

# Commonwealth Human Rights Initiative

**New Delhi, India. London, UK. Accra, Ghana**

# New Delhi, India. London, UK. Accra, Ghana *NGO with Special Consultative Status with the Economic & Social Council of the United Nations*

**SUBMISSION OF INFORMATION BY COMMONWEALTH HUMAN RIGHTS INITIATIVE (CHRI) ON INDIA**

**TO THE HUMAN RIGHTS COMMITTEE FOR ITS 126th SESSION (1st to 26th July 2019)**

**(List of issues prior to reporting)**

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**SUMMARY**

India submitted its third periodic report to the Human Rights Committee in 1995 and it was adopted by the Committee in 1997. Thereafter, over a span of more than two decades, India has not submitted a report to the Committee. In this period, there have been several developments in the institutional, legal, and socio-political framework that would impede and block the effective implementation of the Covenant. This submission will focus on these developments and their impact on the condition of civil and political rights in India under International Covenant on Civil and Political Rights (ICCPR).

**RIGHT TO LIFE**

**Article 6 of the ICCPR states that every human being has an inherent right to life that shall be protected by law and that no one shall be arbitrarily deprived of it. It is applicable at all times and in all circumstances.** The right to life with dignity, as protected in Article 21 of the Constitution, has been given an extensive interpretation by the courts.[[1]](#footnote-1) However, there are persistent incidents of arbitrary deprivation of life in India by State.

**Extrajudicial, arbitrary and summary executions and killings by State agents**

* Extrajudicial killings are perpetrated by the police and security forces under the “cover” of meeting extraordinary security situations such as terrorism and in areas of active conflict, such as in Jammu and Kashmir, states of the North East, and areas affected by internal security threats. Alarmingly, they also arise in the course of regular law enforcement operations, indicating the extent to which they are embedded in police and security forces’ practice.[[2]](#footnote-2)
* According to the NHRC, 2,560 deaths during encounters (or shootouts) with police were reported between 1993 and 2008. Of this number, 1,224 cases were regarded by the NHRC as “fake encounters” amounting to extrajudicial killings.[[3]](#footnote-3) According to Ministry of Home Affairs (MHA) annual report of 2017-18, the Investigation Division of the National Human Rights Commission (NHRC) reported 59 nationwide “encounter deaths” within that one year.[[4]](#footnote-4)
* Prosecution of police (and security force) officers is immensely difficult due to in-built protections in law that are routinely misused to protect police officers.[[5]](#footnote-5) This impedes state accountability for even the gravest violations of the right to life.
* In January 2019, four UN human rights experts expressed concern about the allegations of at least 59 extrajudicial killings by police in the state of Uttar Pradesh since March 2017. Evidence indicates that the killings took place in police custody and that in all the cases, the police said that the killings were during encounters and in self-defence.[[6]](#footnote-6) The statement also raises concerns over statements issued by high-ranking state government[[7]](#footnote-7) and police officials inciting, justifying or sanctioning these killings.[[8]](#footnote-8)
* In response to a petition filed by the Extra-Judicial Execution Victim Families Association (EEVFAM), the Supreme Court asked to inquire into the 1,528 cases of extra-judicial killings or encounters in Manipur that occurred between 1979 and May 2012.[[9]](#footnote-9) The Supreme Court bench of Justice Madan B. Lokur and Justice U.U. Lalit, directed the Central Bureau of Investigation (CBI) to probe into the 98 cases of extra judicial killings by the armed forces and police personnel in Manipur, yet only 10 chargesheets have been filed.[[10]](#footnote-10)
* The Armed Forces Special Powers Act (AFSPA) provides wide-ranging powers to the armed forces with regard to the use of lethal force, and does not to provide safeguards in the case of excessive use of such powers. This results in numerous violations in areas where it is in force.

