**South Asia Human Rights Documentation Centre**

**Submission to the United Nations Human Rights Committee for the fourth periodic review of India under the ICCPR.**

13 May 2019

The South Asia Human Rights Documentation Centre (SAHRDC) works for the protection and promotion of human rights by collecting, verifying and disseminating information on civil and political rights in the South Asian region. It is independent of any government, political ideology, economic interest or religious creed.

SAHRDC played a key role at the UN Commission on Human Rights (CHR), where it brought out a special series of *Human Rights Features* focusing on CHR-specific issues. *HRF* in Geneva was the only publication of its kind at the CHR, reporting on the developments at the CHR session, analyzing the issues on the CHR’s agenda and providing focused recommendations. All issues are available at: http://www.hrdc.net/sahrdc/hrfeatures.htm.

We are happy to learn that India will be taken up for preliminary review in July this year for its adherence to the ICCPR. We trust that this review will be beneficial for India and strengthen existing institutional mechanisms for the protection and enhancement of Human Rights in India.

Suggestions for List of Issues

 (Articles 2, 3. (a)

**Ending Immunity**

**Why is prior sanction from the executive necessary to bring forward prosecution against official perpetrators in a judicial forum?**

1. According to the Indian Code of Criminal Procedure (CrPC) Section 197[[1]](#footnote-2) and its current interpretation and implementation, courts may not hear a case against a police officer unless Central or State government gives authorization for prosecution. Requiring government approval for any prosecution of a police officer is a major impediment to bringing justice for serious abuses committed by police officers. Furthermore, the unsurprising regular refusal of police officers to register First Information Reports (FIRs) and the threats and abuse faced by those who attempt to submit an FIR. for police misconduct, further impedes the pursuit of justice.
2. Additionally, the Indian Supreme Court has interpreted Article 300(1)[[2]](#footnote-3) of the Indian Constitution to mean that individuals cannot sue the government in tort or damage suits.. While the Supreme Court has allowed some individuals to receive compensation for cases of constitutional violations brought under Article 32 or Article 226. of the Constitution, the Court has created difficult standards for obtaining compensation and has left the payment of any such compensation at the discretion of the presiding judge in a particular case..

Given that a) prosecution of police officers requires government sanction and simply filing an First Information Report (FIR) brings threats and intimidation, and b) an individual is not able to sue the State or Central government for police abuses, and can only receive any compensation at the discretion of presiding judges, victims of police abuses have little incentive to bring cases to achieve vindication of their rights and, in turn, police officers enjoy de facto immunity for serious abuses.. In order to ensure effective accountability and an end to police impunity, individual police officers who commit serious abuses must face criminal prosecution, and individual victims of police abuse must have the opportunity to receive just compensation. Indeed, both international law and the Indian Supreme Court have recognized the importance of such criminal and civil remedies for making victims’ whole, effectuating a system of justice, and deterring future abuse.

 **Right to Life**

 **(Articles . 6, 7, 9, 14 )**

**Is it true that various Governmental Committees have recommended the repeal or a major writing down of the Armed Forces Special Powers Act?**

The Armed Forces (Special Powers) Act of 1958 (AFSPA) is one of the more draconian legislations that India has. Under this Act, all armed forces. personnel are given unrestricted and untrammeled power to carry out their operations, once an area is declared disturbed. Even a non‑commissioned officer is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to "maintain the public order."

The AFSPA gives the Indian armed forces including para military forces, wide powers to shoot, arrest and search, all in the name of "aiding civil power." It was first applied to the North Eastern Indian states of Assam and Manipur and was amended in 1972 to extend to all the seven states in the North East. It is presently in force in Assam, Manipur, parts of Meghalaya, parts of Arunachal Pradesh and Nagaland. It is also in force in the northern state of Jammu and Kashmir. The enforcement of the AFSPA has resulted in innumerable incidents of arbitrary detention, torture, rape, and looting by armed forces personnel. The Government of India seeks to justify this legislation on the plea that it is required to stop these states from seceding from the Indian Union.

In November 2004, the Government constituted a five-member Committee under the chairmanship of Justice B.P. Jeevan Reddy to undertake the review of the AFSPA and advise the Government as to whether the Act should be amended or replaced by a “more humane Act.” It is clear that this Committee was a placatory exercise. The Government has yet to react to its recommendation that the Act be repealed.

