



May 26, 2016

**Office of the High Commissioner for Human Rights
Civil Society Unit
Palais des Nations
8-14, Avenue de la Paix
CH-1211 Geneva 10
Switzerland**

**Re: Submission by PVCHR regarding India for the Universal Periodic Review
27th session scheduled on April- May 2017**

Dear Sir/Madam,

PVCHR works to ensure basic rights for marginalized groups in the Indian society, e.g. children, women, Dalits and tribes and to create a human rights culture based on democratic values submit information regarding the state of Impunity.

We hope this information will be considered during India's evaluation under the third UPR session of the UN Human Rights Council.

India: State of emerging corporate fascism:

India is one of the world's oldest living civilisations with a vibrant culture and diversity of its people and languages. Paradoxically, this enormous diversity also hides a dark and sinister side in the shadows of its culture, the caste system. Embedded in the feudal culture, based on the mind of the caste for several centuries, the caste system is one of the world's longest surviving forms of social stratification. It divides the society into social castes. This graded inequality has the sanction of classical Indian religious scriptures.

Piquantly, the caste hierarchy dictates the lives of its citizens even today. The tribal, Muslims and the lower castes or untouchable communities face discrimination and severe oppression due to their social status. As a result, they have been further marginalised in the society and denied their basic rights.

Despite the fact that untouchability was officially banned, when India adopted its constitution in 1950, discrimination against the lower castes is all pervasive. In order to prevent discrimination based on caste and religion, the government passed legislation, in 1989, known as, 'The Prevention of Atrocities Act'. The act specifically made it illegal to parade people naked through the streets, force them to eat faeces, take away their land, foul their water, interfere with their right to vote, and burn down their homes. Many of the youngest in the community are not allowed admissions in the schools since the upper castes do not want their children to study along with the Musahar children. Since then, the violence has escalated largely as a result of the emergence of a grassroots human rights movement among Musahar to demand their rights and resist the dictates of untouchability.

The severest human rights violations in India, the widespread use of custodial torture, are closely linked to caste-based discrimination. In the context of crime investigation, suspects are tortured to enforce confessions. Due to the absence of an independent agency to investigate cases, complaints are often not properly proofed and perpetrators are never prosecuted and punished. The discrimination of women and gender based violence, which includes domestic violence, dowry linked violence, acid attacks, sexual assault, sexual harassment and sex-selective abortion, are the most relevant human rights issues in India.

The main problems facing the country emerge from two things: the implementation of a 'culture of impunity', which is a shared belief that few can act without be accountable for their actions, at the social, economic and political level and the cognitive problem in the context of market democracy and economic globalisation. This explanation reveals how the combination of those two factors – cognitive and contextual – allow the rise of a Neo-Fascism state – an authoritarian state, which wants to make one country with one nation – and the implementation of an aggressive Neo-Liberal capitalism – which perpetuate social and economic injustice. In this way, we would see how the Neo-fascist Hindutva project is used to perpetuate caste domination and allow the Indian leaders to realise profit by selling the country to national and international companies.

Indian example holds out hopeⁱⁱ

The Supreme Court's latest landmark verdict against police's century-old discretionary powers concerning arrest, detention and remand is a bold judicial pronouncement in favour of people's liberty and fundamental rights.

According to article 33, an arrestee must not be detained without informing him or her the reason for the detention and the arrestee must be given the right to consult lawyers.

Article 35 also provides an arrestee with the protection that he or she shall not be compelled to be a witness against him or herself. It also prohibits torture in police remand to extort information as it clearly states no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

But many people who have been arrested and placed on remand have been denied of their constitutional rights.

It is because the law enforcement agencies do not bother about the constitutional provisions. They have on many occasions abused their discretionary powers provided by section 54 and 167 of Code of Criminal Procedure of 1898. In so doing, they do not need to inform the arrestee about the reason for his or her arrest. They have taken arrestee on remand and tortured them for information.

This is why the High Court (HC) in its verdict delivered in 2003 said the two sections of the CrPC is largely inconsistent with the constitution and asked the government to amend those provisions to make them consistent with the provisions of country's supreme law. The Appellate Division upheld the HC verdict dismissing the appeal filed by the government.

It is an open secret that the abuse of discretionary powers has become one of the major reasons for corruption in police administration.

None of the successive governments has taken any effective step to stop the corrupt practices. Instead, all the successive governments have benefited from the misuse of police powers by using it on leaders and activists of the opposition parties.

Following the apex court's verdict, the government of India amended the CrPC in 2010 to minimise abuse of the powers.

Through these processes there have been some improvements in the situation in India.

The Law Commission of India in a report in 1999 described the terrible situation prevailing in the country.

It said notwithstanding the safeguards contained in the CrPC and the constitution, the fact remains that the power of arrest is wrongly and illegally exercised in a large number of cases all over the country.

