

## India's compliance with ICCPR

Suggested list of issues prior to reporting  
126<sup>th</sup> session of HRC

Citizens Against Hate, New Delhi  
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## 1. Introduction

Citizens Against Hate and Quill Foundation<sup>1</sup> are privileged to submit, in this joint-submission, list of suggested issues and questions to be considered by the U.N. Human Rights Committee prior to the forthcoming India periodic report. The Committee's consideration of India's compliance with the International Covenant on Civil and Political Rights (ICCPR) comes at a critical time of grave human rights violations in an atmosphere where violent majoritarianism has taken hold of India under the ruling Bharatiya Janata Party (BJP) regime. This is particularly so against India's religious minorities and other vulnerable groups. And civil liberties continue to be violated everywhere, with impunity. With India scoring poorly on the World Justice Project's Rule of Law index, 2019 (score of 0.51 on a 0-1 scale, and ranking of 68 among the 125 countries surveyed)<sup>2</sup>, the prospect of those suffering human rights violations obtaining justice is slim. A woefully weak justice system makes that prospect even less likely.

India's last review under ICCPR was conducted in 1997. That review had recognised that despite the existence of a broad range of democratic institutions and comprehensive, although constrained constitutional and legislative framework for human rights, implementation was a serious concern, compromising India's ability to translate ICCPR intent into practice.<sup>3</sup> It had recommended, inter alia:

- fully legislating ICCPR provisions into domestic law
- ratifying the optional protocol, to enable HRC to receive individual communication.
- Stopping reliance on special powers under legislation such as Armed Forces (Special Powers) Act; the Public Safety Act and National Security Act.
- Monitoring closely the application of emergency powers such as AFSPA, for their compliance with ICCPR
- Abolishing the death penalty on minors and limit its use to the most serious crimes
- Abolishing the requirement of government sanction for civil proceedings and leaving it to courts to decide whether proceedings were vexatious or abusive.
- Making judicial enquiry mandatory in cases of death by security forces
- Authorising NHRC to investigate all allegations of violations by state actors – including by armed forces
- Enacting legislation for mandatory judicial inquiry into cases of disappearance and death, ill-treatment or rape in police custody;
- Making it mandatory for relatives of detainees to be notified without delay and guaranteeing right to legal advice and assistance and to have a medical examination.

Despite the passage of over 20 years since these recommendations, little has progressed in terms of India's better compliance with ICCPR. Continuing failures to act on these have resulted, among others, in continuance of severe discrimination against vulnerable

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<sup>1</sup> Citizens Against Hate is a collective of groups and individuals committed to a plural, democratic, caring India. It seeks to provide practical help to victims of hate-motivated violence and to counter, through research, litigation, advocacy and dialogue, hate in all its forms. Quill Foundation works on issues of human rights, justice, and equity faced by the underprivileged sections of the people of India, through research & advocacy.

<sup>2</sup> <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2019>

<sup>3</sup> Human rights Committee. Concluding observations of the Human Rights Committee on India – reviewing India. 4<sup>th</sup> Aug. 1997. (Covenant on Civil and Political Rights).

communities. Indeed, with a majoritarian regime as the executive in control of the federal government and in most provinces, law enforcement has increasingly become communalised and casteist, with vulnerable groups and those that speak for them, targeted with impunity.

In the following pages we catalogue key concerns for India from CCPR perspective, to try to propose list of issues prior to reporting.

## **2. Right to life (Art 6,7, 9, 10, 14 of CCPR)**

There has been widespread violation of the right to right to life, especially minorities and other vulnerable groups. These are also taking newer more targeted forms and are the result both of omissions of the state and its commissions.

### Omissions by the state

#### **2.1 Targeted violence against minorities**

Targeted violence against minorities has a long legacy in India. Since the BJP took power in the centre in 2014, anti-minority violence has steadily risen, both in number of incidents and in geo-graphical spread. Newer forms of violence are also emerging. According to figures released by the Government of India, there was a rise in the number of ‘communal’, meaning sectarian violence incidents in 2017 compared to previous years. 111 persons were killed and 2,384 injured in 822 communal incidents in 2017, compared to 86 persons killed and 2321 gravely injured in 703 incidents in 2016, and 97 persons killed and 2264 injured in 751 incidents in 2015.<sup>4</sup> Muslims suffered the brunt of the violence in these ‘communal violence’ incidents, which are, in fact, targeted mass attacks by violent Hindu groups themselves or networks established and nurtured by them.

Since specially 2017 ‘lynching’, often vigilante violence in nature, of mostly Muslims in cow-related attacks, have been carried out with regularity, by so-called ‘Gau Rakshak Dals’ (cow protection militias), many working in coordination with state forces. (Citizens Against Hate, 2017, 2018a). These have replaced, especially in 2018, ‘communal’ violence as the principal mode of targeted violence against minorities. (CSSS, 2019). Other forms of targeted violence against Muslims have been reported from several states, including a string of targeted mass attacks in March 2018, in West Bengal, Bihar and Telangana, and Uttar Pradesh and Rajasthan around religious festivals (Citizens Against Hate 2018b). Small-scale incidence of provocations, threats and attacks by Hindu groups on Muslim communities and their religious sites and practices, as well as opportunistic violence against overtly Muslim persons, such as *madrassa* students and *maulvis*, were reported in large numbers in 2017-18, from the states of Jharkhand, Haryana and Uttar Pradesh, among others. Interfaith couples have also faced harassment, with lynchings carried out against so-called ‘love Jihad’ – a purported Muslim conspiracy to lure Hindu women into marriage.