1. Section 4 of AFSPA provides that an officer may, if he is of opinion that it is necessary for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area.[[11]](#footnote-11) This is in violation of international standards on use of force, including lethal force, and related principles of proportionality and necessity.[[12]](#footnote-12)
2. Section 6 of AFSPA and Section 7 of the Jammu and Kashmir AFSPA, grant protection to the officers acting under these Acts and stipulate that prosecution of members of the armed forces is prohibited unless sanction to prosecute is granted by the central Government.[[13]](#footnote-13) Sanction is rarely granted in practice.[[14]](#footnote-14) This facilitates impunity as those involved in extra-judicial killings and other violations continue to evade justice.[[15]](#footnote-15)

* The then Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heynes, after his official visit to India in 2012, recommended that AFSPA be ‘repealed or reformed’ to be in line with international standards,[[16]](#footnote-16) in agreement with his predecessor, Philip Alston.[[17]](#footnote-17) The Special Committee set up by the Government of India to examine the provisions of AFSPA also found that it should be repealed.[[18]](#footnote-18) This was reiterated by many civil society groups and the NHRC. However, the law continues to operate in areas declared ‘disturbed'.

**Targetted mob violence leading to deaths**

* There has also been a worrying trend of an increase in cases of mob lynching and vigilantism in India, particularly against members of minorities and socio-economically disadvantaged communities, often on mere suspicion of cow slaughter[[19]](#footnote-19) or child abduction.[[20]](#footnote-20) From 2012 to early 2019, there have been 127 reported incidents of cow-vigilantism in India, claiming at least 50 lives. Currently, there is no separate legislation punishing mob lynching as a crime, although the Supreme Court has made such a recommendation.[[21]](#footnote-21) Vigilant and transparent monitoring of state actors’ (police, legal aid services, state Home Departments and the central Home Ministry) compliance with anti-lynching guidelines laid down by the Supreme Court of India in July 2018[[22]](#footnote-22) are lacking at present.
* Other areas of concern relate to the prevalence of communal violence, and, in some areas, killings due to witch-craft and related allegations,[[23]](#footnote-23) dowry,[[24]](#footnote-24) “honour” killings,[[25]](#footnote-25) and the plight of *dalits* and tribal groups.[[26]](#footnote-26)

**Death Penalty**

* Capital offences under the Indian penal laws include treason, mutiny, murder, murder with robbery, etc. The Criminal Law (Amendment) Act that came into force in 2013, made provisions for imposing death penalty in cases of aggravated sexual assaults.[[27]](#footnote-27) Not less than 162 persons were sentenced to death by trial courts in 2018, the highest number of death sentences imposed by trial courts in nearly two decades and 426 prisoners were under the sentence of death as of 31 December 2018.[[28]](#footnote-28)
* Certain legislative provisions provide for the imposition of death penalty for offences that do not fulfil the “the most serious crime” threshold provided under international law[[29]](#footnote-29) such as sabotage of oil and gas pipelines,[[30]](#footnote-30) kidnapping not resulting in death,[[31]](#footnote-31) and drug-related offences.[[32]](#footnote-32)
* There has been further legislative expansion of death penalty in 2018. Criminal Law Amendment Act of 2018 provides for the death sentence as a possible punishment for rape and gang-rape of girls below the age of 12 years. In January 2019, the Union Cabinet approved and introduced amendments to the Protection of Children from Sexual Offences Act, 2012 (POCSO) which brought in the death sentence as a possible punishment for penetrative aggravated sexual assault with children below the age of 18 years. In August 2018, the Cabinet also approved a bill providing death penalty or life imprisonment for crimes involving maritime piracy or piracy at sea.[[33]](#footnote-33)

**TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

**Article 7 of the ICCPR provides for absolute, non-derogable prohibition of torture or cruel, inhuman or degrading treatment or punishment (“ill-treatment”).[[34]](#footnote-34)** The prohibition is complemented by article 10, paragraph 1, of the Covenant, which stipulates that ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.’[[35]](#footnote-35) The Supreme Court of India has ruled that in view of the provisions of Article 21 of the Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise.[[36]](#footnote-36) However, the numbers show wide-spread prevalence of custodial torture in India.

