



Submission from Human Rights Watch Universal Periodic Review of India

November 2011

In its submission for its first Universal Periodic Review in April 2008, India said that its “approach towards protection and promotion of human rights has been characterized by a holistic, multi-pronged effort.”¹ It cited the Indian constitution and numerous government policies to demonstrate its commitment to the protection of rights.

However, India is yet to introduce adequate laws and properly implement existing policies to protect marginalized communities, particularly Dalits, tribal groups, religious minorities, women, and children. There is an urgent need for the state to address human rights violations, including all forms of sexual assault against women, communal violence, enforced disappearances in conflict areas, extrajudicial killings, the persistent use of torture, and increasing attacks against human rights defenders. Tying many of these issues together is the widespread lack of accountability for human rights abuses, and the corresponding problems of access to justice and adequate compensation.

Impunity for serious human rights violations

The government of India has not implemented its UPR Recommendation 1 to expedite the ratification of the *Convention against Torture and its Optional Protocol*. The Prevention of Torture Bill is still at a draft stage. India also failed to implement UPR recommendation 12 to ratify the *Convention against Enforced Disappearance*. Human Rights Watch has long documented a pattern of impunity, often permitted under Indian law. Since the first UPR, Human Rights Watch has documented an ongoing failure to prosecute those responsible for past human rights violations, such as during counter-insurgency operations in Punjab from 1985-1996, as well as continuing violations in conflict areas such as Jammu and Kashmir, Manipur, and Assam. There have been allegations of violations during security operations that began in 2009 against Maoist insurgents operating in central and eastern India. Abuses include arbitrary arrests and detention, torture, extrajudicial killings, and the harassment of civilians caught in the conflict.

A series of Indian laws also make it difficult or impossible to prosecute state officials and agents implicated in abuses. In particular, police and paramilitary forces are protected under section 197 of the Criminal Procedure Code, which provides that no court will recognize any offense alleged to have been committed by a public servant in the discharge of an official duty without the express approval of the central or state government. Military personnel are provided with additional immunity when they are deployed in areas of internal conflict under the Armed Forces Special Powers Act (AFSPA). Permission to prosecute is rarely granted, even when an investigation shows strong evidence of human rights violations.

With legal cover provided to police and armed forces, abuses such as extrajudicial killings occur often during counter-insurgency operations, for which the Supreme Court expressed its concern in January 2011. However, in most cases the police or army's explanation of an "armed encounter" goes uninvestigated, although many officials privately admit to Human Rights Watch that extrajudicial executions are widespread. The failure to implement police reform

¹Human Rights Council, “National Report Submitted in accordance with paragraph 15 (a) of the annex to the Human Rights Council Resolution 5/1; India,” A/HRC/WG.6/1/IND/1, March 6, 2008, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/112/43/PDF/G0811243.pdf?OpenElement>

has created an overworked and undertrained force that often resorts to torture to gather evidence, and uses extrajudicial killings when it cannot secure convictions. Without proper accountability mechanisms, these violations have become the norm.

Although the Indian government claims that it has internal systems of inquiry and punishment to tackle violations by security forces, details of any prosecutions or convictions through such measures are seldom available. Using the Right to Information Act, Kashmiri activists discovered in September 2011 that in 50 cases where the government sought permission to prosecute, 26 were refused, while a response is awaited in 16 others.

Due to interventions by the Supreme Court, some arrests have been made in relation to the attacks on Muslims in Gujarat in 2002. In November 2011, thirty-one people were convicted for the killing of 33 people, most of them women and children, in the village of Sardarpura in Gujarat's Mehsana district in March 2002. This was one of the nine cases investigated and prosecuted under Supreme Court supervision after it became evident that the Gujarat police had shown no real inclination to investigate and file charges against the perpetrators.

Government of India's Actions to Address Impunity

Various inquiries have been set up to address issues of impunity and accountability, particularly in areas of armed conflict. However, the findings of such committees are often not publicly disclosed and are routinely ignored. For instance, a 2004 committee appointed by Prime Minister Manmohan Singh following protests in Manipur has recommended the repeal of the Armed Forces Special Powers Act. Although the report was leaked, it is yet to be officially accepted or acted upon.

Kashmiri political leaders have also repeatedly called for repeal of AFSPA. In August 2011, an official inquiry by the State Human Rights Commission in Jammu and Kashmir confirmed allegations by human rights groups that victims of enforced disappearances may have been buried in unmarked graves. The government had claimed that the graves contained only the remains of unidentified Pakistani militants. The commission recommended forensic tests for proper identification, but a proper investigation will require the cooperation of the army and paramilitary units that were involved in these operations.

