

## Introduction

1. During its third Universal Periodic Review in 2017, India spoke of “a rights oriented constitutional framework, a secular polity, and independent judiciary, a range of national and state level commissions that monitor compliance with human rights, a free press, and a vibrant and vocal civil society.”<sup>1</sup>

2. India is instead witnessing a serious regression in human rights and constitutional protections under the Bharatiya Janata Party (BJP)-led government of Prime Minister Narendra Modi. The government has escalated its crackdown on independent and democratic institutions, and is using draconian sedition, counterterrorism, and national security laws to prosecute and harass human rights activists, journalists, students, government critics, and peaceful protesters.

## Impunity for Security Forces

3. Despite pledges, India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment nor the Convention for the Protection of All Persons against Enforced Disappearance. There were allegations of extrajudicial killings by police and security forces throughout the reporting period.<sup>2</sup> The government also failed to properly implement police reforms directed by the Supreme Court in 2006 and to ensure accountability.<sup>3</sup>

4. Security forces are shielded from accountability by Indian laws. All government officials and members of security forces are protected under section 197 of the Criminal Procedure Code, which provides that no court can recognize any offense (with the exception of sexual offenses) alleged to have been committed by a public servant in the discharge of an official duty without the approval of the central or state government. Such approval to prosecute is seldom granted.

5. Soldiers are provided immunity when internally deployed under the Armed Forces Special Powers Act (AFSPA). The government dismissed both the 2018 and 2019 reports by the Office of the United Nations High Commissioner for Human Rights on Jammu and Kashmir, which raised serious concerns over security force abuses.<sup>4</sup> The government has failed to act on UPR recommendations to repeal AFSPA.

## 6. Recommendations

- a. Repeal the Armed Forces (Special Powers) Act.
- b. Repeal the Jammu and Kashmir Public Safety Act and the National Security Act.
- c. Remove immunity granted under the Criminal Procedure Code in cases of violations of fundamental rights including torture and extrajudicial killings.
- d. Implement police reform as recommended by the Supreme Court including to establish a complaint mechanism against police abuse.
- e. Ratify the Convention against Torture and its Optional Protocol and the Convention for the Protection of All Persons from Enforced Disappearance.

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<sup>1</sup> Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21; India,” UN Doc. A/HRC/WG.6/27/IND/1, February 2017, <https://digitallibrary.un.org/record/863200?ln=en> (accessed March 6, 2022).

<sup>2</sup> “India: Army Kills 14 Civilians in Nagaland,” Human Rights Watch news release, December 8, 2021, <https://www.hrw.org/news/2021/12/08/india-army-kills-14-civilians-nagaland> (accessed March 8, 2022). In Jammu and Kashmir, United Nations expert mandates repeatedly raised concerns over enforced disappearances, arbitrary detentions, harassment and arrest of journalists and activists, and the “broader pattern of systematic infringements of fundamental rights used against the local population.” Letter from five UN expert mandates to the Indian government, March 31, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26181> (accessed March 8, 2022).

<sup>3</sup> *Prakash Singh v. Union of India*, Supreme Court of India, 8 SCC 1, 2006, <http://indiankanoon.org/doc/1090328/> (accessed March 5, 2022).

<sup>4</sup> “Kashmir: UN Reports Serious Abuses,” Human Rights Watch news release, July 10, 2019, <https://www.hrw.org/news/2019/07/10/kashmir-un-reports-serious-abuses> (accessed March 8, 2022).

- f. Ratify the Rome Statute of the International Criminal Court (ICC) and implement the statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the ICC and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts in accordance with international law.

### **Rights of Dalits, Adivasis and Religious Minorities**

7. In the last UPR, India committed to strengthening its efforts to guarantee freedom of religion to all and combating instances of religious intolerance, violence and discrimination.<sup>5</sup> However, the government has instead adopted laws and policies that systematically discriminate against minority Muslims and Christians.<sup>6</sup> These laws, coupled with communal and divisive speeches by BJP leaders, including many officeholders, have normalized violence and encouraged ultra-nationalist Hindu groups to threaten, harass, and violently attack members of minority religious communities, especially Muslims and Christians. Such bigotry has infiltrated independent institutions like the police, who fail to properly prosecute these crimes, perpetuating further abuses.

