



INDIA: IMPUNITY, DISCRIMINATION AND REPRESSION OF DISSENT

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW – 27TH SESSION OF THE UPR WORKING GROUP, APRIL/MAY 2017

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of India in April–May 2017. In it, Amnesty International evaluates the implementation of recommendations made in the previous UPR, assesses the national human rights framework and the human rights situation on the ground, and makes recommendations to the government of India to address the human rights challenges mentioned in this report.

Amnesty International is concerned about the retention of laws in India which are not in line with international human rights law, including on children’s rights and the death penalty, and the use of legal provisions to restrict the right to freedom of expression. Discrimination and violence against women, girls, Dalit and Adivasi people, and members of religious minority groups remains a concern, as does harassment and attacks against human rights defenders and journalists.

Detainees in police custody continue to face torture and other ill-treatment and other violations, thousands of people remain at risk of forced evictions for industrial projects, and discrimination persists in the education system.

FOLLOW UP TO THE PREVIOUS REVIEW

Since the UPR of India in 2012, there has been limited progress on a range of recommendations accepted by the government.

India accepted recommendations to prevent discrimination and violence against women and girls,¹ members of religious minorities,² and Scheduled Castes and Scheduled Tribes.³ However, the authorities have failed to ensure that cases of violence against women and girls are properly registered and investigated, and rape within marriage is yet to be recognized as a crime. Laws to prosecute crimes against members of Scheduled Castes (Dalits) and Scheduled Tribes (Adivasis) communities and laws to end the practice of manual scavenging, remain poorly enforced.

The government also accepted recommendations to promote equal access to justice for all, including by providing more legal aid to the poor and marginalized.⁴ However, inadequate provision of legal aid continues to contribute to excessive pre-trial detention. Two-thirds of India’s

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, India*, A/HRC/21/10, 9 July 2012, recommendations 138.79 (Iran), 138.106 (Mexico), 138.81 (Bahrain), 138.86 (Egypt), 138.87 (Liechtenstein), 138.130 (Viet Nam), 138.144 (Singapore), 138.162 (Ecuador), 138.75 (Ghana), 138.87 (Holy See).

² A/HRC/21/10, recommendation 138.79 (Iran).

³ A/HRC/21/10, recommendations 138.75 (Ghana).

⁴ A/HRC/21/10, recommendation 138.122 (Thailand).

prison population are pre-trial detainees, with Dalits, Adivasis and Muslims disproportionately represented compared to their share in the overall population.⁵

The government committed to ensure a safe working environment for journalists.⁶ However, journalists and other human rights defenders have regularly come under attack for being critical of the authorities. The government also agreed to explore decriminalizing same-sex relations,⁷ however, the lower house of Parliament voted against the introduction of bills seeking to decriminalise same-sex relations.

The government also accepted recommendations to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁸ and to accept requests for visits from the Special Procedures.⁹ Torture and other ill-treatment in police and judicial custody remain common, and domestic legislation has not been passed to recognize these violations as crimes. Several requests for visits from the Special Procedures remain outstanding despite India's standing invitation.¹⁰

THE NATIONAL HUMAN RIGHTS FRAMEWORK

INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS AND DOMESTIC LEGISLATION

India retains laws which are not in line with its obligations under international human rights law. The new Juvenile Justice (Care and Protection of Children) Act, passed in 2015, allows children to be treated as adults in cases of serious crimes, in contravention of India's obligations under the

⁵ National Crime Records Bureau, "Prison Statistics India 2014", Ministry of Home Affairs, Government of India, October 2015, pp. 39, 103, available at <http://ncrb.gov.in/StatPublications/PSI/Prison2014/Full/PSI-2014.pdf>.

⁶ A/HRC/21/10, recommendation 138.127 (Austria).

⁷ A/HRC/21/10, recommendation 138.89 (Argentina).

⁸ A/HRC/21/10, recommendations 138.1 (Spain), 138.3 (United Kingdom of Great Britain and Northern Ireland), 138.4 (United States of America), 138.5 (Iraq), 138.6 (Republic of Korea), 138.7 (Italy), 138.8 (Maldives), 138.10 (Uruguay), 138.12 (Australia), 138.13 (Austria), 138.15 (Botswana), 138.16 (Brazil), 138.17 (Czech Republic), 138.18 (Portugal), 138.24 (France), 138.28 (Sweden), 138.29 (Indonesia), 138.32 (Switzerland), 138.36 (Timor-Leste).

