countering Hate: Violence and state action in North-East Delhi’, July 2020. Available at: <https://bit.ly/2ImiomP>
- 1048 News 18, ‘United in Grief: For Riot-hit Hindu and Muslim Families of North-East Delhi, A Long Wait To Claim Bodies Of Kin’, 27 February 2020. Available at: <https://bit.ly/3leZuwF>
- 1049 The Wire, ‘Muslims in Northeast Delhi Sell Homes Below Market Rate to Escape ‘Continuing Harassment’’, 30 October 2020. Available at: <https://bit.ly/3liiXMs>

With the spread of COVID-19 in the country, several citizens originating from the North-Eastern states of the country reported racial profiling, discrimination, and harassment due to their appearance.<sup>1050</sup> In some parts of the country, the pandemic was used as a pretext for spreading discriminatory rumours and scapegoating of the Muslim community. While COVID-19 cases started surging in India, the *Tablighi Jamaat* (a sect among the Sunni Muslims) held a *markaz* event (congregation) in Delhi's Nizamuddin area in March 2020. Preachers from countries such as Malaysia, Indonesia, and other foreign nationals had participated in the event. Dozens of attendees tested positive for COVID-19 and many others, who were in close contact with such people, had already dispersed. In April 2020, the Ministry of Health and Family Welfare (MoHFW) stated that about 4,300 COVID-19 cases in the country out of the *then* total number of cases in the country were linked to the *markaz*.<sup>1051</sup> The leader of the *Jammat* was booked the provisions of the relevant laws.<sup>1052</sup>

The congregation breached the Delhi government guidelines on religious gatherings and the subsequent travel to different parts of the country, by the devotees, violated the restrictions imposed by the Central Government. However, going beyond administrative actions, this incident was used by the majoritarian forces to systematically stigmatize and discriminate against the wider Muslim community blaming them for the spread of the virus.<sup>1053</sup> Despite the MoHFW guidelines against such stigmatization,<sup>1054</sup> the harmful stereotyping led to harassment and boycott of Muslim vendors.<sup>1055</sup> Some elected politicians also partook in the hate speeches, harassment, and threats against these vendors<sup>1056</sup> which is blatantly unconstitutional.<sup>1057</sup> The mainstream media and social media furthered these biases and prejudices by promoting appellations such as “corona *jihad*”. It implied a paranoia that the Muslims deliberately spread the virus to target the Hindu majority. By early April 2020, a new hashtag *#CoronaJihad* was trending and reportedly appeared over 3,00,000 times on Twitter.<sup>1058</sup>

Even though the first confirmed case of COVID-19 in India was registered on 30 January 2020, it was only after the *Jamaat* incident came into the public domain that the communally-charged disinformation and fake news targeting Muslims started spreading in India.<sup>1059</sup> There appeared many

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- 1050 Outlook, 'COVID-19: Indians from the North-East region victims of racial and regional prejudice', 24 May 2020. Available at: <https://bit.ly/3eJs2vD>
- 1051 The Hindu, 'Coronavirus : Nearly 4,300 cases were linked to Tablighi Jamaat event, says Health Ministry', 18 April 2020. Available at: <https://bit.ly/3lgoS56>
- 1052 The Wire, 'The Coronavirus Spread and the Criminal Liability of the Tablighi Jamaat', 16 April 2020. Available at: <https://bit.ly/32w3nFZ>; see also, The Week, 'Tablighi Jamaat leader booked for culpable homicide: Delhi Police', 15 April 2020. Available at: <https://bit.ly/36k5vBZ>
- 1053 NPR, 'Blamed for coronavirus outbreak, Muslims in India come under attack', 23 April 2020. Available at: <https://n.pr/2lU9l9b>; The Print, 'COVID an excuse to push Indian Muslims out of informal sector jobs. Apartheid the next step', 9 April 2020. Available at: <https://bit.ly/3ljw5Bw>
- 1054 The Wire, 'Despite its guidelines against 'stigmatisation', Govt hypes Jamaat role in COVID-19 spread', 18 April 2020. Available at: <https://bit.ly/3laU1H3>
- 1055 Scroll, 'COVID-19: Muslim vendors stopped from selling vegetables in UP, accused of being Tablighi members', 14 April 2020. Available at: <https://bit.ly/3khuSJv>
- 1056 The Times of India, 'Don't buy vegetables from Muslim vendors: UP BJP MLA Suresh Tiwari', 28 April 2020. Available at: <https://bit.ly/2GKQaS1>; see also, The Wire, 'Uttar Pradesh BJP MLA Harasses, Threatens Muslim Vegetable Vendor', 29 April 2020. Available at: <https://bit.ly/3nc87bA>
- 1057 The Wire, 'Does Law Allow Calls to Boycott Muslims During the COVID-19 Lockdown?', 28 May 2020. Available at: <https://bit.ly/35jEcZj>
- 1058 Time, 'It was already dangerous to be Muslim in India. Then came the coronavirus', 3 April 2020. Available at: <https://bit.ly/2GRbyFq>
- 1059 The Caravan, 'After COVID-19 outbreak at Tablighi Jamaat conference, fake news targeting Muslims abounds', 4 April 2020. Available at: <https://bit.ly/3eN4Xsa>

cases of Muslims being targeted, abused, and even assaulted on streets.<sup>1060</sup> Some were also allegedly discriminated against at health establishments and hospitals.<sup>1061</sup> In one such case, young Muslim men distributing food to the poor were assaulted with cricket bats and sticks and were accused to have “poisoned the ration to spread the disease.” Similar incidents related to relief work were repeated.<sup>1062</sup> There were cases of Muslims being beaten up,<sup>1063</sup> nearly lynched, driven out of their neighbourhoods and even attacked in mosques for “spreading the virus”.<sup>1064</sup> Hateful messages and fake videos were shared online of Muslims discouraging other Muslims from wearing masks, adhering to precautions and practicing physical distancing, which have been found to be of foreign origin, edited, and superimposed with Hindi text and Urdu voiceover, in what appears to be a pattern of targeted disinformation aimed at the Indian Muslim community.<sup>1065</sup>

There are apprehensions that such communal divisions rooted during a public health emergency may exacerbate after the pandemic. Blaming and marginalizing the entire Muslim community for allegedly spreading the virus is dangerous and discriminatory.<sup>1066</sup> There were organized violations of the lockdown by the supporters of the ruling party itself when they gathered to “observe the first *janta* curfew” on 20 March 2020.<sup>1067</sup> Reprimanding people from one community for violating public health restrictions, but waiving them for others, is both unjust and unfair. It must also be noted that while hearing the cases filed against the *Tablighi Jamaat* members, a bench of the Bombay High Court quashed charges against 29 foreign nationals and six Indians and sharply criticised the police authorities and the media for making them ‘scapegoats’ for the pandemic.<sup>1068</sup>

### **Role Of Media And Social Media Platforms In Fanning Communal Disharmony**

A substantial segment of the mainstream media, especially through television networks that are widely available in the country, have promoted the anti-minority narrative that has already gained traction over the last few years. Several media houses have aired prime time debates and special reports that display hatred and bigotry against minorities, especially Muslims. The “independence”, “integrity”, and “journalistic ethics” of the media — public and private — all appear to be compromised to gain popular support and viewer base by giving in to jingoistic sentiments.<sup>1069</sup>

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1060 The National News, ‘Coronavirus: India’s Muslims targeted over outbreak’, 12 April 2020. Available at: <https://bit.ly/32wWtAj>

1061 Scroll, ‘COVID-19: Rajasthan hospital staff face FIR for anti-Muslim WhatsApp chats’, 8 June 2020. Available at: <https://bit.ly/2UdVhxm>; see also, The National News, ‘Indian hospital shuns Muslims as coronavirus spurs discrimination’, 21 April 2020. Available at: <https://bit.ly/2GPBI0G>; Outlook, ‘Gujarat Govt Hospital Segregates Coronavirus Wards On Basis Of Religion’, 15 April 2020. Available at: <https://bit.ly/32rfofl>

1062 Newslaundry, “They are poisoning the rations’: Muslim volunteers distributing food in Bengaluru harassed, beaten up’, 8 April 2020. Available at: <https://bit.ly/3nfVBYZ>

1063 The Indian Express, ‘COVID-19 rumours linked to 3 attacks in Delhi, Gurgaon’, 7 April 2020. Available at: <https://bit.ly/2U8J2Sj>

1064 The Quint, ‘[WATCH] Heckling to Assault: Karnataka sees attacks on Muslims amid COVID-19’, 7 April 2020. Available at: <https://bit.ly/3n7jotW>; The Quint, ‘Attacks on Muslims in the name of COVID-19 surge across India’, 8 April 2020. Available at: <https://bit.ly/3kdA2pP>

1065 India Today, ‘Surge in TikTok videos aimed at misleading Indian Muslims over coronavirus precautions’, 3 April 2020. Available at: <https://bit.ly/36pHx8a>

1066 The Print, ‘Coronavirus was a test of secular nationalism. Then Tablighi Jamaat became the scapegoat’, 1 April 2020. Available at: <https://bit.ly/3eJAuuN>

1067 Outlook, “Corona Jihad”, ‘Tablighi Virus’...Would ‘Mandir Virus’ Be Okay In Such Intolerant Times?’, 3 April 2020. Available at: <https://bit.ly/38uRm0i>

1068 The Indian Express, ‘Bombay HC slams Govt: *Tablighi* a scapegoat to warn Muslims; fix damage’, 23 August 2020. Available at: <https://bit.ly/2ImMKFG>

1069 Foreign Policy, India’s media can’t speak truth to power’, 2 August 2019. Available at: <https://bit.ly/3k9Zf4A>



Among many such instances, the coverage on the aforementioned *Tablighi Jamaat* congregation reeked of Islamophobia and paranoid sensationalism.<sup>1070</sup> Many media houses have also added the suffix of ‘*jihad*’ in different walks of life implying that the Muslims are waging a war or encroaching on the rights of the majority.<sup>1071</sup> The latest in this series was an entire programme based on “UPSC *Jihad*”, which purportedly shows an alleged “infiltration” of Muslims into the civil services through the competitive examinations conducted by the Union Public Service Commission (UPSC).<sup>1072</sup>

Despite a controversial and discriminatory premise — found to be riddled with falsifications<sup>1073</sup> — the Information and Broadcasting (I&B) Ministry allowed four episodes of the programme to air stating that it “cannot pre-censor a programme or stop it from being telecast.”<sup>1074</sup> There was already a case filed before the Supreme Court to put a stay on the programme; former civil servants also filed an intervention application with the same request.<sup>1075</sup> Ultimately, the Supreme Court restrained the channel from telecasting the remaining episodes and stated that the programme was “insidious and was telecast with the intent and purpose of vilifying Muslims” and the anchor was doing a “disservice to the nation.”<sup>1076</sup> On the other hand, many independent journalists or those criticizing or reporting a contrarian view have been harassed.<sup>1077</sup> This is also true of the print media.<sup>1078</sup>

Another concerning development is the role of social media in promoting hateful messages and fake news inciting violence against minorities.<sup>1079</sup> This has been seen in case of mob lynchings and cow vigilantism<sup>1080</sup> and, more recently, during the Delhi violence in February 2020. The chargesheet stated that a WhatsApp group was created to promote enmity on religious grounds.<sup>1081</sup> While social media has been an equalizer and ensured easy access to information for all, the incidence of “religious-cultural hate speech” on it is rising. Topics eliciting hate speech include opposition to interfaith marriage between Hindus and Muslims, positions on universal human rights, and issues of cow protection and beef consumption. It was reported that India’s social media platforms provide “both

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- 1070 The Print, ‘Tablighi Jamaat brought out Republic, Zee and Times Now’s fangs that COVID-19 had withdrawn’, 2 April 2020. Available at: <https://bit.ly/3pdz7th>
- 1071 Zee News, ‘Zee Media special: Watch the biggest discussion on ‘love jihad’’, 30 August 2014. Available at: <https://bit.ly/32uwnlI>; see also, DNA, ‘Zameen Jihad: A sinister conspiracy to change Jammu’s demography’, 12 March 2020. Available at: <https://bit.ly/3pae233>; see also, Scroll, ‘Zee News’ Sudhir Chaudhury’s ‘jihad’ chart draw flak: ‘Radio Rwanda levels of dog-whistling’’, 12 March 2020. Available at: <https://bit.ly/2lmgvGu>
- 1072 Hindustan Times, ‘Controversy around Sudarshan TV show ‘Bindas Bol’: All you need to know’, 24 September 2020. Available at: <https://bit.ly/3kg8HU5>
- 1073 Alt News, ‘Sudarshan TV show ‘UPSC Jihad’ riddled with false claims’, 22 September 2020. Available at: <https://bit.ly/35gol8j>; see also, The Wire, ‘A list of all the false claims made in Sudarshan TV’s ‘UPSC Jihad’ show’, 24 September 2020. Available at: <https://bit.ly/3ljAaW9>
- 1074 The Print, ‘Modi govt allows Sudarshan News ‘UPSC Jihad’ episode to air, says can’t pre-censor TV shows’, 10 September 2020. Available at: <https://bit.ly/2lq4T5A>
- 1075 The Wire, ‘Former civil servants move SC to seek a stay on Sudarshan TV’s ‘UPSC Jihad’ show’, 14 September 2020. Available at: <https://bit.ly/36gOTuM>
- 1076 Scroll, ‘SC stays broadcast of ‘UPSC Jihad’ show, says Sudarshan News anchor doing ‘disservice to nation’’, 15 September 2020. Available at: <https://bit.ly/3n8KFfn>
- 1077 For a detailed discussion on this issue, refer to the chapter on ‘Human Rights Defenders and Civic Space: Freedoms of Expression, Assembly and Association’.
- 1078 Counter Currents, ‘Minority images in the Indian print media’, 25 May 2020. Available at: <https://bit.ly/2UaODYq>
- 1079 India.com, ‘Northeast Delhi riots: WhatsApp group promoted enmity on religion ground, says chargesheet’, 7 October 2020. Available at: <https://bit.ly/2UciHmH>
- 1080 The Quint, ‘The Making of Lynchistan: Inside India’s Deadly Gau Raksha Network’, 21 November 2018. Available at: <https://bit.ly/36jDmLg>
- 1081 The Times of India, ‘Delhi riots: WhatsApp group promoted enmity on religion ground, says chargesheet’, 6 October 2020. Available at: <https://bit.ly/2TX3LIZ>



tacit and overt sanctions for rising incidents of majoritarian violence."<sup>1082</sup> WhatsApp has become an easy way to spread fake news and instigate violence.<sup>1083</sup> There have been violent demonstrations over tweets,<sup>1084</sup> advertisements,<sup>1085</sup> and films<sup>1086</sup> for hurting religious sentiments by the majority, and sometimes even by the minority.

## **Conclusion**

There have been concerns over the enjoyment of freedom of religion and minority rights in the country over the last decade. Since UPR-III, the narrative has become further polarized driving wedges into India's diverse society. Despite constitutional guarantees, the current socio-political climate is not conducive for communal harmony and peace in the country. The majoritarian political discourse and prejudicial fear psychosis against minorities, especially Muslims, has contributed and continued to further widening this rift.

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1082 Observer Research Foundation, 'Digital Hatred, Real Violence: Majoritarian Radicalization and Social Media In India', 29 August 2018. Available at: <https://bit.ly/3piGO1w>

1083 Wired, 'How WhatsApp fuels fake news and violence in India', 12 December 2018. Available at: <https://bit.ly/3neBb2b>; see also, Firstpost, 'WhatsApp asked by Indian Govt to come up with effective solution against fake news', 5 February 2019. Available at: <https://bit.ly/36jco6A>

1084 The Print, 'Post about Prophet Muhammed triggers riots in Bengaluru, 3 killed as police open fire', 12 August 2020. Available at: <https://bit.ly/3phplkj>; Scroll, 'Why have Hindutva online armies launched a concerted attack on India's stand-up comedians?', 17 July 2020. Available at: <https://bit.ly/32rMSdV>

1085 Firstpost, 'Tanishq ad backlash strips India's veneer of pluralism, propped up by television, film programming of decades past', 17 October 2020. Available at: <https://bit.ly/3nbu2Ql>

1086 The Times of India, 'Anti-Padmaavat protests turn violent; mobs block roads, damage vehicles', 24 January 2018. Available at: <https://bit.ly/3pdDpAX>

## CHAPTER 12

### ACCESS TO JUSTICE

#### **Recommendations on Legal Aid And Assistance**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.88	Continue facilitating equal access to justice for all and provide free legal aid, in particular to vulnerable groups, minority groups and marginalized people.	Angola	Supported	Partially Implemented <sup>1087</sup>
161.189	Promote equal access to justice for all, especially by providing more legal aid to the poor and marginalized.	Ethiopia	Supported	Partially Implemented <sup>1088</sup>

The Indian judiciary has long grappled with the issue of delays and backlogs in the disposal of cases. Shortage of funds, infrastructure, and staff have cumulatively contributed to this.

The COVID-19 pandemic has further worsened the problem of pendency and has severely affected the justice delivery system in the country, with cases disposed by the High Courts dropping to half and that of district courts to less than 70 per cent than the average rate of disposal per month.<sup>1089</sup> While many courts moved to video conferencing and facilitating for e-filing, and as of September, some Courts have also resumed physical hearing of cases, the pandemic has worsened the situation of judicial backlogs.<sup>1090</sup>

#### **Providing Legal Aid Services**

Almost 80 per cent of India's population is potentially eligible for obtaining services from its legal aid services system, which is one of the largest in the world. Its mandate provides for access to legal representation, alternate dispute resolution mechanisms, and public education.

Legal aid services institutions in India are set up at national, state (province), and local governance levels (district and block levels). However, despite the guarantee of free legal assistance and aid to vulnerable groups and marginalized people, the structural deficits in the system have prevented the optimization of timely and effective legal representation as well as widespread awareness raising.

In 2019, a total of 196,728 legal awareness programmes were held in the country which were reported to have been attended by 26,835,386 persons. As of 2019, there were 664 district level legal services

<sup>1087</sup> Several schemes have been framed, however, the implementation and the quality of legal aid provided remains a cause of concern.

<sup>1088</sup> Ibid.

<sup>1089</sup> Scroll, 'COVID impact: Cases disposed of by High Courts drop by half, district courts by 70%', 4 September 2020. Available at: <https://bit.ly/3eHH4IB>

<sup>1090</sup> News 18, 'CJI warns of increase in pending cases in post-COVID scene, says mediation needs to be emphasised', 12 September 2020. Available at: <https://rb.gy/wklqtn>

authorities (DLSAs) and 2,254 block/taluka<sup>1091</sup> level legal service committees established across the country. Of the 664 DLSAs, there were only 603 sanctioned posts; the number of full-time secretaries (designation for person in charge of the DLSA) in place is 525 with a deficit of 12.9 per cent.<sup>1092</sup> Smaller jurisdictions such as Dadra and Nagar Haveli and Daman and Diu are yet to sanction and appoint full-time secretaries to their district legal services.<sup>1093</sup>

Funds for legal service institutions (LSIs) are sourced through both National Legal Services Authority (NALSA) and state budgets. The NALSA funds are allocated towards legal services activities such as representation, *lok adalats*<sup>1094</sup> (courts for people), counselling, legal advice, and legal awareness. In 2017-18, six states and union territories, including Jharkhand and Assam, had no funds allocated from the state, whereas the states of Nagaland, Arunachal Pradesh, Manipur, and Tripura saw less than 20 per cent budgetary funds being provided by the state governments. Uttar Pradesh (bulk for mediation) and Andhra Pradesh, on the other hand, saw more than 80 per cent of the funds coming in from the state governments. In the same year, only five states utilized more than 90 per cent of NALSA-allocated funds, the highest being Rajasthan (98%) and Chhattisgarh (97%), with at least 70 per cent of the total funds coming from the state's own coffers. The union territory of Dadra and Nagar Haveli and Daman and Diu<sup>1095</sup> spent the least i.e. merely four per cent of the funds allocated, followed closely by Lakshadweep (7%). Apart from Meghalaya (seven per cent), Andaman and Nicobar Islands (8%), Goa (23%), Puducherry (30%), Sikkim (31%), and Chandigarh (39%), the rest of the states and union territories spent more than 50 per cent of the allocated funds.

NALSA is actively taking steps towards ensuring full and efficient utilization of funds as there is such high underutilization across the board, which is indicative either of lack of planning or of adequate utilization of human resources to fulfil the mandates. This has continued to be a cause of concern and there are apprehensions that such consistent underutilization may lead to a reduced overall budget allocation, which may inhibit the growth of legal services across the country.<sup>1096</sup> An uneven organizational capacity and operational practices among the legal aid institutions have posed further challenges. 'Quality of service' and 'monitoring' have been the primary concerns in this respect.

### Legal Services Clinics

The NALSA (Legal Services Clinics) Regulations 2011 requires legal services clinics to be setup in various places. In 2019, there were legal services clinics in colleges/universities (935), villages (14,093), community centres (1,460), courts (1,015), Juvenile Justice Boards (JJBs) (431), wherein more than 1.4 million persons sought legal assistance. Especially, for legal services clinics in villages, the 2011 Regulations require that such a clinic be set up in a village or cluster of villages in areas where people face 'geographical, social, and other barriers.'<sup>1097</sup> In 2019, there were only 15,210 clinics<sup>1098</sup> for India's

1091 "Taluka" or "tehsil" is an administrative division in India that can be understood as a 'sub-district' or 'township'.