* The latest NHRC Annual Report (2015-2016) numbers a total of 3,848 cases of custodial deaths in that year alone, including 3,606 cases of death in judicial custody, and 242 cases of death in police custody.[[37]](#footnote-37) In the year 2017 alone, the NHRC dealt with a total of 4150 cases, including 2275 cases of deaths in Judicial custody, 200 cases of deaths in Police custody and 1675 fact finding cases.[[38]](#footnote-38)
* In the context of terrorism and organised crime cases, torture is facilitated by extraordinary laws. In conflict-prone areas, such as Jammu and Kashmir and the North-East, torture, detention, and disappearances are common. Concerns are consistently raised over AFSPA and its provisions which violate international standards on the use of force, and the related principles of proportionality and necessity.[[39]](#footnote-39) Recently in March 2019, a principal of a private school was picked up by the police on suspicion of connection with extremists, brutally tortured, and then his body with injury and burn marks, was returned to his family the next day.[[40]](#footnote-40) This brought to fore the several pending instances of custodial deaths in Kashmir over the last three decades.[[41]](#footnote-41)
* Custodial torture is equally pervasive in the regular law enforcement context. According to the NCRB, between 2010 and 2015, 591 people died in police custody, however, there was not a single case in which a police official was convicted for a custodial death between that time.[[42]](#footnote-42) In August 2017, Manjula Shetye, a woman prisoner at the Byculla jail in Mumbai, died after being allegedly beaten by officials for complaining about food in the prison.[[43]](#footnote-43) In March 2019, two men were picked up in a case by the police in Bihar state, were allegedly tortured to death in police custody with nails hammered into their bodies.[[44]](#footnote-44) The police officials in-charge were suspended, but they ‘escaped’ from custody and are still evading arrests.[[45]](#footnote-45) In April 2019, a Muslim under-trial prisoner in the Tihar Jail was branded with a Hindu religious symbol and starved for over 48 hours.[[46]](#footnote-46) These are instances that are reported; and often, the police records also list various other reasons for death in custody.[[47]](#footnote-47)
* There are barely any tangible and proactive steps taken in to prevent these acts, protect individuals, and prosecute the perpetrators. This systemic impunity that makes accountability very difficult. The Supreme Court has repeatedly noted that with custodial crimes, producing evidence against the police is very difficult because the police feel “bound by their ties of brotherhood”[[48]](#footnote-48) and change the truth to their convenience. A major challenge for pressing accountability in cases of custodial deaths is the propensity of government doctors to back police claims. Autopsy and forensic reports frequently support the police version of events even where there is no apparent basis.[[49]](#footnote-49) In 2015, police registered cases against fellow police officers in only 33 of the 97 custodial deaths.[[50]](#footnote-50) In custodial death cases, families of victims seeking justice often face intimidation and threats and are discouraged at every stage from pursuing these cases.[[51]](#footnote-51)
* There have been repeated recommendations for India to enact a domestic anti-torture legislation in line with international standards,[[52]](#footnote-52) however, the limited efforts in that direction have not yet materialised.[[53]](#footnote-53)

**ARBITRARY DETENTION**

**Article 9 of the ICCPR provides that everyone has the right to liberty and security of person and that no one shall be subjected to arbitrary arrest or detention, except on such grounds and in accordance with such procedure as are established by law**.[[54]](#footnote-54) The article also sets out specific safeguards for the protection of liberty and security of person.[[55]](#footnote-55)

