

A. Introduction

1. Lawyers for Lawyers (“L4L”) and the International Bar Association (“IBA”) submit this report on the state of human rights in the Republic of India (“India”), particularly in respect of the legal profession, with recommendations for the 41st session of the Universal Periodic Review (UPR) Working Group in the UN Human Rights Council in November 2022.
2. L4L is an independent and non-political foundation based in the Netherlands, which was established in 1986 and is funded by lawyers’ donations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.
3. The IBA, established in 1947, is the world’s leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 80,000 individual lawyers and more than 190 Bar Associations and Law Societies, spanning all continents. The IBA’s Human Rights Institute (“IBAHRI”), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

B. Executive summary

4. This submission highlights key concerns regarding India’s compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyersⁱ (“Basic Principles”) and other international rights instruments, focusing on violence against lawyers, judicial harassment of lawyers, freedom of expression of lawyers, independence of the Bar Associations in India and surveillance of lawyers.

C. Normative and institutional framework of the State

5. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently of the government and political pressure. This follows inter alia from the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (“ICCPR”). In particular, the protection and the independence of justice actors is a key component to ensure the well-functioning of justice systems and to combat impunity. This is a precondition to the right to a fair trial, protected by Article 14 of the ICCPR.
6. Furthermore, on 22 June 2017, the Human Rights Council (“HRC”) passed a resolution condemning in general “the increasingly frequent attacks on the independence of

[lawyers], in particular threats, intimidation and interference in the discharge of their professional functions”. The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable”.ⁱⁱ

7. In its task of promoting and ensuring the proper role of lawyers, the Government of India should respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.ⁱⁱⁱ
8. During the third UPR cycle in 2017, India received^{iv} and accepted^v some recommendations concerning the need to ensure that its citizens can operate in a safe and enabling environment where it can exercise its rights, including the right to freedom of assembly in a manner which allows legitimate and peaceful dissent, and that it should provide for financial and structural support to civil society organizations. India has supported one recommendation to allocate appropriate resources to reduce backlog and delays in the administration of court cases^{vi} and noted several recommendations focusing on the protection of human rights defenders^{vii} and the right to a speedy trial and strengthening the independent functioning of the judiciary^{viii}. India opted not to submit a mid-term report for the assessment on the implementation of recommendations made during the UPR cycle in 2017. A mid-term report developed by the Working Group on Human Rights in India and the UN (“WGHR”)^{ix} stated that the situation in India concerning human rights defenders has disimproved. More and more human rights defenders “face threats to their personal safety and physical security”^x, they are harassed, intimidated, but also arbitrarily arrested and prosecuted based on fabricated cases. It can be noted that India did not fully implement the recommendations made in the third UPR cycle in 2017.
9. Reports gathered by L4L and the IBAHRI, including information received from lawyers in India, concur with the findings of the WGHR’s mid-term report and demonstrate that India does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

D. No Effective Guarantees for the Functioning of Lawyers

a. Violence against lawyers

10. According to Principle 16(a) of the Basic Principles on the Role of Lawyers, governments must ensure that lawyers ‘are able to perform all of their professional functions without

intimidation, hindrance, harassment or improper interference'. Furthermore, Basic Principle 17 states "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."

11. Lawyers for Lawyers has been informed by lawyers that lawyers in India are the subject of physical attacks in connection to their professional activities. There have been several reports of lawyers being subject to police brutality as well as verbal and physical assault, and in some cases even murder, conducted by the police and by non-State agents in India.^{xi} In addition, a number of lawyers stated that these acts of violence are often targeted towards human rights lawyers from poor, marginalised and migrant backgrounds, or against lawyers who represent these groups.^{xii}
12. The Bar Council of India has stated that it has noted an increase in the use of violence against lawyers. A Committee of the Bar Council of India has drafted the "Advocates Protection Bill" to protect lawyers from assaults, intimidation, coercion and threats.^{xiii} The Bill has not yet been passed by parliament.

- a. Judicial harassment of lawyers

13. According to Principle 16(a) of the Basic Principles on the Role of Lawyers, governments must ensure that lawyers 'are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference'. Moreover, according to Principle 16 (c) "governments shall ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics". Furthermore, Basic Principle 18 states that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."
14. For this cycle of the UPR review, L4L and the IBAHRI have received information including several firsthand reports that lawyers have faced intimidation and harassment for their work on politically sensitive cases, including cases regarding human rights violations allegedly committed by high-ranking officials and influential members from within the Indian Government. The harassment has manifested in various forms including improper interference, arrests, and silencing tactics such as allegations surrounding failure to adhere to propriety standards such as the Foreign Contribution (Regulation) Act, 2010 (FCRA)^{xiv} and alleged misuse of legislations such as the Unlawful Activities Prevention Act (UAPA). This is demonstrated by the following example.