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<sup>4</sup> <https://www.hindustantimes.com/india-news/nearly-300-killed-in-2-276-communal-violence-incidents-in-2015-17-govt-tells-rs/story-dQwLNGd1NtcvnKE5Ut1HhP.html>

Other minorities have not been left alone. There were over 300 incidents of abuse targeting Christians in India in 2016, an increase from 177 incidents in 2015 (United States Department of State 2017). This, according to Evangelical Foundation of India (EFI) went up to 351 cases of violence against Christians and churches in 2017. This included four murders, 110 ‘physical violence/arrest’ cases, 70 cases of ‘threats and harassment’, 64 occasions when worship was forcibly stopped, and 49 cases of Christians being falsely accused and arrested. Most incidents were reported from southern Tamil Nadu, and from Uttar Pradesh, Chhattisgarh, Maharashtra and Madhya Pradesh, of which the latter four states are ruled by the BJP, and in which the report noted, ‘the Sangh [Hindu nationalist] cadres have free hand, with the police and administration either looking the other way, or complicit’.<sup>5</sup> EFI described 2017 as ‘one of the most traumatic’ years for Indian Christians in a decade, comparing 351 verified incidents of hate crime against Christians in 2017 to 147 in 2014, 177 in 2015, and 134 in the first six months of 2016.<sup>6</sup>

***Suggested issues/recommended questions:***

- i. Please describe what measures are being taken and planned to be taken by the State party for the detection, investigation, prevention of hate crimes in general, and on the basis of hatred because of the real or perceived religious/ cultural practices by people from religious minority community. Do the trainings for law enforcement officers, judges, prosecutors, lawyers in hate crimes take place during the refresher course?
- ii. Please describe legislative and other measures that are going to be taken by the State in order to protect the rights of people from religious minority community who constantly face religion-based hate crimes.
- iii. Please describe what measures will be taken to ensure that human rights defenders working with religious minority community fully enjoy their rights to freedom of association, assembly and expression without facing violence and reprisal from both state and non-state actors.

**2.2 Lynchings and vigilante violence – directed at vulnerable groups**

In a count, by the online data site India Spend, from 2012 onward, 127 incidents of cow related lynching/vigilante violence were reported, resulting in 302 victims, including 47 deaths. 56 % of these were Muslims, the rest were also Dalits. An overwhelming majority of these incidents took place in BJP ruled states or after BJP came to power in the centre in 2014.<sup>7</sup> Human Rights Watch reported that between May 2015 and December 2018, at least 44 people—36 of them Muslims—were killed across 12 Indian states in such incidents. Over that same period, around 280 people were injured in over 100 different incidents across 20 states. HRW concluded that the attacks were led by so-called cow protection groups, many claiming to be affiliated to militant Hindu groups that often with ties to the ruling BJP. The same report claimed “in almost all of the cases, the police initially stalled investigations, ignored procedures, or even played a complicit role in the killings and cover-up of crimes. Instead of promptly investigating and arresting suspects, the police filed complaints against

<sup>5</sup> <https://www.worldwatchmonitor.org/2018/02/2017-one-traumatic-years-indian-christians/> 24. Ibid.

<sup>6</sup> Evangelical Fellowship of India

<sup>7</sup> <https://lynch.factchecker.in/>

victims, their families, and witnesses under laws that ban cow slaughter.” (HRW, 2018:)<sup>8</sup> There has been failure of local authorities to enforce constitutional and international human rights obligations to protect vulnerable minorities. In most cases, families of victims, with the support of lawyers and activists, have been able to make some progress toward justice, but many families fear retribution and do not pursue their complaints. In July 2018, India’s Supreme Court issued a series of directives for “preventive, remedial and punitive” measures to address lynching. The implementation of these directives has been patchy, and lynchings have continued to take place, whilst justice for survivors seems remote.

***Suggested list of issues***

- i. Number of cases of lynchings and vigilante violence registered, including details of the cases
- ii. Progress of investigation in the cases
- iii. Please describe what measures are being taken and planned to be taken to reduce organised and targeted physical mob violence, especially in the cases of lynching of religious minorities.
- iv. Please specify why legislations of cattle protection allow unquestionable and unregulated power to Cow vigilantism and why in spite of existing criminal procedures, such hate crimes continue in an undeterred manner.
- v. Implementation of Supreme Court’s judgement in Tehseen Poonawalla vs Union of India & Others. [WP( c ) 754/2016] dated 17<sup>th</sup> July 2018] on mob lynchings and vigilante violence, across the cases registered
  - ‘Remedial’ measures: Compensation; speedy investigation and trial; legal aid
  - ‘Punitive’ measures: actions against state officials complicit either in the violence or in preventing survivors from accessing justice
  - ‘Preventive’ measures: proactive measures to prevent hate incitement and mobilisation, including online hate. Action taken to identify, apprehend and act against vigilante groups
- vi. Steps to count faith-motivated hate crimes: whether any attempt to count such crimes, and how?
- vii. Steps to prevent faith-inspired hate crime: any legislative changes planned, what measures, how?
- viii. Please specify why there isn’t stringent provision for prosecution of offenders in hate crime leading to death. In how many cases have the victim got justice and their damages repaired. Is there a system of accountability that the government is planning to adhere to through its legislation?
- ix. Were the police repressions against people from minority community and human rights defenders a manifestation of the State party's official position with regard to religious minorities or a personal initiative of police officials? If the latter is true, what measures have been taken against the police officers violated the basic rights and freedoms in these cases?

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<sup>8</sup> <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>

- x. Steps for police reforms, for greater accountability: status of working of Police Complaints Authority, transparency in police procedures, including criminal proceedings. Promoting greater autonomy of police procedures – preventing political interference. Training and sensitisation of police officers. Greater representativeness of police forces, especially in areas of high concentration religious minorities

### Commissions by the state

This has taken various forms

### **2.3 Custodial killings**

Several cases of death in police custody have been reported over the past years across the country. These below are a sample of those concerning members from minority communities

i. Mustain Abbas (Kurukshetra district, Haryana. 05-03-2016)

