**ICCPR List of Issues Submission**

Joint NGO Submission to the UN Human Rights Committee on topics to be included prior to the Adoption of the List of Issues for the review of India under the ICCPR

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Reporting Organisations:

This submission by Human Rights Defenders Alert – India (HRDA) and All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI), outlines a number of issues for the consideration of the pre-session Working Group in its preparation of the list of issues to be examined during the Human Rights Committee’s (“Committee”) review of India regarding the implementation of the International Covenant on Civil and Political Rights (ICCPR). It specifically focuses on areas of concern with respect to India’s compliance with the International Covenant on Civil and Political Rights (ICCPR) related to National Human Rights Institutions and Human Rights Defenders. Both HRDA and AiNNI are national networks of human rights defenders.

This submission draws the Committee’s attention to questions about the following issues, which arise particularly in relation to Article 2(3), General Comment No. 3, Articles 6, 7, 9,19, 21 and 22 of the Covenant:

**Issue 1:** Status of National Human Rights Institutions (NHRIs) in India and measures being taken by India to amend 'the provisions in the Protection of Human Rights Act (Amendment) 2006 (PHRA) which deals with the composition of the National Human Rights Commission of India in order to comply with the provisions of ICCPR and recommendations given by the Sub- Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI) in 2011 and 2017.

**Issue 2:** The use and threat of torture and / or cruel, inhuman or degrading treatment or punishment by the Indian security forces, police, and other authorities against individuals who are under arrest (particular focus here on human rights defenders), detained or imprisoned and steps by the Indian government to ratify UNCAT.

**Issue 3:** There is an urgent need to strengthen protections against reprisals for human rights defenders which requires India to enact a strong law for the protection of HRDs in accordance with resolution of UN Human Rights Council in order to enable them to continue their legitimate work.

**Issue 4:** With increasing amount of crack down on the rights to freedom of expression, assembly and association, India needs to review and amend the provisions of Indian Penal Code particularly Sections 499 and 124 A and the Foreign Contribution Regulation Act 2010 (FCRA) etc, to safeguard the fundamental rights in the country and put them in line with the best practices and international standards.

**Constitutional and legal framework for protection of human rights - Relevant ICCPR Articles - General Comment No. 3, Article 2 on Implementation at the national level**

**National Human Rights Institutions (National Human Rights Commission of India)**

India has attained a high level of legitimacy and acceptance through the establishment of NHRIs. Despite having at least 172 NHRIs (national and state commissions on human rights, women’s rights, children’s rights, rights of the disabled, Scheduled Castes, Scheduled Tribes etc) with presence across India, India’s human rights record has actually worsened. The establishment of the National Human Rights Commission (NHRC) in 1993 through the Protection of Human Rights Act, 1993 (PHRA) was a step to demonstrate to the world, India’s commitment to protect and promote human rights. The NHRC was supposed to be an independent body that will oversee and monitor the human rights situation; and protect and promote human rights, defined by the Act as “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants” specifically mentioning the ICCPR.

NHRCI was due for its accreditation before the Sub-Committee of Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) in November 2016. After considering the status, performance and compliance of the NHRCI, the SCA ‘deferred’ the accreditation process for NHRCI to November 2017[[1]](#footnote-1).

The SCA report[[2]](#footnote-2) in 2017 mentioned that it welcomes the ‘proposed amendment to its enabling laws’ i.e. the Protection of Human Rights Act, 1993 (PHRA). On April 3, 2018, the Cabinet had approved the draft bill of Protection of Human Rights Act (Amendment) Bill 2018[[3]](#footnote-3). There had been no consultative process with the public and civil society in particular in this regard. It is also unclear whether the NHRC had proposed amendments and whether they were in line with the recommendations of the SCA as stated in its 2017 report and also whether all the proposed amendments have been considered by the government and if it has all been reflected in the draft bill.

The Bill was introduced in the Parliament but was never discussed and passed in any of the houses of the Parliament. Since the present lower house of the Parliament will be dissolved by May 2019, there is no scope of this draft bill being made into a law. The draft bill also does not contain any specific amendment regarding the recommendations given by the SCA during the 2018 accreditation process.