8. The Citizenship (Amendment) Act passed in December 2019 discriminates against Muslims, making religion the basis for citizenship. The Citizenship Amendment Act, coupled with the Indian government's push for a nationwide citizenship verification process through a National Population Register and a proposed National Register of Citizens, aimed at identifying "illegal migrants," has heightened fears that millions of Indian Muslims could be stripped of their citizenship rights and disenfranchised. In Assam, India's first state that completed the National Register of Citizens, the process has left nearly two million people at risk of arbitrary detention and statelessness. Human Rights Watch found that the process in Assam lacked standardization, leading to arbitrary and discriminatory decisions by officials, and put undue hardship on poorer residents and women who do not have access to identity documentation – dating back for decades – to establish citizenship claims.<sup>7</sup>

9. At least 10 states in India forbid forced religious conversion, but in fact misuse the laws to target Christians, particularly from Dalit or Adivasi communities.<sup>8</sup> They are also used to harass and arrest Muslim men in relationships with Hindu women.<sup>9</sup>

10. States in India use laws against cow slaughter to prosecute Muslim cattle traders even as BJP-affiliated groups attack Muslims and Dalits on rumors that they killed or traded cows for beef. Since May 2015, at least 50 people have been killed, mostly Muslims, and hundreds injured in attacks by these so-called cow protection groups that claim affiliation to the BJP. Police have often stalled prosecutions of the attackers, while several BJP politicians have publicly justified the attacks.<sup>10</sup>

11. Dalits continue to be discriminated against in education and in jobs despite government commitments to the contrary in the last UPR. According to government data, attacks against Dalits

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<sup>5</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21; India," UN Doc. A/HRC/WG.6/27/IND/1, February 2017, <https://digitallibrary.un.org/record/863200?ln=en> (accessed March 6, 2022).

<sup>6</sup> "India: Government Policies, Actions Target Minorities," Human Rights Watch news release, February 19, 2021, <https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities> (accessed March 9, 2022).

<sup>7</sup> Human Rights Watch, "Shoot the Traitors": Discrimination Against Muslims under India's New Citizenship Policy, April 2020, <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy> (accessed March 9, 2022).

<sup>8</sup> Hannah Ellis-Peterson, India's Christians living in fear as claims of 'forced conversions' swirl," *Guardian*, October 4, 2021, <https://www.theguardian.com/world/2021/oct/04/india-christians-living-in-fear-claims-forced-conversions> (accessed March 9, 2022).

<sup>9</sup> Geeta Pandey, "'Love jihad': What a reported miscarriage says about India's anti-conversion law," *BBC*, December 17, 2020, <https://www.bbc.co.uk/news/world-asia-india-55314832> (accessed March 9, 2022).

<sup>10</sup> Human Rights Watch, *Violent Cow Protection in India: Vigilante Groups Attack Minorities*, February 2019, <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities> (accessed March 9, 2022).

and Adivasis have continued to rise during the reporting period.<sup>11</sup> Dalit and Adivasi women remain especially vulnerable to violence, including sexual violence.

## 12. Recommendations

- a. Repeal or amend the Citizenship Amendment Act, anti-conversion laws, and laws banning cow slaughter, to comply with India's international human rights obligations.
- b. Discard any plan for a nationwide citizenship verification project until there are public consultations to establish standardized procedures and due process protections ensuring the process is not discriminatory and does not impose undue hardship on poor, minority communities, and women.
- c. Fully prosecute those responsible for inciting discrimination, hostility or violence and for attacking religious minorities, including government supporters and party leaders.
- d. Ensure prompt, independent, and credible investigations into violence, including gender-based violence, against Dalits and Adivasis.