1092 India Justice Report 2019, p. 82. Available at: <https://bit.ly/3ki6Spl>

1093 Ibid.

1094 Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.

1095 These were initially two separate union territories of 'Daman and Diu' and 'Dadra and Nagar Haveli' in the western part of the country. However, as of 26 January 2020, these two union territories were merged to form a single union territory. Available at: <https://bit.ly/32qQQ6P>

1096 India Justice Report 2019, pp. 85-86. Available at: <https://bit.ly/3ki6Spl>

1097 NALSA (Legal Services Clinics) Regulations 2011, Section 3. Available at: <https://rb.gy/wa2mzb>

1098 As per data available on the NALSA website: Statistics. Available at: <https://nalsa.gov.in/statistics>

approximately 6,00,000 villages. This averages to 39 villages per clinic. Illustratively, in Uttar Pradesh, one clinic would serve 528 villages; similarly, Bihar has one clinic for every 340 villages.

Similarly, for persons in custody, there are 1,098 clinics in 1,339 prisons as of 2019.<sup>1099</sup> A total of 0.29 million prisoners are said to have been provided assistance through these clinics in 2019. The number of persons in custody who were beneficiaries of legal aid and advice in 2019 is 2,04,146.<sup>1100</sup> These clinics have been made responsible for facilitating access to legal aid for persons in custody (both undertrials and convicts for their appeals). In 2018, the Commonwealth Human Rights Initiative's (CHRI) National Legal Aid Report, 'Hope Behind Bars?', highlighted concerns regarding the time taken towards appointment of legal aid lawyers which varies from each state and ranges between assigning a lawyer on the same day (such as in Arunachal Pradesh, Kerala, and Madhya Pradesh) and 20-50 days (such as in Himachal Pradesh and Rajasthan). The delays reported are up to a month or more.<sup>1101</sup>

### **Legal Aid Providers**

In terms of legal aid providers, there is much left to be done to ensure the effective performance of legal aid lawyers and paralegal volunteers. The various regulations and schemes created the mandate that the LSIs appoint individuals to provide legal services, which include panel lawyers, retainer lawyers, jail visiting lawyers, remand lawyers, or community paralegal volunteers (PLVs). It is reported that there are around 63,759 panel lawyers and 69,290 PLVs appointed across various LSIs.<sup>1102</sup> Towards capacity building of both lawyers and PLVs, 1,104 training programmes were conducted for the former and 1,455 for the latter in 2019.<sup>1103</sup>

PLVs are intended to be a link between the state judiciary and the legal aid beneficiary as well as a community-based legal resource. They are an important stakeholder in the legal aid framework. PLVs are considered as the face of LSIs and a means to reach out to the community. They are vital to the dissemination of information about rights of prisoners to legal assistance and others. PLVs in India are not permitted to appear in court and can only provide basic legal advice and ensure inmate interaction with legal aid lawyers, where needed. According to the NALSA's Para-Legal Volunteers Scheme, every DLSA is required to have 50 active paralegal volunteers.<sup>1104</sup> This implies the need of 33,200 PLVs across 664 DLSAs. However, several states report less than 10 PLVs per 1,00,000 population. For example, Uttar Pradesh has a population of 200 million and approximately 1.6 PLVs per 1,00,000.<sup>1105</sup> On the other hand, states such as Himachal Pradesh and Arunachal Pradesh with relatively smaller jurisdictions have 84 and 77 PLVs respectively per 1,00,000 population, which is seemingly disproportionate to the actual need of the area.

Despite the crucial role that PLVs play in the process, their selection, tenure, honorarium and, most importantly, their continued training and effectiveness within the community has been looked at with considerable interest by the officials at the LSIs. It is reported that 1,537 Training Programmes had been organised to train 48,072 PLVs to enhance the understanding of their role and functioning towards effectively discharging their duties.<sup>1106</sup> Some deficiencies, however, have been called out: no

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1099 NALSA, 'Annual Report 2019', p.14. Available at: <https://bit.ly/2GKk3Sq>

1100 Ibid, p.5.

1101 CHRI, 'Hope Behind Bars: Status Report On Legal Aid For Persons In Custody', p.17. Available at: <https://bit.ly/3pfe2i3>

1102 India Justice Report 2019, p. 83. Available at: <https://bit.ly/3ki6Spl>

1103 NALSA, 'Annual Report 2019', p.29. Available at: <https://bit.ly/2GKk3Sq>

1104 NALSA, 'Revised Scheme for Para-legal Volunteers'. Available at <http://nalsa.gov.in/schemes.html>

1105 India Justice Report 2019, p. 99. Available at: <https://bit.ly/3ki6Spl>

1106 As per data available on the NALSA website: Statistics. Available at: <https://nalsa.gov.in/statistics>

standard criteria of recruitment methods have been laid down; appointments are often through patronage networks; tenures are limited to a year resulting in a lack of continuity of resources in the community, while some others are repeatedly re-employed; stipends are low; and there is no process for evaluating their effectiveness and use.

Similar for lawyers, concerns have been raised on their quality and work performance, but there is no standard criteria for recruitment nor uniformity in number of lawyers appointed per district. For instance: in 2016, of the 292 districts which responded to RTI requests, 250 provided information on appointment of lawyers. Seven districts reported zero appointments, whereas half of the panel lawyers in the country were appointed in only six states (Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, and West Bengal). The average panel size was 80, but there were significant variations in the size of the panels from one to 496 in the district.<sup>1107</sup> It is instructive to assess the reasons behind unsatisfactory quality and standards of the lawyers. A micro-study on the payment standards of lawyers indicated that some of the important factors that influence the performance of legal aid lawyers is related to the payment of these panel lawyers, among other things, which includes problems related to reporting, documentation, frequency, amount, and process of payments.<sup>1108</sup>

### **Monitoring of Legal Aid Services**

The NALSA (Free and Competent Legal Services) Regulations 2010 mandated the establishment of Monitoring and Mentoring Committees.<sup>1109</sup> However, recent data on their constitution or functioning is not readily available. In 2016, many DLSAs still did not have a monitoring committee (185 of the 293 DLSAs [60%] contacted through RTI requests responded that they have a committee in place).<sup>1110</sup> Of those which did have these committees, most did not have separate staff (only 26 DLSAs that responded [14%] have staff) or did not maintain registers (only 47 DLSAs that responded [25%] maintain registers) or call for progress reports from the lawyers. Thus, merely establishing the committees without fulfilling these basic requirements makes it difficult to monitor the progress of a case. Especially, the monitoring the quality of legal services is a difficult task. Therefore, a standard operating procedures and specific parameters, suitable to the Indian paradigm, need be fleshed out to define the scope of the committees and the monitoring process, which would assist in improving the quality of legal aid services.<sup>1111</sup>

Accordingly, in 2019, the NALSA prepared the 'Guidelines for Functioning of Monitoring and Mentoring Committees' to streamline their functioning. However, the effectiveness and improvement in the functioning of these committees are yet to be assessed.<sup>1112</sup> In 2020, the NALSA also published a Handbook of Formats<sup>1113</sup> to strengthen the internal processes of its documentation and reporting mechanisms and to enable the provision of effective, efficient, and quality legal services. However, unless there is continued oversight by the NALSA on their implementation, meaningful and structural reforms on the ground will remain a distant reality. Although efforts are being made to better the

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1107 CHRI, 'Hope Behind Bars: Status Report On Legal Aid For Persons In Custody', p.18. Available at: <https://bit.ly/3pfe2i3>

1108 CHRI, 'Micro Study On The Payment Of Legal Aid Lawyers'. Available at: <https://rb.gy/ynssxe>

1109 NALSA Regulations 2010 were amended in 2018 and renamed the 'Monitoring Committees' as 'Monitoring and Mentoring Committees', Section 16(2) and (3). Available at: <https://bit.ly/3ncVNrY>

1110 Commonwealth Human Rights Initiative (CHRI), 'Hope Behind Bars: Status Report On Legal Aid For Persons In Custody', Page 12. Available at: <https://bit.ly/3pfe2i3>

1111 Ibid, p.5.

1112 NALSA, 'Annual Report 2019', p.19. Available at: <https://bit.ly/2GKk3Sg>

1113 NALSA, 'Handbook Of Formats: Ensuring Effective Legal Services', 2020. Available at: <https://rb.gy/uq0grb>

situation and myriad steps being taken, legal services and legal representation continue to be frequently criticized. A large portion of the concerns are systemic and structural in nature such as delays in appointment, quality of assistance, inadequate budgets, infrastructural issues, capacity of legal services providers, and inadequate monitoring, which are some of the primary criticisms.

#### **Recommendations on Judiciary: Vacancies And Delays**

<b>Rec #</b>	<b>Recommendations</b>	<b>Recommending State</b>	<b>Government's Response</b>	<b>Status of Implementation</b>
161.148	Strengthen the independent functioning of the judiciary in order to reduce delays in judicial proceedings, enhance transparency of processes and guarantee the right to speedy trial.	Estonia	Noted	Not Implemented
161.149	Allocate appropriate resources to reducing backlog of delays in the administration of cases in courts.	Ethiopia	Supported	Partially Implemented

#### **Infrastructure and Personnel**

The functioning of the judiciary is significantly affected by the condition of its infrastructure, the human resources at its disposal, and the budgets allocated for its development. However, the judiciary in India remains under-resourced. India has 25 High Courts and 672 district court complexes. As of 7 November 2020, the backlog of cases in district and taluka level courts (subordinate judiciary) stands at 35,502,762 [79.67% of these cases are more than a year old].<sup>1114</sup> As of 7 November 2020, pending cases in the high courts' stand at 5,253,581 cases [85.86% of these cases have been pending for over a year and 15% cases have been pending for more than four years].<sup>1115</sup>

Each state has a sanctioned strength for the number of judges in the High Courts and subordinate courts and a working strength on which the day-to-day functioning relies. As of 2020, the average vacancies in High Courts across the country stand at 37.3 per cent.<sup>1116</sup> The India Justice Report, compiled and analysed on the basis of official data available, highlights that the situation has not improved much since 2017, where each High Court, except that in Himachal Pradesh and Sikkim, had vacancies above 25 per cent. As of 2020, subordinate courts are also grappling with understaffing with

1114 National Judicial Data Grid (District and Taluka Courts of India). Available at: <https://rb.gy/tu0wek> <accessed on 7 November 2020 at 19:54>

1115 National Judicial Data Grid (High Courts of India). Available at: <https://rb.gy/odr15y> <accessed on 7 November 2020 at 19:58>

1116 Vidhi Centre for Legal Policy, 'Justice, Access and Lowering Delays in India (JALDI) Portal: Judicial vacancies in India'. Available at: [http://data.vidhilegalpolicy.in/dashboard/judicial\\_vacancy/index.html](http://data.vidhilegalpolicy.in/dashboard/judicial_vacancy/index.html)



the averaged-out vacancies standing around 25 per cent.<sup>1117</sup> The vacancies in the subordinate courts range from as low as five per cent in West Bengal to over 40 per cent in Uttar Pradesh.<sup>1118</sup>

The rationale or the calculations underlying the ‘sanctioned strength’ of judges in each state is unclear. Historically, a judge to population ratio of 50 judges per million population<sup>1119</sup> has been recommended to calculate the number of judges required.<sup>1120</sup> At a pan-India level, as of 2016-17, there is just one subordinate court judge for over 50,000 people. The ratio varies a great deal across states: for instance, Goa, at 30,386, had the best judge to population ratio at the subordinate court level; among larger states, Haryana with 50,300 people had a better ratio, as compared to Uttar Pradesh and Bihar where the number exceeded one lakh people per judge. Non-judicial staff shortages also negatively affect the capacity to deliver justice. Nationally, shortages of administrative and support staff stand at 20 per cent. Kerala, with 5.5 per cent vacancies, stands as the state with the lowest shortage and Chhattisgarh, with 34.9 per cent, has the highest vacancies in non-judicial staff.<sup>1121</sup>

Data shows that the averaged out staff vacancies in prisons across the country stand at 33 per cent.<sup>1122</sup> Jharkhand (68%), Uttar Pradesh (44%), Bihar (39%), and Rajasthan (35%) reported the highest number of vacancies accounting for 45 per cent of the total vacancies in the country. On the other hand, Kerala (7%), Nagaland (0.51%), Maharashtra (12%), and Odisha (18%) reported the lowest.<sup>1123</sup> This number was recorded as 31.2 per cent in 2017.<sup>1124</sup> Although some states have updated their terminology from ‘jail’ to ‘correctional home/institution’, correctional staff (defined separately from guards and jail administration) is in extremely short supply with vacancies averaging nationally at 42 per cent in 2018.<sup>1125</sup> The situation has worsened since 2017, which recorded the vacancies of correctional staff at 40 per cent nationally. A total of 616 correctional staff was actually posted in prisons as against the sanctioned strength of 1,065 at the end of 2018. While the national average of the number of inmates per correctional staff stood at 756 in 2018, which is dismal, many states function without proper and adequate correctional staff in place: Uttar Pradesh reports two correctional staff for 1,04,011 inmates. As of 2018, 10 states: Andhra Pradesh; Arunachal Pradesh; Assam; Goa; Haryana; Jharkhand; Manipur; Mizoram; Punjab; and Sikkim, along with four Union Territories: *(then)* Dadra and Nagar Haveli, *(then)* Daman and Diu, Lakshadweep, and Puducherry had not sanctioned a single post for correctional officers. 10 other states — Gujarat, Himachal Pradesh, Karnataka, Meghalaya, Nagaland, Rajasthan, Telangana, Tripura, Uttar Pradesh, and Uttarakhand — had less than 10 sanctioned posts.<sup>1126</sup>

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1117 Ibid.

1118 We point out that Uttar Pradesh is significant because it has a population of over 200 million and was ranked the least capacitated state in the India Justice Report 2019.

1119 Law Commission of India (LCI), ‘120th Report: Manpower Planning in the Judiciary: A Blueprint’, July 1987, para 9. Available at: <https://rb.gy/uysr3t>

1120 India Justice Report 2019, p. 72. Available at: <https://bit.ly/3ki6Spl>

1121 Ibid.

1122 Business Today, ‘Prisons understaffed by 33% and overcrowded at 114% occupancy rate, says report’, 8 November 2019. Available at: <https://rb.gy/vcqv1n>

1123 Prison Statistics India - 2018, National Crime Records Bureau (NCRB), 23 December 2019, p.286. Available at: <https://rb.gy/lf96xx>

1124 Prison Statistics India - 2017, National Crime Records Bureau (NCRB), 21 October 2019, p.300. Available at: <https://rb.gy/2ivcxk>

1125 Prison Statistics India - 2018, National Crime Records Bureau (NCRB), 23 December 2019, p.293. Available at: <https://rb.gy/lf96xx>

1126 Ibid, p.287.

Nationwide, the medical staff vacancies stood at 40.5 per cent in 2018,<sup>1127</sup> which has increased from 35 per cent vacancies recorded in 2017.<sup>1128</sup> The number of inmates per medical staff nationally stood at 243. All states and union territories, barring Andaman and Nicobar Islands, Nagaland, and Puducherry function with large vacancies in the medical staff. Goa reports the most vacancies with 92 per cent, followed closely by Jharkhand (91%), Uttarakhand (65%), Uttar Pradesh (63%), and Karnataka (60%).

### Finance and Budget

Presently, both the Central and state governments contribute towards the financial resources allocated to the state's judiciary. The major chunk (92%) of all India judiciary financing is met through expenditure by the state governments, while the Centre's share in total expenditure on judiciary is quite low (8%).<sup>1129</sup> The judiciary budgets cover only establishment costs, i.e. salary, allowances, and minimum operation costs, but do not extend to capacity building, innovation, or experimentation.<sup>1130</sup>

### Recommendations on Excessive Pre-Trial Detention And Prison Conditions

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.116	Improve prison conditions in order to ensure the rights and dignity of all those deprived of their liberty.	Zambia	Supported	Partially Implemented <sup>1131</sup>

On paper, the philosophy of incarceration has steadily shifted from prisons being thought of as places for retribution to centres of reformation. However, in reality, prisons are still primarily considered as places where people are kept away from society for a period of time to punish them for violating the law and prevent them from causing further nuisance. However, for the shift towards reformation and rehabilitation to materialize meaningfully, it demands rather radical reforms in jurisprudence, law, the ideology of policy makers, and the attitude of prison administrators, along with significant improvements in conditions on the ground. Therefore, a shift toward a safe and rehabilitative environment remains distant.<sup>1132</sup>

Despite periodic advisories by the Ministry of Home Affairs (MHA) with regard to overcrowding, prison oversight, improvement in prison conditions, and for the implementation of the Model Prison Manual 2016, reforms have not percolated to the ground given the federal nature of governance of prisons.<sup>1133</sup> Most prisons continue to be governed by prison regulations that are decades old, with only few having adopted new prison Acts or Rules. Prison reforms have been a subject of discussion and decisions

<sup>1127</sup> Ibid, p.294.

<sup>1128</sup> Prison Statistics India - 2017, National Crime Records Bureau (NCRB), 21 October 2019, p.311. Available at: <https://rb.gy/2ivcxk>

<sup>1129</sup> Centre for Budget and Governance Accountability (CBGA) and DAKSH, 'Memorandum to the Fifteenth Finance Commission on Budgeting for the Judiciary in India', December 2018, p.5. Available at: <https://rb.gy/nz8nfa>

<sup>1130</sup> India Justice Report 2019, p. 61. Available at: <https://bit.ly/3ki6Spl>

<sup>1131</sup> While several efforts have been undertaken, the implementation on ground remains a significant challenge. This is a structural issue and needs to be addressed as such.

<sup>1132</sup> India Justice Report 2019, p. 58. Available at: <https://bit.ly/3ki6Spl>.

<sup>1133</sup> Prisons are a fall under the State List of the Constitution ([Entry 4, List II, Seventh Schedule of the Constitution of India](#)).

rendered by the judiciary from time to time over the last 35 years. However, although Article 21 of the Constitution guarantees the right to live with dignity to all persons, little appears to have changed on the ground in respect of prisoners.<sup>1134</sup>

Prisons in India continue to be governed under the Prisons Act 1894; reforms recommended by several committees remain largely unimplemented. Occupancy rates in Indian prisons have increased from 114.4 per cent in 2015 to 117.6 per cent in 2018.<sup>1135</sup> On the one hand, the number of prisons in the country has decreased from 1,361 in 2017 to 1,339 in 2018, the total number of inmates in the prisons has increased by 3.41 per cent in 2018 on the other. Nearly 70 per cent of the total prison population of 0.46 million consists of people awaiting trial. In the two years between 2016-18, the number of pre-trial detainees has increased by 10.4 per cent.<sup>1136</sup> The number of undertrial prisoners who were confined for a period of over three years in 2000 was 4,976. It increased to 19,420 in 2018.<sup>1137</sup>

During the COVID-19 pandemic, some measures were taken to reduce overcrowding in prisons such as alternative arrangements<sup>1138</sup> and temporary release / granting parole to some prisoners. Despite these efforts, Indian jails reportedly remained overcrowded<sup>1139</sup> with the fear of such closed and confined spaces turning into hotbeds of the contagion.<sup>1140</sup>

Similarly, it has been established that socio-economic factors play a determining factor in cases of pre-trial detention: the poor are more likely to remain in pre-trial detention for a prolonged period; they face greater exposure to health and social vulnerabilities.

These increasing numbers also cast a doubt on the effective functioning of the Under-Trial Review Committees (UTRCs)<sup>1141</sup> that are set up as a prison oversight mechanism at the district level.<sup>1142</sup> In 2018, there were 1,822 undertrial prisoners eligible for release under Section 436A of Code of Criminal Procedure (CrPC), of which 1,072 (58.83%) were released. It must be noted that Section 436A is only one of the 14 categories of prisoners who may be recommended for release by the UTRCs.<sup>1143</sup> Effective implementation of the NALSA's Standard Operating Procedures on UTRCs would ensure proper functioning of these committees and keep a check on unnecessary, prolonged detention.<sup>1144</sup>

Therefore, the increasing number of undertrial prisoners, who have been confined for over a year, needs to be checked and the issue needs to be addressed by the Government as a priority.

## Situation of Women Prisoners

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1134 Supreme Court of India, Writ Petition (Civil) No. 406/ 2013, '*Re: Inhuman conditions in 1382 prisons*', order dated 5 February 2016. Available at: [2016\\_3\\_SCC\\_700](https://rb.gy/2016_3_SCC_700)

1135 Prison Statistics India - 2018, National Crime Records Bureau (NCRB), 23 December 2019, pp. 23-24. Available at: <https://rb.gy/lf96xx>

1136 Ibid.

1137 CHRI, 'Periodic Newsletter: Jail Mail – Prison Reform Updates', January 2020, p.8. Available at: <https://rb.gy/lxh2mj>

1138 The Tribune, 'Easing overcrowded prisons in COVID times', 8 April 2020. Available at: <https://rb.gy/u8rbfl>

1139 Scroll, 'Why India's jails remain overcrowded during the pandemic, even as prisoners are released on parole', 30 June 2020. Available at: <https://rb.gy/6cgxik>

1140 The Hindu, 'Jails turn into hotbeds of disease', 25 May 2020. Available at: <https://bit.ly/3kpQ28x>

1141 An Undertrial Review Committee (UTRC) is a district level oversight mechanism headed by the senior most judicial officer of the district and comprises members from district administration, District Legal Services Authority, police and prison department, that primarily focuses on addressing prison overcrowding. Available at: <https://rb.gy/sgw8no>

1142 Ibid.

1143 NALSA, 'Standard Operating Procedure (SOP) / Guidelines for UTRCs. Available at: <https://bit.ly/3liukEB>

1144 CHRI, 'Periodic Newsletter: Jail Mail – Prison Reform Updates', January 2020, p.9. Available at: <https://rb.gy/lxh2mj>

Standards set out in various national and international documents, including the MHA's Model Prison Manual 2016, the UN Standard Minimum Rules for Treatment of Prisoners (Nelson Mandela Rules) 2015, and the UN Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) 2010 need to be implemented uniformly across all prisons.