"Very often this power is utilised to extort money and other valuable property or at the instance of an enemy of the person arrested. Even in case of civil disputes, this power is being resorted to on the basis of a false allegation against a party to a civil dispute at the instance of his opponent," said the commission.

The National Police Commission in its Third Report a few years ago described the power of arrest as one of the chief reasons for corruption in the police. By and large nearly 60 percent of the arrests were either unnecessary or unjustified, the commission said.

Such unjustified police action accounted for 43.2 percent of the expenditure of the jails, it noted.

With the situation remaining almost unchanged, the Indian Supreme Court in 2013 came up with a set of strong guidelines concerning arrest and remand.

It asked all the state governments to instruct its police officers not to automatically arrest when a case is registered under section 498-A of Indian Penal Code. Before arrest, the police must be satisfied themselves about the necessity for arrest in exercise of the power under the CrPC.

It also asked magistrates not to authorise detention mechanically on the prayer of the police. The magistrate must be satisfied by going through the facts recorded by the police for ordering further detention.

Failure to comply with the directives shall, apart from rendering the police officers concerned liable for departmental action, also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction, the SC court warned.

Judicial magistrates have also been warned by the apex court. Authorising detention without recording reasons as aforesaid by the judicial magistrate concerned shall be liable for departmental action by the appropriate High Court.

The latest move taken by the Indian Supreme Court has worked effectively to some extent, resulting in declining in the number of arrests in different states in India.

Situation in Bangladesh is the opposite. The HC in its verdict in 2003 had issued 15-point directives concerning arrest on suspicion and remand. But none of the directive has been followed in last 13 years, prompting the Appellate Division to express its displeasure on April 17.

Police could not be held liable for their failure to obey the directive as there was no mention of punitive measure.

In the past, the successive governments have not implemented some important judgments delivered by the apex court. Even the SC had to struggle for many years to implement its judgment on the separation of the judiciary from the executive.

Now, proper implementation of the apex court's latest verdict against arbitrary arrest, detention and remand depends on the political will of the government.

However, only implementation of the verdict is not adequate to cure the disease in the police administration. The government also should take measures to reform the police.

The judiciary, the custodian of the people's fundamental rights guaranteed by the constitution, should be more vigilant to ensure people's rights are not violated by the arbitrary use of police powers.

A victim of arbitrary use of power by police becomes traumatised as Justice MN Venkatachaliah, former chief National Human Rights Commission of India, said: "Arrest has a diminishing and demoralising effect on his [a victim's] personality. He is outraged, alienated and becomes hostile."

The police have already earned a bad name for various reasons, including excessive politicisation and alleged rampant corruption in its administration. The force is empowered by the state to enforce the law, protect property, and limit civil disorder. But it cannot deliver on its vision which is to provide quality service by competent, efficient and dedicated professionals enjoying trust and respect of citizens to make Bangladesh a better and safer place.

Arbitrary use of powers by the police also taints image of a country as the quality of a nation's civilisation is largely measured by the methods it uses in the enforcement of criminal law.

The National Human Rights Commission (NHRC) made a strong pitch for immediate passage of Prevention of Torture Bill in upper house of Indian Parliament, saying it is urgent to ensure that extracting information through torture is declared illegal. Addressing a conference organized by PVCHR and DIGNITY: Danish Institute against Torture on 12 July 2012, NHRC Chairperson K G Balakrishnan said Parliament needs to pass the Bill urgently so that the culture of extracting information through torture is made illegal and the guilty are punished by law. "Torture is a serious problem for India. Basic human rights are violated when torture is inflicted. It is not just physical pain, but mental which traumatises the

individual and is an assault on his right to life," he said. India has also not ratified the UN convention against torture which asks states to declare torturing a criminal offence under its jurisdiction, he notedⁱⁱⁱ. Till today after many promises, Government of India is making eyewash tactics for ratification of UNCAT.

Sixteen-year-old Suraj Chaudhry has been waiting for most of his life: for lawyers, for justice, for his father's eventual release from the prison after 14 years. His father should have been let out in 2003, but the impoverished family could not pay the 24,000 rupee bail (then worth \$522, now worth \$360) set by the court in the north Indian city of Lucknow. Suraj says his father was framed for murder because he was from the outcast "dalit" community, also known as "untouchables," within India's ancient system of caste hierarchies.

"So my father was sent to jail, while a rich man from our village who belongs to an upper caste and is behind that murder is roaming free," Suraj said, leaning against a wooden pillar within the High Court compound, where he has become a regular. Each day after working his job in a tea shop, Suraj insists he will not leave "until I get an answer" on when his father might be released. But as the sun goes down, he eventually leaves, vowing to return the next day.