The SCA in its report concerning NHRC’s accreditation in November 2016 and its earlier reports in 2006 and 2011, had emphasised on the preponderance of judiciary in the NHRC. The SCA noted its concern that the qualification for the Chairperson, who needs to be a former Chief Justice of the Supreme Court “severely restricts the potential pool of candidates”[[4]](#footnote-4). The SCA further stated that quasi-judicial function is only one of the ten functions of NHRC as mentioned in its founding law[[5]](#footnote-5). The quasi-judicial function of NHRC should not be a justification for having the Chairperson and two other members out of four members to be from the higher judiciary. Adequate amendments need to be made in the Protection of Human Rights Act, 1993, (PHRA) to ensure representation to all segments of society and various human rights expertise in NHRC. Indian civil society, since the establishment of NHRC in 1993, expressed grave concerns about non-representation of civil society in NHRC. There had been no woman member in the NHRC between 2004 and 2017.

Chairpersons of other national commissions[[6]](#footnote-6) are deemed members of NHRC’s Full Commission and it has been argued by the NHRC that it contributes to the aspect of plurality and diversity in the NHRC. However, the deemed members seldom attend the Full Commission meetings. The SCA had also noticed that the ‘deemed members’ rarely attend the Full Commission meetings of NHRC and that this practise of the NHRC is not sufficient to ensure plurality in the Commission. Nine out of ten functions according to Section 12 of the Act, require expertise, engagement and knowledge of human rights. The SCA recognised the presence of “deemed members” from the NHRIs addressing caste, women’s rights, minorities, and scheduled tribes on the full statutory commission. However, there has been concerns that they are not adequately involved in discussions on the focus, priorities and core business of the NHRC non-judicial functions.

The SCA through its General Observations made in 2013 has mentioned that “pluralism refers to broader representation of the national society”. This includes representation from civil society as well. Though NHRC’s founding law provides that two persons having knowledge and experience about human rights shall be appointed as its members, since its inception only one person from the civil society (close proximity with the social wing of the current government) has filled this slot.

The lack of representation of religious and ethnic minorities in NHRC is worrying. Muslims being the largest minority in India with a population share of 14.23% is not represented in the country’s national human rights institution through a Member or a Chairperson. Same is the fact with tribal and Dalit communities in India who despite having a share of 8.6% and 16.6% respectively of the total population, are not represented in the NHRC[[7]](#footnote-7). The SCA had also mentioned in its report about the glaring deficiency in gender balance among the staff of NHRC, with only 20% (92 of 468)[[8]](#footnote-8) of them being women and had encouraged NHRC to ensure pluralism by having its staff from diverse sections of the society.

The SCA in its accreditation reports of NHRC, in January 2017, stated that “*The SCA is of the view that the selection process currently enshrined in the Act is not sufficiently broad and transparent. In particular, it does not:*

* *require the advertisement of vacancies;*
* *establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and*
* *specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.”*

The SCA further stated that for appointments, NHRC should:

* Publicise vacancies broadly;
* Maximise the number of potential candidates from a wide range of societal groups and educational qualifications;
* Promote broad consultation and / or participation in the application, screening, selection and appointment process;
* Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and Select members to serve in their individual capacity rather than on behalf of the organization they represent.

Despite repeated recommendations made by the SCA, the recent appointments were not held in a transparent and consultative process. The Government of India did not advertise the vacancy, did not spell out the criteria of assessment and made these appointments in a very secretive manner though the selection committee. It is to be noted that the representatives from the ruling government are in majority in the selection committee as the post of the Leader of Opposition in the Lower House is vacant since May 2014. The Government of India has yet again failed to make the selection broad based and transparent, which would have led to consideration of a wide-ranging pool of desirable candidates from various segments of the society – academicians, social scientists, jurists, etc.