A cattle trader, the circumstances of Mustain's murder are unclear. Family claims he was killed by the police in collusion with local cow protection bodies. First Information Report (FIR) was filed and dead body handed over to family by police only after the lapse of several weeks, on the father of the deceased moving the Punjab & Haryana High Court under a writ of habeas corpus. The court severely reprimanded the district police chief and civil authorities, whilst ordering the police to produce the body of the victim. High Court also transferred the investigation in the case over to the Central Bureau of Investigation (CBI), the federal investigating agency. Civil society accounts reveal even this has not helped. Despite the lapse of over 3 years, family members are unaware of any arrests having been made of the accused. They have not been informed if the CBI has filed its investigation report.<sup>9</sup> Justice continues to evade the family.

ii. Minhaj Ansari (Jamtara district, Jharkhand. 03-10-2016)

Minhaj Ansari was killed in police custody, allegedly by police Sub-Inspector, Harish Pathak, along with an unidentified private person – reported in local newspapers as member of the VHP, a Hindu right-wing organisation - when the two beat up the victim so badly, that he succumbed to his injuries. Minhaj had posted pictures of beef and dead cows on his Facebook page. Family was informed that a criminal case had been registered against the police officer, and an unidentified person. The family suffers in silence, has received no justice.

iii. Mohammad Wahid (Secundrabad, Bulandshahr, Uttar Pradesh, 18-06-2018)

Family claimed victim was apprehended by police. Dead body was hand over after lapse of several hours.

iv. Taslim Ansari and Ghufran Ansari (Sitamarhi district, Bihar, 07-03-2019)

Newspapers reported that two men were picked up in a case of robbery and murder and were tortured to death by police personnel in custody. Families of the deceased shared photos and a video clip with the police of their bodies showing marks of nails hammered into them, as

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<sup>9</sup> Citizens Against Hate, 2018. Lynching Without End, New Delhi: CAH, page 39

their bodies were being washed before burial. Police was reported not allowing their families to see their bodies when they first informed them of the deaths, and the bodies were handed over only after 24 hours. While the Chief of Bihar Police confirmed the custodial death and called it “unacceptable”, the FIR registered for murder does not name the police personnel involved. Despite the passage of two months since the murder, the accused have not been arrested. And efforts by human rights activists to get the NHRC to investigate the matter by sending its personnel have not resulted in much result. No compensation too has been paid to the families.

v. Rizwan Asad Pandit (Pulwama, J&K, 17-03-2019)

Newspapers reported, a school teacher from Awantipora in Pulwama district of Jammu & Kashmir, was picked up by security forces and was later reported as having died in their custody.<sup>10</sup> The victim’s family was later reported to have claimed that there were horrific torture marks on the deceased’s body, including bruises over whole body, burnt body parts, left eye completely blackened, and left leg extensive swelled.<sup>11</sup> Media reports report magisterial inquiry is underway. It is not known if NHRC has taken any action in this case.

***Suggested list of issues:***

- i. Report of progress of investigation and access to justice to families in the stated cases
- ii. Numbers of custodial deaths, by year, by religious groups (besides other markers) and their circumstances and actions taken
- iii. Report on progress made in the investigation on those cases
- iv. Information on steps taken to prevent custodial death
- v. Please describe the mechanisms put in place for regular review and monitoring of the status of implementation of the directives of the Supreme Court and the National Human Rights Commission guidelines on arrest, and custodial violence and death.
- vi. Please report on the progress made in the establishment of effective and functioning independent Police Complaints Authorities in the State of Uttar Pradesh.
- vii. Measures to prevent torture in custody
- viii. Please describe whether Autopsies of the deceased in the cases of alleged extra judicial killings in UP were carried out in conformity with international standards, and whether families of victims have full and easy access to the full autopsy reports, and other relevant documentation.

**2.4 Extra judicial killings (called ‘encounter killings’ or ‘fake encounters’ in India)**

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<sup>10</sup> <https://www.deccanherald.com/national/north-and-central/kashmir-school-teacher-dies-in-police-custody-723980.html>

<sup>11</sup> <https://thewire.in/rights/rizwan-pandith-custodial-death-kashmir>

State police have also targeted Muslim youth, with Muslims killed disproportionately in extra judicial killings, what are called ‘fake encounter killings’ in India, in Uttar Pradesh and Haryana.<sup>12</sup> Northern Uttar Pradesh state particularly, has seen a spate of encounter killings by the local police since March 2017, with the coming to power of the current right-wing government in the State led by Chief Minister Yogi Adityanath. The state government enumerates the figures of encounter killings and arrests as its achievements in its first 16 months of rule. According to state government, there were 3,026 ‘encounters’ in UP from March 2017 to July 2018. In these encounters, 78 criminals were killed, 7,182 were arrested, and 838 sustained injuries. In the six months between January 2018 and July 2018, 61 criminals were killed in the encounters – an average of more than 8 persons per month.

The state government attributes encounter killings to the police acting in self-defence when attacked with firearms or lethal weapons by alleged criminals and maintains that the encounters took place in accordance with the norms, and procedure laid down by the National Human Rights Commission (NHRC) and the Supreme Court of India. The UP government continues to offer police encounter killings as evidence of its resolve to clean up the state of crime and criminals, in spite of concerns being raised by the UN Experts, Supreme Court and the NHRC. Yogi Adityanath, state Chief Minister went so far as to state on the floor of the State Legislature on February 15th, 2018, that the police encounters will continue, adding that sympathy for criminals was dangerous for a democracy.

Fact finding reports by civil society and media reports have stated that several victim families are being continuously harassed, threatened, arrested in fabricated cases, and even being assaulted with firearms by the police when they have tried to file complaints against errant police officials, thus leading to a situation of complete impunity for the Police in these State sponsored killings and no protection, compensation or procedural redress for the victim families.