In most prisons in India, women prisoners are found to have been denied access to several basic facilities that are available to male prisoners. According to the Prison Statistics India (PSI) 2018, there were 19,242 women prisoners in India. Among these, 1,732 women prisoners were residing in prison with their 1,999 children. It is interesting to note that the increase in women prisoners in India is at a higher rate (111.7%) than the increase in number of male prisoners (71%). Further, the increase in India is twice the rate of increase of women prisoners in the world (53.3%) since 2000.<sup>1145</sup> However, as of 31 December 2018, there are only 24 jails that are exclusively for women prisoners. Only about 3,243 of the 19,242 women prisoners in the country are placed in women's jails. The rest are placed in separate enclosures within the premises of men's prisons.

Most of these jails do not have a permanent female medical officer. The temporary measures of such a female doctor visiting regularly, as recommended in the 2018 report by the Ministry of Women and Child Development,<sup>1146</sup> has become the norm in several women's enclosures in prisons across states. However, in the absence of a female doctor, women prisoners are forced to consult with male doctors with whom they are not always comfortable sharing their concerns, especially on reproductive or menstrual health issues. Besides, medical camps and awareness programmes on menstrual hygiene rarely take place in prisons, which are essential. The restrictions placed on the provision of sanitary napkins, coupled with dirty and unhygienic toilets, are bound to have an adverse impact on the menstrual health and hygiene practices of women in prisons.<sup>1147</sup>

### Foreign Nationals in Indian Prisons

From 2016-18, the population of foreign national prisoners (FNPs) has increased in 14 states in the country,<sup>1148</sup> which is significant in light of the 19 per cent decrease in the total FNP population in the country. Lack of prompt consular assistance, restrictions on making international calls/emails/communications with family, non-implementation of agreements on transferring of prisoners, vague application of deportation / repatriation procedures, and absence of alternative facilities for FNPs who have completed their sentence, contribute to this major humanitarian and administrative problem.<sup>1149</sup>

### Deaths in Prisons

In 2018, there were 1,845 deaths *in toto* in Indian prisons, which has been the highest number since 1998. The PSI data over the years shows that the deaths in prisons are increasing at a higher rate than

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1145 CHRI, 'Periodic Newsletter: Jail Mail – Prison Reform Updates', March 2020, p.1. Available at: <https://rb.gy/mdtee6>

1146 Ministry of Women and Child Development – Govt of India, 'Women in Prisons', June 2018. Available at: <https://rb.gy/lwvh8v>

1147 CHRI, 'Periodic Newsletter: Jail Mail – Prison Reform Updates', May 2020, p.1. Available at: <https://rb.gy/t0pfdl>

1148 Assam, Chhattisgarh, Gujarat, Himachal Pradesh, Karnataka, Maharashtra, Manipur, Punjab, Rajasthan, Sikkim, Tamil Nadu, Telangana, Uttarakhand and Delhi.

1149 CHRI, 'Strangers to Justice: A Report on Foreign National Prisoners in India', 2019, pp.25-40. Available at: <https://rb.gy/yfuzhg>. It documented the challenges and issues faced by FNPs in India based on RTI data. The findings show a huge variation in the PSI figures and data received through RTI responses on the number of FNPs. It revealed that only 5.7% percent of FNPs received consular access and that 522 out of 3,908 such prisoners are 'persons whose nationality is not provided'. The NCRB data on foreign national prisoners remains devoid of these figures without which the actual situation of these prisoners remains only partially presented.

the increase in prison population. From 2013-18, while the increase in total prison population was 13.12 per cent, increase in deaths in prison was 15.5 per cent and the increase in ‘unnatural’ deaths was 29.6 per cent.

It is important to have better access to improved medical facilities, 24x7 presence of medical officers, and robust training of prison staff to address this issue. The PSI 2018 data on prison inspections shows that prisons are not adequately monitored by visitors. On an average, three prison visits per month does not represent the actual rate of prison inspections as almost half of such inspections are medical visits which are often limited to medical aspects.<sup>1150</sup>

Effective prison management requires robust training of prison personnel at all levels. In furtherance of the directions of the Supreme Court,<sup>1151</sup> the Bureau of Police Research and Development (BPRD) of the MHA prepared two detailed training manuals for prison officers and other staff. The Court directed these manuals to be adopted by the prison training institutes across the country on an urgent basis.<sup>1152</sup>

It is also important that prison departments are subject to scrutiny and accountability. However, they still are closed institutions with hardly any information about its functioning and performance made available in the public domain. The RTI Act 2005 has brought about some change in this respect, but the necessary awareness about it, especially among prisoners or their relatives, is woefully low.<sup>1153</sup> The mandate of proactively disclosing information under Section 4(1)(b) of the RTI Act needs to be complied with by the state prison departments. The only source of information for prison data is the PSI published by the National Crime Records Bureau (NCRB).<sup>1154</sup> Although it is supposed to be an annual publication, there was a gap of 2.5 years between the publication of PSI 2015<sup>1155</sup> and PSI 2016.<sup>1156</sup> It was only recently, in September 2020, that PSI 2019 was published.<sup>1157</sup>

### **Recommendations on Policing And Human Rights Training For Police In India**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.65	Continue and step up national efforts to train and guide security staff and other law enforcement officials in the field of human rights.	Egypt	Supported	Not Implemented

1150 CHRI, ‘Looking Into The Haze: Second National Report on Prison Monitoring in India’, 2019. Available at: <https://rb.gy/8norlt>. It revealed that only 24% prisons have a Board of Visitors, which held only 20% of its total mandated meetings. Only 52% prisons have NOV's appointed who made only 11% of the total mandated visits. Regular inspections by trained visitors and proper documentation can have a remarkable impact on improving prison conditions and inmates' lives. CHRI's studies have shown that documentation and follow up on inspections is poor.

1151 Supreme Court of India, Writ Petition (Civil) No. 406/ 2013, ‘*Re: Inhuman conditions in 1382 prisons*’, order dated 5 February 2016. Available at: [2016\\_3\\_SCC\\_700](https://rb.gy/2016_3_SCC_700)

1152 Deccan Herald, ‘Why states are not following model prison manual: SC’, 5 August 2018. Available at: <https://rb.gy/cwe84k>

1153 CHRI, ‘Key to Transparency: Your Guide to using the Right to Information Act, 2005, to collect data about Indian Prisons’, 2018. Available at: <https://rb.gy/ipzf09>

1154 Prison Statistics India, National Crime Records Bureau (NCRB). Available at: <https://rb.gy/etzmzc>

1155 Prison Statistics India – 2015 was published on [26 September 2016](https://rb.gy/26sept2016)

1156 Prison Statistics India – 2016 was published on [7 March 2019](https://rb.gy/7march2019)

1157 Prison Statistics India – 2019 was published on 27 August 2020. Available at: <https://rb.gy/jb8oaw>

161.66	In the spirit of its Constitution which guarantees equal rights to all minorities, further invest in dedicated human rights training of police officials to register and investigate cases of discrimination and violence and to hold them to accountable when they fail to do so.	Finland	Supported	Not Implemented
161.67	Provide systematic training on women's rights to all law enforcement personnel, medical staff and judicial officials.	Belgium	Supported	Partially Implemented <sup>1158</sup>

Training of the police force is one of the most critical components for ensuring an effective, efficient, and approachable force. The Indian Police have two types of training streams: one for central officers and one for state level officers. Leading civil society organisations, Common Cause and the Centre for the Study of Developing Societies (CSDS), began collaborations to produce yearly “Status of Policing in India Report” (SPIR) since 2018. These reports contain assessments of official data on policing as well as data from public surveys.<sup>1159</sup> The 2019 report surveyed 12,000 police personnel across India, covering their trying working conditions, meagre resources and infrastructure, police-people contact, and police violence. It aimed at eliciting the personnel's perceptions of their work environments, sensitivities, and attitudes regarding society as well as their capacities and profession skills.<sup>1160</sup>

The quality of training of the police directly depends on the infrastructure available with the state, which ideally should be upgraded regularly. However, most states spend only a miniscule share of their overall police budget on training, and as a result, the frequency and quality of training is adversely affected. Training, taken as a percentage of the national expenditure on policing, accounts for just 1.39 per cent. This is slightly lower than 1.4 per cent that was previously recorded. While the total expenditure on the police force in 2019 was Rs. 1,333.94 billion nationwide, the expenditure on training was only Rs. 16.755 billion which was only 1.26 per cent of the total expense.<sup>1161</sup> Maximum expenditure on training was made by the Delhi Police accounting to about Rs. 3.30 billion. The training budgets across states varied only slightly ranging around the average of one per cent mark.<sup>1162</sup>

It must be noted that although there are *ad hoc* trainings in some institutions, it is not yet a norm that all police training institutions include courses/classes on protection of human rights broadly, equality and non-discrimination specifically, or relating to the police response to vulnerable groups. Independent surveys in the SPIR reveal continuing stereotypes and biases in the attitudes of the police. It also points out that in five states – Assam, Kerala, Bihar, Gujarat, and Telangana –

1158 Relating to police and law enforcement personnel, many state police training institutions have introduced courses on ‘gender sensitization’, but this is not necessarily the part of the core curriculum or made mandatory for all trainees. Additionally, the quality of the content and methodology of the training varies and does not follow a consistent high standard across states.

1159 Status of Policing in India Report 2018: A Study of Performance and Perceptions. Available at: <https://rb.gy/fxaw4t>

1160 Status of Policing in India Report 2019: A Study of Performance and Perceptions. Available at: <https://rb.gy/zrq0ne>

1161 Bureau of Police Research and Development (BPRD) – MHA, ‘Data on Police Organisations 2019’. Available at: <https://rb.gy/pq93dq>

1162 Ibid.



approximately one-fourth of the police personnel have never received any caste sensitization training. In a survey of police perception toward various communities, the report found that about one in two personnel felt that Muslims are likely to be naturally prone towards committing violence. Similarly, biases were seen in the perceptions of the police in Rajasthan and Maharashtra about the proclivity of the *Adivasis* towards committing crimes; in Uttar Pradesh, more than half of the total police personnel (51%) believed that upper-caste Hindus are so inclined.<sup>1163</sup>

One in every 10 police personnel has never received gender sensitization training. Across states, Nagaland provided the least gender sensitization training, with almost two in every five male police personnel (37%) never having received any such training. This is followed by Gujarat with one in every four male police personnel (24%) never being trained on gender sensitization. Bihar with 22 per cent and Assam with 20 per cent were marginally better. On the other end of the spectrum, Rajasthan was found to have no male police personnel left untrained in this respect.<sup>1164</sup> 27 per cent male personnel felt that domestic violence complaints, while 16 per cent felt that rape or sexual harassment complaints were mostly false.

Where some efforts have been made to systematize the training around discrimination, such as by the *Anusuchit Jati / Janjati Kalyan* (AJK)<sup>1165</sup> branch of the Madhya Pradesh police dealing specifically with crimes against the Scheduled Castes and the Scheduled Tribes, legal provisions on accountability are largely ignored. Under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (POA) 1989, police negligence and misconduct such as refusal to register a reported complaint of an alleged atrocity with the signature of the informant and delay in filing chargesheet beyond the stipulated period are punishable offences with up to one year prison term.<sup>1166</sup> Provisions such as these are aimed at exposing and deterring caste discrimination by the police, and while extensive training material has been developed by the Madhya Pradesh police on the provisions of the POA, it pays little attention to penalization of police misconduct.<sup>1167</sup> Common police malpractices stemming from caste discrimination in the implementation of the POA continue to be referred to as “lapses” rather than illegalities, reflecting a tendency to underplay or dismiss biases and obfuscate legal accountability.

Another instance of police organizations in India failing to address systemic bias and discrimination is the lack of diversity within the organization. Despite years of reservation for the Scheduled Castes, Scheduled Tribes, Other Backward Classes, and in some states, also for women, states are lagging behind in meeting their stated quotas for all these categories (to varying degrees) in their police. Excluding the constabulary that have limited responsibilities within the police hierarchy, the data available as of 2016 reveals that 19 states and union territories fail to meet their Scheduled Castes’ reservation quota, 26 - their Scheduled Tribes’ quota, and 20 - their Other Backward Classes’ quota in the remaining officer ranks.<sup>1168</sup> It is concerning that states and union territories have stopped reporting the *total* representation of these communities in their respective police organizations since

1163 Status of Policing in India Report 2019: A Study of Performance and Perceptions. Available at: <https://rb.gy/zrq0ne>

1164 Ibid.

1165 *Anusuchit Jati Janajati* means Scheduled Castes and Scheduled Tribes as listed in the Constitution of India. The *Anusuchit Jati Janajati Kalyan* branch for the Madhya Pradesh police is a special unit to deal with crimes against Scheduled Castes and Scheduled Tribes.

1166 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Available at: <https://rb.gy/4cyumq> Some other details in this respect are discussed in the chapter on ‘Dalit And Adivasi Rights’ in this report.

1167 CHRI, ‘*Anusuchit Jati Janajati Kalyan* Branch, Madhya Pradesh Police: An Assessment of the Special Unit on Crimes against Scheduled Castes and Scheduled Tribes, 2018. Available at: <https://rb.gy/stqy0k>

1168 Bureau of Police Research and Development (BPRD) – MHA, ‘Data on Police Organisations’ (as on 1 January 2017). Available at: <https://rb.gy/3qgskt>; see also, India Justice Report 2019, pp. 41-42. Available at: <https://bit.ly/3ki6Spl>

2017. It is now available only with respect to select state-cadre ranks,<sup>1169</sup> making it impossible to track not only the extent of compliance of states and union territories with their overall reservation targets, but also the even representation of these groups across the police hierarchy.

Similarly, women constitute only nine per cent of the total police strength in India,<sup>1170</sup> although increasing women's representation to 33 per cent has been a stated goal of the Government of India and its several other states since 2009.<sup>1171</sup> Where women police personnel are present, they are largely concentrated in the junior ranks: in Bihar, women constitute nearly 19 per cent of the constabulary and only 3.26 per cent of the officer ranks; in Maharashtra, they make up 14 per cent of the constabulary and only 5.91 per cent of the officer ranks; in Himachal Pradesh, they form 14 per cent of the constabulary and only 4.39 per cent of the officers ranks. There is little effort at addressing institutional barriers, such as limiting reservation only for the junior entry levels instead of at all entry levels, non-transparent promotion processes, and lack of suitable infrastructure that hinder the rise of women within the system. States are yet to develop a robust plan of action with clear timelines, yearly recruitment targets, and resources required to meet them.<sup>1172</sup>

Other vulnerable sections of society including religious minorities, persons with disabilities, and the transgender community remain neglected in government efforts at inclusion within policing. For example, over a period of 15 years from 1999-2013, Muslim representation in the police has remained consistently low at three or four per cent (excluding the *then* state of Jammu and Kashmir [now union territories of 'Jammu and Kashmir' and 'Ladakh'] which pushes the national figure to 8%)<sup>1173</sup> as against 14.2 per cent Muslim population in the country.<sup>1174</sup> This is despite a strong recommendation made by a Government-Appointed High-Level Committee headed by Justice Rajinder Sachar in 2006 that the number of Muslim personnel, particularly in Muslim concentrated areas, must increase.<sup>1175</sup> Some states such as Kerala, Tamil Nadu, Telangana, and West Bengal extend reservation to Muslim groups under the Other Backward Classes category.<sup>1176</sup> However, since 2013, the annual reporting of Muslim representation in the police, previously done by the NCRB, has ceased, making it almost impossible to track representation of Muslims in an objective and meaningful way.

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1169 State cadre ranks in the police include (in descending seniority order): Deputy Superintendent of Police; Inspector; Sub-Inspector; Assistant Sub-Inspector; Head Constable and Constable. Till 2016, states provided data on the representation of Scheduled Castes, Scheduled Tribes and Other Backward Classes for all these ranks. Since 2017, this data is available only for Sub-Inspector rank and below.

1170 Bureau of Police Research and Development (BPRD) – MHA, 'Data on Police Organisation 2019', p.91. Available at: <https://rb.gy/pq93dq>

1171 MHA - Govt of India, Office Memorandum, F. NO.15011/48/2009-SC/ST-W: Advisory on crimes against women – regarding measures need to curb, 4 September 2009. Available at: <https://bit.ly/32uvci7>

1172 CHRI, 'Model Policy for Women in Police in India', 2018. Available at: <https://rb.gy/hj4j5w>. It was developed in consultation with serving and retired police officers, academics and independent experts with the aim of guiding the Government's efforts at improving gender diversity and mainstreaming gender equality in police services across India.

1173 Derived from Crime in India reports by the National Crime Records Bureau (NCRB) from 1999 to 2013. See, CHRI, 'Muslim Voices: Perceptions of Policing in India', 2018, p. 9. Available at: <https://rb.gy/e7k4eh>

1174 Firstpost, 'India has 79.8% Hindus, 14.2% Muslims, says 2011 census data on religion', 26 August 2015. Available at: <https://rb.gy/Ofxgwz>

1175 Prime Minister's High-Level Committee headed by Justice Rajinder Sachar, 'Social, Economic and Educational Status of the Muslim Community of India – A Report', November 2006, Chapter 12, para 3.3, p.253. Available at: <https://rb.gy/akzgqg>

1176 Kerala provides 12%, Tamil Nadu 3.5%, and Telangana has passed a law (awaiting Presidential assent) giving 12% reservation. In West Bengal, OBCs are split into two categories in which Muslim groups are included – for one category 10% reservation is provided, and for the other, 7%. CHRI, 'Muslim Voices: Perceptions of Policing in India', 2018, n.67, p.31. Available at: <https://rb.gy/e7k4eh>

### **Recommendations on Excessive Use Of Force And Police Brutality**

<b>Rec #</b>	<b>Recommendations</b>	<b>Recommending State</b>	<b>Government's Response</b>	<b>Status of Implementation</b>
161.95	Take appropriate measures to avoid the excessive use of force by security officers.	Greece	Supported	Not Implemented
161.96	Deepen the respect about principles of proportionality and necessity for armed forces and police.	Peru	Supported	Not Implemented
161.98	Review the Code of Criminal Procedure as regards the use of force by law enforcement officials, in particular Section 46.	Sierra Leone	Noted	Not Implemented <sup>1177</sup>

From 2017 to present, there have been glaring incidents of disproportionate and excessive use of force by police in India across states, largely in response to peaceful protests. The use of force has ranged from varied forms of physical force to the use of firearms, sometimes causing deaths and serious injuries. In all these cases, accountability of the police is largely protracted, delayed, and insufficient. Prosecution of police officers for human rights violations amounting to criminal offences rarely materializes. Some of the most egregious incidents of excess force during this period are:

#### *Extrajudicial / Encounter Killings in Uttar Pradesh (Beginning From September 2017)*

From September 2017 to mid-2019, over 80 people have been killed in the course of shootings / encounters by the police in the state of Uttar Pradesh. From the figures revealed by the state government, there were a total of 3,026 shootings from March 2017 to July 2018, in which 78 individuals / criminals were killed and 838 others were injured. In the seven months intervening January and June 2018 alone, the scale of people killed in shootings increased sharply to 61, with an average of more than eight people per month.<sup>1178</sup> According to civil society estimates, thousands of others have been maimed and crippled for life due to bullet injuries and are incarcerated with no medical attention. These injury cases so far have not been reported by the media.

<sup>1177</sup> Although this recommendation specifically has not yet been implemented, there are some relevant developments. The Government of India constituted a 'Committee for Reforms in Criminal Laws' in 2020 with the mandate to recommend reforms of all criminal laws and penal code of India. The Committee has already completed first phase of consultations with stakeholders. However, it has been criticized by retired judges, lawyers, activists and academics for: lack of independence from the Government; disregard for the universally accepted law reform protocols; being all-male and non-representative of the most vulnerable communities affected by the police / justice system abuses; and failing to use participatory methods to enable people across socio-economic classes to engage with it. There are serious concerns that the Committee will actually widen the net of criminal laws and dilute the existing safeguards. Explainer available here: <https://disbandthecommittee.in/concerns.html>. See also, <https://thewire.in/law/criminal-law-reform-committee-transparency>; <https://www.deccanherald.com/specials/sunday-spotlight/how-not-to-reform-criminal-law-886718.html>

<sup>1178</sup> The Indian Express, 'First 16 months of Yogi Adityanath govt: Over 3000 encounters, 78 killed', 25 January 2019. Available at: <https://rb.gy/pwj1at>

The state government and the UP police have justified the shootings as the state policy to curb crime, and the killings and/or injuries caused are justified as defence against armed “criminals”.<sup>1179</sup> The police and government have not complied with any of the processes laid down to account for the deaths and injuries due to police shootings, as mandated by Supreme Court<sup>1180</sup> and the National Human Rights Commission (NHRC) guidelines.<sup>1181</sup> Victims or their families seeking accountability and human rights defenders supporting their cause are often subjected to reprisals by state actors, putting at peril their physical safety and freedom of movement as well as steps towards accountability taken by them. Narratives of victim families and independent sources have called into question the police narrative of “spontaneous” shootouts. It has been revealed that the victims largely belong to Muslim and Dalit communities and vulnerable socio-economic backgrounds; recurring patterns indicate that the killings were premediated by the police.<sup>1182</sup> In fact, the patterns and reprisals point to the commission of serious human rights violations that are covered up in the guise of police “encounters”.<sup>1183</sup>

In December 2018, five UN Special Rapporteurs expressed concerns over the allegations of a large number of extrajudicial killings by police in UP since March 2017 and wrote a detailed communication regarding 15 of these cases to the Government of India. They expressed serious concerns about the pattern of events of individuals allegedly being abducted or arrested before their killing, and their bodies bearing injuries indicative of torture. They called for an urgent review of the use of force by the UP police and prompt, independent and thorough investigations into all allegations of unlawful killings to bring the perpetrators to justice.<sup>1184</sup>

The People’s Union for Civil Liberties (PUCL) filed a public interest litigation in the Supreme Court in January 2019; supported by an application to implead as a co-petitioner by the civil society collective, ‘Citizens Against Hate’ (CAH), towards compliance with the Court’s guidelines to investigate the police actions in these killings. At that time, the Supreme Court had stated that the killings required “serious consideration” and had agreed to examine a selection of the cases.<sup>1185</sup> Details of 17 cases were submitted to the Court by the CAH. These proceedings in these cases remain pending.