The Indian government is yet to enact the Prevention of Torture bill, which was introduced to ratify the Convention against Torture. The draft bill falls short of international standards by permitting certain officials immunity from prosecution, not giving victims adequate time to file complaints, and not ensuring that all forms of inhuman and degrading treatment are under the purview of the law. A parliamentary committee has reviewed the bill and submitted its recommendations to the cabinet.

In recent years, the political leadership of India, including the prime minister, has repeatedly said that there will be "zero tolerance" of human rights abuses. In a positive step to end the profiling of Muslims as terrorism suspects, the political leadership has repeatedly emphasized that targeting on religious grounds is wrong. There have been fresh investigations into terror attacks that were previously attributed to Muslim groups, where members of the majority Hindu community have been arrested and prosecuted.

The government has committed to enacting the Communal Violence (Prevention, Control and Rehabilitation of Victims) bill, which is intended to prevent and control communal violence, ensure speedy investigation and trials, and provide prompt rehabilitation of victims.

While civil society welcomed the openness and collaboration demonstrated by the government during the visit of the UN Special Rapporteur on human rights defenders in January 2011, it also noted that some crucial mandate holders such as the rapporteurs on torture, extrajudicial, summary or arbitrary executions, children, racial discrimination, or

the Working Group on arbitrary detention have made numerous requests for country visits and have not yet received a response.

State Institutions to Promote and Protect Human Rights

India boasts of its independent judiciary, which has a strong voice in protecting human rights. However, lower courts tend to support the authorities in accepting questionable charges in terror-related cases. Judicial delays due to overload mean that the appeals process can linger while a person remains in custody. Human Rights Watch considers that the implementation of UPR Recommendations 3 and 4 requires further efforts.

The government of India refers to the National Human Rights Commission (NHRC) as its symbol of commitment to the protection of human rights. In its 2008 submission to the UPR, the government described the independence of the NHRC as at a par with the Supreme Court of India. However, the NHRC has very limited capacity to independently investigate allegations of abuse, and relies on relevant government departments to provide information. It uses police investigators to investigate allegations against the police. The NHRC is prohibited by law from investigating violations by the armed forces under section 19 of the Human Rights Protection Act. It can only seek a report from the central government and make recommendations. Since such reports are sought from the very agency accused of the violation, they rarely uncover abuses. The NHRC remains largely inaccessible to the poor, its inquiry procedures cumbersome, and often those who testify against state officials are not adequately protected against retribution.

In 2008 the government also claimed that there were a number of state human rights commissions that protected rights. However, in reality almost all state commissions are inadequately staffed, with almost no capacity or political will to conduct independent investigations.

The government also referred to other national commissions created to protect the rights of women, religious minorities, Dalits and tribal communities, and children. However, members and chairpersons of these commissions are political appointees and this is often reflected in their functioning, with some more effective than others.

Protection of Women

Gender training for the lower and higher judiciary is ongoing but remains inadequate. For example, in rape trials, many lower criminal courts and appellate courts have for decades reinforced damaging social stereotypes against victims by describing them as “habituated to sex” based on archaic and degrading medical examinations such as the “two-finger test.” In some cases the fact that they are identified as “habituated to sex” has resulted in the courts discrediting victims’ testimony, affecting the outcome of the trial.

The NHRC has the power to take action on its own (*suomoto*) of reports to investigate human rights violations. But the commission has failed to use this power effectively. For example, the Indian government’s maternal healthcare program is administered in a blatantly discriminatory manner in many parts of the country, with no action from the NHRC. In many states, the Indian government’s flagship Janani Suraksha Yojana (Safe Motherhood Program) provides cash assistance for poor pregnant women to give birth in health facilities, only up to two live births, and limits such assistance to mothers above age 18, completely excluding young mothers and mothers with more than two children, even though they face considerably higher health risks during pregnancy.

Access to Palliative Care

In 2009, a Human Rights Watch study found that hundreds of thousands of patients with cancer and other serious health conditions in India unnecessarily suffer from severe pain every year because they cannot get access to effective, safe, and inexpensive medications that could relieve their suffering.