On at least four occasions, the NHRC has raised concern over the encounter killings and has ordered investigation in 17 cases of alleged extrajudicial killings in the state of Uttar Pradesh, which is currently pending before the Commission for more than a year. On 22nd November, 2017, NHRC took *suo moto* cognizance of media reports about the Government of UP, allegedly endorsing killings in encounters by police, seeking improvement in law and order situation in the State. In the Notice sent to the State Government NHRC had observed that it seems that: “... *the police personnel in the State of Uttar Pradesh are feeling free, misusing their power in the light of an undeclared endorsement given by the higher ups. They are using their privileges to settle scores with the people.*”

On 11<sup>th</sup> December, 2018, a detailed communication [Reference UA IND 27/2018] on 15 such cases of extrajudicial killings from UP, was sent to the Government of India by the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or

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<sup>12</sup> Citizens Against Hate. 2018. Countering the Silence: Citizens Report on Extrajudicial Executions in Uttar Pradesh and Haryana, India. New Delhi: Citizens Against Hate.

degrading treatment or punishment. The five UN human rights experts expressed alarm about allegations of at least 59 extrajudicial killings by police in UP since March 2017 and the pattern of events in the cases, of individuals allegedly being abducted or arrested before their killing, and their bodies bearing injuries indicative of torture. The communication further reports that family members of victims and human rights defenders working on the cases have been harassed, subjected to death threats from police and had false criminal cases brought against them in apparent attempts to intimidate them. The experts called for an urgent review of the use of force by the UP police, and for a prompt, independent, and thorough investigations into all allegations of potentially unlawful killings and for perpetrators to be prosecuted. The Indian Government has not responded to the above communication. On January 14th 2019, the Supreme Court of India stated that the recent encounter killings in Uttar Pradesh require “serious consideration” and agreed to examine the details in this regard, which is currently pending before the Supreme Court.

### ***Suggested list of Issues***

- i. *Please report whether the allegation that the police officials of the State of Uttar Pradesh are killing people from marginalised communities in ‘fake encounters’ is accurate? If not, please provide details of the inquiries carried out to refute these allegations.*
- ii. *Please describe why the State Government of Uttar Pradesh is enumerating the figures of encounter killings and arrests as an achievement and an evidence of its resolve to clean up the state of crime and criminals, in spite of concerns being raised by the UN Experts, Supreme Court and the NHRC?*
- iii. *Please report on the number of cases of deaths caused in police action since March 2017 in the State of Uttar Pradesh and the progress of investigation and prosecution in these cases. Please report on whether any First Information Reports have been filed against police officials on the statements of the family members of the deceased?*
- iv. *Please also describe the measures taken by the Government to ensure that criminal investigations, prosecutions and trials in cases of extrajudicial killings in UP are launched and conducted in a swift, effective and impartial manner. Please also provide information on steps taken to prevent such cases?*
- v. *Please describe the mechanisms put in place for regular review and monitoring of the status of implementation of the directives of the Supreme Court and the National Human Rights Commission guidelines on arrest, encounter killings, and custodial violence and death.*
- vi. *Please report on the progress made in the establishment of effective and functioning independent Police Complaints Authorities in the State of Uttar Pradesh.*
- vii. *Please report on whether promotions and other types of awards have been given to police officials in Uttar Pradesh alleged to be involved in cases of extrajudicial killings?*
- viii. *Please describe whether Autopsies of the deceased in the cases of alleged extra judicial killings in UP were carried out in conformity with international standards, and whether families of victims have full and easy access to the full autopsy reports, and other relevant documentation.*

- ix. *Has any compensation been provided to the families of the victims? If so, please provide details including the type and the amount of the compensation involved. If no compensation has been provided, why not?*
- x. *Please report whether there has been any review of Section 46 of the Criminal Procedure Code regarding the use of force, including the exceptional use of lethal force, by all security officers to ensure compliance with international human rights law and principles of proportionality and necessity.*

## **2.5 Use of Pellet-firing shotguns against protestors in Kashmir**

Relevant CCPR provisions: Art. 6 (Right to Life), 7 (freedom from inhuman treatment), 12 (liberty and freedom of movement), 21 (right to peaceful assembly), 22 (freedom of association), 24 (rights of children)

In July 2016, international media reported mass-blinding in Kashmir as a result of indiscriminate use of force by security forces to control protestors. The New York Times called it “an epidemic of dead eyes”. The Guardian labelled it “the World’s first mass blinding”. In Sept 2017, Amnesty International, released its report, *Losing Sight in Kashmir*, being the documentation of 88 victims of pellet guns, between 2014 and 2017, with partial or complete blindness. Between 8<sup>th</sup> July 2016 and December of that year, Security Forces used indiscriminate and excessive force in responding to widespread protests, including firing on protestors. Among the weapons used were tear gas grenades, pepper gas shells, and live ammunition. The weapon of choice, and the one that drew particular scrutiny was 12-gauge shotguns firing ‘birdshots’, misleadingly called ‘pellet guns’. Whilst security forces called these “least lethal” and “less than lethal”, these have in fact caused deaths and serious, often permanent, injuries, many to the eye.

Reliable data about the number of injuries and blinding from ‘pellet guns’ is difficult to come by. According to official figures presented in the Parliament, 17 persons were killed by pellet injuries between July 2016 and August 2017.<sup>13</sup> According to information received by the Jammu and Kashmir State Human Rights Commission from 10 districts of the Kashmir Valley, 1,726 people were injured by metal pellets in 2016. (UNHCR, 2018) In January 2018, the then state Chief Minister Mehbooba Mufti stated before the State Assembly that 6,221 people had been injured by pellet guns in Kashmir between 8 July 2016 and 27 February 2017; among the victims, 728 had eye injuries. The Chief Minister reported that 54 persons suffered some form of visual impairment due to pellet injuries.<sup>14</sup> According to civil society groups the casualties were higher. Statistics from the state Department of Health showed that 837 of the estimated 12,000 people injured during protests since July 8, 2016 had sustained eye injuries, in one or both eyes, from pellet guns.<sup>15</sup>

Physicians for Human Rights carried out review of use of 12 gauge shotguns and Government of India’s Standard Operating Procedure (SOP) regulating their deployment, to conclude: “12 gauge shotgun is inherently inaccurate, indiscriminate, and capable of penetrating soft tissues even at a distance”, going on to note “in general kinetic impact

<sup>13</sup> Parliament of India, Rajya Sabha, Unstarred Question no. 511. Available from <http://rajyasabha.nic.in/>.