There are tens of thousands of prisoners like Suraj's father in the state of Uttar Pradesh, where at least 70 percent of the state's 84,228 inmates have languished in jail because they cannot afford to pay bail while their cases take years or even decades to wend through India's notoriously slow and backlogged judicial system, according to the Jail Ministry of Uttar Pradesh.

Lawyers familiar with Suraj's father's case said his only hope was to find the money. "Unless he deposits surety in court, he will not be released," elderly advocate Mohammed Anis Siddaqui said.

But for Suraj, who is illiterate, the bail amount is out of reach. He makes just 5,000 rupees (about \$76) a month working in a roadside cafe, while his mother earns the same from her job as a maid. It is often not enough to support their family of six, including Suraj's grandparents.

Justice seems very costly for the poor in India. Have you ever seen a rich businessman or powerful politician languishing in jail for that long? No. They have money, power, and can turn the case on its head and roam free.

Most prisoners awaiting trial are poor minorities with little understanding of judicial procedure. "The police are under pressure to solve criminal cases, so they arrest the poor because they know they are not in a position to contest."^{iv}

The Punishment: Forcing Women into Submission^v

In the last few years, brutal, vicious attacks on women and young girls in India have been resonating in the local and international media, shocking and angering people the world over.

Elements of modernity such as wealth, urban development and wider education, including the promotion of women's rights and freedoms, have never been standing



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more in contrast with the deeply-rooted, powerful patriarchal system that has always dominated village politics and traditional Indian culture.

Such ancient feudal structures still survive today, ensuring that women remain oppressed, obedient and marginalised.

We routinely read reports on social media about these grim realities, but the quick-news cycle often fails to connect us emotionally with the victims and their unique stories, or to the people tirelessly working towards justice and social change.

PVCHR exposes the roots feeding the subjugation of women in India, through intimate stories of abuse, resilience and survival.^{vi} We urge to immediate implementation of recommendation given by Special rapporteur on violence against women, its causes and consequences during her country mission to India in may 2013^{vii}.

Criminalization of Human Rights work

We (I as survivor of criminalization of human rights work and Entire family of PVCHR) heartily congratulate Mr. Henri Tiphange for receiving Amnesty International Germany Human rights award. It is one of the auspicious moments for the human rights movement in India. I again congratulate Mr. Henri Tiphange and appreciate his remark in interview at Deutsche Welle, *“The challenges that are faced by human rights defenders in India are plenty. The first and the most important is the criminalization of human rights work, for instance, by registering a series of false cases.”*

But in my case there was a mysterious and selective silence by the human rights groups, Human Rights defenders (except few such as Mr. Subodh Raj Pyakurel, Nepal) and National Human Rights Commission.^{viii} Government of India needs to establish rule of procedure for protection of Human Rights and a nodal ministry for human rights and plural democracy.

Need to learn and replicate community based approach

There are a lot of best practices based on innovation, resilience, cost effectiveness and participation of children and other target groups^{ix}. Elimination of the culture of silence, fear and phobia of organised violence and torture are the predominant factors of resilience to inculcate social transformation. It contributes in poverty elimination. The stories of Sarai and Sakara villages are the classical examples of how change happens. The success of Sarai village achieved by the people of Sarai is creating waves in the struggle against poverty, injustice, caste system and torture and organised violence, as a slogan: ‘You Can!’^x Government of India needs to implement learning of grass roots level.

Please do not hesitate to contact us at pvchr.india@gmail.com if you have any questions or require any additional information.

Thanking You

Sincerely Yours



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- ii <http://www.thedailystar.net/frontpage/indian-example-holds-out-hope-1229569>
- iii <http://www.pvchr.net/2012/07/prevention-of-torture-law-is-much.html>
- iv <http://www.foxnews.com/world/2015/09/04/in-india-prisons-high-bail-demands-keep-poor-languishing-behind-bars-for-years.html>
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- vi http://www.pvchr.net/2013/04/submission-to-un-special-rapporteur-on_22.html
<http://www.pvchr.net/2013/01/justice-verma-committee-report-on.html>
- vii <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13282&>
- viii **About case of Criminalization of Human Rights work of Lenin Raghuvanshi:**
· <https://www.saddahaq.com/mysterious-silence-of-nhrc-in-my-case-testimony-of-lenin-raghuvanshi>
PVCHR congratulates Mr. Henri:
· <https://www.saddahaq.com/amnesty-international-human-rights-award-2016-awarded-to-henri-tiphagne-from-india>
Interview of Mr. Henri:
· <http://www.dw.com/en/tiphagne-biggest-challenge-is-criminalization-of-human-rights-work-in-india/a-19212403>
- ix <https://www.everipedia.com/baghawanala-school-of-varanasiindia/>
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- x <http://differenttruths.com/human-rights/subaltern-dalits/varanasi-musahars-break-the-shackles-of-slavery-emancipate-community/>