The SCA has constantly expressed its dissatisfaction over the fact that the NHRC has insufficiently addressed the recommendations made in 2011 and 2016. The SCA recommended that the NHRCI advocate to amend the Act to remove the requirement that the Secretary General and Director of Investigations be seconded from the Government, and to provide for an open, merit-based selection process. The SCA also expressed concerns about the practice of having police officers and former police officers involved in the investigation of human rights violations, particularly in circumstances where the alleged perpetrators are the police. This practice has adverse implications for the actual and perceived independence of the NHRC.’

In June 2016, the NHRCI Chairperson and former Chief Justice of India, HL Dattu, described this institution over which he presided as “a toothless tiger.” It is because NHRCI investigates human rights violation cases with very limited resources, but at the end, when it arrives at a finding, it can only recommend remedial measures or direct the state concerned to pay compensation. The NHRCI is a recommendatory body and does not have powers to prosecute a human rights violation on its own or see that its recommendations are carried out. In 2017, the Supreme Court of India reiterated NHRCI’s own observations that it is a toothless while dealing with the alleged extra-judicial killings of 1,528 persons in Manipur by police and armed forces.

GANHRI’s SCA report in November 2017 recommended the NHRCI to be re-accredited with ‘A’ status. This recommendation of ‘A’ status in November 2017 came after the SCA decided to defer NHRCI’s accreditation in November 2016. In the one year of deferment, Indian NHRCI was supposed to undertake steps to amend the Act to be in greater compliance with the Paris Principles. However, with no change to demonstrate and only a set of proposed amendment to the Act, Indian NHRC was granted the ‘A’ status. This was in itself an unique step by the SCA, moving away from its own precedence, where proposed changes/amendments held no grounds until they were enacted. The proposed amendments in the Act, which were the grounds for obtaining the ‘A’ status, weren’t discussed and enacted by the Parliament. Hence, no changes in the concerns put forward by the SCA in 2011, 2016 and 2017. The grounds on which Indian NHRC was granted the ‘A’ status remain a concern.

**Suggested Questions**

* Specify steps being considered to ensure that the NHRCI is in complete compliance with the Paris Principles. Towards the same, the NHRCI should follow all the SCA recommendations on transparency in appointment process, calling for nominations for Chairperson and Members of NHRCI and discussions on annual reports in the Parliament.
* Specify steps being considered to ensure pluralism and diversity in the composition of the National Human Rights Commission.
* Specify steps being considered to ensure representation of human rights defenders in the composition of the NHRCI.
* Specify steps being considered to ensure that serving bureaucrats and senior police officers and army personnel are not seconded to the NHRC.
* Is government considering developing a system of independent special investigation teams, (not comprising only police) and special rapporteurs (not including only former bureaucrats or former senior functionaries of the NHRCI) to look into cases of human rights violations.
* The NHRC should also ensure that in addition to compensation to victims of violations it should also start recommending criminal prosecution of those found responsible for the human rights violation and also ensure that rights contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 are meticulously respected and adhered and thus that assurance of non-repetition of the violation by the perpetrator and delivering an apology to the victim are also incorporated in the recommendations of the NHRCI.
* What steps the Government of India has taken to ensure that all national level and state level thematic human rights institutions are encouraged to closely adhere to Paris Principles and thus build robust, effective, plural, transparent and accountable NHRIs in India?

**Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, treatment of persons deprived of their liberty (Relevant ICCPR Articles - 2. 6, 7, 9 and 10)**

The Indian government has signed and ratified several international conventions that are not part of domestic law, but by ratifying them, India commits itself to being legally bound by their obligations, and respecting and implementing their provisions. This includes one specific convention which prohibit torture and inhuman and degrading treatment: United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). India has not ratified the UNCAT, but has signed the Convention on 14 October 1997. India has not signed the Optional Protocol to the ICCPR, which permits individuals to bring complaints of violations before the Human Rights Committee.