⁹ A/HRC/21/10, recommendation 138.66 (Belgium).

¹⁰ Since India's second UPR in 2012, it has hosted the Special Rapporteur on violence against women (April 2013) and the Special Rapporteur on the right to adequate housing (April 2016). It has received requests from the Working Group on enforced or involuntary disappearances (November 2012 and September 2013), the Special Rapporteur on the independence of judges and lawyers (reminder in March 2014), the Special Rapporteur on the rights to freedom of assembly and association (September 2014), the Special Rapporteur on the sale of children (February 2015), the Working Group of experts on people of African descent (December 2014), the Special Rapporteur on hazardous substances and waste (February 2015), the Special Rapporteur on Extreme Poverty (April and December 2015), the Special Rapporteur on contemporary forms of slavery (November 2015), and the Special Rapporteur on cultural rights (December 2015).

Convention on the Rights of the Child.¹¹ Section 377 of the Indian Penal Code criminalizes consensual same-sex relations, in violation of India's obligations under international law to respect the rights to privacy, freedom from discrimination and freedom of expression.¹²

India retains the death penalty for crimes which do not meet the threshold of the "most serious crimes", such as abetment of mutiny¹³ and kidnapping for ransom,¹⁴ in contravention of international law which mandates that the use of the death penalty must be restricted to those crimes that involve intentional killing.¹⁵

India's national and state-level human rights commissions continue to operate with restricted mandates (which, among other things, prevent them from investigating complaints of human rights violations against members of the armed forces), limited powers¹⁶ and sometimes with limited capacity and resources. Several state human rights commissions still do not have permanent chairpersons.

The Indian government has accepted requests from some of the Special Procedures,¹⁷ but is yet to respond to outstanding requests by others to visit the country, including the Working Group on enforced or involuntary disappearances (first requested in 2005) and the Special Rapporteurs on

¹¹ Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act was passed despite opposition to the reforms from several child rights organizations, India's National Commission for Protection of Child Rights and National Institute of Mental Health and Neuro-Sciences, and a parliamentary committee chaired by the country's Health Minister. The UN Committee on the Rights of the Child, which monitors the implementation of the UN Convention on the Rights of the Child, has categorically stated that every person under 18 years of age at the time of an alleged offence must be tried in accordance with the rules of juvenile justice. Committee on the Rights of the Child, General Comment No. 10 (2007): Children's rights in juvenile justice, 25 April 2007, UN Doc. CRC/C/GC/10, para 37, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

¹² The UN Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights, has said that laws used to criminalize private, adult, consensual same-sex relations violate rights to privacy and non-discrimination. See *Toonen v. Australia*, UN Human Rights Committee, 4 April 1994, UN Doc. CCPR/C/50/D/488/1992, available at <http://www.unhcr.org/refworld/docid/48298b8d2.html>. Also see HRC, Concluding *observations of the Human Rights Committee: Chile*, 30 March 1999, UN Doc. CCPR/C/79/Add.104, para. 20.

¹³ Section 132 of the Indian Penal Code, 1860.

¹⁴ Section 364A of the Indian Penal Code, 1860.

¹⁵ Article 6 of the ICCPR states that "sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime". The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the death penalty "must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill, which resulted in the loss of life." Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 29 January 2007, UN Doc. A/HRC/4/20, para. 53, available at http://www.extrajudicialexecutions.org/application/media/A_HRC_4_20.pdf.

¹⁶ In June 2016, the Chairperson of India's National Human Rights Commission said the Commission was a "toothless tiger", with no authority to ensure that its recommendations were implemented. See Dhananjay Mahapatra, "NHRC a toothless tiger: Panel Chief", *The Times of India*, 2 June 2016, available at <http://timesofindia.indiatimes.com/india/NHRC-a-toothless-tiger-Panel-chief/articleshow/52544350.cms>. In September 2016, the Commission stated before the Supreme Court that it had become a 'mailbox' which was 'marred by red-tapism', and that the government refused to co-operate with it in cases of alleged human rights violations by security forces. See Anusha Soni, "NHRC on Human Rights violations in AFSPA zones: We have become a toothless mailbox", *India Today*, 7 September 2016, available at <http://indiatoday.intoday.in/story/nhrc-afspa-human-rights-violations-supreme-court/1/758835.html>.