* Constitutional safeguards in India require that a person arrested and detained in custody by the police must be produced before a magistrate with 24 hours of such arrest, except in cases of laws providing for preventive detention.[[56]](#footnote-56) These safeguards also include the right to be informed of the grounds for the arrest, the right to consult and to have access to a lawyer.[[57]](#footnote-57) These are restricted in laws that allow preventive detention,[[58]](#footnote-58) and in select special security laws. , except in cases of laws providing for . This “extraordinary” legal regime in conflict-prone areas and national security laws facilitate arbitrary and prolonged detention, sidestepping and diluting the needed constitutional guarantees.
* The National Security Act 1980 allows police to detain persons considered national security risks without charge or trial for as long as one year.[[59]](#footnote-59) Even regarding grounds of arrest, it allows family members and lawyers to visit national security detainees and requires authorities to inform a detainee of the grounds for detention within five days, or 10 to 15 days in exceptional circumstances. But the Government can withhold such information as it considers to be against public interest.[[60]](#footnote-60) Rights activists noted provisions allowing detainees to meet family or lawyers were not followed in practice, especially in the states of Orissa, Manipur, Andhra Pradesh, and Maharashtra. The Act has often been misused to suppress dissent[[61]](#footnote-61) and political opposition.[[62]](#footnote-62)
* Similarly, the Public Safety Act 1978 applicable to the state of Jammu and Kashmir permits state authorities to detain persons without charge or judicial review for up to two years without visitation from family members.[[63]](#footnote-63) Over 1,000 people were detained under the PSA between March 2016 and August 2017. Human rights groups had warned Jammu and Kashmir authorities that minors were being arrested under the PSA in 2016 and 2017.[[64]](#footnote-64) Authorities allowed detainees access to a lawyer during interrogation, but police allegedly and routinely employed arbitrary detention and denied detainees access to lawyers and medical attention.[[65]](#footnote-65)
* The Unlawful Activities (Prevention) Act 1967 gives the authorities the ability to detain persons without charge in cases related to insurgency or terrorism for up to 180 days, makes no bail provisions for foreign nationals and creates presumption against bail in the case of detained citizens of the country.[[66]](#footnote-66) State governments also reportedly held persons without bail for extended periods before filing formal charges under the UAPA.[[67]](#footnote-67)
* The NCRB data reported that 293,058 prisoners were under trial at the end of 2016, constituting 67.7% of the prison demography, while the number of detenues awaiting trial was 3,089 constituting 0.7%.[[68]](#footnote-68) In July 2017, a report on pretrial detention in India, noted that shortages of police escorts, vehicles, and drivers caused delays in bringing prisoners to trial.[[69]](#footnote-69)

**Access to Legal Aid**

* Considering access to legal aid, there were some positive developments over the years, like setting up of legal aid clinics in most of the jails.[[70]](#footnote-70) However, there are some longstanding issues such as under-utilisation of funds guaranteed to the State Legal Services Authorities, absence of a national scheme establishing mechanism to provide legal aid at police stations, insufficiency of dedicated staff, the quality of legal aid available, etc.[[71]](#footnote-71)

**Foreign National Prisoners in India**

* There are 3908 foreign nationals confined in prisons across India. Of these 1647 are undertrials, 1377 are convicts while an astonishing 871 are reported to be awaiting repatriation. These refer to those foreign nationals who have completed their terms of sentence, yet remain in prison pending the repatriation process.[[72]](#footnote-72) Only 5.7% of the total population having received consular access i.e. 222 out of the 3908. Among these only 83 of the 1657 undertrials had ever received consular access, which amounts to a mere 5%.[[73]](#footnote-73)

**FREEDOM OF RELIGION AND BELIEF**

**Article 18 of the ICCPR provides that everyone shall have the right to freedom of thought, conscience and religion. It encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others**.[[74]](#footnote-74) Over the years, there have been serious concerns over communal violence and treatment of minorities.