## Crackdown on Civil Society, Freedom of Speech, Assembly, and Association

13. The government has shut down foreign funding for thousands of civil society groups, particularly those that work on human rights or the rights of vulnerable communities, using the Foreign Contribution Regulation Act (FCRA).<sup>12</sup> Several UN bodies have warned that the FCRA is being used to silence dissent. In October 2020, the UN High Commissioner for Human Rights Michelle Bachelet said that the act is "indeed actually being used to deter or punish NGOs for human rights reporting and advocacy that the authorities perceive as critical in nature."<sup>13</sup>

14. People who protest or criticize the government are frequently labeled "anti-national" and the authorities target them by bringing politically motivated criminal cases under the broadly worded counterterrorism law, the Unlawful Activities Prevention Act (UAPA), sedition law, or by alleging financial fraud or irregularities.<sup>14</sup> Although the government has repealed the farming law amendments, initially, protesting farmers were labeled "terrorists" by BJP leaders.<sup>15</sup>

15. The authorities are wrongfully prosecuting 18 human rights defenders under the UAPA who participated in protests against the citizenship law, blaming them for the communal violence in Delhi in February 2020 which left 53 people dead and hundreds injured, most of them Muslim. Muslim victims said that the police failed to respond adequately and were at times complicit in these attacks. Courts have found that police investigations were marked by bias, delays, inaccuracy, lack of proper evidence, and failure to follow proper procedures.<sup>16</sup>

16. The Indian government has arrested 16 prominent human rights defenders working on rights of India's most marginalized communities under the UAPA in relation to anti-caste violence that took

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<sup>11</sup> "Crime in India, 2020," National Crime Records Bureau, Ministry of Home Affairs, Government of India, September 2021, <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf> (accessed March 9, 2022).

<sup>12</sup> "India Should Stop Using Abusive Foreign Funding Law," Human Rights Watch news release, January 18, 2022, <https://www.hrw.org/news/2022/01/18/india-should-stop-using-abusive-foreign-funding-law> (accessed March 9, 2022).

<sup>13</sup> "Bachelet dismayed at restrictions on human rights NGOs and arrests of activists in India," Office of the High Commissioner for Human Rights news release, October 20, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26398&LangID=E> (accessed March 9, 2022).

<sup>14</sup> "India: Arrests of Activists Politically Motivated," Human Rights Watch news release, September 6, 2020, <https://www.hrw.org/news/2020/09/16/india-arrests-activists-politically-motivated>; "India: Government Raids Targeting Critics," Human Rights Watch news release, September 17, 2021, <https://www.hrw.org/news/2021/09/17/india-government-raids-targeting-critics> (accessed March 8, 2022).

<sup>15</sup> Harikishan Sharma and Avishek G. Dastidar, "How protesting farmers were targeted by Govt, BJP," *Indian Express*, November 20, 2021, <https://indianexpress.com/article/india/protesting-farmers-modi-govt-bjp-7632043/> (accessed March 10, 2022).

<sup>16</sup> "India: End Bias in Prosecuting Delhi Violence," Human Rights Watch news release, June 15, 2020, <https://www.hrw.org/news/2020/06/15/india-end-bias-prosecuting-delhi-violence> (accessed March 9, 2020).

place in Bhima Koregaon in Maharashtra state in January 2018.<sup>17</sup> They are accused of being members of a banned Maoist organization and of inciting violent protests despite proof that evidence was planted against them.<sup>18</sup> One of the defenders, Stan Swamy, 84, a well-known tribal rights activist, died in July 2021 in custody, prompting the UN special rapporteur on human rights defenders to say his death “will forever remain a stain on India’s human rights record.”<sup>19</sup> UN High Commissioner Bachelet has also raised concerns over the use of the UAPA against human rights activists.<sup>20</sup>