¹⁷ Since India's second Universal Periodic Review in 2012, it has hosted the Special Rapporteur on violence against women (April 2013) and the Special Rapporteur on the right to housing (April 2016).

torture (first requested in 1993), rights of Indigenous Peoples (first requested in 2008) and independence of judges and lawyers (first requested in 2000).¹⁸

THE HUMAN RIGHTS SITUATION ON THE GROUND

HUMAN RIGHTS DEFENDERS

Human rights defenders continue to face threats, intimidation, harassment and attacks by state and non-state actors. In Chhattisgarh state, journalists, lawyers and human rights activists seeking justice for alleged abuses by the security forces have been threatened by the police or arrested on fabricated charges, or face harassment from vigilante groups that may operate with the backing of the police.¹⁹ Journalists in other states, such as Bihar, have also been targeted for their work, with perpetrators going largely unpunished.²⁰

Measures have been taken by the authorities to unduly restrict the activities of civil society organizations, including by using the Foreign Contribution (Regulation) Act (FCRA) which restricts organizations from receiving foreign funding. In particular, groups critical of infrastructure and mining projects and those seeking justice for the anti-Muslim violence in Gujarat in 2002 have faced repeated queries about their work, threats of investigations and blocking of foreign funding.²¹ The FCRA falls short of international standards and enables violations of the rights to freedom of association and expression.²²

¹⁸ <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx>.

¹⁹ Human rights defenders in Bastar, Chhattisgarh have faced a relentless crackdown by the police and self-styled vigilante groups. For more details, see Amnesty International India, “Blackout in Bastar: Human rights defenders under threat”, April 2016, available at https://www.amnesty.org.in/images/uploads/articles/Chhattisgarh_Campaign_Digest.pdf.

²⁰ India was featured in the 2015 Global Impunity Index of the Committee to Protect Journalists, which highlights countries where journalists have been killed without the perpetrators being held responsible. Committee to Protect Journalists, “Getting Away with Murder”, 8 October 2015, available at <https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php#14>.

²¹ Amnesty International India, “Suspension of human rights NGO’s foreign funding license must be revoked”, 3 June 2016, available at <https://www.amnesty.org.in/show/news/suspension-of-human-rights-ngos-foreign-funding-license-must-be-revoked>; Amnesty International India, “Rights activists at risk of detention on politically motivated charges”, 28 July 2015, available at <https://www.amnesty.org.in/show/news/rights-activists-at-risk-of-detention-on-politically-motivated-charges>; Amnesty International India, “India: Curbs on Greenpeace India violate right to freedom of expression”, 10 April 2015, available at <https://www.amnesty.org.in/show/news/india-curbs-on-greenpeace-violate-right-to-freedom-of-expression>

²² In April 2016, the UN Special Rapporteur on freedom of assembly and association published a legal analysis arguing that the FCRA was not in conformity with international law, principles and standards: see UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, “Analysis on international law, standards and principles applicable to the Foreign Contributions Regulation Act 2010 and Foreign Contributions Regulation Rules 2011”, 20 April 2016, available at <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>. In June 2016, the UN Special Rapporteurs on human rights defenders, on freedom of expression, and on freedom of association, called on the Indian government to repeal the FCRA, which they said was “being used more and more to silence organizations

In June 2014, media organizations reported that a classified document prepared by India's Intelligence Bureau had described a number of foreign-funded NGOs as "negatively impacting economic development".²³ The government subsequently cancelled the FCRA registration of thousands of NGOs for allegedly violating the Act.

CASTE-BASED DISCRIMINATION AND VIOLENCE

Discrimination and violence against Dalit and Adivasi people by state and non-state actors are widespread and often go unpunished. According to government data, over 45,000 crimes against members of Scheduled Castes and nearly 11,000 crimes against members of Scheduled Tribes²⁴ were reported in 2015.²⁵ Members of dominant castes continue to use sexual violence to punish, humiliate and assert their power over Dalit and Adivasi women and girls.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act – aimed at prosecuting crimes against Dalit and Adivasi people – is often not used by the police while registering offences, leading to under-reporting of such crimes. Conviction rates under the law are also low.