In contravention of its international obligations, including under Article 7 of ICCPR and UNCAT, torture and ill treatment are not defined as crimes under Indian law. In India, neither Constitution nor statutory law contains an express definition of torture. India continues to have several draconian security laws that are supposedly aimed at stopping terrorism but are used effectively by state agents to abuse human rights. These laws include the Terrorist and Disruptive Activities (Prevention) Act (TADA), Prevention of Terrorism Act (POTA), the Disturbed Areas Act (DAA), and the Armed Forces Special Powers Act (AFSPA), the Assam Preventive Detention Act, National Security Act, and the Armed Forces (Jammu and Kashmir) Special Powers Act (1990). These laws have the most deplorable effects on the human rights and they have further institutionalized torture. In fact, custodial torture at times is rather a deliberate practice sanctioned by top ranking officials and policy makers.

Concerns regarding the widespread use of torture in India have been repeatedly expressed by national and international civil society organizations, the NHRC, the United Nations and by international experts on several occasions. As per the latest NHRC annual report, during 2015-16, the investigation division of the NHRC dealt with a total of 3,848 cases of custodial deaths, including 3,606 cases of death in judicial custody and 242 cases of death in police custody. Figures released by NHRC between 2008 to 2011 showed 4,034 registered custodial deaths and 1,836 registered cases of custodial torture. The worst affected state was Uttar Pradesh, with 999 deaths and 1,552 cases of torture. The fact finding data of the National Project on Preventing Torture in India (NPPTI) reports that 1.8 million people fall victim to police torture each year in India. In most of these cases, it is the vulnerable sections of the society – particularly Dalits, women, religious minorities and the poor – that are targeted.

In May 2017, the Attorney General of India stated: *“the concept of torture is completely alien to our culture and it has no place in the governance of the nation.*” At its third periodic review by the UN Human Rights Council (HRC) under the mechanism of the Universal Periodic Review (UPR) on May 4, 2017*,* in Geneva, India accepted recommendations to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Of the 103 countries which participated in India’s third UPR, 35 reiterated the recommendations made during India’s first UPR in 2008 and second UPR in 2012, to ratify UNCAT. India accepted most of these 35 recommendations, barring those which called for swift/early ratification. Having signed the UNCAT in October 1997, its ratification is long overdue.

As at present, under the Indian domestic legal framework, torture as defined in Article 1 of the Convention is not yet criminalised. Coming under heavy pressure from the international community and civil society, in 2010 the Government of India had presented to the parliament a Prevention of Torture Bill to make torture a punishable offence; however, the bill lapsed after failing to pass the Upper House (Rajya Sabha). The bill was sharply criticised by law and human rights experts as it presented serious gaps, including lack of a definition of torture complying with international standards and of firm provisions to set accountability for officers '”in command”.

On October 30, 2017, the Law Commission of India (LCI) under the chairpersonship of Justice B. S. Chauhan submitted an 80-page report on “Implementation of UNCAT through legislation” to the Ministry of Law and Justice. The matter had been referred to the LCI in July 2017, following a recommendation by the Supreme Court. In addition, the LCI submitted a draft Prevention of Torture Bill in 2017. There are some crucial differences between the 2010 and the 2017 draft laws on a number of crucial aspects including the definition of torture; however the 2010 Prevention of Torture Bill remains more comprehensive than the one proposed by the LCI.

Laws governing India's armed forces allow human rights violations by security personnel to be tried in military not civilian courts, further entrenching impunity. The provisions contained both in the Code of Criminal Procedure, 1973 and in special security laws have led to de jure or de facto impunity from prosecution to perpetrators. Sec. 197 of the Criminal Procedure Code provides for the need of prior sanction to try security forces. Special laws, such as the AFSPA, contain similar provisions barring prosecution without prior government sanction in respect of anything done or purported to be done in exercise of the powers conferred by this Act. Permission to prosecute police and paramilitary personnel are rarely granted by the government. It is, therefore, impossible to prosecute any individual for torture or ill-treatment, with disciplinary sanctions and the provision of compensation being the only remedies available in theory.