17. Government data shows a rising number of UAPA cases in Jammu and Kashmir, from fewer than 60 annually until 2015 to 255 cases in 2019.<sup>21</sup> Kashmiris are facing repression after the government revoked the state’s special constitutional status and split it into two federally governed territories in August 2019, with many detained.<sup>22</sup> The government regularly shuts down the internet in the Muslim-majority region.<sup>23</sup> There are growing restrictions on media, a number of journalists and human rights defenders have been arrested on spurious terrorism charges, and authorities regularly harass critics, including through use of counterterrorism raids.<sup>24</sup>

## 18. Recommendations

- a. Immediately drop the charges and release all human rights defenders, journalists, and others held on politically motivated charges.
- b. Amend the Unlawful Activities (Prevention) Act to conform to international standards.
- c. Repeal the colonial-era sedition law.
- d. Stop harassment of human rights defenders and amend the FCRA so that it does not interfere with the rights to freedom of expression and association.
- e. Release all those arbitrarily detained in Jammu and Kashmir, drop the politically motivated charges against critics, and protect people’s right to peaceful protests.

## Privacy and Digital Rights

19. The Indian government is using technology to curtail rights as part of its broadening crackdown on freedom of expression, association, and peaceful assembly.

20. India continues to impose the largest number of internet shutdowns globally.<sup>25</sup> India’s Supreme Court has directed the authorities to ensure that internet shutdowns do not violate

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<sup>17</sup> Siddhartha Deb, “The unravelling of a conspiracy: were the 16 charged with plotting to kill India’s prime minister framed?” *Guardian*, August 12, 2021, <https://www.theguardian.com/world/2021/aug/12/bhima-koregaon-case-india-conspiracy-modi> (accessed March 9, 2022).

<sup>18</sup> Niha Masih and Joanna Slater, “Evidence found on a second Indian activist’s computer was planted, report says,” *Washington Post*, July 6, 2021, <https://www.washingtonpost.com/world/2021/07/06/bhima-koregaon-case-india/> (accessed March 9, 2022).

<sup>19</sup> “India: Death in custody of priest Stan Swamy is devastating – UN expert,” Office of the High Commissioner for Human Rights news release, July 15, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27313&LangID=E> (accessed March 9, 2022).

<sup>20</sup> “Bachelet dismayed at restrictions on human rights NGOs and arrests of activists in India,” Office of the High Commissioner for Human Rights news release, October 20, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26398> (accessed March 9, 2022).

<sup>21</sup> Safwat Zargar, “‘For anything and everything’: UAPA cases are rising in Kashmir,” *Scroll.in*, April 9, 2021, <https://scroll.in/article/991077/for-anything-and-everything-uapa-cases-are-rising-in-kashmir> (accessed March 9, 2022).

<sup>22</sup> “India: Basic Freedoms at Risk in Kashmir,” Human Rights Watch news release, August 6, 2019, <https://www.hrw.org/news/2019/08/06/india-basic-freedoms-risk-kashmir> (accessed March 8, 2022).

<sup>23</sup> “India: Abuses Persist in Jammu and Kashmir,” Human Rights Watch news release, August 4, 2020, <https://www.hrw.org/news/2020/08/04/india-abuses-persist-jammu-and-kashmir> (accessed March 9, 2022).

<sup>24</sup> “India: Kashmiri Journalist Held Under Abusive Laws,” Human Rights Watch news release, February 8, 2022, <https://www.hrw.org/news/2022/02/08/india-kashmiri-journalist-held-under-abusive-laws>; “India: Kashmiri Activist Held Under Abusive Law,” Human Rights Watch news release, November 25, 2021, <https://www.hrw.org/news/2021/11/25/india-kashmiri-activist-held-under-abusive-law>; “India: Counterterrorism Raids Targeting Peaceful Critics,” Human Rights Watch news release, October 30, 2020, <https://www.hrw.org/news/2020/10/30/india-counterterrorism-raids-targeting-peaceful-critics> (all accessed March 9, 2022).