* In 2017, the NCRB, Government of India, reported that communal violence increased significantly during 2016.[[75]](#footnote-75) The Ministry of Home Affairs, Government of India stated that as many as 111 people were killed and 2,384 others were injured in 822 incidents of communal violence in the country in 2017 representing a 29% increase in deaths and a 17% increase in incidents as compared to 2016.[[76]](#footnote-76) Especially over the last decade, the minorities and the “lower castes” often face challenges ranging from acts of violence or intimidation, to the loss of political power, to increasing feelings of disenfranchisement and “otherness”.[[77]](#footnote-77)
* Religious minorities are not only concerned with security; they also faced diminishing representation in the legislature despite a growth in their population numbers. For example, in the state of Uttar Pradesh, Muslims constituted 19 percent of the population but their representation in the legislative assembly dropped to 6 percent in 2017.[[78]](#footnote-78) Over the last few years, there has been a spate of mob attacks across India, especially against minorities. This is due to growing religious fanaticism, increased penetration of social media, and politicians and other persons in authority, who have been apathetic, or sometimes even instigated such violence.[[79]](#footnote-79) In 2013, Muzaffarnagar district of Uttar Pradesh saw communal clashes that killed 42 Muslims and 20 Hindus, along with the displacement of 50,000 people.[[80]](#footnote-80)
* Under Article 48 of India’s Constitution, the slaughter of cows is prohibited. Accordingly, 21 out of 29 states in India prohibit cow slaughter in various forms, with prison sentences ranging from six months to 14 years. However, “cow protection” lynch mobs are a new phenomenon, and such groups murdered at least 10 victims in 2017.[[81]](#footnote-81) One incident that took place in Alwar, Rajasthan, led to the public murder of a dairy farmer named Pehlu Khan. Khan made a deathbed statement to the police identifying six people who were responsible for his beating. While some of the suspects were arrested, criminal charges against all six suspects were dismissed, and none were charged with murder.[[82]](#footnote-82) The rise in communal violence is attributed to impunity and patronage given to the non-state actors by those who are the helm of power.[[83]](#footnote-83)
* Anti-conversion laws have been adopted in several states, including Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Arunachal Pradesh, and Himachal Pradesh. These laws prohibit conversion based on force, allurement, inducement, or fraud, but have been applied discriminatorily in many instances against Muslims and Christians engaged in proselytization.[[84]](#footnote-84) These laws violate the special protection of the rights of minorities enshrined in Article 27 of the ICCPR as they are predominantly deployed against religious minorities.[[85]](#footnote-85) However, in a positive development, the Supreme Court held that if a Hindu woman willingly consents to marrying a Muslim man and converting to his religion, the judicial system has no role in examining the validity of that relationship.[[86]](#footnote-86)
* The issue of religious discrimination is also visible in the current process of updating the National Register of Citizens (NRC) 1951 in India. The update is being carried out under the supervision of the Supreme Court, to honour the Assam Accord signed between the All Assam Students Union (AASU) and the Central government in 1985 to “detect, delete and deport” all “foreigners” who entered the state, mostly from neighbouring Bangladesh, after March 25, 1971.[[87]](#footnote-87) Four UN special rapporteurs jointly wrote to Indian Minister of External Affairs, Sushma Swaraj, expressing “serious concern” over the discrimination of “members of Bengali Muslim minority in Assam” in getting “access to and enjoyment of citizenship status on the basis of their ethnic and religious minority status”.[[88]](#footnote-88) Recently, the Supreme Court of India made a statement that foreign detenues should be deported at the earliest[[89]](#footnote-89) and reprimanded the government of the state of Assam for its proposal to end the process of indefinite detention in the state’s detention centres.[[90]](#footnote-90) The statement was criticised for violating Indian constitutional standards as well as international obligations on complex issues of nationality, detention and deportation.[[91]](#footnote-91)
* Official statistics released in November stated that more than 40,000 crimes against Scheduled Castes were reported in 2016.[[92]](#footnote-92) Several incidents were reported of members of dominant castes attacking Dalits for accessing public and social spaces or for perceived caste transgressions. In May 2018, two Dalit men were killed, several injured, and dozens of Dalit homes burned by dominant caste men in Saharanpur, Uttar Pradesh, following a clash between members of the communities.[[93]](#footnote-93) Activists said that at least 90 Dalits employed as manual scavengers died during the year while cleaning sewers, despite the practice being prohibited.[[94]](#footnote-94)
* An estimated 40,000 Rohingya people in India are at risk of expulsion, including more than 16,000 who were recognized as refugees by UN High Commissioner for Refugees. In August 2017, the Home Ministry wrote to state governments asking them to identify “illegal immigrants”, including Rohingya. In September 2017, the Ministry said that all Rohingya in India were “illegal immigrants”, and claimed to have evidence that some Rohingya had ties to terrorist organizations.[[95]](#footnote-95) In October, in response to a petition filed by two Rohingya refugees, the Supreme Court temporarily deferred expulsions.[[96]](#footnote-96)