**Suggested Questions**

* Specify steps the government has taken to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that was signed in the year 1997.
* Specify steps the government has taken to expedite ratification of the optional protocols of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
* Specify the procedure being adopted to enact a comprehensive legislation on prevention of torture, taking into full consideration the recommendations/ suggestions made by the select committee.
* Specify steps being taken or will be taken to improve the recording and reporting on deaths in all forms of detention.
* Why are prosecution and conviction rates of police officers following deaths in custody so low? What steps are being taken to improve the rates of prosecution and conviction?
* Provide explanation on how the power to detain people without charge for longer periods is compatible with the provisions of the Convention. Is there any data base of people who were detained and whether they were eventually charged, and convicted or acquitted, including for what offences.
* Specify steps being taken to remove requirement of sanction for prosecution of security personnel and grant permission to enable prosecution in all pending cases involving human rights violations.
* Will the government reconsider as a matter of principle making a declaration under Article 22 that it recognises the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation of the provisions of the Convention?

**Human Rights Defenders: Relevant ICCPR Articles - 6, 9, 10, 19, 21, 22**

Human rights defenders (HRDs) in India work on the front lines of society and take up a range of issues including Right to Information, administrative corruption, criminal and administrative detentions, land and environment rights, caste discrimination, workers’ rights and child rights. Article 12 of the UN Declaration on HRDs mandates states to take necessary measures to ensure protection of human rights defenders. The ICCPR further guarantees the freedoms of expression, association and peaceful assembly. Although freedoms of expression, association and assembly are guaranteed in the Constitution of India, human rights defenders (HRDs) face stark reality in India with unusually severe reprisals for exercising these freedoms. The government has failed to meet this obligation. The condition of HRDs in India remains dire and the country does not have a HRD protection law.

The recent instances demonstrate that those strong dissenting voices have found the freedom of expression, association and assembly of not just HRDs, but also of writers[[9]](#footnote-9), artists[[10]](#footnote-10) and certain sections of the media severely curtailed or threatened. Recent instances of attacks indicate a new pattern of retaliation both from State and non-State actors who range from the Right-wing affiliated organisations, to intolerant religio-political formations, to vigilantes targeting sexual minorities, to outfits justifying institutionalised discrimination and to mafias allegedly promoted by corporates indulging in land grabbing and environmental degradation. These instances assume the form of criminalisation, violations by law enforcement agencies and abuses by private actors with whom these agencies often brazenly collude.

Between 2014-2018, Human Rights Defenders Alert – India (HRDA)[[11]](#footnote-11) has documented and intervened in 402 cases of attacks on HRDs across the country. HRDs are being profiled, harassed, intimidated, ill-treated and subjected to hateful abuse in the media. They are arbitrarily arrested or detained, and a number of cases filed against them, their offices raided and files stolen or confiscated; and in extreme cases, they are tortured, made to disappear or even killed. Women, Dalit and religious minorities HRDs are most vulnerable. In 36% of these cases intervened by HRDA, HRDs are charged with fabricated cases and 11% cases of killings. According to 2017 report by Global Witness (GW)[[12]](#footnote-12), India documented a three-fold increase in land rights defenders murdered and has been placed fourth in global rankings of the worst affected. HRDs using the Right to Information (RTI) have come under direct attacks by the State and non-State actors. According to the Commonwealth Human Rights Initiative (CHRI)[[13]](#footnote-13), between 2014-2018, 49 RTI activists were killed including 3 deaths by suicide, 68 were assaulted and 66 were harassed or threatened. Between 2014-2018, on three specific instances, HRDs were barred from travelling outside India and engaging with UN and other international bodies. Several activists were barred from entering India on grounds of involvement in ‘NGO Activities’.

In the recent years, there is a growing trend of state repression through the use of criminal justice system which is aimed to vilify, criminalise and suppress human rights defenders and their organisations. Legislations such as the sedition law with section 124A of the Indian Penal Code, Unlawful Activities Prevention Act (UAPA), as also some state laws were misused to target HRDs. Sedition law has been repeatedly abused by local authorities to silence dissent. Sections dealing with sedition were freely imposed by the state on folk singers, cartoonists, students and defiant political activists. Even works of art and literature containing what the State felt was “blasphemous and seditious” were banned in the recent past and its authors faced charges.