An official census stated in July 2015 that over 180,000 households were engaged in "manual scavenging" – the practice of cleaning up human waste carried out mainly by Dalit people, despite laws prohibiting the practice.²⁶ Human rights defenders have said the census figure is an underestimate.

RELIGIOUS VIOLENCE

The authorities have failed to prevent religious violence across the country. Draft legislation aimed at preventing and punishing communal and targeted violence, and ensuring access to justice and reparations for victims, has yet to be passed.

In 2013, over 60 people were killed and tens of thousands displaced, most of them Muslim, during religious violence between members of Hindu and Muslim communities in Muzaffarnagar and Shamli districts, Uttar Pradesh.

The authorities have also consistently failed to bring to justice public officials - including police officials and politicians - suspected of involvement in large-scale attacks on members of religious

involved in advocating civil, political, economic, social, environmental or cultural priorities, which may differ from those backed by the Government". See UN Human Rights Office of the High Commissioner, "UN rights experts urge India to repeal law restricting NGO's access to crucial foreign funding", 16 June 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E#sthash.PczXAXGg.dpuf>.

²³ See, for example, Amitav Ranjan, "Foreign-aided NGOs are actively stalling development, IB tells PMO in a report", *The Indian Express*, 7 June 2014, available at <https://indianexpress.com/article/india/india-others/foreign-aided-ngos-are-actively-stalling-development-ib-tells-pmo-in-a-report/>.

²⁴ Certain Dalit communities are identified as Scheduled Castes and certain Adivasi communities as Scheduled Tribes under the Constitution of India.

²⁵ National Crime Records Bureau, "Crime in India: 2015 Statistics", Ministry of Home Affairs, Government of India, August 2016, pp.226, 258, available at http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Statistics-2015_rev1.pdf.

²⁶ Press Information Bureau, "Manual Scavenging", Ministry of Social Justice and Empowerment, Government of India, 15 December 2015, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=133286>.

minority groups. A team formed by the central government in February 2015 to re-investigate closed cases related to the killings of around 3,000 Sikhs in Delhi in 1984 has to date made little progress. Several trials are ongoing related to the killings in Gujarat in 2002 of at least 1,044 people, mostly Muslims.

Hindu groups have been accused of forcibly converting Muslims and Christians in Madhya Pradesh, Uttar Pradesh and other states.²⁷ Politicians across parties, particularly the Bharatiya Janata Party, have contributed to religious tensions by justifying discrimination and violence in their speeches.²⁸

VIOLENCE AGAINST WOMEN

Discrimination and violence against women and girls remain pervasive. Over 327,000 crimes of violence against women, including over 34,000 cases of rape, were reported in 2015.²⁹ This is likely to be an underestimate, as stigma and discrimination from police officials and the authorities deter many women from reporting sexual violence. Many states continue to lack standard operating procedures for the police to effectively deal with cases of violence against women.

The Indian Penal Code was amended in 2013 to criminalize a wider range of offences against women, including stalking, acid attacks and certain forms of sexual assault. However, Section 375 of the Penal Code retains an exception for rape when it is committed by a man on his wife when she is over 15 years old.³⁰ Unofficial all-male caste-based unelected village councils continue to issue illegal decrees ordering punishments against women for perceived social transgressions, such as marrying or having relationships with men outside their caste.³¹

BUSINESS AND HUMAN RIGHTS

Thousands of people, particularly Adivasi communities, remain at risk of being forcibly evicted from their homes and lands to give way to large infrastructure and industrial projects.

National laws do not fully recognize the rights of Indigenous Adivasi people to free, prior and informed consent on decisions that affect their lives, including regarding the use of their lands,

²⁷ See for example, Jatin Gandhi, "Forced into 'homecoming'", *The Hindu*, 21 December 2014, available at <http://www.thehindu.com/sunday-anchor/conversion-confusion-forced-into-homecoming/article6711441.ece>.

²⁸ See for example Ashutosh Bhardwaj, "Muslims warned of 'final battle' at Sangh Parivar meeting, MoS Katheria says 'we've to show our strength'", 1 March 2016, available at <http://indianexpress.com/article/india/india-news-india/muslims-warned-of-final-battle-at-sangh-meet-mos-katheria-says-weve-to-show-our-strength/>.