**FREEDOMS OF SPEECH, EXPRESSION, PEACEFUL ASSEMBLY AND ASSOCIATION**

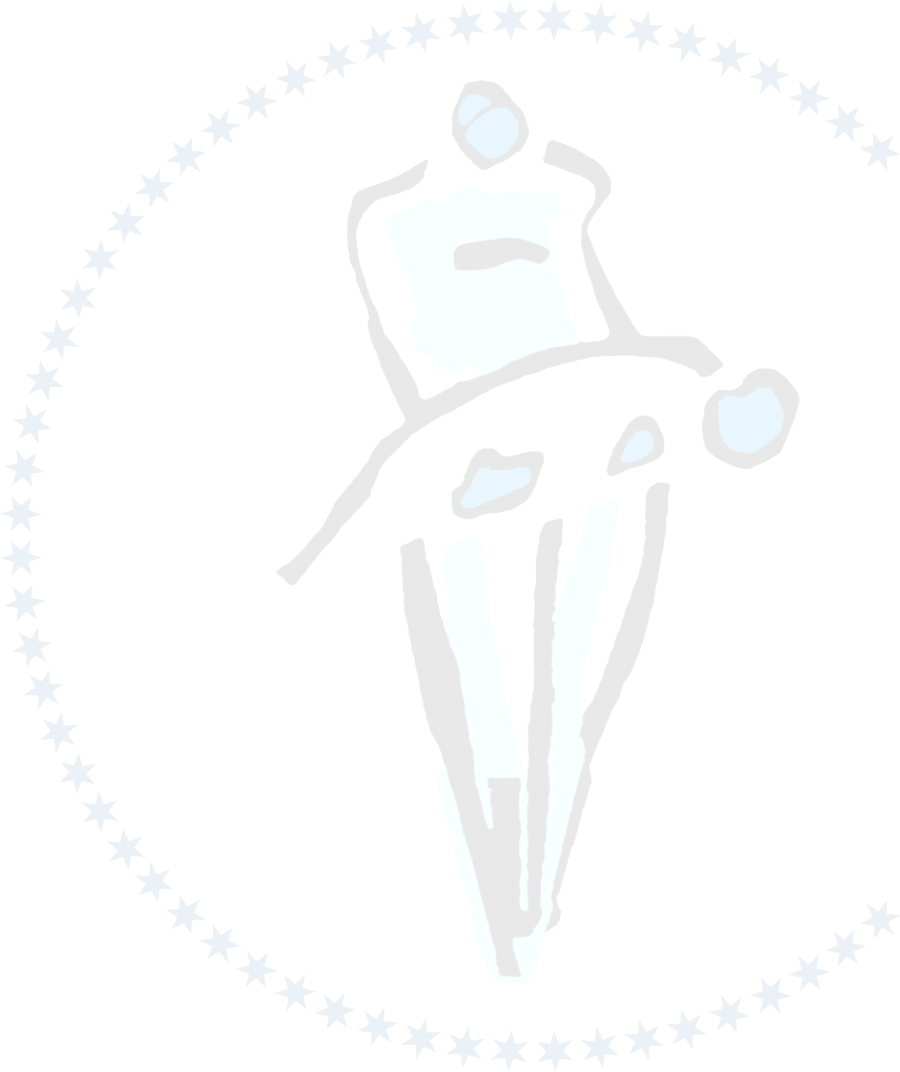
**Article 19-22 of the ICCPR recognise the rights to freedom of speech and expression, peaceful assembly, and association.[[97]](#footnote-97)** In a positive development, in September 2018, the Supreme Court of India, recognised the right to privacy as a fundamental right and as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.[[98]](#footnote-98) However, over the last decade, these freedoms have significantly deteriorated in the country with increasing trend of attacks and reprisals against journalists and human rights defenders, threats of legal action, indiscriminate use of sedition and defamation laws, and other such restrictions.