The Committee described the Act as being “too sketchy, too bald and quite inadequate in several particulars.” They questioned the appropriateness of a separate Act for the North-East, and based on its interactions with the stakeholders concluded that the AFSPA had become “a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness.” The Committee observed the constitutional validity of the Act upheld by the Supreme Court in *Naga People's Movement of Human Rights v Union of India* (AIR 1998 SC 431), but did not agree that the decision signifies AFSPA’s “desirability or advisability.” In unequivocal terms it dismissed the option of retaining the Act by amending it and called for repeal.

**Article 9 (5)**

**Does the Government of India propose to withdraw its declaration on the The Right to Compensation**

Indian citizens, who are unlawfully arrested, detained, tortured, and even killed while in police custody are not guaranteed a right to compensation. International standards require reparations and compensation for victims of violations of fundamental rights. Nevertheless, in India compensation for these offences is only issued at a judge’s discretion.

In India, compensation is not an enforceable right. An effective compensation system would deter government officials from criminal activity and encourage victims to bring their cases to court. Currently, the system or lack thereof does neither in India. A mandatory right to compensation must be established for the victims of State imposed abuse.

**Articles 9, 14 and 17)**

**Protection of children (Article 24)**

**The Unlawful Use of Pellet Guns –**

**The Lethal Use of Allegedly Non- Lethal Weapons**

**Is the Government of India contemplating the stoppage of the usage of pellet guns immediately and all stocks be destroyed under Parliamentary supervision.**

**Has compensation been provided to all victims of pellet injuries, especially children who have been completely or partially blinded?**

**Does the Government of India contemplate the setting up of a judicial commission with publicly announced terms of reference be constituted to identify police and other public officials for the use of excessive force.**

**Will the Government of India give assurances that such individuals so identified, be prosecuted expeditiously.**

Since 9 July 2016, in the aftermath of the killing of Mr. BurhanWani, a Hizbul Mujahedeen leader, large scale protests and funeral gatherings have been taking place across the Kashmir Valley. The apparently indiscriminate usage of allegedly “non-lethal” weapons, such as pellet guns, to control the crowds has resulted in 87 civilians having lost their lives so far. Hundreds have been blinded and a few thousand injured.

**Counterterrorism and security measures (Articles 9, 14 and 17)**

**Articles 2 and 3**

**Democratic Accountability and Intelligence Agencies**

**Does the Government of India contemplate bringing all its Intelligence agencies under Parliamentary control? Will spending by Intelligence agencies be audited by the Comptroller and Auditor General of India?**

1. The Supreme Court of India did little for democracy on 23 February 2016 when in a terse order it stated, “We find no merit in the writ petition as well as in the transferred case. The writ petition and the transferred case are dismissed accordingly” (Writ Petition (Civil) No. 505 of 2012).
2. The writ petition filed by the Center for Public Interest Litigation had sought Parliamentary control of Intelligence Agencies and fiscal oversight through the Comptroller and Auditor General of India (CAG).Under Section 14 of the CAG Act, all entities that draw monies from the Consolidated Fund of India are to be audited by the CAG.
3. No reasoning, no analysis. This decision will be remembered in history books as a turning point in India’s hurtling towards an authoritarian order. When historians revisit this period the case will receive the same opprobrium the habeas corpus case of the emergency period received.
4. The judiciary plays an important role in ensuring the accountability of intelligence agencies. Its core tasks are to determine whether intelligence activities conform to constitutional and statutory law and to compensate individuals for inappropriate infringements on civil liberties. Judicial oversight is crucial in maintaining the appropriate balance between security and civil liberties, “Such judicial scrutiny has two clear strengths: first, judges are perceived to be independent of government, while, second, the traditional role of the courts is to protect individual rights. Therefore, they are well-suited to oversight tasks in areas such as the surveillance of individuals” (Hannah, O’Brien, Rathmell 2005: 13).