<sup>14</sup> Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.330, 12 January 2018, Annexure-A. Available from <http://www.jklegislativeassembly.nic.in/replies2018/12jan/UN330.pdf>.

<sup>15</sup> Physicians for Human Rights, 2016, p:12.

projectiles (such as 12 gauge shotguns) should not be used for crowd management or for crowd dispersal, as most of these weapons cannot be used safely or effectively against crowds".<sup>16</sup> A petition by the Jammu & Kashmir High Court Bar Association in the Supreme Court, in December 2016, demanding banning the use of pellet guns in Kashmir (along with prosecuting those using it, as well as compensation for the victims) has not resulted in any redress. The petition had earlier been rejected by the J&K High Court.

Pellet-firing shotguns continue to be used to this day. In April 2018, SMSH hospital in state capital, Srinagar, was reported treating 41 patients with pellet injuries to their eyes.<sup>17</sup> The same month, around 40 people were reportedly injured, including 35 hit in the eye, by pellet shotguns used against people protesting against the killing of civilians in Shopian and Anantnag districts.<sup>18</sup> In June 2018, United Nations issued its first ever report on the condition of human rights in Kashmir, claiming "impunity for human rights violations and lack of access to justice are key human rights challenges in J&K", to call for "international enquiry...".<sup>19</sup> Focusing especially on the situation from July 2016, after the outbreak of largescale demonstrations, the report noted, "one of the most dangerous weapons used against protesters in 2016 – and which is still being employed by security forces – was the pellet-firing shotgun".<sup>20</sup> In November 2018 reports emerged of an 18 month old, Hiba Nasir, having been injured in the eye, result of firing pellet gun shot inside her home in Shopian district, thus becoming the youngest reported victim of pellet guns.<sup>21</sup> Doctors warned that she may have permanently lost vision in her right eye. In January 2019, committee to project Journalists reported injuries suffered by journalists in Kashmir.<sup>22</sup> In repose to this continuing violation, on 25<sup>th</sup> March 2019, 50 Members of European Parliament (MEPs) wrote to Indian Prime Minister demanding ban on use of pellet guns in Kashmir.<sup>23</sup> But pellet-firing shotguns have neither been banned nor replaced with mitigating alternative. Injuries including death from pellet-firing shotguns have been reported from Kupwara district in April 2019 and Pulwama in May 2019.

The use of pellet-firing shotguns amounts to excessive and indiscriminate use of force against protestors. According to Physicians for Human Rights, this violates India's obligation to protect right to life and health and uphold obligations to uphold freedom of expression and assembly. Weapons and tactics used to disperse assembly also fails to meet

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<sup>16</sup> Physicians for Human Rights. 2016. Blind to Justice. Excessive Use of Force and Attacks on Health Care in Jammu and Kashmir, India. P 4.

<sup>17</sup> Aljazeera. 'Kashmir pellet gun injuries bring back memories of 2016 uprising'. April 2018. <https://www.aljazeera.com/indepth/features/kashmir-pellet-injuries-bring-memories-2016-uprising-180403164735687.html>

<sup>18</sup> Office of the United Nations High Commissioner for Human Rights. 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 General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan. Geneva: United Nation, p24

<sup>19</sup> Ibid.

<sup>20</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23198%20>

<sup>21</sup> Aljazeera. 'Kashmir's youngest pellet gun victim could lose complete sight' 7 Dec. 2018 <https://www.aljazeera.com/indepth/features/kashmir-youngest-pellet-gun-victim-lose-complete-sight-181206223840348.html>

<sup>22</sup> <https://cpj.org/2019/01/four-kashmiri-photojournalists-hit-by-pellet-gun-f.php>

<sup>23</sup> Tehelka. European Parliament member write to PM Modi, seek ban on use of pellet guns in Kashmir, revocation of AFSPA <http://tehelka.com/european-parliament-member-write-to-pm-modi-seek-ban-on-use-of-pellet-guns-in-kashmir-revocation-of-afspa/>

international standards on proportionality in assessing the use of force against protestors. In situations of civil unrest, international standards require that security forces adhere to basic principles of use of force, and the force must be targeted, discriminate and only used to prevent immediate loss of life, not to disperse a crowd.<sup>24</sup>

**Suggested issues:**

- i. Number of persons that have been injured on account of pellet-firing shot guns in Kashmir? What is their condition today?
- ii. Whether government has provided them any relief and rehabilitation? If so what?
- iii. What is the extant SOP on use of pellet-firing shotguns for crowd management?
- iv. Whether the use of these already are in violation of the SOP? If so, whether any punitive action has been taken or is contemplated against those that used the guns and those that approved their use?
- v. Whether any independent enquiry has been conducted by the government on the widespread use of pellet-firing shotguns in Kashmir from later part of July 2016, when largescale injuries and blinding have been reported, and their continued use today? If not, does the government plan any
- vi. Whether government has a policy on the use of pellet-firing guns as a weapon of crowd management in Kashmir? Are pellet firing shotguns used anywhere else in India as crowd management weapon?
- vii. Whether it plans to replace pellet-firing shotguns in Kashmir with any alternatives ? Whether there is any timeframe for this?

**3. Hate speech and incitement (Art 20 of CCPR)**

The law to deal with hate speech and incitement, generally, is contained in sections 153, 153a, 295a, and 505 of the Indian Penal Code. There is also section 123 (3A) of the Representation of People Act, 1951, applicable to political candidates, during elections. These are weak. State's record of enforcement of the laws is poorer still. According to an NDTV report of 2018, the use of hateful and divisive language by high-ranking politicians increased almost 500 % in the previous 4 years. Of the 45 leaders responsible for hate speech since April 2014, only in 6 cases was there evidence of the accused being reprimanded or cautioned, or issuing a public apology. At least 21 political leaders (or 48 %) had recorded more than one instance of hate speech.<sup>25</sup>

According to another study, the ruling BJP, had the largest number of lawmakers in the country with declared cases of hate speech against them. (by Association for Democratic Reforms)<sup>26</sup> The Ruling BJP's role in amplifying hate is demonstrated by another study, recently published, of more than 140 WhatsApp groups affiliated to the ruling BJP, in a span of 3 months from Nov/ '18 - Feb. '19 (in the run up to parliamentary elections currently

<sup>24</sup> Physicians for Human Rights (2016:8).