* Journalists have been faced increasing pressure and are vulnerable to attacks for their legitimate work. They are forced to self-censor due to threat of legal action, smear campaigns and threats on social media, and even threats of physical attacks. In September 2017, unidentified gunmen shot dead publisher and editor Gauri Lankesh, a vocal critic of militant Hindu nationalism, outside her home in Bengaluru city.[[99]](#footnote-99) In September 2017, photojournalist Kamran Yousuf was arrested in Jammu and Kashmir for allegedly instigating people to throw stones at security forces, under a law which does not meet international human rights standards. In November, journalist Sudip Datta Bhowmik was shot dead, allegedly by a paramilitary force member, at a paramilitary camp near Agartala. In December, a French film-maker conducting research for a documentary on the Kashmir conflict was detained for three days in Jammu and Kashmir, allegedly for violating visa regulations.[[100]](#footnote-100) In 2017 alone, 68 RTI (Right to Information) activists were killed in India.[[101]](#footnote-101)
* Journalists continued to face criminal defamation cases filed by politicians. In June, the Karnataka legislature sentenced two journalists to one year’s imprisonment each for allegedly writing defamatory articles about members of the state assembly.[[102]](#footnote-102) There has been a significant rise in the Strategic Lawsuits Against Public Participation (SLAPP) cases against journalists and media houses in the country to stifle the exercise of free speech.[[103]](#footnote-103) In June 2017, the Karnataka state assembly punished two editors for articles that allegedly defamed two of its members.[[104]](#footnote-104)
* Authorities in India continued to use sedition and criminal defamation laws against government critics. In June 2017, police in Madhya Pradesh state arrested 15 Muslims on sedition charges for allegedly celebrating Pakistan’s victory over India in a cricket match, despite Supreme Court directions that sedition allegations must involve actual violence or incitement to violence. After a public outcry, the police dropped the sedition case, but charged them with disturbing communal harmony.[[105]](#footnote-105) Sedition charges have also been used to suppress dissent, including that in student movements.[[106]](#footnote-106)
* Reprisals against human rights defenders and political dissident have seen in increase in the last few years.[[107]](#footnote-107) The last five years saw killings of several dissident activists like Narendra Dabholkar, MM Kalburgi, Govind Pansare etc.[[108]](#footnote-108) Activists and human rights defenders faced harassment including under the Foreign Contribution Regulation Act (FCRA), which governs access to foreign funding for NGOs. In January, the Home Ministry said that it had refused to renew the foreign funding licence of the NGO known as People’s Watch because it had allegedly portrayed India’s human rights record in a “negative light” internationally.[[109]](#footnote-109)
* There have also been several incidents of suppression of freedom of association and peaceful assembly in the country. The police arrested five activists after raids at their homes and offices while investigating an event held on December 31 to mark the 200th anniversary of the Battle of Bhima Koregaon. The police claimed that speeches the accused made at the event led to violent clashes between Dalits and Marathas a day later. Five activists – Rona Wilson, Sudhir Dhawale, Mahesh Raut, Shoma Sen and Surendra Gadling – were arrested on June 6 for alleged links to the banned Communist Party of India (Maoist). Arrests made by the Maharashtra police of activists Sudha Bharadwaj, Gautam Navlakha, Vernon Gonsalves, Arun Ferreira, and Varavara Rao under India’s principal counterterrorism law, the Unlawful Activities (Prevention) Act (UAPA), and sections of the Indian Penal Code, were called out to be politically motivated.[[110]](#footnote-110)
* Several countries, including the US, Norway, South Korea, Czech Republic, Switzerland, Canada, Germany, and Sweden raised concerns over restrictions on civil society and called on India to ensure freedom of association.[[111]](#footnote-111)