 **Balancing Interests: National Security versus Civil Liberties**

1. The two prominent issues related to intelligence regulations are: (1) how to deal with the sometimes conflicting needs of national security and civil liberties; and (2) how to achieve democratic oversight without compromising intelligence efficacy.
2. Democratic nations regularly struggle to protect their citizenry and the state against external and internal threats while simultaneously fighting to preserve fundamental democratic civil rights and liberties. A delicate balance between these competing needs is difficult, especially when protection against terrorism, hostility, and physical attacks often demand limiting the guarantees of privacy and liberty that are at the heart of democratic rights. Secrecy and operational discretion are necessary for the government to respond to potential security threats while transparency and curbing civil liberties abuses are essential to a thriving democracy (Hans and Leigh 2011).

**Rights of minorities (Articles 26 and 27)**

**Anti Conversion Laws**

**Is it true that anti-conversion laws in many states of India, both by their design and implementation, favour Hinduism over minority religions? Does this not represent a significant challenge to Indian constitutional secularism? The erosion of the principles of secularism and toleration risks fanning inter-religious tensions.**

It is no exaggeration to say that India stands at a crossroads and must be careful to reassert its commitments to the tenets of religious toleration and secularism.

Supporters of the laws argue they are intended to prohibit conversions or conversion attempts that are conducted by allurement, force or fraud. They suggest that such conversions are presently taking place, and that these laws are designed to criminalize such activities. The anti-conversion acts are therefore presented as if their purpose were to protect the ‘freedom of religion.’

These laws, however, actually serve to infringe upon religious freedom and contradict rights protected within international agreements and the Indian Constitution. Such laws are motivated by irrational and insecure Hindu fundamentalism that is antagonistic to religious minorities

***Article 9***

**What has the Government of India done to accede to the repeated requests of the higher judiciary for greater resources?**

**Judicial Delay**

1. As of 26 April 2016, “the current judges-to-population ratio in India is estimated at 17 judges for every million citizens.” This number is far lower than the United States, which has 151 judges per million and China, which has 170 judges per million people. *The Business Standard* stated that, “some experts estimate that at current rates of disposal the backlog would take 466 years to clear.” Currently the backlog stands at 30 core cases, 60,000 of those cases are pending before the Supreme Court, 30 lakh( 3 million) before High Courts, and 2.7 crore ( 270 million) before subordinate judiciaries.

To add to the disparate ratio, there are currently around 5,000 vacancies on the bench that need to be filled. As retired Chief Justice Shri Y.K. Sabharwal stressed in his 2006 Justice Sobhag Mal Jain Memorial Lecture, “Delay in the disposal of cases not only creates disillusionment amongst the litigants, but also undermines the very capability of the system to impart justice.

It was poignant to see the present Chief Justice of India with tears in his eyes pleading with the executive for additional human and material resources earlier this year.

**Articles 3, 4, 5, 6, 9, 14, 17 and 40**

**When does the Government of India hope** **to facilitate visit of OHCR delegation to study the human rights situation in Kashmir.**

**When will the Special Rapporteurs who have requested dates to visit India be given them?**

In September 2016, the government of India has denied permission to an OHCHR delegation to visit Kashmir to study the human rights situation there. In view of Issue 2- Ending Police Immunity, above and Issue 6- The Need to Repeal the Armed Forces Special Powers Act (AFSPA), the Indian Government’s assertions that domestic accountability mechanisms exist carry little credence. In fact. the Government of India informed the Supreme Court of India on 7 September 2016 that the National Human Rights Commission (NHRC) cannot investigate alleged excesses by armed forces in militancy-affected areas such as Manipur and Jammu and Kashmir.

In spite of India’s **Standing invitation on** 14 September 2011 to thematic UN Special Procedures, the following key procedures are yet to be accorded permission at the time of this submission. The listing is illustrative not exhaustive.

1. Special Rapporteur in the field of Cultural Rights
2. Special Rapporteur on extreme poverty and human rights
3. Special Rapporteur on contemporary forms of slavery, including its causes and consequences.
4. Special Rapporteur on the Right to Privacy
5. Special Rapporteur on Contemporary forms of Racism, racial discrimination, xenophobia and relate intolerance
6. Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment
7. Working Group on Enforced and Involuntary Disappearances.
8. Special Rapporteur on the Independence of Judges and lawyers

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1. India Code of Criminal Procedure, 1973, sec. 197, *Available at*: http://www.vakilno1.com/bareacts/CrPc/s197.htm. [↑](#footnote-ref-2)
2. The Constitution of India, available at: http://lawmin.nic.in/coi/coiason29july08.pdf. [↑](#footnote-ref-3)