In addition, several reports have further alleged that that the NHRC has failed to investigate and act on cases brought to it by civil society organisations. The NHRCI has a Focal Point for Human Rights Defenders (HRDs) which can be accessed by human rights activists/defenders and others working in the field. This focal point has no specific powers to act on cases involving HRDs. Former UN Special Rapporteur on HRDs, Ms. Margaret Sekaggya, after her visit to India in January 2011, had recommended improvements in this regard. The situation of HRDs in India is exacerbated by the fact that the country doesn’t have a HRD protection law. The government has failed to implement in letter and spirit, a UN General Assembly Resolution on Human Rights Defenders.

**Suggested Questions**

* Specify steps taken to enact a strong law for the protection of HRDs in accordance with the resolution of the UN Human Rights.
* Specify steps taken to stop the intimidation, harassment and judicial persecution of human rights activists and especially those who engage with the international community on India’s human rights commitments?
* Specify steps taken to review and amend the IPC particularly sections 124 (a) and 499 to ensure that these are not misused to target the HRDs.
* Specify steps taken to review, amend or repeal the Unlawful Activities Prevention Act and National Security Act.
* Specify steps taken to ensure that NHRC’s Focal Point on HRDs gets the position of a member of the Commission with sufficient powers to act on complaints with a dedicated team drawn from those with an HRD background as recommended by the UN Special Rapporteur on the protection of HRDs in her report of March 2012 after the 2011 country visit.
* Provide information if the NHRC has a national and state protection programme for HRDs at the central and state levels.

**Freedom of expression, assembly and association** - **Relevant ICCPR Articles - 3,** **6, 7, 19, 21 and 22**

India has witnessed an increasing amount of crack down on the rights to freedom of expression and assembly and association. After a new political dispensation took over power in India in 2014 under the Right-wing Hindu nationalist Bhartiya Janata Party (BJP), crackdowns on freedom of expression and assembly, pressure on civil society, threats against human rights defenders and media workers have intensified tremendously. The right wing government tightened surveillance on foreign-funded civil society groups and used police machinery to perpetuate violence, harassment and judicial intimidation against those groups who were exercising or sought to exercise their rights to association and assemblies in various parts of the country. Attacks on freedom of association have often been coupled with clampdowns on freedom of expression and assembly, including through internet restrictions, laws undermining the right to protest, the closing down of independent media and persecution of human rights activists.

India is now ranked at 138 out of 180 countries in the World Press Freedom Index[[14]](#footnote-14). According to 2017 Global Impunity Index[[15]](#footnote-15) by the Committee to Protect Journalists (CPJ), India features on the list of countries having high impunity for the killers of journalists. The data recorded by Committee Against Assault on Journalists in India[[16]](#footnote-16) (CAAJ) shows that between 2014-2018, 17 journalists were killed, 21 charged with fabricated cases and 44 cases of threats personally and online. According to the 2015 annual report of Reporters Without Borders, India was among the three most dangerous countries for journalists in 2015, with nine reporters losing their lives during the year. Indian journalists “daring to cover organised crime and its links with politicians have been exposed to a surge in violence, especially violence of criminal origin, since the start of 2015.

Several Indian journalists face dangerous attacks by the State and private agencies for pursuing stories against governments, powerful people of political parties and corporations, resulting in restrictions on their freedom. Such targeting of journalists is often driven by a sense of vengeance and an intention to silence them and discourage others from daring to do their professional duty. The impunity with which such attacks take place only shows that, in India, freedom of speech and expression cannot be taken for granted. Media freedom is further curtailed by corporations taking control of media houses and pressurising journalists from reporting according to their conscience.

The right to freedom of expression and opinion as one of the basic human rights is enshrined in the international human rights documents. Article 19 of the ICCPR guarantees the right to freedom of expression and opinion; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. Article 19 (1a) of the Constitution of India also guarantees the right to freedom of expression. It states that “all citizens have the right to freedom of speech and expression.” However, in policy and practice, the Indian authorities continue to use restrictive legislation to prosecute journalists and media agencies, human rights activists, writers and artists.