<sup>25</sup> <https://www.ndtv.com/india-news/under-narendra-modi-government-vip-hate-speech-skyrockets-by-500-1838925>

<sup>26</sup> <http://www.newindianexpress.com/nation/2018/apr/25/most-hate-speeches-in-india-by-bjp-lawmakers-adr-study-1806377.html>

underway). Demonstrating the extent to which hate messages are being circulated in the groups by volunteers and members of the ruling party, the study reports that approximately a quarter of 60,000 messages analyzed were anti-Muslims, Islamophobic and deeply inflammatory with an intent to create disharmony or feelings of enmity, hatred, or ill-will between Hindus and Muslims.<sup>27</sup> Ongoing parliamentary election campaigning by candidates, itself has been hate filled, with seniormost leaders of the ruling BJP, including PM Narendra Modi, BJP President, Amit Shah, Uttar Pradesh 1st Minister, Yogi Adityanath, among others reported to have been resorting to divisive especially Islamophobic campaigning.<sup>28</sup> The Election Commission of India – that polices as it supervises elections – has only taken a weak-kneed approach to hate speeches by senior politicians.

### ***Suggested list of Issues***

- i. Number of cases registered under hate speech / incitement under various provisions of law, and their circumstance (Sections 153, 153a, 295a, and 505 of the Indian Penal Code. And Section 123 (3A) of the Representation of People Act, 1951).
- ii. Progress of investigation in these cases
- iii. Data on accused senior state functionaries as well as prominent leaders of political parties that have been prosecuted under these provisions
- iv. Please describe what measures are being taken and planned to be taken to prevent hate speech on the lines of nationalism, race and religion, in particular from representatives of the state.
- v. Progress of implementation of Supreme Court's judgement in Tehseen Poonawalla vs Union of India & Others. [WP( c ) 754/2016] dated 17<sup>th</sup> July 2018] with respect to 'preventive' provisions, to prevent incidence of mob lynchings and vigilante violence.
- vi. Whether legal provisions to prevent hate speech and incitement are adequate, and what measures are being taken to strengthen those? This to include hate incitement on online platforms / on Internet, and measures to counter it, including through better laws and enforcement

#### **4. National Register of Citizens in Assam: Discrimination and denial of nationality**

Relevant CCPR provisions: Art 2 (non-discrimination), 7 (freedom from inhuman treatment), 14 (right to fair trial and independent judiciary)

The complete draft National Register of Citizens (NRC) in Assam was published on 30th July 2018, raising fears that, contrary to international law, it risked arbitrarily depriving the nationality of over 4 million persons and rendering them stateless. The populations at risk are overwhelmingly from minority ethnic, religious and linguistic groups - consisting Muslims and Hindus of Bengali descent and Nepali-speaking populations - with high percentages of women, children and daily wage workers, all among the most marginalized and excluded communities. The discriminatory and arbitrary manner in which this procedure is being carried out is causing despair among many and has, to-date, resulted in over 30 suicides as reported by those excluded or their relatives, in recent months.

<sup>27</sup> <https://thediplomat.com/2019/05/manufacturing-islamophobia-on-whatsapp-in-india/>

<sup>28</sup> <https://hatewatch2019.home.blog/page/3/>

NRC updation is being closely monitored by the SC.

The large exclusion of names from the draft NRC is the outcome of a mix of administrative weaknesses. Central to the exclusion, disproportionately, of linguistic, religious and gender minorities, however, is also the in-built discrimination in rules and procedures, segregating populations into 'original' and 'non-original' inhabitants and the use of differential standards to verify claims and supporting documents for the two categories:

- i. Section 3(3) of the Schedule to Rule 4A(4) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 speaks of "persons who are originally inhabitants of the State of Assam..." being eligible for inclusion in NRC but does not provide any definition or procedure for identifying these persons. NRC-SC has interpreted this arbitrarily to mean Assamese-speaking persons and indigenous tribes. Contrary to the letter and intent of Sec 3(3) of the said Schedule, all such persons have been included in the draft NRC automatically, without "further proof or inquiry". (SC order, SLP #13256/2017, dated 24-08-17, page 3)
- ii. The SC has endorsed this segregation of applicants as so-called original and non-original inhabitants. It has, further, approved automatic inclusion of 'original inhabitants' in the draft NRC (SC order, SLP #13256/2017, dated 12-10-17, page 3), while, on the other hand, decreeing a two-step process of 'exhaustive' and 'thorough' verification for applicants deemed non-original. (SC order, SLP # 13256/2017, dated 05-12-17, page 15). Whilst doing this, the SC did not provide any directions on a definition or procedure to determine who the original inhabitants of Assam were. (SC judgement, WP # 1020, dated 05-12-17, page 5 & 7). In practice, non-original applicants have been taken to mean mostly Bengali and Nepali-speaking and other minorities.
- iii. According to Section 3(2) of the aforementioned Schedule to Rule 4A(4), persons declared illegal migrants or foreigners are ineligible for inclusion in NRC, whereas those who entered Assam after 1966 and before 25<sup>th</sup> March 1971 (and registered themselves and are not declared foreigners), are eligible. But without a definition of original inhabitants, non-Assamese-speaking persons who have been residents of Assam legally since even before 1966, besides others eligible under Sec. 3(2), might have been arbitrarily categorised as non-original and a different standard of verification used against them, effectively jeopardising their application.