In November 2017, the NHRC took *suo moto* notice of media reports in which Uttar Pradesh government officials endorsed the spate of killings as effective crime control strategy and sought a reply from the Chief Secretary of the state government within six weeks, while cautioning against abuse of power by public servants.<sup>1186</sup> On 9 May 2018, the NHRC ordered an investigation into 17 cases of killings by police in UP on complaints filed by CAH and victim families.<sup>1187</sup> This was to be

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1179 The Wire, ‘In the fight between encounter policy and rule of law, it’s clear who is winning’, 15 July 2020. Available at: <https://rb.gy/tiykms>

1180 *People’s Union for Civil Liberties and Anr. v. State of Maharashtra and Others* (2014) 10 SCC 635

1181 NHRC, ‘Guidelines on Deaths in the course of Police Action’, 12 May 2010. Available at: <https://rb.gy/qhgpqs>

1182 The Wire, ‘A Chronicle of the Crime Fiction That Is Adityanath’s *Encounter Raaj*’, 24 February 2018. Available at: <https://rb.gy/g5ttly>

1183 Outlook, ‘In 2017-18, NHRC sent multiple notices to UP Govt on “encounters” by police’, 10 July 2020. Available at: <https://bit.ly/3eMMDPM>

1184 OHCHR, Communication sent by four Special Rapporteurs concerning the extrajudicial killings in Uttar Pradesh, 11 December 2018. Available at: <https://rb.gy/5canih>

1185 The Indian Express, ‘SC says UP encounters need ‘serious consideration’, issues notice to Yogi govt’, 14 January 2019. Available at: <https://rb.gy/ebpdvi>

1186 NHRC, Notice to the Government of Uttar Pradesh over its reported endorsing of killings in encounters by police for law and order, 22 November 2017. Available at: <https://rb.gy/va20to>

1187 The Wire, ‘NHRC orders constitution of team to probe UP extra-judicial killings’, 17 May 2018. Available at: <https://rb.gy/icw53t>

completed within four weeks but remains pending more than two years later. The NHRC has not responded to multiple complaints of reprisals against victim families and human rights defenders.<sup>1188</sup>

#### *Indiscriminate Firing By Police At Peaceful Protestors In Thoothukudi (Tuticorin) (May 2018)*

On 22 May 2018, a number of protestors had gathered peacefully at Thoothukudi district collectorate to mark the 100th day of the community-led protests against the expansion of the Vedanta Sterlite Copper Unit. For 100 days continuously, citizens exercised their fundamental rights to free expression and assembly to call attention to serious environmental and public health hazards posed by the copper plant. On the unfortunate day, the police opened fire on protestors, with no prior warning. Witnesses and video footage confirm that shots were fired by people in plain clothes armed with snipers, atop vans, into the crowd of unarmed protestors. The identity of the shooters in plain clothes remains unknown. 13 protestors were killed in front of the district collectorate and about four more on the streets due to police actions that followed the firing.<sup>1189</sup> Eyewitness testimonies and video evidence of the incident are widely available, including an extensive “People’s Inquest” report with testimonies of victim families, medical reports, First Information Reports, and other primary documents.<sup>1190</sup>

On 31 May 2018, the UN Special Rapporteurs condemned the “apparent excessive and disproportionate use of lethal force by police against protestors calling for the closure of a copper smelting plant in the Indian state of Tamil Nadu over health and environmental concerns”, and called for an independent investigation.<sup>1191</sup> In spite of the inquiries by the NHRC, the set-up of a Commission of Inquiry by a single judge, and investigation by the CBI, no punitive action has been taken against any police or government official to this date.<sup>1192</sup>

#### *Excessive Use of Force By Police During The Nationwide Anti-CAA Protests*

As previously mentioned in this report, the Citizenship (Amendment) Act 2019 (CAA) was passed by the Parliament of India on 12 December 2019 and has been severely criticised by constitutional and international human rights experts for being discriminatory and exclusionary against Muslims.<sup>1193</sup> Immediately following the passage of the Act, protests broke out across the country from December 2019 led by ordinary people and students in most places. While the protests opposed the law and policies giving basis to the CAA, their larger message rested on a constitutional language and fundamental rights for all<sup>1194</sup> and were characterised by an unprecedented wave of community-based, peaceful sit-in protests in cities across India, beginning from December 2019.<sup>1195</sup>

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1188 OHCHR, Communication sent by four Special Rapporteurs concerning the extrajudicial killings in Uttar Pradesh, 11 December 2018. Available at: <https://rb.gy/5canih>

1189 Time Now News, ‘Tuticorin police firing: 2 years later, scars are yet to heal and justice is elusive’, 22 May 2020. Available at: <https://rb.gy/nqtwby>

1190 People’s Inquest Report, ‘The Day Tuticorin Burned’, June 2018. Available at: <https://rb.gy/bg6uuf>

1191 OHCHR, ‘Press release: **UN experts condemn deadly police response to protest against copper smelting plant in India, call for probe, 31 May 2018.** Available at: <https://rb.gy/nvstxq>

1192 People’s Watch, ‘A Year After Thoothukudi Burned’, 22 May 2019. Available at: <https://rb.gy/5xr8vf>; see also, Amnesty International, ‘Two years after Thoothukudi: Impunity on gross display’, 22 May 2020. Available at: <https://rb.gy/kmbcxc>

1193 The Hindu, ‘A bill that undercuts key constitutional values’, 7 October 2019. Available at: <https://bit.ly/2BVmcYA>

1194 [Exemplified](#) by the collective reading out of the Preamble of the Constitution of India at every protest.

1195 The Wire, ‘At Delhi’s Anti-CAA sit-in protests, women continue their struggle’, 4 March 2020. Available at: <https://rb.gy/lsikon>

Excessive use of force by the police to quell the protests was witnessed in multiple incidents and places. In fact, use of such force, including the use of lethal and non-lethal weapons, against the anti-CAA protesters has led to people being injured and killed, with the highest known number of deaths reported from Uttar Pradesh.<sup>1196</sup> On an examination of the use of force in Uttar Pradesh, the International Commission of Jurists had concluded that “through the conduct of the police and the Uttar Pradesh government, India is in violation of its international legal obligations to protect the right to life and freedom from torture and cruel, inhuman degrading treatment. Indian authorities have engaged in arbitrary deprivation of life and acts of proscribed ill-treatment”.<sup>1197</sup> Human Rights Watch called for Indian authorities to cease “the unnecessary use of lethal force.”<sup>1198</sup> Amnesty International documented a clear pattern of use of excessive force and arrests of peaceful protestors, delayed access to legal counsel, and differential treatment to “pro-CAA” assemblies.<sup>1199</sup> Civil society documented case studies of 47 children detained in December 2019 and subjected to intimidation and custodial violence by the Uttar Pradesh police.<sup>1200</sup>

The Allahabad High Court is hearing several public interest litigation petitions, tagged together, seeking judicial intervention into the police and government actions against protestors in Uttar Pradesh, particularly to address violations of constitutional rights.<sup>1201</sup> In March 2020, the Uttar Pradesh government put up “name and shame” hoardings identifying protestors with their names, addresses, pictures, and put a bounty on their heads,<sup>1202</sup> jeopardising their lives and safety.<sup>1203</sup> They were ultimately ordered by the Allahabad High Court to be removed.<sup>1204</sup> However, in November 2020, the posters of absconding anti-CAA protestors were put up again in Lucknow. The Uttar Pradesh government had approached the Supreme Court in this matter, where it is pending.<sup>1205</sup>

On 7 January 2020, a Division Bench of the Allahabad High Court had started hearing a public interest litigation on violence in Aligarh Muslim University, outlined in the next section, in the case of *Mohd. Aman Khan v. Union of India*, wherein it has directed the NHRC to conduct an enquiry into the police actions and violence and provide its report in four weeks.<sup>1206</sup> On conducting its investigation, the NHRC recommended compensation to six students who were grievously injured by the police, and ordered

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1196 International Commission of Jurists, ‘Briefing Paper on the Use of Force by the Uttar Pradesh Police to Quell Anti-Citizenship Amendment Protests’, 15 January 2020. Available at: <https://rb.gy/6alrcc>

1197 Ibid.

1198 Human Rights Watch, ‘India: Deadly force against protestors; police target anti-citizenship law demonstrators’, 23 December 2019. Available at: <https://rb.gy/npvukz>; see also, National Alliance for People’s Movement, ‘Report on ‘State repression of protestors in UP’’, 2 January 2020. Available at: <https://rb.gy/g2b18w>

1199 Amnesty International, ‘Press release: Peaceful anti-CAA protests being suppressed in Prime Minister Narendra Modi’s constituency’, 16 January 2020. Available at: <https://rb.gy/bw18ol>

1200 HAQ: Centre for Child Rights, ‘Smouldering embers the voices of children in Uttar Pradesh’. Available at: <https://rb.gy/k6l5cp>

1201 These include *Vishnu Shukla v. State of UP and four Ors.* (Kanpur), *Aftab Alam v. State of UP and six Ors.* (Muzzafarnagar), *Syed Najmussaib v. State of UP and six Ors.* (Kanpur), *Shree Ajay Kumar v. State of UP*, among others.

1202 Huffington Post, ‘CAA: Protestors Forced Into Hiding, As UP Police Puts Bounty On Their Heads’, 7 February 2020. Available at: <https://rb.gy/lfbhgk>

1203 The Hindu, ‘Now, police banners in Lucknow show anti-CAA protestors accused of violence’, 6 March 2020. Available at: <https://rb.gy/azxzhx>

1204 The New Indian Express, ‘Uttar Pradesh government seeks time to remove posters of ‘anti-CAA protestors’, 17 March 2020. Available at: <https://rb.gy/qlsbh6>

1205 Deccan Herald, ‘Posters of absconding anti-CAA agitators come up again in Lucknow’, 5 November 2020. Available at: <https://rb.gy/mvvyh6>

1206 The Wire, ‘Allahabad HC orders NHRC to probe December police violence at AMU’, 7 January 2020. Available at: <https://rb.gy/hvsnr1>



the identification of the police personnel involved in caning the students, and directed that “suitable” action be taken against them.<sup>1207</sup> Thereafter, the High Court passed an order directing the Uttar Pradesh Police Chief and the Head of the Central Reserved Police Force (CRPF) to take strict actions against officers who attacked students.<sup>1208</sup> However, till date, there is no indication or reporting of action taken against the police.

### *Action Against Student Protests in Universities*

- **Jamia Millia Islamia University:** On 15 December 2019, in response to a major protest by the students of New Delhi’s Jamia Millia Islamia University in the university campus, the Delhi police and at least one other security force, conducted an all-night police action to break up the protests. The students were allegedly beaten with batons and subject to the firing of tear gas.<sup>1209</sup> Video evidence through the CCTV footage of the university library clearly shows uniformed personnel in riot gear indiscriminately beating unarmed students inside the library.<sup>1210</sup> The destruction of University property by the personnel – chairs, desks, doors – is clearly visible. There is also a clear shot of a man in uniform, with a masked face, smashing the CCTV camera, which amounts to destruction of public property by a law enforcement officer.<sup>1211</sup> The police detained (and subsequently released) about 50 students. Some reported being beaten while in detention, held for over six hours in a locked police station, and denied access to lawyers and family.<sup>1212</sup> Medical attention was also reportedly denied to some injured students. In December 2019, on the receipt of complaints of use of excess force by the police, the NHRC formed a team to conduct an “assessment on the alleged human rights violations”. However, it goes on to largely rely on internal inquiries by the Delhi police itself for further action.<sup>1213</sup> The NHRC’s findings in a report released in June 2020 have been sharply criticized by Jamia students, lawyers, and activists for not giving sufficient attention to the hundreds of testimonies by students and diluting the culpability and complicity of the police.<sup>1214</sup>
- **Jawaharlal Nehru University (JNU):** On 5 January 2020, eyewitnesses and videos attested that masked men and women carrying sticks, hammers, bricks, and shouting pro-government majoritarian slogans entered the JNU in a violent attack inside the campus, injuring more than 30 students and teachers. The mob was allegedly armed with rods and sledgehammers as they intimidated students by destroying campus property, entering hostel rooms, and chanting slogans.<sup>1215</sup> Police allegedly stood at the University gates as mere bystanders without taking any preventive or any other action.<sup>1216</sup>

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1207 The Leaflet, ‘Allahabad HC orders UP government to comply with NHRC’s recommendation to provide compensation to AMU students’, 24 February 2020. Available at: <https://rb.gy/jlvbfq>

1208 Scroll, ‘AMU violence: Court orders UP police chief, CRPF head to act against officers who attacked students’, 24 February 2020. Available at: <https://rb.gy/4qnozy>

1209 The Night of the Broken Glass: Testimonies from Jamia Milia Islamia: <https://indiaresists.com/jamiatestimonies/>

1210 The Wire, ‘Purported CCTV footage shows police attacking students in Jamia library on December 15’, 17 February 2020. Available at: <https://rb.gy/ocsbyb>

1211 The Quint, ‘Why is police vandalising CCTV in Jamia library?’, February 2020. Available at: <https://rb.gy/ucuybz>

1212 CHRI, ‘Press release: CHRI demands swift investigation of violence in Jamia Milia’, 16 December 2019. Available at: <https://rb.gy/hmkdfc>

1213 Taken from the NHRC’s order provided by a complainant.

1214 The Wire, ‘NHRC blames Jamia students for police violence, wants ;real motive’ of anti-CAA protest probed’, 26 June 2020. Available at: <https://rb.gy/giujpx>

1215 The Hindu, ‘JNU violence: The night of the long rods’, 11 January 2020. Available at: <https://rb.gy/agk0a0>

1216 Human Rights Watch, ‘India: Police failed to protect students’, 7 January 2020. Available at: <https://rb.gy/ybijhx>

- **Aligarh Muslim University (AMU):** On December 2020, the Uttar Pradesh police entered the AMU campus without permission to contain the student protests against the CAA. CCTV footage allegedly shows police personnel “damaging motorcycles and unnecessarily caning the apprehended students”. An independent fact-finding report led by a team of civil society activists, lawyers, and journalists found that the action by the Uttar Pradesh police and the Rapid Action Force left many students “with shattered bones, grave injuries, deep bruises and severe psychological trauma.”<sup>1217</sup> According to the report, eyewitness testimonies, medical opinions, video footage, and physical evidence confirm that the police used tear gas shells, sound bombs, rubber bullets, and batons (*lathis* in Hindi) to quell the protests. The hand of a doctoral student had to be amputated from below the wrist due to the injuries sustained from a stun grenade explosion. Teachers and doctors interviewed by the fact-finding team estimated that around 100 students were picked up by the police and another 100 were injured. The personnel allegedly used anti-Muslim slurs while attacking the students. Detained students were reported to have been subjected to violence and beaten with leather belts. Doctors at AMU stated that on 16 December 2019, police blocked ambulances from entering the university campus to treat the injured students.<sup>1218</sup>

#### *Mass Violence in Delhi (February 2020)*

Multiple areas of North-East Delhi, a densely populated district of the national capital, suffered mass violence from 23-27 February 2020. The official number of deaths recorded is 53, with hundreds injured, who had to be hospitalized, and an unknown number of missing persons. The violence has led to huge financial losses due to the looting and arson of homes, shops, businesses, and other property. Many commentators have said the violence was not a communal “riot” but a targeted attack on Muslims.<sup>1219</sup> While both Hindus and Muslims were killed in the violence, the majority of the 53 dead are Muslims.<sup>1220</sup> There were clear signs of police complicity, either in turning a blind eye to the violence, or in many cases, actually abetting and participating in the violence.<sup>1221</sup> In one incident which was filmed and went viral, some Muslim boys were surrounded and beaten by police officers forcing them to sing the national anthem.<sup>1222</sup> One of them died some days later and the FIR registered does not name any accused.<sup>1223</sup> The Delhi Minorities Commission deputed a fact-finding team in March 2020 to conduct an independent assessment of what occurred and the role of the police.<sup>1224</sup> It

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1217 Karwaan-e-Mohabbat, ‘The Siege of Aligarh Muslim University: A Fact-Finding Report’, 24 December 2019. Available at: <https://rb.gy/xuboib>

1218 Ibid.

1219 The Guardian, ‘The violence in Delhi is not a riot. It is targeted anti-Muslim brutality’, 1 March 2020. Available at: <https://rb.gy/f9qvxn>; see also, The Polis Project, ‘An Account of Fear and Impunity – A preliminary fact-finding report on communally-targeted violence in NE Delhi’, February 2020. Available at: <https://rb.gy/3xsbls>

1220 The Scroll, ‘In Delhi violence investigation, a disturbing pattern: Victims end up being prosecuted by the police’, 23 May 2020. Available at: <https://rb.gy/so1dnp>

1221 The Caravan, ‘Dead and buried’, 24 June 2020. Available at: <https://rb.gy/2frw2v>

1222 Huffington Post, ‘Ground Report: Delhi police actions caused death of man in the infamous national anthem video’, 2 March 2020. Available at: <https://rb.gy/5d7wux>

1223 The Indian Express, ‘Man made to sing national anthem: North-East Delhi riots FIR names no accused’, 20 June 2020. Available at: <https://rb.gy/74pajp>

1224 Delhi Minorities Commission, ‘Fact-Finding Report on North-East Delhi Riots of February 2020’, July 2020. Available at: <https://rb.gy/disdk0>

published its report in July 2020, which concluded that the violence was a planned and targeted attack on Muslims, with testimonies of the Delhi police's complicity in the violence.<sup>1225</sup>

#### *Excess Force In Enforcement Of Nationwide Lockdown Due To The COVID-19 Pandemic*

On 11 March 2020, the World Health Organization (WHO) declared the outbreak of COVID-19 a pandemic,<sup>1226</sup> and soon after, the Government of India imposed a nationwide lockdown on 25 March 2020. It continued till 31 May 2020, following which local cities/districts have gone on to extend or impose localized lockdowns. Allegations, complaints, video footage, and images of police across states resorting to use of excess force to "enforce" lockdown conditions surfaced throughout the duration.<sup>1227</sup> Following analysis and compilation of media reports, the Commonwealth Human Rights Initiative (CHRI) found that 18 individuals died following alleged police excesses, largely involving beatings /canings in public; these actions were reported in May and June 2020.<sup>1228</sup> CHRI had also petitioned the NHRC for independent inquiry into these incidents.

#### *Training On Use Of Force Standards And Operational Practices*

Police training includes physical training on weaponry and crowd control, but these emphasize the physical aspects and neglect imparting the understanding and operational proficiency in the application of the standards of proportionality and necessity in the use of force, including in the use of firearms or other lethal methods. Surveys conducted among police personnel in the SPIR 2019 reveal that even the physical training on the use of weaponry and/or crowd control is not continuous through an officer's career. While the majority of police reported being trained in crowd control, physical training and weaponry, more than one in two respondents reported that the last training they received was at the time of joining the police service.<sup>1229</sup> These are long gaps of decades, when refresher training should be continuous.

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1225 Al Jazeera, 'Minority body faults police role in anti-Muslim riots in Delhi', 17 July 2020. Available at: <https://rb.gy/2wlqkl>

1226 World Health Organization, 'WHO Director-General's opening remarks at the media briefing on COVID-19', 11 March 2020. Available at: <https://rb.gy/0blyoy>

1227 Coalition Against Torture and Amnesty International, 'Coalition Against Torture: Government Officials Should Be Accountable For Excessive Use Of Force, Ill-treatment During COVID-19 Lockdown', 23 April 2020. Available at: <https://rb.gy/whfo7a>

1228 CHRI, 'CHRI petitions NHRC to investigate 15 deaths following alleged police excesses during COVID-19 lockdown', 20 May 2020. Available at: <https://rb.gy/22hrgf>; this was followed up with a supplementary petition sent in June 2020.