Apart from assaults on journalists by unidentified individuals, many of such actions are often veiled behind a plethora of legal charges such as sedition, contempt of court, public disorder, obscenity, Officials Secrets Act, defamation etc. The Indian authorities have used restrictive provisions of the Indian Penal Code (IPC) (1860) which was drafted during British colonial rule to curb freedom of expression. Section 499 of the IPC criminalises defamation. It defines defamation as the utterance or publication of information with the intention to harm the reputation of a person, company or an association. Section 500 proposes a fine and two-year imprisonment sentence to those found guilty of defamation. It is frequently misused by individuals, politicians, business persons and corporations to target journalists who write critical investigative articles about them.

The right to assemble and associate peacefully rests at the core of the functioning of the democratic systems and is closely related to other cornerstones of democracy and pluralism, such as freedom of expression and freedom of association. It is enshrined in a number of international human rights instruments. The Constitution of India provides for freedom to assemble and the freedom to associate. Article 19 (1) (b) provides that all citizens shall have the right to assemble peaceably and without arms. While Article 19 (1) (c) accords all citizens the right to form associations or unions or cooperative societies. Article 22 of the ICCPR guarantees the right to freedom of association. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society.

Despite the fact that India became party to the international and regional instruments on human rights, many colonial-era statutes impact the freedom to assemble in India even today. Section 144 of the Code of Criminal Procedure which empowers executive authorities to issue orders requiring individuals to abstain from committing certain acts is routinely invoked to arbitrarily prevent peaceful public gatherings on the pretext of maintaining law and order and to stifle people’s movements. Existence of these laws and adoption of new ones amply demonstrate the level of assault on freedom of association. Civil society groups working on human rights issues have been subjected to intense regimen of bureaucratic scrutiny and harassment. Peaceful protests and other forms of assembly have been violently suppressed and space for civic society organizations and their activities has shrunk as the ruling regime seems determined to eliminate all perceived sources of opposition and dissent.

In addition to attacks on dissent, protests, freedoms of expression and assembly, freedom of association, especially those organisations possessing valid licenses under the Foreign Contribution Regulation Act (FCRA), have come under severe systematic attack from the Indian government. The 2010 amendments[[17]](#footnote-17) in FCRA make it compulsory for all NGOs that receive foreign grants to re-register every five years and empowers the Union Ministry of Home Affairs (MHA) to suspend, cancel or freeze the FCRA account of an organisation if it determines that the organisation violated any provision of the FCRA. The amendments increased the reporting requirements by NGOs and them requiring excessive administrative resources. In addition, Indian banks are compelled to report any funds received from foreign sources within 48 hours. These provisions make it easy for the authorities to target organisations critical of government policies. Several organisations critical of government and its policies, advocating for human rights and social justice, providing legal aid etc. had their FCRA either not renewed, renewed and then cancelled, suspended and cancelled. It is important to note that MHA had initiated these actions solely based on reports by the intelligence bureau and organisations are never given an opportunity to respond before any action is taken by the MHA.

Between May 5 and June 9, 2015, the MHA cancelled the registration of 4,470[[18]](#footnote-18) CSOs for violating the FCRA. It justified its decision on the grounds that the CSOs had not complied with FCRA and had failed to submit tax returns. This action was followed by the cancellation of the licenses of 9,000[[19]](#footnote-19) CSOs in April 2016 for FCRA violations. In August 2017, as gathered from the MHA website, more than 11,000 organisations’ FCRA license were cancelled. Some of the prominent organisations whose FCRAs were either not renewed, renewed and then cancelled, suspended and cancelled are Indian Social Action Forum, Centre for Promotion of Social Concerns, Lawyers Collective, Sabrang Trust, Centre for Justice and Peace, Greenpeace India, Church’s Auxiliary for Social Action, Navsarjan Trust etc. Many CSOs have effectively been left in limbo, unable to receive funding impacting a large base of human rights work in the country and affecting many activists depending on their meagre remunerations for their work. NHRCI despite several petitions, requests and meetings, hasn’t intervened in the FCRA cases despite its initial order in one case calling such non-renewal by MHA prima facie arbitrary.