The modalities approved by the Supreme Court - that is closely monitoring NRC updation - for the Claims and Objections (C&O) phase of NRC updation that is currently underway (SC order, WP # 274/2009, dated 01-11-18 and 12-12-18) does not seem to provide much redress against these in-built discriminations. Rather, by making it easier to file objections against wrongful inclusion, including removing the bar on number of objections, doing away with the requirement of the objector to be a local resident and that of a penalty against false and frivolous objections, the modalities further compromise due process in NRC updation. They potentially violate Sec 17 of the Citizenship Act 1955, and have resulted in bulk objections being filed by those with vested interests, defeating the purpose of NRC updation.

Those not satisfied with the NRC C&O results will have the option to appeal to Foreigners Tribunals (FT), based on whose decisions, the final inclusion in NRC will be decided (Section 8 of the Schedule to Rule 4A(4) of Citizenship Rules 2003). FTs use the Foreigners Act, 1946 to test claims to citizenship, wherein the burden of proof is on those proceeded against (Sec. 9). These are heavily weighted against those proceeded against without providing the latter any statutory rights. In practice, by shifting the burden of proof on the accused, they set the bar too high, especially as those affected by the NRC exclusion are mostly poor and illiterate, and government record keeping is neither efficient nor accessible. Of late it is also being widely reported that FTs are coming under extraneous pressures, diluting their ability to act as objective tribunals following due process. Seeing FTs then, as a judicial remedy against miscarriage of justice, would be misplaced.

Those finally excluded will face the risk of being declared “foreigners”, rendered stateless, locked up in detention centres, or excluded as disenfranchised citizens. There is no extradition treaty between India and Bangladesh, nor does Bangladesh or any other country recognise those excluded as its citizens, creating a risk of mass statelessness, resulting from the discriminatory deprivation of the right to a nationality protected under article 5(d)(iii) of the ICERD.

In-built discrimination against minorities is also writ large in the attempts by the Government of India seeking, through the Citizenship Amendment Bill 2016, to make specific illegal migrants eligible for Indian citizenship and to fast-track the process of naturalisation for them. But by excluding Muslims from the ambit of its proposal – thus making citizenship contingent on religion - these provisions violate Article 14 of the Constitution, which guarantees equality.

The likelihood of mass statelessness facing large sections of population as a result of the highly flawed NRC updation process is real. Experience warns that our failures to prevent exclusion and discrimination against specific minorities, on such a large scale, could potentially open the way for graver abuse of human rights and violence against these groups. The massacre of over two thousand persons, a large percentage of those, women and children, in Nellie, central Assam in 1983, is a grim reminder of that failure

It was in light of these risks that 4 UN Special Rapporteurs jointly addressed a letter to the Government of India in June 2018, communicating concerns that “local authorities in Assam, deemed particularly hostile towards Muslims and people of Bengali descent, may manipulate the verification system in an attempt to exclude genuine Indian citizens from the updated NRC”, warning that “if these allegations are founded, the updated register poses a dire risk to thousands of Indian citizens who may wrongfully be declared as “foreigners” and consequently rendered stateless”.<sup>29</sup> This was before the draft NRC was published on 30<sup>st</sup> July 2018. Clearly the warning had not been heeded. The warning was

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<sup>29</sup> Special Rapporteur (SR) on minority issues; SR on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance; SR on the Promotion and Protection of the Right to Freedom of Opinion and Expression; and SR on Freedom of Religion or Belief, joint letter to Government of India, 11<sup>th</sup> of June 2018. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23884>

repeated in another letter by 4 SRs they wrote to Government of India on 13<sup>th</sup> Dec. 2018.<sup>30</sup> The outcome of this warning is yet to be felt on the ground, as the final NRC is readied for release on 15<sup>th</sup> July 2019.

### ***Suggested issues***

They are the same as those posed by the four SRs in their last communication:

- i. Please provide detailed information on any steps Government may have taken to ensure that the substance and implementation of the NRC update, including the administration of the claims and objection period, complies with India's obligations under international human rights law and standards.
- xi. In particular, please provide details on steps taken to ensure that the NRC update does not result in statelessness or human rights violations, in particular, arbitrary deprivation of citizenship, mass expulsions, and arbitrary detention.
- xii. Please provide details on safeguards ensuring that members of ethnic, religious and linguistic minorities are not discriminated against in the framework of the NRC update and the determination of their citizenship status.
- xiii. In this context, please provide disaggregated data on the race, ethnicity and religion of individuals who have been excluded from the draft NRC as well as individuals who have been declared as foreigners by Foreigners' Tribunals. If unavailable, please explain why.
- xiv. Please provide detailed information on the implications for those individuals who will be excluded from the final NRC. In particular, please elaborate whether they will face detention or deportation.
- xv. Please provide details on measures taken to ensure access to effective remedies for individuals excluded from the NRC.
- xvi. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities, including the Bengali Muslim minority, with regard to the right to nationality and to ensure that no person belonging to ethnic, religious or linguistic minority is arbitrarily deprived of her or his nationality.
- xvii. Please provide information on steps taken to ensure adequate training of members of Foreigners' Tribunals, police and NRC authorities on relevant human rights norms and standards, particularly those relating to non-discrimination and to persons belonging to ethnic, religious and linguistic minorities.

### **5. Weak Legal framework against discrimination and for minority protection**

Relevant CCPR provisions: Art 2 (Freedom of conscience and religious belief), Art 14 (equality before law), Art 18 (freedom of thought, conscience and religion) and Art 26 (equal protection of law), and Art. 27 (Right to culture, religious practice and language).

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<sup>30</sup> Special Rapporteur (SR) on Arbitrary Detention; SR on Freedom of Religion or Belief; SR on Minority issues; SR on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, joint letter to Government of India, 13<sup>th</sup> Dec. 2018.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24247>

The positive elements of India's constitutional and legal framework notwithstanding, there are several weaknesses that continue to compromise the implementation of the Covenant. As the 1997 CPPR review had highlighted, key elements here were about incomplete incorporation of CPPR provisions in domestic law; reliance on special powers under extraordinary laws; weak powers and capacity of the NHRC; and requirement of government sanction for civil proceedings against security force personnel. Recent legislative developments have further muddied waters, especially for religious minorities. These include particularly the ever-expanding state cow protection and anti-conversion legislations, the enabler of much violence recently against Muslims and Christians, respectively.