- a. *Lawyers Collective, Mr. Anand Grover and Ms. Indira Jaising*

The Lawyers' Collective was a group of lawyers with a mission to empower and change the status of marginalized groups through the effective use of law, and an engagement in human rights advocacy, legal aid and litigation. The Lawyers' Collective was co-founded and led by lawyers Anand Grover and Indira Jaising. Both Mr Grover and Ms Jaising have legally represented clients in many high-profile cases on politically sensitive issues involving individuals high in the present

government. Mr Grover has also worked many cases relating to LGBT rights, mass evictions and environmental cases, patent rights, death penalty, narcotic and psychotropic drugs. Ms Jaising is a lawyer who has also worked on, amongst others, environmental and minority cases, including cases on gender discrimination, reservation case. As a consequence of these activities, the Lawyers' Collective and Mr Grover personally have faced judicial harassment.

Firstly, on 31 May 2016 the Ministry of Home Affairs suspended the FCRA license of the Lawyers' Collective and froze its bank accounts based on three alleged violations of the FCRA. The alleged violations include remunerations provided to Ms. Jaising by the Lawyers' Collective while she also served as a governmental servant, reimbursement of expenses incurred by Mr Grover while he served as the UN Special Rapporteur on the Right to Health, and lastly, the use of funds of the Lawyers' Collective received through the FCRA to organize peaceful demonstrations and rallies. The Lawyers' Collective has denied all aforementioned allegations. The license was not renewed on 28 October 2016 and then permanently cancelled on 27 November 2016. The Lawyers Collective challenged this non-renewal and permanent cancellation in January and March 2017 respectively.

On 13 June 2019 the Central Bureau of Investigation ('CBI') filed a criminal case against the Lawyers Collective, Mr Grover and other representatives of the organization under several provisions of the Indian Penal Code, the FCRA and the Prevention of Corruption Act.^{xv} These charges were based on the initial allegations of abuse of the FCRA that were also used to suspend and later cancel the license of the Lawyers' Collective.

On 11 July 2019, the CBI raided the offices of the Lawyers Collective in Mumbai and in New Delhi and the residences of Mr Grover and Ms Jaising in New Delhi.

In 2019 the Enforcement Director also initiated proceedings under the Prevention of Money Laundering Act against the Lawyers Collective and Mr. Anand Grover.

All the aforesaid proceeding have been challenged by Mr. Anand Grover, Ms Indira Jaising and the Lawyers Collective in the Bombay High Court which has granted interim relief to them.

E. Freedom of Expression

15. According to Basic Principle 23 *"Lawyers like other citizens are entitled to freedom of expression [...]. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights."*
16. It was reported that on a number of occasions, lawyers in India face repercussions for voicing their opinions on matters relating to the independence of the judiciary and rule of law. This is illustrated by the following example:

a. *Prashant Bhushan*

Prashant Bhushan is a well-known public interest lawyer in India who has been practicing law for over three decades. He has taken up many cases relating to government corruption, the environment, transparency in courts and a range of other human rights issues.

In June 2020, Mr Bhushan posted two tweets in which he critiqued the current and former chief justices of India. In one tweet he showed a photo of the current Chief of Justice on a motorcycle and mentioned: “when he keeps the SC in Lockdown mode denying citizens in their fundamental right to access justice”. In another tweet he noted the role of the Supreme Court in the “destruction of democracy”.

On 22 July 2020, the Supreme Court issued a contempt notice and stated in its judgment^{xvi} that Mr Bhushan’s tweets were a “calculated attack on the very foundation of the judiciary”. Mr Bhushan faced a maximum sentence of six months in prison for the tweets. On 31 August 2020, the Supreme Court ordered Mr. Bhushan to pay a symbolic fine of 1 Indian rupee. It also warned Mr. Bhushan that if he failed to pay the fine before 15 September, he would face three months in jail and lose his rights to practice law. Mr Bhushan paid the fine.

Mr Bhushan filed for a review of the 31 August 2020 judgment by the Supreme Court. Mr Bhushan also filed a petition in the Supreme Court for an intra court appeal against the original conviction of contempt of court on 22 July 2020. Both cases are still pending.

F. Threats to the Independence of the Bar Association

17. Basic Principle 24 states that “*Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.*”

18. The Bar Council of India (“**BCI**”) is a statutory body created by Parliament under the Advocates Act 1961 to regulate and represent the Indian bar. They prescribe standards of professional conduct and etiquette, and exercise disciplinary jurisdiction over the bar.^{xvii} Furthermore, there are 16 State Bar Councils that regulate the legal profession at state level. There is also a large number of Bar Associations in India which are organisations of advocates working at particular courts, such as the Supreme Court Bar Association.^{xviii} Enrolment at the Bar Councils is necessary to be registered as a lawyer, while membership of a certain Bar Association is voluntary.