<sup>25</sup> #KeepItOn report: India shuts down internet more than any other nation on earth,” Access Now, March 3, 2021, <https://www.accessnow.org/keepiton-report-india-shuts-down-internet-more-than-any-other-nation-on-earth/> (accessed March 13, 2022).

constitutional rights, and that telecom or internet services are suspended only in exceptional circumstances such as a public emergency or for reasons of public safety. The court has also directed the authorities to always publish internet suspension orders and to ensure that the orders are lawful, necessary, proportionate and limited in scope.<sup>26</sup> However, internet shutdowns remain common in India and the authorities continue to disregard court directive to publish internet suspension orders.

21. In February 2021, the government enacted the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which target internet intermediaries, including social media services, digital news services, and curated video streaming sites. While the government said it wants to curb the spread of “fake news,” this policy effectively allows greater governmental control over online content including to curb legitimate criticism, threatens to weaken encryption, and seriously undermines rights to privacy and freedom of expression online.<sup>27</sup> Three UN human rights experts said the rules did not conform with international human rights norms.<sup>28</sup>

22. Despite the constitutional and international law rights to privacy, Indian authorities have also been implicated in using the Israeli-produced spyware Pegasus to target activists, journalists and political opponents.<sup>29</sup> The government has repeatedly stalled attempts to investigate these allegations. Its refusal to disclose information to the Supreme Court, arguing national security implications, finally led the court to appoint an independent committee. India’s failure to establish proper judicial and parliamentary oversight of government surveillance measures also violate privacy and other civil liberties guaranteed under domestic and international law.

23. The government’s proposed Personal Data Protection Bill, 2021, falls short of international standards on safeguarding the right to privacy and other human rights. In particular, the bill provides that the central government may exempt agencies from compliance with any or all of its provisions with respect to data processing or data sharing, raising concerns over enhanced state surveillance powers.<sup>30</sup>

24. In September 2018, the Supreme Court upheld the constitutionality of the biometric identification project Aadhaar for accessing government benefits and filing income tax, but restricted it for other purposes. Rights groups raised concerns that Aadhaar registration requirements had prevented poor and marginalized people from getting essential services that are constitutionally guaranteed, including food and health care.<sup>31</sup>

## 25. Recommendations

- a. End broad, indiscriminate internet shutdowns. Ensure any restriction on internet access is lawful, necessary, proportionate, and limited in scope, and publish every shutdown order in line with the Supreme Court directives.
- b. Repeal the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

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<sup>26</sup> *Anuradha Bhasin v. Union of India*, Supreme Court of India, 3 SCC 637, January 10, 2020, <https://indiankanoon.org/doc/82461587/> (accessed March 12, 2022).

<sup>27</sup> Center for Democracy and Technology, “New Intermediary Rules in India Imperil Free Expression, Privacy and Security,” blog post, June 4, 2021, <https://cdt.org/insights/part-2-new-intermediary-rules-in-india-imperil-free-expression-privacy-and-security/> (accessed March 13, 2022).

<sup>28</sup> Letter from three UN human rights experts to the government of India, Reference OL IND/8/2021, June 11, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26385> (accessed March 13, 2022).

<sup>29</sup> “India: Spyware Use Violates Supreme Court Privacy Ruling,” Human Rights Watch news release, August 26, 2021, <https://www.hrw.org/news/2021/08/26/india-spyware-use-violates-supreme-court-privacy-ruling> (accessed March 12, 2022).

<sup>30</sup> Apar Gupta and Vrinda Bhandari, “National security, at the cost of citizens’ privacy,” *Indian Express*, December 20, 2021, <https://indianexpress.com/article/opinion/columns/national-security-at-the-cost-of-citizens-privacy-7680787/> (accessed March 12, 2022).

<sup>31</sup> “India: Top Court OK’s Biometric ID Program,” Human Rights Watch news release, September 27, 2018, <https://www.hrw.org/news/2018/09/27/india-top-court-oks-biometric-id-program> (accessed March 12, 2022).