²⁹ National Crimes Records Bureau, "Crime in India: 2014", Ministry of Home Affairs, Government of India, July 2015, p.83, available at <http://ncrb.nic.in/StatPublications/CII/CII2014/Compendium%202014.pdf>.

³⁰ Studies have shown that marital rape is a reality a number of women face in India. In a nationwide survey conducted in 2005-06, 10 per cent of married women – and over 20 per cent in some states – said their husbands had raped them or forced them to commit sexual acts against their will. International Institute of Population Studies, *National Family Health Survey (NFHS-3), 2005-6*, pp.507, 519, available at <http://hetv.org/india/nfhs/nfhs3/NFHS-3-Chapter-15-Domestic-Violence.pdf>.

³¹ In August 2015, two Dalit sisters and their family fled their home in Baghpat, Uttar Pradesh, fearing caste-based violence. One of the sisters filed a petition stating that an unelected all-male village body had ordered that she and her 15-year old sister be raped and paraded naked as 'punishment' for their brother who had eloped with a married woman from a dominant caste. See Amnesty International India, "Supreme Court recognizes risks to Baghpat Dalit family", 17 September 2015, available at <https://www.amnesty.org.in/show/news/supreme-court-recognizes-risks-to-baghpat-dalit-family>

territories or natural resources. For example, the Coal Bearing Areas Act allows authorities to acquire land for coal mining by state-owned companies without consulting affected communities or seeking the consent of Adivasi communities.

Research by Amnesty International in Chhattisgarh, Jharkhand and Odisha has shown that authorities and companies have failed to conduct adequate consultations and to seek consent of Adivasi communities on coal mining projects.³² Successive central governments have sought to dilute requirements to hold public hearings with communities affected by mining projects.

FREEDOM OF EXPRESSION

The government continues to use legal provisions that unduly restrict the right to freedom of expression to silence human rights defenders and others. These include offences under the Indian Penal Code of sedition (Section 124A), criminal defamation (Sections 499 and 500), hurting religious sentiments (Sections 295A and 298) and hate speech (Sections 153A and 505).³³

In several cases, the government has failed to protect artists and writers from threats and violence by powerful individuals and groups in violation of their right to freedom of expression. The government has also implemented and expanded mass surveillance of telephone and internet communications without disclosing the details of these projects or safeguards to prevent their misuse.

ABUSES BY THE SECURITY FORCES

The Armed Forces (Special Powers) Act, which grants security forces sweeping powers and virtual immunity from prosecution, continues to enable human rights violations in Jammu and Kashmir and north-eastern states. The law also prohibits the prosecution of security force personnel in civilian courts without government permission. Research by Amnesty International indicates that central government authorities consistently deny such permission in Jammu and Kashmir state, including in cases of alleged crimes under international law, such as torture, enforced disappearances and extrajudicial executions.³⁴

In Chhattisgarh state, reports of human rights violations by security forces, including cases of sexual assault, have not been adequately investigated.³⁵ In 2016, the security forces used pellet-

³² With regard to mining operations by India's state-owned Coal India Limited, the world's largest coal producer, the Indian central government and state governments have failed to ensure meaningful consultation with Adivasi communities on land acquisition, rehabilitation and resettlement, and the environmental impacts of mines, seriously affecting their lives and livelihoods. See Amnesty International India, "When Land Is Lost, Do We Eat Coal?: Coal Mining and Violations of Adivasi rights in India", July 2016, available at https://www.amnesty.org.in/images/uploads/articles/COAL%2BREPORT_10_FINAL_on_5-7-2k16_LOW_RES_with_out_mark.pdf.

³³ See for example Amnesty International India, "India: Crackdown on freedom of expression must end", 17 February 2016, available at <https://www.amnesty.org/en/latest/news/2016/02/india-crackdown-on-freedom-of-expression-must-end/>, Amnesty International India, "Legal reform crucial to protect right to free speech", 26 June 2014, available at <https://www.amnesty.org.in/show/news/legal-reform-crucial-to-protect-right-to-free-speech>.