Although about 70 percent of cancer patients in India are diagnosed when their cancer is advanced and they are unlikely to still respond to curative treatment, more than half of India's regional cancer centers (which receive government support) do not offer palliative care or effective treatment for moderate to severe pain.

The central government recommended in 1998 that all states and union territories simplify regulations around access to morphine, an essential medication for treatment of moderate to severe pain, but only 14 states and territories have done so to date. All others maintain highly restrictive regulations that interfere with proper medical practice.

Attacks on Education

In investigations carried out between 2008- 2010, Human Rights Watch documented that the education of tens of thousands of India's most disadvantaged and marginalized children is being disrupted by the ongoing conflict between Maoist ("Naxalite") insurgents and police and other security forces. The Maoists have targeted and bombed government schools. In 2009, at least 36 schools in Jharkhand state and 23 schools in Bihar state were attacked. The government's failure to repair the bombed schools promptly prolongs the negative impact of these attacks on children's education.

Meanwhile, security forces continue to occupy government school buildings as bases for their anti-insurgency operations, sometimes only for a few days but often for periods lasting months or years. In 2010, at least the following number of schools had long-term occupations from security forces: 30 in Bihar, 31 in Chhattisgarh, 20 in Jharkhand, 16 in Tripura, and an unknown number in Assam.

Both the Maoist attacks and the government occupation and use of schools place students at unnecessary risk and interfere with the right to education.

Recommendations to be made to the Indian government:

On addressing impunity, India should:

- Repeal all legal provisions providing effective immunity to government officials such as section 197 of the Criminal Procedure Code.
- Repeal the Armed Forces Special Powers Act.
- Vigorously investigate and prosecute officials who order, commit, or tolerate human rights violations, including torture, custodial killings, faked armed encounter killings, and enforced disappearances.
- Ensure in drafting the Prevention of Torture Bill that no immunity from prosecution is provided, that adequate time is given for victims to be able file complaints, and to ensure that all forms of inhuman and degrading treatment are also brought under the purview of the law.
- Engage in immediate efforts at police reform and establish transparent accountability mechanisms.
- Ensure prompt prosecutions in case of communal violence and enact a strong law to protect against such acts.

On institutions to promote and protect human rights, India should:

- Ensure all individuals have equal access to justice and right to remedies, and examine and remedy the shortcomings in the effectiveness of existing justice mechanisms.
- Amend the Human Rights Protection Act to allow the National Human Rights Commission to independently investigate allegations of abuse by members of the armed forces.
- Empower the NHRC, the state human rights commissions and other national commissions to function independently, in full autonomy, and to have the capacity for independent investigations.

- Provide victims and their beneficiaries with reparations through a prompt and effective procedure that redresses the entire scope of the violations.
- Ensure that the NHRC and other national and state commissions are more responsive to civil society complaints and interventions.
- Provide comprehensive human rights education and training at all levels of government and across sectors, and the armed forces.

On women's rights, India should:

- Enact a comprehensive law against all forms of sexual assault against women and children and provide reproductive and mental health services to survivors of sexual assault.
- Ensure that maternal health care programs do not discriminate against women with more than two children or mothers under the age of 18.

On discrimination and protecting vulnerable populations, India should:

- Provide disaggregated data and status information on all vulnerable groups including minorities, indigenous people, Dalits, people with disabilities, LGBT people, migrants, and internally displaced persons.
- Enact rehabilitation laws to ensure the protection of communities displaced by development, infrastructure, or mining projects.

On access to palliative care, India should:

- Take immediate steps to ensure that all regional cancer centers offer palliative care services.
- Take immediate steps to ensure all states and territories implement simplified morphine regulations.

On human rights treaties and UN special procedures, India should:

- Promptly ratify the Convention against Enforced Disappearance.
- Issue a standing invitation to UN special procedures to conduct country visits to India and respond positively to the nine special procedures that have made requests for country visits.
- Facilitate, as a matter of priority, the visits to India of the Special Rapporteur on torture, the Working Group on arbitrary detention, and the Working Group on enforced or involuntary disappearances.

On attacks on education facilities, India should:

- Comply with court orders that all security forces vacate all educational institutions and school buildings, and ensure that the security forces do not unlawfully occupy such institutions in the future.
- Cooperate with states affected by Maoist attacks to prepare rapid advance systems, so that when Maoist attacks on schools occur, schools are quickly repaired or rebuilt, and destroyed educational material replaced, so that children can return to school as soon as safely possible. During reconstruction, students should receive their education in an alternative locale.