1229 Status of Policing in India Report 2019: A Study of Performance and Perceptions, p.75. Available at: <https://rb.gy/zrq0ne>

## CHAPTER 13

### THE RIGHT TO FREEDOM FROM TORTURE AND ILL-TREATMENT

#### **Recommendations on Ratification of the UN Convention Against Torture And Other Cruel, Inhuman And Degrading Treatment Or Punishment (UNCAT)<sup>1230</sup>**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.8	Finalize the efforts to ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as other international instruments, as recommended by relevant treaty bodies.	Bulgaria	Supported	Not Implemented 1231
161.5	Ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as previously recommended.	Botswana	Supported	Not Implemented
161.6	Ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment urgently and in accordance with	Norway	Supported	Not Implemented

1230 While we have noted only 15 recommendations, there were a total of 31 recommendations in UPR-III calling on India to ratify the UNCAT and to enact a domestic legislation in compliance with international standards.

1231 While India has signed the UNCAT in 1997 and consistently expressed its commitment towards ratifying it, there have been no steps taken towards ratification. In fact, the revised Standard Operating Procedure of the Ministry of External Affairs dated 2 April 2018 specifically states, “In order to ensure that India is in a position to efficiently discharge all obligations emanating from treaties, ratification / accession should be undertaken only after the relevant domestic laws have been amended or the enabling legislation has been enacted in cases where there are no domestic laws on the subject.” Available at: <https://mea.gov.in/images/Revised-SOPs-with-forwarding-letter-02042018.pdf> (p.8). “Torture” is not a separate offence defined in the Indian Penal Code (IPC), neither does India have an independent legislation prohibiting and criminalizing torture. In fact, on 15 September 2020, on a question posed by a Member of the Parliament, the Minister of State for Home Affairs gave the following response in writing.

**QUESTION:** “Will the Minister of Home Affairs be pleased to state: (a) whether the Government is considering to bring a legislation to prevent torture of individuals by police and public officials; (b) if so, the details thereof; and (c) if not, the reasons therefor?”

**ANSWER [Minister of State in the Ministry of Home Affairs, Shri G. Kishan Reddy]:** (a) to (c) – “The existing provisions of the IPC provide punishment for such offences. “Police” and “Public Order” are state subjects under the Seventh Schedule to the Constitution of India and it is primarily the responsibility of the state governments to ensure compliance of law and protect life and property of people. There is no proposal to bring a legislation in this regard”. Available at: [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-381565.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-381565.pdf)

This goes on to show that despite supporting most of the recommendations on ratifying the UNCAT and enacting a complementary legislation, as well as voluntarily committing to ratify it, no concrete steps have been taken in that direction to implement them. A detailed explanation is covered in the body of this chapter.

	its commitments from the 2012 universal periodic review.			
161.7	Ratify, before the next UPR cycle, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Czechia	Supported	Not Implemented
161.9	Ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	(i) Greece (ii) Guatemala (iii) Italy (iv) Lebanon (v) Montenegro (vi) Mozambique (vi) South Africa (vii) Sweden (viii) Turkey (ix) Ukraine (x) United States of America	Supported	Not Implemented
161.11	Ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is consistent with the Convention.	Australia	Supported	Not Implemented
161.12	Swiftly ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, ensure that domestic legislation defines torture in line with international standards, and extend an invitation to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for an official visit to the country.	Germany	Noted	Not Implemented
161.13	Proceed with the early ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the International Convention for the Protection of	Japan	Noted	Not Implemented

	All Persons from Enforced Disappearance.			
161.15	Finalize the process of ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.	Kazakhstan	Noted	Not Implemented
161.16	Redouble its efforts to ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Republic of Korea	Supported	Not Implemented
161.17	Speed up the process for the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Israel	Supported	Not Implemented
161.18	Advance towards the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Chile	Supported	Not Implemented
161.19	Consider completing the process of preparation for the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Burkina Faso	Supported	Not Implemented
161.20	Complete the process of preparation for the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Russian Federation	Supported	Not Implemented
161.21	Intensify efforts to ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Denmark	Supported	Not Implemented
161.22	Strengthen national efforts towards the ratification of the Convention Against Torture and	Indonesia	Supported	Not Implemented



	Other Cruel, Inhuman or Degrading Treatment or Punishment.			
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### *Status of UNCAT Ratification: Procedural Challenges*

India signed the UNCAT in 1997; however, it has still not ratified it. It is important to note that India has repeatedly expressed its commitment towards ratifying the UNCAT since UPR-I in 2008,<sup>1232</sup> which was reiterated by accepting related recommendations in UPR-II<sup>1233</sup> as well as UPR-III.<sup>1234</sup> In the same vein, India has also voluntarily pledged to give effect to such ratification while presenting its candidature for the membership of the UN Human Rights Council (UNHRC) in its elections held in 2011,<sup>1235</sup> 2014,<sup>1236</sup> and 2018,<sup>1237</sup> based on which it is currently serving as a member of the Council.

However, there are some procedural challenges, standing in the way of fulfilling these commitments, that have been used as a justification for not ratifying the UNCAT 23 years after signing it: India is a dualist country and this principle of dualism, as reflected in Article 253 of the Constitution, mandates the Parliament to enact a domestic anti-torture legislation in order to vindicate the commitment to ratify the UNCAT. Under India's constitutional framework, the process of ratifying or acceding to international treaties is an executive act and is concluded by the signature and seal of the President of India on approval of the Union Cabinet.<sup>1238</sup> In consonance with this, the Standard Operating Procedures set forth by the Ministry of External Affairs (MEA)<sup>1239</sup> provide that when the performance of treaty obligations entails alteration of the existing domestic law or requires a new enactment, the legislative action should be completed before the referred ratification or accession. The Supreme Court has held, "Even so, until the municipal law is changed to accommodate the Covenant what binds the court is the former, not the latter. A.H. Robertson in 'Human Rights - in National and International Law' rightly points out that international conventional law must go through the process of transformation into municipal law before the international treaty can become an internal law."<sup>1240</sup> Further, in 2004, in the case of *State of West Bengal v. Kesoram Industries*, the Supreme

1232 Report of the Working Group on Universal Periodic Review – India Addendum, Response of the Government of India to the recommendations made by delegations during the Universal Periodic Review of India (First Cycle), 25 August 2008. [A/HRC/8/26/Add.1](#)

1233 Report of the Working Group on Universal Periodic Review – India Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (Second Cycle), 17 September 2012. [A/HRC/21/10/Add.1](#)

1234 Report of the Working Group on Universal Periodic Review – India Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (Third Cycle), 10 September 2017. [A/HRC/36/10/Add.1](#)

1235 United National General Assembly (UNGA), *Note verbale* dated 16 February 2011 from the Permanent Mission of India to the United Nations and addressed to the President of the General Assembly – Voluntary pledges and commitments. [A/65/758](#)

1236 UNGA, *Note verbale* dated 20 October 2014 from the Permanent Mission of India to the United Nations and addressed to the President of the General Assembly – Voluntary pledges and commitments. [A/69/538](#)

1237 UNGA, *Note verbale* dated 29 August 2018 from the Permanent Mission of India to the United Nations and addressed to the President of the General Assembly – Voluntary pledges and commitments. [A/73/394](#)

1238 Ministry of External Affairs (MEA) – Govt of India, 'Standard Operating Procedures (SOP) with respect to MoUs/Agreements with foreign countries', 2 April 2018. Available at: <https://rb.gy/i4bglm>

1239 Ibid.

1240 *Jolly George Varghese and Anr v. The Bank of Cochin*, para 6 (1980) 2 SCC 360. Available at: <https://rb.gy/m3idit>

Court reiterated that India follows the “doctrine of dualism” and that “a treaty entered into by India cannot become law of the land...unless the Parliament passes a law as required under Article 253”.<sup>1241</sup>

However, the prohibition of torture is a part of customary international law. The International Court of Justice (ICJ) has recognized it as a peremptory norm of international law (*jus cogens*) from which no derogation is permissible.<sup>1242</sup> Torture and other cruel, inhuman and degrading treatment (ill-treatment) are absolutely prohibited under international treaty law, including by the UNCAT (Article 2 and 16) and by the International Covenant on Civil and Political Rights (ICCPR) (Article 7). India is already a State Party to the ICCPR, without any reservations to Article 7, and therefore, has already incurred obligations thereunder. Similarly, it is also a signatory to the UNCAT, although it has not ratified it, which implies that in good faith it ought not to act contrary to its object and purpose. In its own national report for UPR-I, India had indicated that the act of signing “signalled its intention to respect the provisions of the treaty and take steps towards its ratification”.<sup>1243</sup> Even in UPR-III, India accepted many recommendations made by several countries about ratifying the UNCAT; in its mid-term report on implementation of UPR-III recommendations, the National Human Rights Commission (NHRC) has noted that the Government “remains committed to ratifying the UNCAT.”<sup>1244</sup>

While India does not have an explicit prohibition against torture in its Constitution, the Supreme Court has read it into the right to live with dignity under Article 21.<sup>1245</sup> The Constitution also makes other provisions that are broadly aimed at preventing torture: Article 20 (3) explicitly prohibits an accused from being of being compelled to be a witness against themselves; Article 22 requires an arrested person to be brought before a magistrate within 24 hours of the arrest and recognizes the right to consult a lawyer of their choice. Some legislative efforts were made over the last two decades to bring the issue under discussion at the national level.

It must be noted that in its submission for UPR-III, the NHRC commented on the status of implementation of the recommendations on ratifying the UNCAT and stated that: “*The Bill introduced in Parliament in 2010 to enable UNCAT ratification has lapsed with the dissolution of 15th Lok Sabha in May 2014. A mendacious view prevails in the Government that existing provisions with slight amendment in the Indian Penal Code are sufficient to deal with torture. Delay in bringing out the changes in the law as a pre-requisite for ratification is disquieting as five years have passed without any major change.*”<sup>1246</sup> The Government has maintained this position.<sup>1247</sup>

#### **Recommendations on Enacting a Domestic Anti-Torture Legislation Complying with the UNCAT**

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
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1241 *State of West Bengal v. Kesoram Industries* (2004) 10 SCC 201. Available at: <https://rb.gy/6pxjdm>

1242 *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, ICJ Reports 2012, pp. 422 et seq., at p. 457, para. 99. Available at: <https://www.icj-cij.org/en/case/144/judgments>

1243 National Report submitted by India to the Working Group on Universal Periodic Review (First Cycle), 6 March 2008, para 38. [A/HRC/WG.6/1/IND/1](https://rb.gy/vbmsq1)

1244 NHRC, Mid-term Report of India based on UPR-III, May 2020, p.11. Available at: <https://rb.gy/bntvva>

1245 *Francis Coralie Mullin v The Administrator, Union of India* (1981) 1 SCC 608. Available at: <https://rb.gy/vbmsq1>

1246 NHRC, ‘Submission to the UN Human Rights Council for UPR-III of India’. Available at: <https://rb.gy/narzji>

1247 The Leaflet, ‘Govt has no plan to bring law against prevention of torture: MoS (Home) informs Lok Sabha’, 15 September 2020. Available at: <https://rb.gy/wczoqz>

161.24	Enact the Prevention of Torture Bill currently pending in the Parliament in compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Turkey	Noted	Not Implemented 1248
161.25	Adopt the draft law on the prevention of torture and other forms of cruel, inhuman or degrading treatment or punishment by complying with established international norms.	Madagascar	Noted	Not Implemented
161.26	Adopt the draft law on the prevention of torture and ensure that it complies with the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Senegal	Noted	Not Implemented

#### *Legislative Position and Developments*

There were some attempts to codify the prevention and prohibition of torture into a legislation after 1997. Although these efforts did not bear any fruition, they were important steps towards some progress on the issue:

In 2010, The Prevention of Torture Bill was introduced and passed in the *Lok Sabha* (Lower House of the Parliament).<sup>1249</sup> As the bill went to the *Rajya Sabha* (Upper House of the Parliament), it was referred to a Select Committee for a detailed analysis and recommendations. The Select Committee submitted its report<sup>1250</sup> in December 2010 suggesting some amendments to the Bill, including to the definition of ‘torture’ to make it consistent with the UNCAT. However, the 2010 Bill remained pending and subsequently lapsed in 2014 with the dissolution of the *Lok Sabha* at the end of its term.

In the next legislative attempt in 2017, the Law Commission of India (LCI) submitted a report on ‘Implementation of the UNCAT through Legislation’<sup>1251</sup> along with a draft Prevention of Torture Bill 2017 to the Ministry of Law and Justice, following a recommendation by the Supreme Court. Considering the concurrent subject matter of legislation, the draft bill and relevant documents were

1248 The Prevention of Torture Bill 2010 referred to in the recommendation was introduced in the Lok Sabha, but it lapsed in 2014 with the dissolution of the House for fresh elections. No action has been taken on the Draft Bill prepared by the Law Commission of India (LCI) in 2017. The LCI Bill with some modifications was introduced as a private member’s bill in Rajya Sabha in 2017 and in Lok Sabha in 2018. The latter lapsed with the dissolution of the Lok Sabha in 2019. Currently, no Bill has been introduced by the ruling party and the private member’s bill in the Rajya Sabha remains pending. Moreover, recently, the Ministry of Home Affairs (MHA) while responding to a question in the Parliament stated that “...There is no proposal to bring a legislation in this regard.” Available at: <https://rb.gy/gdcz9l>

1249 This Bill however, left much to be desired, with even the NHRC commenting: “An anodyne Prevention of Torture Bill was passed by the Lower House of Parliament. It has been greatly strengthened by a Select Committee of the Upper House, and it would be a travesty if the original Bill is adopted.” Available at: <https://rb.gy/dwwoue>

1250 Report of the Select Committee on the Prevention of Torture Bill, 2010. Available at: <https://rb.gy/izor09>

1251 Law Commission of India Report No.273, October 2017. Available at: <https://rb.gy/vodmsd>

circulated to all states and union territories for their views. Although this was a remarkable effort in drawing the necessary attention to the issue, the LCI draft bill substantially narrowed down the provisions of the UNCAT and was inconsistent with it on several aspects. It imposed an excessively high threshold of physical injury to constitute torture; it failed to hold superior officers criminally liable for acts of torture by their subordinates and to criminalize the instigation of torture by a public servant (command responsibility); it did not provide a comprehensive framework to quantify compensation to the victims; it imposed a limitation period of six months from the date on which the offence is alleged to have been committed for filing a complaint and for the court to take cognizance; and it required prior sanction of a competent authority to prosecute a public servant accused of inflicting torture in the discharge of official duty.

Furthermore, it also did not provide for exclusion of evidence obtained by torture, principle of *non-refoulement*, and regular review of interrogation practices. The bill stated that an inquiry by a judicial magistrate will be conducted only in cases that are “suspicious”, which defeated the very objective of ensuring investigation and accountability in all cases as whether an instance of torture or death is suspicious or not can only be determined after the judicial inquiry. The existing law in India, which provides for a mandatory judicial inquiry under Section 176 (1-A) of the Code of Criminal Procedure (CrPC) in the event of custodial death, rape or disappearance, is found to be routinely flouted.<sup>1252</sup>

Although there were these limitations, the LCI draft bill had one noteworthy provision regarding the burden of proof, which should be retained in any future legislation: The crime of torture is committed in the circumstances of control and custody. The LCI draft bill provided that while adjudicating on the allegation of torture, a statutory presumption shall be raised against the public authorities that the injuries were inflicted by them. The LCI Report 2017 reiterated and recommended that:

*“The Commission endorses the recommendation made by the Law Commission of India vide its Report No.113, and, as reiterated in Report No.152, that the Indian Evidence Act 1872 requires insertion of Section 114B. This will ensure that in case a person in police custody sustains injuries, it is presumed that those injuries have been inflicted by the police and the burden of proof shall lie on the authority concerned to explain such injury.”*<sup>1253</sup>

However, the LCI draft bill has remained in cold storage with no further developments in this regard.

Further, in 2017, a Private Member’s Bill<sup>1254</sup> on the prevention of torture was introduced in the *Rajya Sabha*, which has since remained pending. It largely draws from the LCI draft bill, but it is even more limited in its scope, including the definition of torture. The definition makes no classification between ‘torture’ and ‘ill-treatment’, whereas the UNCAT defines and prohibits both ‘torture’ under Article 1 and in Article 16 provides that there may exist other acts of cruel, inhuman and degrading treatment which do not amount to torture but still are prohibited.<sup>1255</sup> It also fails to address many basic requirements set out in the UNCAT, such as the provision that no exceptional circumstances or an order from a superior officer may be invoked to justify torture and the enforceable right to fair and adequate compensation for victims.

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1252 The Wire, ‘Most States have flouted mandatory judicial inquiry into custodial deaths for 15 years’, 7 July 2020. Available at: <https://rb.gy/o2mja9>

1253 Law Commission of India Report No.273, October 2017, para 7.5. Available at: <https://rb.gy/vodmsd>

1254 The Prevention of Torture Bill 2017, introduced in the Rajya Sabha on the 15th December 2017. Available at: <https://rb.gy/lizhg8>

1255 UNCAT, Articles 1 and 16. Available at: <https://rb.gy/a3vpj2>

In 2018, there was yet another Private Member's Bill introduced in the *Lok Sabha* on prevention and prohibition of torture.<sup>1256</sup> However, it had the same drawbacks as the Private Member's Bill of 2017. This bill eventually lapsed with the dissolution of the *Lok Sabha* on the completion of its term in 2019.

### *Barriers to Accountability*

The Government of India provides that although torture is not a separate offence as such, it is punishable under existing provisions of the Indian Penal Code (IPC) "such as those pertaining to voluntarily causing grievous hurt, or causing grievous hurt to extract a confession, etc. (Sections 322 and 330-331)."<sup>1257</sup> The LCI has also noted the existence of the offence of wrongful confinement to extort commission (Sections 342 and 348) as well as stringent penalties for custodial rape by police officers (Section 376(1)(b)) and sexual intercourse by a person in authority (Section 376C).<sup>1258</sup> Similar provisions also existed in the Ranbir Penal Code that was applicable in erstwhile state of Jammu and Kashmir (*now* the union territories of 'Jammu and Kashmir' and 'Ladakh') until 31 October 2019.<sup>1259</sup>

However, as previously mentioned, the NHRC had referred to this view of the Government that existing provisions in the IPC – with slight amendment – would be sufficient to deal with torture as "mendacious".<sup>1260</sup> In the absence of a stand-alone legislation on torture, existing penal provisions in the IPC on bodily harm, grievous hurt, and murder are invoked which are clearly insufficient to deal with cases of custodial torture and ill-treatment.

Similarly, in parts of the country where extraordinary legal regimes operate, the most significant barrier to accountability for torture is Section 197 CrPC<sup>1261</sup> and Section 6 of the Armed Forces Special Powers Act (AFSPA) 1958,<sup>1262</sup> and Section 7 of AFSPA 1990,<sup>1263</sup> which mandate the requirement of prior sanction for prosecution and allows the official to take refuge behind the plea that his actions were in the discharge of official duty. The burden of bringing to light and pursuing cases of torture falls squarely on the victims and their families, who in the absence of support from human rights lawyers or groups, are unable to access legal remedies. It is key that a legislation prohibiting torture ensures that there is an express obligation on the State to not only monitor, detect, investigate, and prosecute cases of torture, but also to ensure transparency in this process, in addition to providing adequate compensation to the victims.