³⁴ See Amnesty International India, "'Denied': Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir", July 2015, available at [https://www.amnesty.org.in/images/uploads/articles/Kashmir_Report_Web_version_\(1\).pdf](https://www.amnesty.org.in/images/uploads/articles/Kashmir_Report_Web_version_(1).pdf).

³⁵ Amnesty International India, "Chhattisgarh must investigate police inaction in sexual assault case", 25 January 2016, available at <https://www.amnesty.org/en/press-releases/2016/01/chhattisgarh-must-investigate-police-inaction-in-sexual-assault-case/>.

firing shotguns – which are inherently inaccurate and indiscriminate weapons – to police protests in Kashmir, leading to hundreds of severe injuries.³⁶

ABUSES IN THE CRIMINAL JUSTICE SYSTEM

Torture and other ill-treatment of detainees in police custody remain widespread. Overcrowding in jails is common. About two-thirds of the total prison population are pre-trial detainees, with Dalits, Adivasis and Muslims disproportionately represented. Weak legal aid services contribute to the problem.

The Unlawful Activities (Prevention) Act, India's primary anti-terror legislation, contains several provisions which do not meet international human rights standards. For instance, the Act uses sweeping definitions of "membership of a terrorist gang or organization" without a clear definition of what constitutes membership. These provisions may amount to excessive restrictions on the rights to freedom of association and freedom of assembly, which are protected under Articles 21 and 22 of the International Covenant on Civil and Political Rights. The minimum period of detention of suspects without charge is 30 days and the maximum period 180 days, well beyond international standards. These provisions contravene Articles 9(2) and 9(3) of the Covenant which obligate India to ensure that all arrested people are promptly informed of the charges against them and tried within a reasonable time or released. The Act is often abused, with the use of fabricated evidence and false charges, to detain human rights defenders.

Several central and state-level laws on administrative detention, including the National Security Act, the Jammu and Kashmir Public Safety Act, and the Tamil Nadu Prevention of Dangerous Activities Act, allow for people to be detained for long periods without charge or trial, circumventing the safeguards of the criminal justice system.

HUMAN RIGHTS EDUCATION

The government has yet to take concrete steps to incorporate human rights education into the education system. The new draft education policy, issued in 2016, does not mention human rights education. Where human rights programmes are conducted, they are not holistic and rely on textbooks.

Discrimination against students on the basis of caste, class, religion, gender and disability is widespread in schools and universities.³⁷

³⁶ Amnesty International India, "Global standards on use of force violated in Kashmir", 12 September 2016, available at <https://www.amnesty.org.in/show/news/global-standards-on-police-use-of-force-violated-in-kashmir/>.

³⁷ See for example, Human Rights Watch, "[They Say We're Dirty': Denying an Education to India's Marginalized](https://www.hrw.org/report/2014/04/22/they-say-were-dirty/denying-education-indias-marginalized)", April 2014, available at <https://www.hrw.org/report/2014/04/22/they-say-were-dirty/denying-education-indias-marginalized>.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF INDIA TO:

INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS AND DOMESTIC LEGISLATION

- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which India signed in 1997 and committed to ratify in its 2012 UPR,³⁸ and ensure that domestic legislation defines torture in line with international standards;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and ensure that domestic legislation defines enforced disappearance in line with international standards;
- Ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;
- Ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and ILO Convention No. 189 concerning Decent Work for Domestic Workers;
- Endorse the UN Draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent;
- Amend the Juvenile Justice (Care and Protection of Children) Act to ensure that any person under the age of 18 at the time of the alleged commission of an offence is treated in accordance with juvenile justice rules, as mandated by the Convention on the Rights of the Child;
- Repeal or amend Section 377 of the Indian Penal Code to ensure that consensual same-sex relations are not criminalized;
- Restrict the imposition of the death penalty to the “most serious crimes”, which involve intentional killing, as a first step towards full abolition;
- Amend the Protection of Human Rights Act to expand the authority and mandate of the National Human Rights Commission and State Human Rights Commissions in order to strengthen their work to promote human rights and ensure they are adequately staffed and resourced;
- Strengthen co-operation with the UN Special Procedures and accept without delay outstanding requests to visit India, particularly from the Working Group on enforced or involuntary disappearances and the Special Rapporteurs on torture, rights of Indigenous Peoples, and rights to freedom of assembly and association.

³⁸ A/HRC/21/10.