**GENDER INEQUALITY AND VIOLENCE AGAINST WOMEN**

There have been some positive developments in relation to gender equality in India. In 2014, the Supreme Court of India took a major step towards such equality by recognising transgenders as ‘the third gender’.[[112]](#footnote-112) In September 2018, the Supreme Court decriminalised consensual adult same-sex relationships by declaring Section 377 of the Indian Penal Code unconstitutional.[[113]](#footnote-113) In another landmark decision,[[114]](#footnote-114) the Court struck down a law that made adultery illegal, calling it arbitrary and saying it is unconstitutional because it "treats a husband as the master."[[115]](#footnote-115) The Supreme Court banned the practice of *triple talaq* (Islamic instant divorce), declaring that it was arbitrary and unconstitutional.[[116]](#footnote-116) However, despite all these positive developments, there are concerns over gender discrimination and violence in India.

* In November, statistics were published showing that over 338,000 crimes against women were registered in 2016, including over 110,000 cases of violence by husbands and relatives.[[117]](#footnote-117) The cases on record of rape and sexual violence increased to 38,947 in 2016.[[118]](#footnote-118) The latest NCRB data for the year 2016 shows that while overall crimes against women have risen by just about 3%, incidents of rape have gone up by 12%.[[119]](#footnote-119)
* While intimate partner violence in the country is recorded at 29%,[[120]](#footnote-120) responding to petitions in courts seeking to criminalize marital rape, the central government stated that doing so would “destabilize the institution of marriage”.[[121]](#footnote-121) In July, the Supreme Court weakened a law enacted to protect women from violence in their marriages, by requiring that complaints be initially assessed by civil society “family welfare committees”. In October, the Supreme Court suggested that it would review its judgment.[[122]](#footnote-122)
* In October 2018, Supreme Court upheld the right of women to worship in the famous Sabarimala temple, irrespective of their age, in the face of bitter opposition. This judgment struck down a rule which banned the entry of women between the ages 10 to 50 years into the temple.[[123]](#footnote-123) There were violent protests against the judgment for allegedly infringing upon traditional beliefs and it could not be immediately enforced due to strong opposition.[[124]](#footnote-124)
* In 2009, the Government of India adopted 33% reservation for women in the police, directly applicable to the Union Territories. Since then, it has issued several advisories reiterating gender diversity in policing as an important measure for affording greater protection to, and preventing crimes against, women, and for “improving the image of the police…and making the police station a gender-sensitive place". However, as of January 2017, women make up 7.28% of the total police strength in India. Some states fare better – Tamil Nadu (15.97%), Himachal Pradesh (12.25%) and Maharashtra (11.62%). Others have a long way to go – Assam, Uttar Pradesh, and Bihar are at less than five per cent. Where women are present in the police, a general trend is that they are concentrated in lower ranks, with very few at important operational positions such as officer in charge of districts or police stations.[[125]](#footnote-125)



1. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 26 April 2013, para 4. Available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf>. [↑](#footnote-ref-1)
2. Priya Pillai, Extrajudicial Killings: India’s long history of “fake encounters”, 29 January 2019. Available at: <https://www.lowyinstitute.org/the-interpreter/extrajudicial-killings-long-history-fake-encounters>. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. Ministry of Home Affairs, Government of India, Annual Report 2017-18, pp. 66-67. Available at: <https://mha.gov.in/sites/default/files/MINISTRY%20OF%20HOME%20AFFAIR%20AR%202017-18%20FOR%20WEB.pdf>. [↑](#footnote-ref-4)
5. This is with specific reference to the requirement in Section 197 of the Code of Criminal Procedure (CrPC) for prior sanction from the government to prosecute any offences (except for specified sexual offences) committed by public servants in the course of “official duty”. While courts have laid down that alleged human rights violations such as custodial torture and extrajudicial killings do not constitute “official duty”, sanction is hardly granted, or its granting is unduly delayed. This leads to impunity. [↑](#footnote-ref-5)
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