### *Failure of the NHRC to Monitor and Recommend Prosecution in Cases of Torture*

The NHRC receives complaints of torture and, pursuant to its inquiry, mainly recommends compensation for the victims.<sup>1264</sup> In 2016, a former member of the NHRC, while commenting on the

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1256 The Prevention of Torture Bill 2018, introduced in the Lok Sabha. Available at: <https://rb.gy/ojp1he>

1257 National Report submitted by India to the Working Group on Universal Periodic Review (Third Cycle), 23 February 2017, para 33. [A/HRC/WG.6/27/IND/1](https://rb.gy/627/IND/1)

1258 Law Commission of India Report No.273, October 2017, pp. 42-23. Available at: <https://rb.gy/vodmsd>

1259 Firstpost, 'J&K reorganised into UTs of Jammu and Kashmir, Ladakh: Security under Centre's ambit, state Constitution, Ranbir Penal Code abolished', 31 October 2019. Available at: <https://rb.gy/gckmpa>

1260 NHRC, 'Submission to the UN Human Rights Council for UPR-III of India'. Available at: <https://rb.gy/narzji>

1261 The Code of Criminal Procedure 1973. Available at: <https://rb.gy/fmzshz>

1262 The Armed Forces (Special Powers) Act 1958. Available at: <https://rb.gy/g6acxs>

1263 The Armed Forces (Jammu and Kashmir) Special Powers Act 1990. Available at: <https://bit.ly/3p53xxO>

1264 The NHRC awards monetary compensation to the victims of torture. "Between 1 April 2017 to 31 March 2018, it had recommended a total of Rs. 22,69,80,000 as payment of monetary relief / compensation to the victim / next-of-kin of the deceased in 757 cases of custodial death / rape. However, of the cases in which such monetary relief was recommended, compliance reports were received only in 151 cases, wherein a sum total of Rs. 5,67,75,000 was

noticeable fact that the NHRC had recommended compensation in cases of torture but stopped short of recommending prosecution said: *“While the NHRC has a responsibility to seek both justice and relief for victims’ families by recommending prosecution of those who committed the crime and compensation for the victims, seeking prosecution often jeopardized the possibility of relief. Most states would simply not accept the recommendation, and therefore, since NHRC can only recommend and not compel, we would then fail in our duty to get both justice and relief.”*<sup>1265</sup>

### *Judicial Position and Developments*

The Supreme Court has, through its various judgments, held that torture is “an affront to human dignity”<sup>1266</sup> and “violates the right to life under Article 21”.<sup>1267</sup> This judicial interpretation remains crucial in the absence of a separate offence or legislation criminalizing “torture”. In fact, the Supreme Court had also held that not just physical threats or violence, but psychological torture, atmospheric pressure, environmental coercion are in violation of the law.<sup>1268</sup> This position was reiterated in a recent decision in 2018, wherein the Supreme Court awarded a compensation of Rs. 5 million for ‘harassment and mental torture’ suffered by an appellant, who falsely charged with espionage.<sup>1269</sup>

However, the Supreme Court has also acknowledged the difficulties in investigating and prosecuting cases of torture. In *State of Madhya Pradesh v. Shyam Sunder Trivedi and Ors.*, the Supreme Court had stated: *“Rarely in cases of police torture or custodial death, is direct ocular evidence available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other, police witnesses feigned ignorance about the whole matter.”*<sup>1270</sup>

Recently, in 2019, the Supreme Court accorded a hearing<sup>1271</sup> on the Public Interest Litigation (PIL) petition filed in 2016 by senior advocate and former Law Minister, Mr. Ashwani Kumar. The petition urged the Court to direct the Central Government to enact a comprehensive legislation against torture in compliance with the UNCAT. However, the Court rejected the plea on the ground that it would “undermine and conflict with the role assigned to the judiciary under the Constitution”.<sup>1272</sup> Despite this position, the Court stated that it would not affect “the jurisdiction of the courts to deal with individual cases of alleged custodial torture and pass orders in accordance with the law.”<sup>1273</sup>

### *Prevalence of Custodial Torture in India: Statistics and Reported Cases*

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actually paid to the victim / next-of-kin.” See, NHRC Annual Report 2017-18, para 2.46. Available at: <https://rb.gy/ir8jcs>

1265 Human Rights Watch, “‘Bound by Brotherhood’: India’s failure to end killings in police custody”, 19 December 2016. Available at: <https://rb.gy/dybow2>

1266 *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746, para 6. Available at: <https://rb.gy/vbmsg1>

1267 *DK Basu v State of West Bengal* [1997] 1 SCC 416. Available at: <https://rb.gy/jomwyw>

1268 *Nandini Satpathy v. P.L.Dani & Anr.* AIR 1978 SC 1025. Available at: <https://rb.gy/vsafxf>

1269 *S. Nambi Narayanan v. Siby Mathews and Ors. etc.* (2018) 10 SCC 804. Available at: <https://rb.gy/ginojh>

1270 *State of Madhya Pradesh v. Shyam Sunder Trivedi and Ors.* 1995 (4) SCC 262. Available at: <https://rb.gy/rclu22>

1271 The New Indian Express, ‘SC hears PIL on custodial torture entire day after ex-Law Minister Ashwini Kumar said he was not heard’, 13 February 2019. Available at: <https://rb.gy/chnobw>

1272 Supreme Court of India. Order dated 05.09.2019. Available at: <https://rb.gy/pu5gdv>

1273 Ibid.



Torture and other forms of ill-treatment are widely seen to be practised by the police and other agencies in India and the culture of impunity still remains. Statistics and emblematic cases reveal the seriousness and urgency of the matter. While official statistics does not specifically collect data on cases of 'torture', such information is available with respect to custodial deaths and their causes. Statistics and data specifically on reported cases of torture is mostly available with independent organizations working on the issue and the NHRC based on the reported complaints.

Taking into account official data, the National Crime Records Bureau (NCRB)<sup>1274</sup> indicated that a total of 1,845 prisoners have died in judicial custody during 2018, out of which 1,639 were attributed to natural deaths, 149 to unnatural deaths, and 57 were reported as unknown causes.<sup>1275</sup> In 2019, a total of 1,775 inmates died in prisons, out of which 1,544 were attributed to natural deaths, 165 to unnatural deaths, and 66 were reported as unknown causes.<sup>1276</sup> According to the latest NHRC report, "custodial violence and torture is so rampant in India that it has become almost routine."<sup>1277</sup> From 1 April 2017 to 31 March 2018, it received 1,636 intimations concerning death in judicial custody, 148 intimations of death in police custody, and one intimation of death in para-military/defence forces custody. The NHRC's Investigation Division has dealt with 2,896 cases of deaths in judicial custody, 250 cases of deaths in police custody, and 277 cases of deaths in police encounters.<sup>1278</sup> A report published by the National Campaign Against Torture states that a total of 1,731 people have died in custody in India in 2019 alone.<sup>1279</sup>

In March 2018, an investigation conducted by the NHRC confirmed that 21 prisoners were being "mentally and physically tortured" in the Bhopal central jail.<sup>1280</sup> The inmates were suspected operatives of the Students Islamic Movement of India (SIMI), an banned organization. The investigation<sup>1281</sup> revealed that "the prisoners alleged that they were forced to chant anti-religious slogans", and "the guards would verbally abuse them and disrespect the holy book". The findings also stated that the jail doctor seemed "to have helped the jail authorities in covering up instances of torture by omitting crucial details from their medical records." In March 2019, as reported by civil society fact-finding missions and the media, two men were picked up by the police in Sitamarhi district in Bihar and brought to the Dumra police station, where they were tortured and killed. According to a statement endorsed by 13 human rights organizations, "their bodies showed signs of electric shocks, broken legs and hands, as well as signs of nails having been hammered into their hands and legs".<sup>1282</sup>

In a recent incident reported from Thoothukudi in Tamil Nadu,<sup>1283</sup> a father and son were brutally tortured and assaulted by the police while in custody and were allegedly denied medical treatment

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1274 Prison Statistics India - 2018, National Crime Records Bureau (NCRB), 23 December 2019, p.33. Available at: <https://rb.gy/lf96xx>

1275 Crime in India 2018 - National Crime Records Bureau India (Volume III, p.107). Available at: <https://rb.gy/gatcil>

1276 Prison Statistics India - 2019, National Crime Records Bureau (NCRB), 1 September 2020, p.33. Available at: <https://rb.gy/jiyzui>

1277 NHRC, 'Annual Report 2017-18, p. 44. Available at: <https://rb.gy/ir8jcs>

1278 Ibid.

1279 The Hindu, 'Five custodial deaths in India daily, says report', 27 June 2020. Available at: <https://rb.gy/lfpkq8>

1280 Hindustan Times, "SIMI operatives' in Bhopal jail being mentally and physically tortured: NHRC", 31 March 2018. Available at: <https://rb.gy/58rpjc>

1281 Ibid.

1282 The Print, 'SC to hear plea seeking probe into 'brutal' torture of 2 Muslim men in Bihar police custody', 28 June 2019. Available at: <https://rb.gy/q2fbzo>

1283 News 18 India, "'We pleaded with them to stop': Father, son die after alleged torture by Tamil Nadu police in custody", 29 June 2020. Available at: <https://rb.gy/a1elh�>

and assistance for two days. They were taken into custody for keeping their shop open during the COVID-19 related curfew hours. The police reportedly assaulted them for hours.<sup>1284</sup> Reports suggest that a total of 13 officers were present at the station where the incident occurred. The police allegedly also sexually assaulted the victims by inserting *lathis* (batons) into their anus. Eyewitnesses stated that both men bled profusely from the rectum and change their *lungis* (lower garment worn by men) multiple times due to copious bleeding. While initially, the only action that was taken was to suspend three police officers on duty, after media attention and widespread public outrage, four police officers were arrested and an First Investigation Report for murder and other relevant provisions registered against them.<sup>1285</sup> The investigation was then transferred to the Central Bureau of Investigation (CBI), which recently filed the chargesheet in this case in October 2020.<sup>1286</sup>

### *Intersectionality of Torture and Socio-Economic Marginalizations in India*

As previously mentioned, the definition of ‘torture’ provided in Section 3 of the LCI draft bill was restrictive as it only covered acts committed in connection with extracting confessions or in relation to persons suspected of having committed a crime. However, the definitional threshold that needs to be met according to international standards as outlined in Article 1 of the UNCAT provides that torture would include both physical or mental pain and suffering that may be inflicted, including that is based on and due to any kind of discrimination.

While understanding cases of torture in the Indian context and while drafting a legislation in this respect, an important point to factor in is that “suspect individuals and communities” are more prone to torture and that the marginalization and vulnerability of the victims impacts their access to redress and justice. Given the socio-economic realities of the country, recognizing the prevalence of deep-rooted discrimination on the basis of caste, ethnicity, religion, and gender identity is important as there is documentation to show that torture may be committed merely on the ground of the identity of the victim without any instrumental purpose to extract a confession. In 2019 alone, of the 125 deaths in police custody, about 60 per cent belonged to the poor and marginalized communities.<sup>1287</sup>

Similarly, custodial rape is used as a form of torture, especially on women inmates. Several testimonies have been recorded by activists, survivors, and experts on the issue.<sup>1288</sup> In a 2019 incident from Churu in Rajasthan, a Dalit woman was allegedly raped and assaulted with a stick by five-six policemen; her nails were plucked and she was threatened with electrocution. This continued for a period of eight days.<sup>1289</sup> A report published by the National Campaign Against Torture documents several cases of

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1284 Scroll, ‘Thoothukudi custodial deaths: Father, son were tortured for 7 hours, made to clean blood, says CBI’, 27 October 2020. Available at: <https://rb.gy/lderi>

1285 India Today, ‘Jeyaraj and Beniks custodial deaths: Inspector suspended, no FIR yet’, 28 June 2020. Available at: <https://rb.gy/burbd>; see also, Huffington Post, ‘Jayaraj-Bennix Custodial Deaths: Four Cops Arrested, Murder Charge Against Six’, 2 July 2020. Available at: <https://rb.gy/ym3iaq>

1286 Hindustan Times, ‘Thoothukudi custodial deaths: CBI files charge sheet naming 9 police personnel for torturing father, son’, 26 September 2020. Available at: <https://rb.gy/ieglcq>

1287 National Campaign Against Torture, ‘India: Annual Report on Torture 2019’, 26 June 2020, pp.108-118. Available at: <https://rb.gy/0tki64>

1288 Citizens for Justice and Peace, ‘Women prisoners account jail horror stories’, 24 January 2019. Available at: <https://rb.gy/66kfph>

1289 India Today, ‘Nails plucked, threatened with electrocution and immolation: Rajasthan custodial rape victim recounts horror’, 17 July 2019. Available at: <https://rb.gy/br2ama>; see also, The Wire, ‘Rajasthan: Dalit Woman Gang Raped in Police Custody’, 16 July 2019. Available at: <https://rb.gy/7jgmqo>

custodial torture in India in 2019, including those against women, Dalits, tribals, and other socio-economically marginalized communities.<sup>1290</sup>

This is also true for the Muslim community: there have been instances of discriminatory violence and torture in custody against members of the Muslim community.<sup>1291</sup> In January 2019, four UN Special Rapporteurs — including those on torture and on freedom of religion or belief — expressed “alarm about allegations of at least 59 extrajudicial killings by police in Uttar Pradesh since March 2017” and noted that most cases were concerning Muslim individuals from poorer backgrounds. They expressed concern about the pattern of events, as individuals were allegedly arrested before their killing, and their bodies bore injuries indicative of torture.<sup>1292</sup>

## **Conclusion**

In the absence of ratification of the UNCAT and a separate domestic legislation, none of the recommendations in relation to torture made during UPR-III, including those accepted, were implemented by India. In fact, the Government recently stated that it has no plans of bringing in a law on torture prevention and that the existing provisions of the IPC are sufficient to deal with the issue.<sup>1293</sup> However, the widespread prevalence of torture in India, coupled with its repeated commitments to the international community, underlines the urgency in adopting a comprehensive and effective anti-torture legislation that is in compliance with international standards.

Merely adjusting the existing penal provisions to include torture and ill-treatment would only be of a limited purpose. It is important to work towards a standalone legislation prohibiting, punishing, and preventing torture and ill-treatment in India, in consultation with relevant stakeholders, which is: encompassing the substantive, procedural, and evidentiary requirements to investigate and prosecute cases of torture; attentive to socio-economic marginalization; gender; and such other factors that aggravate vulnerability. It should also consider other overlapping factors such as arbitrary, unlawful, or *incommunicado* detention that lend themselves to torture in custody.<sup>1294</sup> This is particularly relevant in regions where extraordinary laws operate and arbitrary detention is often resorted to by the police and security forces.<sup>1295</sup> The mutually reinforcing calls for UNCAT ratification and enacting a domestic anti-torture legislation have been endorsed by the NHRC,<sup>1296</sup> the LCI,<sup>1297</sup> the Supreme Court,<sup>1298</sup> several UN bodies, national and international civil society organizations, and experts.

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1290 National Campaign Against Torture, ‘India: Annual Report on Torture 2019’, 26 June 2020, pp. 108-118. Available at: <https://rb.gy/Otki64>

1291 The Wire, ‘We must recognise that discrimination plays a large role in custodial torture’, 10 May 2019. Available at: <https://rb.gy/kdzbxy>

1292 OHCHR, ‘Press release – India: UN experts alarmed by alleged police killings in Uttar Pradesh’, 11 January 2019. Available at: <https://rb.gy/lt18wc>

1293 The Leaflet, ‘Govt has no plan to bring law against prevention of torture: MoS (Home) informs Lok Sabha’, 15 September 2020. Available at: <https://rb.gy/wczoqz>

1294 Human Rights Committee (HRCttee), General Comment No. 20 on Article 7 of the ICCPR, para 11, [HRI/GEN/1/Rev.9 \(Vol.II\)](https://rb.gy/HRI/GEN/1/Rev.9(Vol.II))

1295 Report by Association of Parents of Disappeared Persons and Jammu-Kashmir Coalition of Civil Society. Available at: <https://rb.gy/awgsp3>

1296 NHRC on the Status of Ratification of Convention Against Torture. Available at: <https://rb.gy/trier9>

1297 Law Commission of India Report No.273, October 2017. Available at: <https://rb.gy/vodmsd>

1298 Hindustan Times, ‘Anti-torture law in India’s interest, says SC’, 24 April 2017. Available at: <https://rb.gy/is0cza>

## CHAPTER 14

### MILITARIZATION AND ENFORCED DISAPPEARANCES

#### Recommendations on The Armed Forces (Special Powers) Act [AFSPA]

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.97	Revise the Armed Forces (Special Powers) Act to bring it into compliance with the obligations under the International Covenant on Civil and Political Rights, with a view to fighting impunity.	Switzerland	Noted	Not Implemented
161.248	Repeal the Armed Forces (Special Powers) Act and the Public Safety Act and take credible actions to end the prevailing culture of impunity in "Indian-Occupied Kashmir".	Pakistan	Noted	Not Implemented

#### Recommendations on Enforced Disappearances

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.13	Proceed with early ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the International Convention for the Protection of All Persons from Enforced Disappearance.	Japan	Noted	Not Implemented
161.15	Finalize the process of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the International Convention for the Protection of All Persons from Enforced Disappearance.	Kazakhstan	Noted	Not Implemented 1299

1299 No information is available on such a process being finalized.

161.29	Expedite efforts to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Sierra Leone	Noted	Not Implemented 1300
161.30	Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.	i) Greece ii) Ukraine	Noted	Not Implemented
161.31	Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.	Burkina Faso	Noted	Not Implemented

### **The Situation In Jammu and Kashmir**

On August 5 2019, the Government of India abrogated Section 370<sup>1301</sup>, split the state of Jammu and Kashmir (J&K) into two Union Territories<sup>1302</sup>: Jammu and Kashmir and Ladakh.<sup>1303</sup> While the MTR dwells on the situation in Jammu and Kashmir prior to this event, the change of its legal status is one of the most significant events of this period.

#### *Before August 2019*

Since 1989, an armed insurgency, with cross-border support, gained traction in the Kashmir valley. In response, the Government of India posted large contingents of the army and other Central Armed Police Forces (CAPF) in J&K which has led to it being considered as one of the most militarized zones in the world. For reasons of national security, official troop figures are not placed in the public domain. Besides this, a labyrinth of laws, agencies, institutions, and security apparatus operate in the region.

One of the measures is the imposition of extraordinary security laws such as the Armed Forces (Special Powers) Act 1990<sup>1304</sup> (AFSPA) which have been imposed in the region allowing for some areas to be designated as ‘disturbed areas’ as a result of continuing unrest, caused by militancy or insurgency. The AFSPA grants special powers to the security forces in such areas, by specifically allowing them to fire at any person in the interest of maintaining public order; to arrest without warrant; to enter, search and seize any premises or property on “reasonable suspicion”; etc. (this has been discussed under the section on AFSPA.

1300 No indication that any efforts are being made in this direction.

1301 1947, when the Maharaja of Kashmir signed an Instrument of Accession with the Union of India on three subjects: defence, communications and foreign affairs. The Constitution of India, through Article 370, accorded a special status to Jammu and Kashmir. Since then there have been several Presidential Orders extending Indian laws to the (*then*) State of Jammu and Kashmir (J&K) had eroded the autonomy envisaged under Article 370

1302 Union Territories are administered by the President through an Administrator appointed by him/her.

1303 The Indian Express, ‘Abrogation of Articles 370 and 35A has created possibilities of development’, 6 August 2019. Available at: <https://rb.gy/mfzme4>.

1304 The Armed Forces (Jammu and Kashmir) Special Powers Act 1990. Available at: <https://rb.gy/nnf7dq>.

Another special law is the Jammu and Kashmir Public Safety Act (PSA) 1978,<sup>1305</sup> a preventive detention law that allows the authorities to hold an individual without trial for up to one or even two years.<sup>1306</sup> Like the J&K AFSPA, the PSA also provides immunity from prosecution stating that, “no suit, prosecution or any other legal proceeding shall lie against any person for anything done, or intended to be done, in good faith in pursuance of the provisions of this Act.” Similarly, Section 197 of the Code of Criminal Procedure (CrPC) lays down the requirement of prior sanction to prosecute all public servants, including security forces. However, it has been noted that such provisions act to provide impunity and preclude accountability for human rights violations.<sup>1307</sup>

Against this backdrop of militarization, reports and complaints of arbitrary and prolonged detention, torture, “cordon and search operations”, extrajudicial killings, intimidation by security forces and other human rights abuses, and the “collateral damage” of counter-terrorism operations, have been frequently raised from Kashmir. There have been some flashpoints which have exacerbated the conflict, including some recent instances, that are relevant to understanding the situation in Kashmir. There have been large scale protests over the years which have met with state force.<sup>1308</sup> It is reported that ‘Operation All-Out’ launched in 2017 to control militancy has led to extrajudicial killings, unlawful detentions, raids, and destruction of property of non-militants as well.<sup>1309</sup> An example of extreme excess meted out by the security forces was in May 2017, when an army officer tied a civilian to a vehicle as a “human shield” and drove through parts of Srinagar, purportedly to control mobs during parliamentary elections.<sup>1310</sup>

Information obtained through Right to Information (RTI) applications revealed that over 1,000 people were detained under the PSA between March 2016 and August 2017.<sup>1311</sup> Local human rights groups have documented the deaths of 586 people in 2017: of these 160 were civilians, 267 were militants, and 159 were security personnel. A total of 275 Cordon and Search Operations were conducted in this period.<sup>1312</sup> These included children and young adults. A 17-year-old boy was reportedly killed after the forces allegedly opened fire at protestors near an encounter site. Earlier that same month, a 22-year-old man was killed when security forces fired at a group of youngsters who were allegedly pelting stones.<sup>1313</sup> These Shopian killings<sup>1314</sup> had sparked widespread protests across southern Kashmir for

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1305 Jammu and Kashmir Public Safety Act (PSA) 1978. Available at: <https://rb.gy/it9oyy>.

1306 Ibid.

1307 The Code of Criminal Procedure 1973, Section 197. Available at: <https://rb.gy/h7hf5n>.

1308 For example: The Hindu, ‘Macchil fake encounter: life term for 5 army men’, 13 November 2014. Available at: <https://rb.gy/ghsczg>, see also, The Times of India, ‘6,221 pellet-gun injuries reported in unrest after Burhan Wani killing: J&K govt’, 24 January 2018. Available at: <https://rb.gy/pessio>; see also, [Amnesty International](#); [Physicians for Human Rights](#); [International Federation for Human Rights \(FIDH\)](#); Jammu and Kashmir Legislative Assembly, [Unstarred A.Q. No.330, 12 January 2018](#) Annexure-A; and [Deccan Herald](#).

1309 News Click, ‘Operation All out ‘in Kashmir’: A Bludgeoning Military Panopticon, 14 March 2019. Available at: <https://rb.gy/qirsxs>.

1310 Amnesty International, ‘Report 2017/18: The State of the World’s Human Rights’, p.39. Available at: <https://rb.gy/1dugg8>.

1311 CHRI, ‘No Rules, SOPs for ordering preventive detentions under J&K PSA’, 2018. Available at: <https://rb.gy/1qmoau>.

1312 Association of Parents of Disappeared Persons and Jammu-Kashmir Coalition of Civil Society, ‘Annual Human Rights Review 2018’, p.5. Available at: <https://rb.gy/vd4pxc>. Chief Minister, Ms. Mehbooba Mufti, however, [told the State Assembly](#), on 23 January 2018, that 172 people had been killed since 2016: 105 in “law and order problems” (85 in 2016 and 20 in 2017); and 67 people in “militancy related incidents” (19 in 2016 and 48 in 2017).

1313 Hindustan Times, ‘Boy killed in clashes between protestors, security forces in south Kashmir’, 24 January 2018. Available at: <https://rb.gy/guh6ew>.