HUMAN RIGHTS DEFENDERS

- Drop all charges against and immediately and unconditionally release all persons detained or imprisoned solely for peacefully exercising their rights to freedom of expression, peaceful assembly or association;
- Investigate and prosecute anyone who harasses, intimidates or otherwise obstructs human rights defenders from carrying out their legitimate and peaceful activities;
- Repeal the Foreign Contribution (Regulation) Act and ensure the right to freedom of association, which includes the ability of civil society organisations to access foreign funding.

CASTE-BASED DISCRIMINATION AND VIOLENCE

- Take steps to ensure the effective enforcement of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, including by providing training to district-level officials responsible for its enforcement;
- Hold police officials accountable for failing to properly register and investigate complaints of caste-based discrimination and violence;
- Effectively implement the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, including by providing adequate rehabilitation to members of communities that carry out manual scavenging.

RELIGIOUS VIOLENCE

- Enact a new law to prevent and respond to communal and targeted religious violence, which incorporates international human rights principles of superior and command responsibility, remedy and reparation;
- Take steps to bringing to justice, in fair trials and without recourse to the death penalty, all those responsible for human rights abuses - including political leaders, police or government officials - during past incidents of mass violence against members of religious minorities, including the killings of Muslims in Gujarat 2002 and the massacre of Sikhs in Delhi in 1984;
- Establish a comprehensive and adequately resourced victim and witness protection programme at the central and state levels, which is independent of state agencies such as the police;
- Hold accountable public officials who advocate religious hatred that constitutes incitement to discrimination, hostility, or violence.

VIOLENCE AGAINST WOMEN

- Direct all state-level police personnel to establish standard operating protocols, in line with international standards, for registering and investigating cases of violence against women, and hold accountable officials who fail to properly register crimes involving violence against women;
- Remove the exception related to marital rape from the definition of rape in section 375 of the Indian Penal Code;
- Introduce laws to specifically prevent and prosecute “honour” killings and prosecute unelected village councils that order or endorse violence against Dalit or Adivasi women.

BUSINESS AND HUMAN RIGHTS

- Amend existing legislation to guarantee the right to free, prior and informed consent by Adivasis in all decisions that affect them, including by amending the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act;

- Investigate and prosecute human rights abuses suffered by communities due to public and private corporate-led projects and ensure that all victims are provided effective remedy and reparation;
- Require public and private mining companies to identify, prevent and mitigate any adverse impact on human rights, including by carrying out human rights impact assessments as part of due diligence processes.

FREEDOM OF EXPRESSION

- Repeal or revise provisions in the Indian Penal Code and other laws that unduly restrict the right to freedom of expression, including criminal defamation and sedition laws;
- Ensure that police officials take steps to protect individuals who face threats, harassment or attacks for legitimately exercising their right to freedom of expression;
- Ensure that any interference with privacy is necessary and proportionate to legitimate goals and subject to judicial supervision and review.

ABUSES BY SECURITY FORCES

- Repeal the Armed Forces (Special Powers) Acts, grant sanctions to prosecute security force personnel in civilian courts, and ensure that military tribunals do not try military personnel suspected of crimes under international law or other human rights violations;
- Ensure thorough, independent and impartial investigations into all cases of alleged human rights violations by security forces, the prosecution of suspects in civilian courts in fair trials and without the recourse of the death penalty, and full reparation for victims.

ABUSES IN THE CRIMINAL JUSTICE SYSTEM

- Strengthen oversight mechanisms in all states to prevent excessive pre-trial detention, and ensure the provisions of competent, effective and free legal aid to all detainees who need it;
- Repeal or substantially revise the Unlawful Activities (Prevention) Act to bring it in line with international standards, including regarding the definition of “acts of terrorism” and the permissible period of detention of suspects without charge;
- Repeal all state and central-level laws which authorize administrative detention without charge or trial.

HUMAN RIGHTS EDUCATION

- Ensure that both private and state-run schools institutionalize human rights education into school curricula, co-curricular activities, school policies and everyday practices;
- Incorporate human rights education into the 2016 national education policy, the Right of Children to Free and Compulsory Education Act and the 2005 National Curriculum Framework;
- Implement the recommendations of the National Advisory Council’s Working Group on the Right to Education Act on ending discrimination in schools.

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