24 of the 29 provinces in India have, over time, enacted cow protection legislations. These ban the slaughter of cow as well as bulls and bullock, and export of cattle outside the state for slaughter. All cow protection laws create criminal offences that are cognizable, most are non-bailable. In Gujarat, slaughter of any cattle is punishable with life imprisonment. This use of the law to protect majority religious beliefs through the criminal procedure code, is remarkable, for a constitution that claims no state religion. Also remarkable is the prescription of food choices by a constitution that promises social and economic liberty, equally to all. They violate Art. 2 & 27 of the Covenant. Some provinces have provided formal role to private individuals to help police enforce the laws – including intelligence, identification and apprehension of alleged cow smugglers - creating openings for the rash of cow-related vigilantism and lynchings of Muslims and some Dalits that have occurred in recent years. The laws provide a cloak of protection to these organised groups that target minority members particularly.

Similarly, anti-conversion legislations (called Freedom of Religion Acts) in effect in 7 provinces - again remarkable under a constitution that guarantees freedom of conscience - severely impede implementation of Art 18 of the Covenant. All state laws seek to prevent conversion through 'forcible' or 'fraudulent' means, or by 'allurement' or 'inducement'; most requiring intent of conversion to be reported to authorities well in advance. Crimes under these acts are cognizable offences, again mostly non-bailable. These state laws exclude from their ambit reconversions to 'native' or 'original', thus effectively targeting only conversion to Christianity or Islam. Definition of 'force', 'fraud', 'allurement' and 'inducement', are all vague creating grounds for state actors in collusion with or under the influence of local majoritarian groups to target minority communities, especially Christians, on allegations of carrying out conversions.

Alongside, a weak legislative framework for hate crime mean that the rising incident of bias motivated violence especially against religious minorities have little checks. Sections 153 A and 153 B of the Indian Penal Code (along with sections 295a and 295b), make up the hate speech / incitement legislation in India. These forbid acts that would disturb social order and harmony. But rising incidence of violence against minorities – communal riots or lynchings - are extreme forms for hate crime, and not merely instances of public disorder / disturbance of peace. This has only poor acknowledgement in Indian jurisprudence, with only weak provisions for hate speech and hate crime. As a result, hate-motivated lynchings and vigilante violence are treated as normal murders and assaults, and recorded and prosecuted as such.

Protective legislation in favour of religious minorities too is weak. India's commitment to protecting and promoting rights of weaker sections is strong, but this excludes religious minorities. As an example, Muslim and Christian Dalits, are excluded by law (Presidential Order of 1950) from the Scheduled Caste category, depriving them of preferential benefits in education, jobs, welfare programmes, and protection against violence that Hindu and other Dalits are entitled to. A good example is the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 2015, that has helped check violence and harassment against scheduled castes (the Dalits). Muslim and Christian Dalits are deprived of this protection.

This lacuna has been highlighted by multiple UN bodies that have recommending bringing Muslims and Christian under the ambit of SC category (Special Rapporteur on Freedom of Religion or Belief, 2009, Special Rapporteur on Executions and Special Rapporteur on Minority Issues, both 2017, and CERD). These have had no effect.

There is also no anti-discrimination law in the country, despite the Constitution guaranteeing equality and India having committed through international treaties, to ensuring non-discrimination. CESCR has recommended that India strengthen enforcement of existing legal prohibitions on discrimination and consider enacting comprehensive anti-discrimination legislation, specifically prohibiting discrimination in employment, social security, housing, health care and education, among others. No action has been taken yet in this direction.

There is little targeting of minorities for improved access to services and benefits through universal programmes. There is also only a poor regime of monitoring, evidence gathering and assessment of the impact of state's efforts on minorities, and data disaggregated by religious groups, is poorly available, resulting in the poor showing on socio-economic outcomes. Without availability of data disaggregated by religious groups, there is little to know how minorities are performing.

Lastly, India has not ratified optional protocols under various UN treaties, including CPPR, foreclosing the option for individuals and groups affected by discriminatory laws and practices to access international forums of adjudication. At the same time, the response of national mechanisms for grievance redressal, such as the Supreme Court, National Human Rights Commission, National Commission for Minorities and National Women's Minorities, and others has been laboured.

### **Suggested Issues:**

- i. State cow protection legislations:
  - What measures are being taken to prevent their misuse to target minorities?
  - Whether these legislations violate CPPR provisions (Art 2): as they affect livelihoods of minorities
  - These laws criminalise offence under this act. Whether this is proportionate?
  - Whether states have involved private parties in enforcement of state legislations (intelligence, identification and apprehension of those deemed violating cow laws)? If so what measures are being taken to reform laws and rules to prevent this, and their misuse.

- What safeguards are being built into these laws against targeting of minorities
- ii. State Anti-conversion laws:
  - Whether they violate freedom of conscience (Art 18 of CCPR)
  - Whether they violate equality provision (Art 2 of CCPR), by excluding conversion to 'original' / 'native' faiths from their scope?
  - Whether definitions under these laws of grounds for prosecution – 'fraud', 'allurement' etc. have been clearly made, to prevent their misuse, targeting minorities?
- iii. Inclusion of Muslims and Christian Dalits in the SC category
  - What action have been taken on previous recommendations of UN bodies?
  - Whether the state party has a plan for their implementation?
- iv. Please describe the legislative and other measures that have been taken and/or planned to be taken to prevent discrimination, including on grounds of caste, ethnicity, religion and gender identity, and to restore the rights of people affected by it.
  - Whether any action has been taken on past recommendations of Convention on Economic, Social and Cultural Rights (CESCR) to enact anti-discrimination legislation?
  - Whether there is any attempt to including systematic data gathering on programmes and outcomes disaggregated by religion?
  - What Institutional framework is being planned, if any, for anti-discrimination