1314 Hindustan Times, ‘FIR filed against army over killing of two civilians in Kashmir’s Shopian’, 29 January 2018. Available at: <https://rb.gy/cdwkqz>.



several days. In response, the *then* Chief Minister, Ms. Mehbooba Mufti, had announced a magistrate-level inquiry, and the state police had filed a First Information Report (FIR) against the army personnel of the 10 Garhwal Rifles for murder. However, in March 2018, the investigation was put on hold by the Supreme Court after one of the accused army officers filed a petition.<sup>1315</sup>

In February 2019, 40 security personnel were killed in a brutal terror attack on a truck carrying members of the Central Reserve Police Force (CRPF). It was one of the worst such attacks in the history of contemporary violence in Jammu and Kashmir.<sup>1316</sup>

### *Abrogation of Article 370 and its aftermath*

On 5 August 2019, Parliament passed an amendment to the Constitution: it repealed Article 370 which accorded a special status to J&K and excluded it from the automatic application of various laws enacted by the Parliament.<sup>1317</sup> It also repealed Article 35A, which limited certain residency rights to the local population and granted them certain protections.<sup>1318</sup> The erstwhile state of J&K was split into two Union Territories of ‘Jammu and Kashmir’ and ‘Ladakh’.<sup>1319</sup> The period following the abrogation saw the Central Government enforcing stringent restrictions in the region for maintaining “law and order” and “preventing any possible disturbances,”<sup>1320</sup> which included deployment of additional armed troops in the valley and an absolute lockdown.<sup>1321</sup> Several incidents of arbitrary detentions, media blackouts, communication blockades,<sup>1322</sup> harassment and persecution of journalists using legal and extra-legal means, restriction on access to information, education, healthcare, and other basic rights and amenities were documented during this period.<sup>1323</sup>

While there are no official data on the exact number of people detained under the PSA in 2019-20; unofficial collation and documentation which was usually undertaken by civil society was hampered due to restrictions on communication and movement. The Government stated that 389 people were detained under the PSA, with over 437 people in preventive detention immediately after August 2019 till December 2019.<sup>1324</sup> By September 2019, 252 habeas corpus petitions were pending before the J&K

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1315 The Hindu Business Line, ‘Shopian Case: J&K says Major Aditya not named in FIR, SC halts probe’, 5 March 2018. Available at: <https://rb.gy/pigaqp>.

1316 The Hindu, ‘February 14, 2019: When a CRPF convoy came under attack in Pulwama on Srinagar-Jammu Highway’, 16 February 2019. Available at: <https://rb.gy/chqctu>.

1317 India Today, ‘No Article 370 for Jammu and Kashmir, historic move by Modi govt’, 5 August 2019. Available at: <https://rb.gy/wdbngz>.

1318 Ministry of Law and Justice, ‘Declaration under Article 370 (3) of the Constitution’, 6 August 2019. Available at: <https://rb.gy/w8jxzm>; see also, Jammu and Kashmir Reorganisation Act 2019. Available at: <https://rb.gy/jedako>.

1319 The Indian Express, ‘Abrogation of Articles 370 and 35A has created possibilities of development’, 6 August 2019. Available at: <https://rb.gy/mfzme4>.

1320 The Print, ‘Kashmir freeze will continue in 2020 as Modi govt’s promises to develop the valley look bleak’, 3 January 2020. Available at: <https://rb.gy/uuvnh1>.

1321 The Washington Post, ‘India revokes special status of Kashmir, putting tense region on edge’, 5 August 2019. Available at: <https://rb.gy/cxlxkd>.

1322 The Wire, ‘In Srinagar, journalists’ protest ban on internet, mobile service across Kashmir’, 3 October 2019. Available at: <https://rb.gy/pppgia>.

1323 Association of Parents of Disappeared Persons, ‘120 Days: 5th August to 5th December: A Report by APDP’. Available at: <https://rb.gy/sui1kq>; see also, The Wire, ‘Report flags human rights violations during J&K lockdown’, seeks end to curbs’, 23 July 2020. Available at: <http://bit.ly/3gXlg6E>; OHCHR, Communication by four Special Procedures mandate holders sent to India dated 4 May 2020. Available at: <https://bit.ly/2LDbgeu>; National Herald, ‘Agra jail refuses to provide even the number of J&K detainees under RTI’, 20 October 2019. Available at: <http://bit.ly/3npR9am>.

1324 The Wire, ‘How the Public Safety Act continues to haunt Kashmir’, 28 January 2019. Available at: <https://rb.gy/fxtlp9>; see also, Jammu-Kashmir Coalition of Civil Society, Annual Human Rights Review 2019. Available at:

High Court.<sup>1325</sup> Among those detained included former Chief Ministers,<sup>1326</sup> mainstream political leaders, separatist leaders from the *Hurriyat* and other prominent individuals, including the President of the Srinagar Bar Association.<sup>1327</sup> In June 2020, nearly one year after the abrogation of Article 370 and preventive detentions, it was pointed out in a letter from the J&K Bar Association that 99 per cent of the habeas corpus petitions against these detentions have been pending in the High Court.<sup>1328</sup>

Amnesty International in its 2011 and 2019 Reports on the PSA has documented the systematic misuse of the law to detain people without trial, saying that it deprived them of basic human rights by “circumventing” criminal justice and undermining accountability and transparency. It also pointed out cases of repeat orders and “revolving-door detentions” under the PSA, whereby a detainee on being released by the court is immediately slapped with another charge under the PSA and the cycle of detention continues till such time as the authorities want the person to be behind bars.<sup>1329</sup> It has been found to be thus misused in cases where the authorities cannot prosecute and convict certain persons through the established legal channels in order to keep them locked up and out of circulation.”<sup>1330</sup>

In August 2019, after the imposition of the lockdown in Kashmir, five UN Special Procedures had urged the Government of India to revoke the communication shutdown.<sup>1331</sup> The *then* UN Special Rapporteur on freedom of expression, David Kaye, had also commented: “*I cannot recall a situation where there has been a total blackout of not only two-way, multipoint communication systems that we are familiar with now — anything on the internet, WhatsApp etc. — but also the one-direction communications like TV.*”<sup>1332</sup> This communication blockade created a sense of uncertainty and fear as the people in the valley did not have any access to information or decisions being made with respect to the region.<sup>1333</sup> Protests against the abrogation were denied by the Government, despite the existence of video footage and eye-witness testimonies.<sup>1334</sup> On grounds of law and order, over 3,000 persons were detained, including at least 100 minors.<sup>1335</sup>

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<https://rb.gy/tcisfy>; see also, The Print, ‘389 people detained in J&K under Public Safety Act since Article 370 was scrapped: Govt’, 5 February 2020. Available at: <http://bit.ly/2KECxFe>

1325 The Indian Express, ‘Under wraps so far: 252 habeas corpus pleas in J&K High Court since August 5’, 20 September 2019. Available at: <https://rb.gy/qktuvq>.

1326 The Print, ‘Former J&K CMs under PSA: Modi Govt taking shortcuts instead of hard political engagement?’, 7 February 2020. Available at: <https://rb.gy/ev3hi5>.

1327 World Organisation Against Torture (OMCT), ‘Urgent Appeal: Continuing judicial harassment and arbitrary detention, as well as deteriorating health condition while in detention, of Miyan Abdul Qayoom, 12 February 2020. Available at: <https://rb.gy/dxvkyn>; see also, India Today, ‘Lockdown in Kashmir: 400 politicians, aides, separatists under arrest as valley turns into massive prison’, 7 August 2019. Available at: <https://rb.gy/h16bvv>.

1328 The Print, ‘99% habeas corpus pleas filed in J&K since Article 370 move are pending, HC Bar tells CJI’, 28 June 2020. Available at: <https://rb.gy/uthre2>.

1329 Amnesty International, ‘Tyranny Of A “Lawless Law”: Detention Without Charge Or Trial Under The J&K Public Safety Act’, 2019. Available at: <https://rb.gy/plrvxv>.

1330 Ibid, see also, The Wire, ‘How the Public Safety Act continues to haunt Kashmir’, 28 January 2019. Available at: <https://rb.gy/fxtlp9>.

1331 OHCHR, ‘Press release: UN rights experts urge India to end communications shutdown in Kashmir’, 22 August 2019. Available at: <https://rb.gy/3reaff>

1332 The Guardian, ‘Kashmir: India’s “draconian” blackout sets worrying precedent, warns UN’, 8 August 2019. Available at: <http://bit.ly/3ra1gSZ>

1333 The Washington Post, ‘“I’m just helpless”: Concern about Kashmir mounts as communication blackout continues’, 6 August 2019. Available at: <https://rb.gy/xhdvsm>.

1334 Alt News, ‘Did BBC, Al Jazeera, Reuters fabricate reports of unrest in Kashmir?’, 13 August 2019. Available at: <https://rb.gy/1u3mwq>.

1335 The Washington Post, ‘Among the 3,000 detained by Indian authorities include children: Kashmir’, 29 August 2019. Available at: <https://rb.gy/fzcong>.

There has been a pattern of suspension of telephone and internet services as a ‘preventive measure to avoid any law and order problems and passing of rumours by miscreants / anti-national elements’ since 2016.<sup>1336</sup> However, following the August 2019, the complete suspension of telephonic and internet-based communication in such a scenario led to petitions before the Supreme Court. These challenged the telecommunications and internet blockade and for purportedly violating the fundamental right to information, right to be informed, freedom of the press, and right to profession. Five months after the blockade was imposed, the Supreme Court held that the Executive must review its decision to suspend internet services.<sup>1337</sup> Soon after the judgment, the Union Government revoked the suspension of internet services, but restricted internet speed to only 2G as against 4G or more in the rest of India. This decision was again challenged in the Supreme Court, particularly in light of the debilitating impact of restricted internet services on health, education, and livelihood, after the imposition of the COVID-19 nationwide lockdown. However, the Supreme Court declined to pass an order to restore 4G services in Jammu and Kashmir, and instead directed the Central Government to form a special committee to examine the petitioners’ demands.<sup>1338</sup> However, the Government maintained that only 2G services would be available in the region at least till 17 June 2020.<sup>1339</sup>

Since August 2019, it has been reported that several journalists working in Srinagar have been summoned by the police. Reporters and media professionals have alleged harassment and have claimed that press freedom was being muzzled.<sup>1340</sup> Foreign media and journalists were not granted permission to report or remain in the region. The Minister of External Affairs had stated: “We do not want their presence to provoke problems – from people who would take advantage of it to show that there is unrest.” He assured that they can visit “as soon as it is safe.”<sup>1341</sup> The J&K administration announced a media policy in June 2020, which gives it wide powers to monitor, control, and restrict content as well as control accreditation of journalists and clear publications to receive government advertisements. Government advertisements are the primary source of revenue for newspapers.<sup>1342</sup>

### *Enforced Disappearances*

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- 1336 It has been reported that internet services in J&K were suspended 32 times in 2017 as compared to 10 times in 2016. OHCHR, ‘Press release: India must restore internet and social media networks in Jammu and Kashmir, say UN rights experts’, 11 May 2017. Available at: <https://rb.gy/gqbdzh>; see also, Huffington Post, ‘Review Internet Shutdown Policy, Cellular Association Tells Modi Govt’, 1 January 2020. Available at: <https://rb.gy/ascmmw>.
- 1337 *Anuradha Bhasin v. Union of India* 2019 SCC Online SC 1725. Available at: <https://rb.gy/denj2a>; see also, Live Law, ‘Responsible Governments Should Respect Freedom Of Press At All Times, Says SC’, 10 January 2020. Available at: <https://rb.gy/uyjqym>.
- 1338 Live Law, ‘Better Internet Desirable During Pandemic Lockdown; But Can’t Ignore Terrorism Concerns: SC in J&K Please For 4G’, 11 May 2020. Available at: <https://rb.gy/zgg9av>.
- 1339 Scroll, ‘Jammu and Kashmir: Only 2G internet services in region till June 17, says government’, 28 May 2020. Available at: <https://rb.gy/ulrkdw>.
- 1340 Committee to Protect Journalists (CPJ), ‘Indian authorities say jailed photojournalist Kamran Yousuf not a ‘real journalist’’, 16 February 2018. Available at: <https://rb.gy/bjw26r>; see also, *Amnesty International*, *NDTV*, among others.
- 1341 Scroll, ‘Jammu and Kashmir: Only 2G internet services in region till June 17, says government’, 28 May 2020. Available at: <https://rb.gy/ulrkdw>.
- 1342 The Indian Express, ‘New media policy for UT: J&K officials to rule on “fake news”, take legal action’, 10 June 2020. Available at: <https://rb.gy/szecqz>. It states, “DIPR (Directorate of Information and Public Relations) shall examine the content of the print, electronic and other forms of media for fake news, plagiarism and unethical or anti-national activities,” says the media policy on pages 8 and 9. “...Any fake news or any news inciting hatred or disturbing communal harmony shall be proceeded against under IPC and Cyber laws.”

In November 2017, the J&K State Human Rights Commission (SHRC) directed the state government to complete the investigations of the 2,080 unidentified and unmarked graves in Poonch and Rajouri districts within six months and recommended DNA profiling to identify those so buried.<sup>1343</sup> In 2012, the government had accepted the existence of these graves. This order was passed in response to a plea filed by the Association of Parents of Disappeared Persons (APDP), who had claimed the existence of more such graves.<sup>1344</sup> Such order were also previously passed in 2012, but the government allegedly failed to comply and undertake any such investigation.<sup>1345</sup> However, no update was available in the public domain on the status of the plea till the J&K-SHRC was dissolved in October 2019.<sup>1346</sup>

In the past, the National Human Rights Commission (NHRC) had received 341 complaints of disappearance in 2010 and 338 in 2011.<sup>1347</sup> The Committee on Enforced Disappearances, the Working Group on Enforced or Involuntary Disappearances (WGEID), and the Human Rights Committee (HRCtte) have all recognized the scope of enforced disappearance as both an autonomous offence and an egregious violation of human rights, that should be punishable under domestic criminal law in line with the definitions set out in Article 2 of the International Convention on the Protection of All Persons from Enforced Disappearance (ICPPED). Currently, under the Indian legal framework, the writ of habeas corpus is the only remedy available to the families of those who have been forcefully disappeared. Prosecutions against suspected security personnel, however, are hindered by the requirement of prior sanction under the AFSPA and Section 197 of the CrPC. Prosecutions, if any, are subject to the jurisdiction of military courts, which have some inherent limitations.<sup>1348</sup> The immunity from prosecution under the law has inevitably led to impunity. The WGEID has reiterated its request to visit India from 2016<sup>1349</sup> to 2020, however, has not yet received a positive response from the Government in this regard.<sup>1350</sup> India, in its response during UPR-I, had committed that the process of ratification of the ICPPED was underway, however even during UPR-II, it had not accepted any recommendations in that respect. The NHRC, in its UPR-II submission, had stated that there is no evidence that the Government of India intends to ratify the ICPPED and that enforced disappearance is not codified as a criminal offence in domestic law nor are existent laws used to deter the practice. It had also underlined the need for the Government to act on the issue.<sup>1351</sup> As of 8 November 2020, the Government of India has not ratified the ICPPED, though it had signed it in 2007.<sup>1352</sup>

### *Questions of Accountability*

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1343 The Indian Express, 'Unmarked graves in Poonch, Rajouri: J&K human rights panel recommends DNA profiling', 3 November 2017. Available at: <http://bit.ly/34tsBWz>

1344 Scroll, 'Human rights panel tell J&K government to complete investigating 2,080 unmarked graves in 6 months', 2 November 2017. Available at: <http://bit.ly/37DcDeF>

1345 Ibid.

1346 National Herald India, 'J&K State Human Rights Commission among 6 commissions to be wound up', 24 October 2019. Available at: <http://bit.ly/2WxM6c2>

1347 NHRC, 'Submission to the UN Human Rights Council for UPR-II of India'. Available at: <https://rb.gy/fyo9ci>

1348 International Commission of Jurists, 'No More "Missing Persons": The Criminalization of Enforced Disappearance in South Asia', August 2017. Available at: <https://rb.gy/2a6tkq>

1349 Report of the Working Group on Enforced or Involuntary Disappearances, 28 July 2016, para 29. Available at: <https://rb.gy/95xxcf>

1350 Report of the Working Group on Enforced or Involuntary Disappearances, 7 August 2020, para 35. Available at: <https://rb.gy/4wwl4z>

1351 NHRC, 'Submission to the UN Human Rights Council for UPR-II of India', para 20. Available at: <https://rb.gy/fyo9ci>.

1352 OHCHR, Ratification Status For India. Available at: <https://rb.gy/qh6q6t>.

The abrogation of Article 370 has led to the winding up of various statutory bodies operating in the erstwhile state of J&K, including the J&K State Information Commission (SIC) and the J&K SHRC.<sup>1353</sup> The jurisdiction of the NHRC was set to extend to the union territories of 'Jammu and Kashmir' and 'Ladakh'.<sup>1354</sup> However, it must be noted that the NHRC does not have the mandate or power to enquire into a complaint against the armed forces. Prior sanction to prosecute the police and paramilitary personnel, which is a requirement under the applicable laws, is rarely granted by the Government. In a response to an RTI application seeking the number of instances where the Government has granted sanction for prosecution of security forces operating in J&K between 1989-2011 revealed that out of the 44 applications made during the period, sanction was granted to none of them.<sup>1355</sup>

Subsequently, it was reported that the *then* government of J&K had sought sanction to prosecute the accused in at least 50 cases of human rights violations between 2001 and 2016. The Minister of State for Defence confirmed in the *Rajya Sabha* in response to a question posed that as of January 2018, 50 requests of sanction for prosecution were received,<sup>1356</sup> out of which such sanction was rejected in 47 cases, while a decision on three cases was pending.<sup>1357</sup> In an RTI intervention based on this, the Central Information Commission (CIC) rejected the cases files on the matter in the larger public interest.<sup>1358</sup>

It needs to be noted that in July 2017, the Supreme Court passed an order in the case of *Extrajudicial Execution Victim Families Association Manipur v. Union of India*,<sup>1359</sup> whereby it directed an investigation into alleged extrajudicial killings by security forces and police in of Manipur, including some cases under the AFSPA. However, no such directions have been passed in relation to Jammu and Kashmir nor has an equivalent jurisprudence or human rights standards been applied yet.

### **Armed Forces (Special Powers Act) 1958 (AFSPA)**

In addition to the other aspects of the AFSPA as discussed, one of the contentious provisions of the is that it provides legal immunity to security forces as well as the presumption — both statutory and jurisprudential — in their favour that they are acting in good faith. This presumption coupled with the requirement of prior sanction of the Central Government provides immunity from prosecution.<sup>1360</sup> It must be noted that some key recommendations for the repeal of the Armed Forces (Special Power) Act 1958 (AFSPA), which have not been accepted by the Government of India. In 2005, the Report of the Committee to Review the Armed Forces (Special Power) Act 1958, headed by Retired Justice B P

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1353 Jammu-Kashmir Coalition of Civil Society, Annual Human Rights Review 2019. Available at: <https://rb.gy/tcisyf>.

1354 National Herald India, J&K State Human Rights Commission among 6 commissions to be wound up', 24 October 2019. Available at: <http://bit.ly/2WxM6c2>

1355 Amnesty International, Denied', July 2015, p.27. Available at: <https://bit.ly/3h10DXc>

1356 The Week, 'J&K: CIC rejects access to files on Centre denying prosecution in 47 AFSPA cases', 11 June 2020. Available at: <http://bit.ly/2UHehS>

1357 The Wire, CIC Rejects Access To Information On Sanction Denial For Prosecution Under J&K AFSPA', 12 June 2020. Available at: <https://rb.gy/avgxm9>; see also, Parliament of India, Rajya Sabha, Unstarred question no. 1463. Available at: <https://rajyasabha.nic.in/>. The Government had denied sanction to prosecute the accused in other cases involving allegations of "murder or killing of civilians" (17 cases), "rape" (two cases), "death in security operations" (10 cases), "custodial death" (three cases), "beating or torture" (two cases), "abduction and death (of the abducted person)" (three cases), "disappearance" (seven cases), "illegal detention" (one case) "fake encounter" (one case) and "theft and molestation" (two cases).

1358 Ibid.

1359 *Extrajudicial Execution Victim Families Association Manipur v. Union of India* (2013) 2 SCC 493.

1360 Ibid (Section 6 of AFSPA; Section 7 of the Jammu Kashmir AFSPA).



Jeevan Reddy,<sup>1361</sup> had recommended the repeal of AFSPA applicable in the North-Eastern states of India. The second Administrative Reforms Commission headed by K Veerappa Moily also reiterated the call for the repeal of the AFSPA. At the same time, the Ansari Committee or the Working Group on Confidence-Building Measures in Jammu and Kashmir had made a recommendation in the same vein.<sup>1362</sup> Further In 2013, the Report of the Committee headed by Retired Justice Verma emphasized the need to ‘review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas’.<sup>1363</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, in his 2013 report<sup>1364</sup> recommended: the appointment of a Commission of Inquiry in areas affected by extrajudicial executions; repeal or radical amendment of the AFSPA; removal of legal barriers to the criminal prosecution of members of armed forces; ensuring that designated ‘disturbed areas’ are reviewed regularly every six months till the law is amended/repealed, among other things.