19. Lawyers have informed L4L and the IBAHRI that they do not always feel supported by their respective Bar Associations and Bar Councils when they face harassment in relation to the work they conduct in their capacity as a lawyer. Some Bar Associations and Councils are more reserved in taking a stance to protect lawyers on sensitive cases. A lawyer that Lawyers for Lawyers spoke to expressed that it depends on ‘where you are and who you are for the bar association to stand up for you’.

G. Threats to Lawyer-Client Confidentiality

20. Article 8 of the UN Basic Principles on the Role of Lawyers states that *“All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”*
21. Article 22 of the UN Basic Principles on the Role of Lawyers stipulates that *“Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”*
22. In this context, there are serious concerns regarding the reports of surveillance software, including the NSO Group’s spyware Pegasus, being used against Indian lawyers. In 2018, research from the University of Toronto Citizen Lab, a cybersecurity watchdog revealed that India had access to Pegasus spyware.^{xx} The Pegasus spyware, once present in a phone, surveilles everything ranging from messages to contacts and conversations.
23. In 2020, Amnesty International and Citizen Lab jointly reported that they had uncovered a coordinated spyware campaign against a number of human rights defenders, including lawyers, since 2018. Most of the lawyers targeted were involved in the legal defense of the activists arrested in the politically sensitive cases, such as the legal defense of minorities and the contested Bhima Koregaon case. The lawyers were targeted through malicious emails and some of them also through the Pegasus software.^{xx}
24. In October 2021, India’s Supreme Court appointed a committee to investigate whether the government has indeed used Pegasus software to illegally spy on citizens and called for people who suspected their phones have been targeted to contact them by January 7, 2022.^{xxi} Reportedly, at least one lawyer, Nihal Singh Rathod, who has represented activists from the Bhima Koregaon case, has written in to the committee to state that he had strong reason to believe his phone had been infected with the Pegasus spyware.^{xxii} Mr. Rathod had been approached by Citizen Lab to warn him that his phone had potentially been breached with Pegasus software in 2019.^{xxiii}
25. The unlawful surveillance of lawyers by the government is not only violating basic human rights, such as the right to privacy as enshrined in Article 12 of the Universal Declaration of Human Rights, but is also a breach of attorney-client privilege, and herewith in violation of the above mentioned Articles 8 and 22 of the Basic Principles on the Role of Lawyers.

H. Recommendations to the Government of India

- **Take immediate measures to ensure sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity.**
- **Immediately take effective measures necessary to ensure that crimes, harassment, and other violations against lawyers are effectively investigated and publicly condemned at all levels, and that the perpetrators of such acts are prosecuted.**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in.**
- **Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.**
- **Take immediate measures to ensure full confidentiality of communication between lawyers and clients as set out in article 22 of the Basic Principles on the Role of Lawyers and refrain from using surveillance software, including the spyware Pegasus, against lawyers.**
- **Ensure consistent and meaningful representation of the interests of all lawyers in India and refrain from exerting political pressure on the Bar Councils and Bar Associations of India.**

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ⁱ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

ⁱⁱ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20.

ⁱⁱⁱ During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.

^{iv} Report of the Working Group on the Universal Periodic Review of India, A/HRC/36/10, 14 July 2017, pp. 11 - 25.

^v Report of the Working Group on the Universal Periodic Review of India, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replied presented by the State under review, A/HRC/36/10/Add.1.

^{vi} Recommendation 161.149 (Ethiopia): Allocate appropriate resources to reducing backlog and delays in the administration of cases in courts

^{vii} Recommendation 161.135 (Germany): Amend the Foreign Contribution (Regulation) Act to ensure the right to freedom of association, which includes the ability of civil society organizations to access foreign funding, and protect human rights defenders effectively against harassment and intimidation.

Recommendation 161.134 (Lithuania): Enact a law for the protection of human rights defenders.

Recommendation 161.140 (Switzerland): Lift legal restrictions or hurdles to the work of civil society individuals or organizations and ensure that they can undertake their legitimate activities without fear of reprisals.

^{viii} Recommendation 161.148 (Estonia): Strengthen the independent functioning of the judiciary in order to reduce delays in judicial proceedings, enhance transparency of the processes and guarantee the right to speedy trial

^{ix} Working Group on Human Rights in India and the UN (2020). *Universal Periodic Review (UPR): Mid-term Report 2020: Assessing India’s Implementation Of UPR-III Recommendations*.