In April 2015, the UN Special Rapporteur on Freedom of Peaceful Assembly and Association, Maina Kiai, used the example of the Indian government’s action against Greenpeace India to illustrate his concern about how governments place restrictions on access to foreign funding to curtail the activities of associations engaged in environmental protection work. The special rapporteur’s analysis submitted to the Government of India on April 20, 2016, argued that the ability to access resources, including foreign funding, was a fundamental part of the right to freedom of association, granted under the International Covenant on Civil and Political Rights (ICCPR), which India is a party to.

**Suggested Questions**

* The provisions of Indian Penal Code, particularly Sections 499, severely undermine the right to freedom of expression and opinion. Specify steps taken to review or amend them to bring into compliance with the best practices and international standards in the area of freedom of expression.
* Specify steps taken to ensure that journalists, writers and social activists work freely and without fear of retribution for expressing critical opinions or covering topics that the government may find sensitive.
* Provide information on the action plan to repeal or comprehensively amend the FCRA particularly sections that restrict the ability of civil society organisations from receiving funding from foreign sources and the cumbersome reporting and administrative requirements for civil society organisations.
* What steps did the NHRCI take to ensure that the FCRA is not misused against CSOs (HRDs) and what are the results of its interventions if any?
* What steps did the NHRCI take to ensure compliance to the recommendations on FCRA by the UNSR on HRD after her India visit in 2011?
* Did the NHRCI exercise its powers under the PHRA and undertake a review of the law and place it before the Parliament?

1. <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Final%20Report%20-%20Nov%202016%20-%20English.pdf> [↑](#footnote-ref-1)
2. <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20November%202017%20-%20ENG.pdf> [↑](#footnote-ref-2)
3. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=178411> [↑](#footnote-ref-3)
4. <http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Final%20Report%20-%20Nov%202016%20-%20English.pdf> [↑](#footnote-ref-4)
5. The Protection of Human Rights Act, 1993. [↑](#footnote-ref-5)
6. PHRA Section 3(3) states that “The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12”. [↑](#footnote-ref-6)
7. ANNI Report 2016 [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. http://www.bbc.com/news/world-asia-india-34513311 [↑](#footnote-ref-9)
10. <https://freemuse.org/?s=India&asl_active=1&p_asid=1&p_asl_data=cXRyYW5zbGF0ZV9sYW5nPTAmc2V0X2ludGl0bGU9Tm9uZSZzZXRfaW5jb250ZW50PU5vbmUmc2V0X2luZXhjZXJwdD1Ob25lJnNldF9pbnBhZ2VzPU5vbmUmY3VzdG9tc2V0JTVCJTVEPW5ld3MmY3VzdG9tc2V0JTVCJTVEPWRlZl9hcnRfZnJl> [↑](#footnote-ref-10)
11. [www.hrdaindia.org](http://www.hrdaindia.org) [↑](#footnote-ref-11)
12. <https://www.globalwitness.org/en-gb/press-releases/india-focus-worst-year-ever-environmental-and-land-rights-activists-least-200-killed-2016-crisis-spreads-across-globe/> [↑](#footnote-ref-12)
13. <http://attacksonrtiusers.org> [↑](#footnote-ref-13)
14. <https://rsf.org/en/ranking> [↑](#footnote-ref-14)
15. <https://cpj.org/reports/2017/10/impunity-index-getting-away-with-murder-killed-justice.php> [↑](#footnote-ref-15)
16. <https://www.caajindia.org> [↑](#footnote-ref-16)
17. <https://fcraonline.nic.in/home/PDF_Doc/doc00600120151214130739.pdf> [↑](#footnote-ref-17)
18. <http://www.indiandefensenews.in/2015/06/in-fresh-crackdown-govt-cancels.html> [↑](#footnote-ref-18)
19. <http://www.hindustantimes.com/india/home-ministry-cancels-registration-of-9-000-foreign-funded-ngos/story-UpnVtwpwSrSJzqEdYygiJN.html> [↑](#footnote-ref-19)