The concluding observations of the Committee on the Elimination of Discrimination Against Women (CEDAW) published in 2014<sup>1365</sup> also recommended the review and repeal of the AFSPA and other provisions on legal immunity. It had requested the Government of India to provide written information on the steps undertaken towards implementing these recommendations within two years, i.e. by 2016. However, no action has been taken pursuant to these recommendations and no information is known, in public domain, to have been provided, despite two reminders from the Committee.<sup>1366</sup> In 2014, the UN Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, also recommended the removal of the legal immunity provided through the AFSPA and special laws.<sup>1367</sup> The 2018 Report of the Office of the High Commissioner for Human Rights (OHCHR) on the situation of human rights in Kashmir, too recommended the repeal of the AFSPA and of the legal immunity from prosecution.<sup>1368</sup>

AFSPA has been in operation in the North-Eastern part of India since 1958. Similar to its application in Jammu and Kashmir, once an area is declared as “disturbed” under the law, armed forces and other security personnel deployed by the Centre can carry out search operations without warrant, arrest without warrant, detain and interrogate to gather ‘operational intelligence’,<sup>1369</sup> as well as “use force to the extent of causing death as required.”<sup>1370</sup> No legal action can be taken against the personnel without prior sanction from the Central Government, which, as mentioned, is rarely granted.

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1361 MHA – Govt of India, ‘Report of the Committee to Review the Armed Forces (Special Powers) Act 1958’, 2005, p.75. Available at: <https://rb.gy/epfhfn>

1362 Lok Sabha Debates, ‘The need to repeal the ‘Armed Forces (Special) Powers Act (AFSPA) 1958 by Dr. Thokchom Meinya, 2 December 2014. Available at: <https://bit.ly/2LSURLT>

1363 The Hindu, ‘Full text of Justice Verma’s Report – Report of the Committee on Amendments to Criminal Law’, 23 January 2013. Available at: <https://rb.gy/r51fvz>

1364 Report of the (then) Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns – Addendum: Mission to India, 26 April 2013, paras 100-101. Available at: <https://rb.gy/xs72sq>

1365 CEDAW, Concluding observations on the combined fourth and fifth periodic reports of India, 24 July 2014, para 13(b). Available at: <https://rb.gy/oohfha>

1366 OHCHR, Reporting Status for India, Available at: <https://rb.gy/rfakk3>

1367 Report of the (then) Special Rapporteur on violence against women, Rashida Manjoo – Addendum: Mission to India, 1 April 2014, para 78(f). Available at: <https://rb.gy/genngy>

1368 OHCHR, ‘Report on the Situation of Human Rights In Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and the General Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan’, 14 June 2018. Available at: <https://rb.gy/nrhouz>

1369 *Naga People’s Movement for Human Rights v. Union of India* [Order dated 17-08-2001 of the Supreme Court of India, Criminal Original Jurisdiction, Criminal Miscellaneous Petition No. 4198 of 1999 in Writ Petition (Criminal) No. 550 of 1982].

1370 The Hindu, ‘Ending impunity under AFSPA’, 11 July 2016. Available at: <https://rb.gy/mtlhq9>



While its retention has been justified on grounds of ‘national security’ and ‘necessity’,<sup>1371</sup> the impunity it has created has left a trail of egregious human right violations in the parts of the North-East region where it is or has been in force, including enforced disappearances, extrajudicial executions, torture, rape, etc.<sup>1372</sup> Concerns over AFSPA have been consistently raised by almost all relevant UN treaty bodies<sup>1373</sup> and Special Procedures<sup>1374</sup> for not only violating international human standards, but also the international humanitarian law. In all the three previous UPR cycles, India received recommendations for its review or repeal, but none were accepted by the Government of India.

After sharp criticism from the HRCtte in 1997, the Supreme Court heard the petitions challenging the Act’s constitutionality, which had been pending for years.<sup>1375</sup> A five-judge constitutional bench of the Court upheld the constitutional validity of the AFSPA,<sup>1376</sup> but also issued some guidelines in this respect. Almost two decades later, the Extrajudicial Execution Victim Families Association Manipur (EEVFAM) and Human Rights Alert (HRA), through a public interest litigation,<sup>1377</sup> meticulously pointed out the manner with which these guidelines are routinely flouted in practice, which had resulted into extrajudicial executions of at least 1,528 civilians in Manipur. In furtherance of this case, the Supreme Court passed a landmark judgement on 8 July 2016, stating that even in areas declared “disturbed” under the AFSPA, cases of excessive use of force or retaliatory killings causing death of civilians should be thoroughly investigated. In 2017, the Court directed the Central Bureau of Investigation (CBI) to register an FIR against the police and armed forces deployed in the region, where cases of extrajudicial execution have already been, *prima facie*, established by an official commission of inquiry or a High Court and to complete the investigation by December 2017.<sup>1378</sup>

Reviewing the tardy response from the CBI, the Court, in an unprecedented move, directed two investigating officers from the NHRC to join the CBI investigation team. On the other hand, as the pressure from the Court mounted, back in Manipur the petitioners were constantly threatened and intimidated by police and security personnel. Taking cognizance of the harassment, the Special Rapporteurs on Summary, Arbitrary or Extrajudicial Execution and on Human Rights Defenders issued a statement on 4 July 2018 stating: “*We are extremely concerned that the delay appears to be deliberate, undue, and unreasonable, and we condemn this lack of progress.*”<sup>1379</sup>

Despite this, the progress, if any, continues to be slow. As of July 2020, only 14 chargesheets have been filed, out of the total 39 FIRs registered by the CBI. These chargesheets filed have indicted 80 Manipur police personnel.<sup>1380</sup> However, not even a single officer from the Central armed forces, who were equally responsible in these violations, were indicted.<sup>1381</sup> In fact, when the first army officer (who

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1371 Gateway House, ‘AFSPA: National necessity or human rights violation?’, 30 May 2012. Available at: <https://rb.gy/an5tmx>

1372 Livemint, ‘Jammu and Kashmir tops list on rights abuses under AFSPA, Assam second’, 29 July 2017. Available at: <https://rb.gy/zb90tb>

1373 HRCtte, CEDAW, CESC, CERD.

1374 Special Rapporteurs on Extrajudicial Executions, Torture, Violence Against Women, Human Rights Defenders etc.

1375 The first PIL against AFSPA of Human Rights Forum, Manipur was registered on 10 October 1980.

1376 *Naga People’s Movement for Human Rights v. Union of India*, AIR 1998 SC 431.

1377 *Extrajudicial Execution Victim Families Association Manipur v. Union of India* (2013) 2 SCC 493

1378 The Hindu, ‘SC orders CBI probe into Manipur extra-judicial killings’, 14 July 2017. Available at: <https://rb.gy/9lsqfm>

1379 OHCHR, ‘Press release – India: UN experts call for urgent process in investigation of hundreds of “fake encounter” killings’, 4 July 2018. Available at: <https://rb.gy/dcsowg>

1380 The Sangai Express, ‘EEVFAM raises call for CBI Special Court in State’, 11 July 2020. Available at: <https://rb.gy/zevrhr>; see also, The Hindu, ‘Families of ‘fake encounter’ victims meet in Imphal’, 11 July 2020. Available at: <https://rb.gy/lwoh9k>

1381 The Indian Express, ‘Rights groups on Manipur encounters: No forces personnel indicted by CBI’, 12 January 2020. Available at: <https://rb.gy/luzvq>

led a team that allegedly killed a 12 year old boy) was named in an FIR by the CBI, hundreds of serving army personnel<sup>1382</sup> petitioned the Supreme Court<sup>1383</sup> seeking class impunity from legal action for their conduct during counter insurgency operations stating that such a probe will ‘demoralize’ the army.<sup>1384</sup> Although the Court dismissed the petition,<sup>1385</sup> this move effectively stopped the EEVFAM case from making any further progress and it has not been listed in Court since September 2018. After the retirement of a senior judge heading the bench,<sup>1386</sup> a new bench was never constituted. Drawing the attention of the Chief Justice to the matter on several occasions has not made any difference.

That said, the process of accountability initiated by the Supreme Court and the UN human rights mechanisms have put a check on and reduced the ‘encounter deaths’ in the North-East.

## **Conclusion**

It must be noted that establishing accountability for human rights violations even in ‘disturbed’ areas is essential to break the cycle of impunity. Therefore, legal provisions that impede such accountability must be reviewed and repealed. It is also important that allegations of human rights violations by security forces are investigated promptly, effectively, and independently, and prosecuted in civilian courts. Similarly, sexual violence by armed forces should be brought within the purview of criminal law. There must also be a standardized process to ensure reparations to victims and their families.

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1382 Initially, the petition was signed by 356 army personnel; but eventually it swole to over 750.

1383 *Lourembam Deben Singh v. Union of India* (2017) 8 SCC 417. Available at: <https://rb.gy/zwnbla>

1384 The Indian Express, ‘Rights groups on Manipur encounters: No forces personnel indicted by CBI’, 12 January 2020. Available at: <https://rb.gy/l1uzvq>

1385 The Wire, ‘Supreme Court slams claim that Manipur fake encounter probe will ‘demoralise’ army’, 13 November 2018. Available at: <https://rb.gy/emon3j>

1386 [Justice Madan B. Lokur](#) retired from the Supreme Court of India in December 2018.

## CHAPTER 15

### INTERNATIONAL OBLIGATIONS AND COOPERATION WITH UN HUMAN RIGHTS MECHANISMS

Rec #	Recommendations	Recommending State	Government's Response	Status of Implementation
161.44	Adopt an open, merit-based selection process when selecting national candidates for the United Nations treaty body elections.	United Kingdom of Great Britain and Northern Ireland	Supported	Not Implemented 1387
161.45	Respond positively to visit requests by the special procedures of the Human Rights Council.	Latvia	Supported	Partially Implemented 1388
161.47	Request all necessary technical assistance enabling the Government to meet its international commitments.	Côte d'Ivoire	Supported	Information not available
161.250	Provide unhindered access to the United Nations and other international organizations, and accede to the call of the High Commissioner for Human Rights to allow an OHCHR fact-finding mission to the "Indian-Occupied	Pakistan	Noted	Not Implemented 1389

1387 There is no known, established and transparent system in place on the basis on which candidates are selected for the UN treaty body elections. It must also be noted that, over the years, India has not taken enough interest in nominating members to the treaty bodies, despite extensive expertise in the country on different thematic issues. This aspect has been discussed further in the body of this chapter.

1388 While India extended a standing invitation to the Special Procedures in September 2011, the last visit of a thematic Special Rapporteur to the country took place in 2017. However, as of 8 November 2020, it has 19 pending requests from various mandate holders — some of which have been reiterated over the years — without any positive response from the Government of India. Available at: <https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&country=IND&Lang=en>

1389 India has strongly and consistently objected to allowing a fact-finding mission in Kashmir as well as entry of the UN and other international organizations to report on human rights situation from the ground. Although in November 2019, a few months after the special status of Jammu and Kashmir was abrogated, the Government allowed a group of 27 Members of the European Parliament (MEPs) into the Kashmir Valley for a "private visit" to give them a better understanding of the regions of Jammu, Kashmir and Ladakh. However, the visit was criticised for being 'partisan' and 'one-sided', reflecting a convenient viewpoint on the issue. More information is available at: <https://thewire.in/diplomacy/partisan-one-sided-eu-legislators-respond-to-meps-visit-to-kashmir>; see also, <https://thediplomat.com/2019/11/why-the-european-parliament-groups-kashmir-visit-backfired-on-india/>. Similarly, it must be noted that the United Nations Military Observer Group in India and Pakistan (UNMOGIP) is stationed along the Line of Control (LoC) between the two countries. However, in 2018, the UN Secretary-General had clarified that the mission does not have a mandate to report beyond the ceasefire between the countries along the LoC. Available at: <https://economictimes.indiatimes.com/news/defence/un-backtracks-on-role-in-kashmir-says-limited-to-loc/articleshow/53520076.cms?val=3728&from=mdr>

	Kashmir” to investigate and report on the human rights situation there.			
161.41	Ratify the international conventions to which it has committed itself.	Madagascar	Supported	Not Implemented 1390
161.42	Ratify other human rights instruments to which India is not yet a State party.	Philippines	Noted	Not Implemented
161.43	Ratify the international human rights instruments to which India is not a State party yet.	Côte d’Ivoire	Noted	Not Implemented

### **Recommendations on Ratification of International Human Rights Instruments**

India has presently ratified six of the nine key international human rights treaties. The ratified instruments include: The International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>1391</sup>

However, India has failed to ratify three major human rights treaties. They include:

- **The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT):** India had signed the UNCAT over two decades ago on 14 October 1997. On several occasions, India has expressed its commitment to ratify the UNCAT, including in the previous UPR cycles as well as in its voluntary pledges submitted along with its candidature for the membership of the UN Human Rights Council. However, the ratification has not materialized yet and there are no indications of it happening as yet.<sup>1392</sup>
- **The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED):** India had signed the ICPPED on 6 February 2007 and has yet not ratified it. It is interesting to note that India, in its response during UPR-I, had stated that it is taking steps towards ratification of the ICPPED<sup>1393</sup>; however, during UPR-II and UPR-III, it did not accept any recommendation to that effect.
- **The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (ICRMW):** India has neither signed nor ratified the treaty.

Similarly, India has also not yet ratified the First (CCPR-OP1) and Second Optional Protocol to the ICCPR aiming at the abolition of death penalty (CCPR-OP2-DP); the Optional Protocol on Individual

1390 Out of the key international human rights instruments, India had signed the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1997 and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) in 2007. However, it has not yet ratified either.

1391 OHCHR, Ratification Status For India. Available at: <https://rb.gy/qh6q6t>

1392 A detailed discussion and resources on India’s expressed commitment to ratify the UNCAT can be found in the chapter on ‘Ratification Of The UNCAT And Enactment Of A Domestic Anti-Torture Legislation’.

1393 National Report submitted by India to the Working Group on Universal Periodic Review (First Cycle), 6 March 2008, para 38. [A/HRC/WG.6/1/IND/1](https://www.hrc.org/hrweb/docstore/doc.asp?doc=14111)

Complaints Procedures of the CRC; the Optional Protocol to the CEDAW; and the Optional Protocol to the ICESCR.<sup>1394</sup>

### **Recommendation on Selection of Candidates for the UN Treaty Body Elections**

There is no clear and transparent system in place on the basis on which candidates are selected for the UN treaty body elections by India. Similarly, it needs to be noted that India has not taken a keen interest in nominating members to the UN treaty bodies. While over the years, though sporadically, India has nominated members to the CERD, the CESCR, and the CEDAW (see list below), no person has till date been nominated to the CRC by India in spite of the extensive expertise on the issue.

However, since the adoption of outcome report for UPR-III, India has only nominated one member to a UN treaty body: Ms. Preeti Saran to the CESCR. Her term began in January 2019 for a period of four years thereafter.<sup>1395</sup> In that light, while the process followed by India to select or nominate a member is not *per se* open, in this case, both the nomination process and the choice of candidate do not comply with Recommendation 161.44 that India has supported. Merit, with respect to nomination of a member to a UN treaty body, would be based on the thematic expertise on the issues falling within the ambit of the concerned treaty body. However, an absence of clear criteria for selecting members may raise concerns over the independence of the experts so nominated.

India's membership of the UN treaty bodies:

<b>Treaty Body Members from India</b>	<b>Term</b>
<b>Committee on Economic, Social and Cultural Rights (CESCR)</b>	
Ms. Preeti Saran	1 January 2019 – 31 December 2022
Mr. Chandrashekhar Dasgupta	29 April 2008 – (term expired: 31 December 2010)
	1 January 2011 – (term expired: 31 December 2014)
	1 January 2015 – 31 December 2018
Ms. Chokila Iyer	Term expired on 31 December 2006
Ms. Arundhati Ghose	Term expired on 31 December 2006
<b>Human Rights Committee (HRCtte)</b>	
Mr. P.N. Bhagwati	8 September 1994 – 31 December 1998
	10 September 1998 – 31 December 2002
	14 September 2000 – 31 December 2004
	9 September 2002 – 31 December 2006
	6 September 2006 – 31 December 2010
<b>Committee on the Elimination of Discrimination Against Women (CEDAW)</b>	
Ms. Indira Jaising	2009 – 2012
<b>Committee on the Elimination of Racial Discrimination (CERD)</b>	
Mr. Dilip Lahiri	17 January 2008 – 30 November 2011
Ms. Shanti Sadiq Ali	1 January 1991

1394 OHCHR, Ratification Status For India. Available at: <https://rb.gy/qh6q6t>

1395 NDTV, 'Ex-Diplomat Elected To UN's Economic, Social and Cultural Committee', 6 December 2018. Available at: <https://rb.gy/gvq3pg>

### **Recommendation on Engagement with Special Procedures**

India issued a standing invitation to the UN Special Procedures on 14 September 2011. Since the adoption of its UPR-III report, India has accepted visit request of only one mandate holder, the Special Rapporteur on the Right to Water and Sanitation which took place in November 2017.

Between 2000 and 2017, India has complied with requests from 10 Special Procedures.<sup>1396</sup> Recently, it also accepted the visit request from the Special Rapporteur on environment and has proposed dates for the visits of the Special Rapporteurs on sale of children and on leprosy. India currently has 19 visit requests pending with the Special Procedures: 14 reminders and five requests. This includes requests from the Special Rapporteurs on human rights and counter terrorism and on minority issues; Working Group on discrimination against women and girls; and Independent Experts on sexual orientation and gender identity and on international solidarity, as well as reminders from the Special Rapporteurs on freedom of assembly, on freedom of expression, on slavery, on torture (since 1999), on trafficking, on racism etc. and Working Groups on discrimination against women, on disappearances, on arbitrary detention, among others.<sup>1397</sup> India has also maintained that it will not entertain any communication with the Special Rapporteurs<sup>1398</sup> based on the 2018 OHCHR Report on Jammu and Kashmir.<sup>1399</sup>

As can be seen from the table below,<sup>1400</sup> requested visits and reminders of many mandate holders have seen no response from the Government.

<b>Mandate Holder</b>	<b>Status of visit request / report</b>	<b>Dates</b>
SR on violence against women	Reported / completed	From 28 October to 15 November 2000
SR on health	Reported / completed	From 22 November to 3 December 2007
SR on freedom of religion	Reported / completed	From 3 March to 20 March 2008
SR on toxic waste	Reported / completed	From 11 January to 21 January 2010
SR on human rights defenders	Reported / completed	From 11 January to 21 January 2011
SR on extrajudicial, summary or arbitrary executions	Reported / completed	From 19 March to 30 March 2012
SR on violence against women	Reported / completed	22 April to 1 May 2013
SR on food	Reported / completed	From 10 May to 22 May 2013
SR on housing	Reported / completed	From 11 April to 22 April 2016
Sr on rights to water and sanitation	Reported / completed	From 27 October to 10 November 2017

1396 Office of the High Commissioner for Human Rights, Country visits by Special Procedures to India. Available at: <https://rb.gy/xovxla> <accessed at 21:58 on 8 November 2020>

1397 Ibid.

1398 OHCHR, 'Report on the Situation of Human Rights In Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and the General Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan', 14 June 2018. Available at: <https://rb.gy/nrhous>

1399 The Hindu, 'India cuts off UN panel after Jammu and Kashmir report', 21 May 2019. Available at: <https://rb.gy/dvqprk>; see also, The Hindu, 'UN makes its third communication on Jammu and Kashmir public', 8 July 2020. Available at: <https://rb.gy/h8nzk7>

1400 This table is drawn from the official table of SR country visits, requested and completed. Available at: <https://rb.gy/xovxla> <accessed at 22:03 on 8 November 2020>



SR on racism	Reminder	Second half of 2018
SR on minority issues	Requested `	Second half of 2018
SR on indigenous peoples	Reminder	October 2018
SR on trafficking	Reminder	First half of 2019
SR on toxic waste	Reminder	2019
SR on cultural rights	Reminder	2019
WG on discrimination against women and girls	Requested	2019
SR on freedom of expression	Reminder	2019
WG on people of African Descent	Reminder	February 2019
SR on sale of children	Proposal of dates	Proposed dates second half of 2019
SR on extreme poverty	Reminder	Fourth quarter of 2019
IE on international solidarity	Requested	August 2019
SR on leprosy	Proposal of dates	Proposed dates from 26 November to 5 December 2019
SR on torture	Reminder	First half of 2020
WG on disappearances	Reminder	2020
IE on sexual orientation and gender identity	Requested	2020
SR on slavery	Reminder	Fourth quarter of 2020
SR on environment	Accepted by the State	Second half of 2020
WG on business and human rights	Reminder	2021
WG on arbitrary detention	Reminder	—
SR on independence of judges	Inactive	—
SR on freedom of assembly	Reminder	—
SR on human rights and counter terrorism	Requested	—

## **Conclusion**

The Government of India is yet to comply fully with its international obligations as it is yet to ratify three key international human rights instruments, despite repeated and expressed commitment in that regard in the context of UNCAT and ICPED. Its engagement with UN human rights mechanisms has also been sporadic in nature. Open, timely and meaningful engagement with the Special Procedures of the Council as well as clearly defined and transparent criteria for nominating members to the Treaty Bodies would be key in fully implementing these recommendations in that regard which were in fact supported by India in its UPR-III.

WGHR MEMBERS ORGANIZATIONS
<b>Lawyers Collective</b>
<b>Human Rights Alert</b>
<b>Housing and Land Rights Network (HLRN)</b>
<b>HAQ: Centre for Child Rights</b>
<b>FIAN India</b>
<b>Commonwealth Human Rights Initiative (CHRI)</b>
<b>National Campaign on Dalit Human Rights (NCDHR)</b>
<b>People's Watch</b>
<b>India Alliance for Child Rights</b>
<b>Citizens for Peace and Justice</b>
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2020



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