^x Working Group on Human Rights in India and the UN (2020). *Universal Periodic Review (UPR): Mid-term Report 2020: Assessing India’s Implementation Of UPR-III Recommendations*, p. 54

^{xi} Frontline Defenders, ‘Human Rights Lawyer Babar Qadri killed’, 28 September 2020. Available at:

<https://www.frontlinedefenders.org/en/case/human-rights-lawyer-babar-qadri-killed>;

Siraj Qureshi, ‘India demands strict action against guilty in police attack on advocate in Uttar Pradesh’, 27 December 2020.

Available at: <https://www.indiatoday.in/india/story/bar-council-of-india-uttar-pradesh-police-attack-advocate-etah-1753436-2020-12-27>;

Priyanka Sharma, ‘“As soon as they heard my name, I was attacked”: Advocate on Being Beaten up by Police’, 13 July, 2021.

Available at: <https://www.republicworld.com/india-news/law-and-order/as-soon-as-they-heard-my-name-i-was-attacked-advocate-on-being-beaten-up-by-police.html>;

Frontline Defenders, ‘Lawyers from Indian Civil Liberties Union physically assaulted by police personnel’, 3 March 2020.

Available at: <https://www.frontlinedefenders.org/en/case/lawyers-indian-civil-liberties-union-physically-assaulted-police-personnel>.

^{xii} Frontline Defenders, ‘Lawyers from Indian Civil Liberties Union physically assaulted by police personnel’, 3 March 2020.

Available at: <https://www.frontlinedefenders.org/en/case/lawyers-indian-civil-liberties-union-physically-assaulted-police-personnel>.

^{xiii} Bar Council of India, ‘Press Release dated 02.07.2021’, 2 July 2021. Available at:

https://www.livelaw.in/pdf_upload/press-release-dated-02072020-regarding-advocate-protection-bill-english-395933.pdf

^{xiv} Frontline Defenders, ‘Ongoing intimidation and harassment of Lawyers Collective and its founders, Indira Jaising and Anand Grover’, July 12, 2019. Available at <https://www.frontlinedefenders.org/en/case/fabricated-criminal-charges-filed-against-lawyers%E2%80%99collective-and-anand-grover>

^{xv} The accusations were based on the following provisions: Sections 120-B (“criminal conspiracy”), 406 (“criminal breach of trust”), 420 (“cheating”) and 199 (“false statement made in declaration”) of the Indian Penal Code (IPC); and Sections 33 (“making of false statement, declaration or delivering false accounts”), 35 (“punishment for contravention of any provisions of the Act”), 37 (“penalty for offences where no separate punishment has been provided”), and 39 (“offences by

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companies”) of the FCRA; and Sections 13 (1) (d) and 13 (2) of the Prevention of Corruption Act (PC) 1988.

^{xvi} The Supreme Court of India, Judgement in the Supreme Court of India Inherent Jurisdiction Suo Moto Contempt Petition, No. 1 of 2020, Prashant Bhushan & ANR. Available at:

https://main.sci.gov.in/supremecourt/2020/14323/14323_2020_32_1502_23453_Judgement_14-Aug-2020.pdf

^{xvii} The Bar Council of India, About the Council. Available at: <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/>

^{xviii} Indian Bar Association, ‘Bar Association’. Available at: <http://indianbarassociation.org/wp-content/uploads/2013/12/Bar-Association.pdf>

^{xix} Citizen Lab, ‘HIDE AND SEEK: Tracking NSO Groups Pegasus Spyware to Operations in 45 Countries’, 18 September 2018. Available at: <https://citizenlab.ca/2018/09/hide-and-peek-tracking-nso-groups-pegasus-spyware-to-operations-in-45-countries/>

^{xx} Amnesty International, ‘India: Human Rights Defenders Targeted by Coordinated Spyware Operation’, 15 June 2020. Available at: <https://www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/>

^{xxi} Aneesha Mathur, ‘SC Panel probing Pegasus snooping scandal issues public notice; here’s what it says’, 3 January 2022. Available at: <https://www.indiatoday.in/india/story/pegasus-snooping-row-supreme-court-panel-public-notice-targets-phones-1895204-2022-01-03>

^{xxii} India Today, ‘Elgar Parishad case lawyer claims phone hacked using Pegasus, offers device to SC-appointed panel for probe’, 10 January 2022. Available at: <https://www.indiatoday.in/india/story/elgar-parishad-lawyer-phone-hacked-pegasus-device-supreme-court-panel-1898019-2022-01-10>

^{xxiii} The Wire, ‘Elgar Parishad Accused, Their Lawyers Write to SC’s Committee on Pegasus Spyware Targeting’, 10 January 2022. Available at: <https://thewire.in/rights/elgar-parishad-accused-their-lawyers-write-to-scs-committee-on-pegasus-spyware-targeting>