- c. Revise the draft bill on data protection to ensure it is in line with international standards on safeguarding the right to privacy of users and other human rights, and is accompanied by surveillance reform.
- d. Create adequate safeguards, including meaningful, non-biometric alternatives, to ensure that an Aadhaar registration requirement does not prevent poor and marginalized people from getting essential services that are constitutionally guaranteed such as food and health care. Also provide sufficient safeguards relating to storing and protecting centrally stored data under Aadhaar.

## Rights of Women and Girls

26. In the last UPR, India cited laws and policies brought since 2013 to strengthen the safety and security of women. However, survivors of sexual violence continue to face barriers to justice.<sup>32</sup>

27. The government has failed to properly implement the 2013 Sexual Harassment of Women at Workplace Law. In June 2019, India voted in favor of the International Labour Organization (ILO) Violence and Harassment Convention. However, the authorities have failed to properly implement the 2013 Sexual Harassment of Women at Workplace Law, leaving many women, especially those in the informal sector, at risk of violence and without recourse.<sup>33</sup>

28. In February 2022, India's BJP-led Karnataka state issued a directive backing discriminatory bans at several government-run educational institutions on Muslim female students from wearing the hijab, or headscarf, inside classrooms.<sup>34</sup> In March, the state high court upheld the government order banning the hijab from classrooms.<sup>35</sup>

## 29. Recommendations

- a. Develop, adopt, and implement binding regulations providing standard operating procedures for all police, forensics experts, and the judiciary in dealing with violence against women.
- b. Enforce the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by creating effective oversight, carrying out inspections and investigations, sanctioning employers who fail to comply, and ensuring remedies for survivors.
- c. Ratify and implement ILO Convention on Domestic Workers, 2011, No. 189 and the ILO Convention on Violence and Harassment, 2019, No. 190 paying special attention to sectors with heightened risk of violence and harassment.
- d. Repeal directives that ban the hijab, and ensure that schools and universities are inclusive spaces, and safeguard girls' and women's right to freedom of religion and expression.

## Rights of Children

30. India made significant progress after the Right to Education Act came into effect in 2010, guaranteeing free and compulsory education to children ages 6 to 14. However, government failure to

<sup>32</sup> Human Rights Watch, "Everyone Blames Me": Barriers to Justice and Support Services for Sexual Assault Survivors in India, November 2017, <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors> (accessed March 9, 2022).

<sup>33</sup> Human Rights Watch, "No #MeToo for Women Like Us": Poor Enforcement of India's Sexual Harassment Law, October 2020, <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law> (accessed March 9, 2022).

<sup>34</sup> Jayshree Bajoria, "Hijab Ban in India Sparks Outrage, Protests," Human Rights Watch, February 9, 2022, <https://www.hrw.org/news/2022/02/09/hijab-ban-india-sparks-outrage-protests>; Meenakshi Ganguly, "India's Hijab Debate Fueled by Divisive Communal Politics," Human Rights Watch, February 15, 2022, <https://www.hrw.org/news/2022/02/15/indias-hijab-debate-fueled-divisive-communal-politics> (accessed March 10, 2022).

<sup>35</sup> "Hijab ban: Karnataka high court upholds government order on headscarves," BBC, March 15, 2022, <https://www.bbc.co.uk/news/world-asia-india-60300009> (accessed March 15, 2022).

ensure equitable access to remote education and resources amid school closures during the Covid-19 pandemic reversed some of those gains and exposed entrenched discrimination against marginalized populations.<sup>36</sup> Decline in earnings and loss of jobs due to the pandemic resulted in an increase in child labor, early marriage, and trafficking.<sup>37</sup> A UNICEF report said about 10 million students are at risk of never returning to school.<sup>38</sup>

31. In May 2021, the United Nations Secretary-General called on India to endorse the Safe Schools Declaration.<sup>39</sup>

## 32. Recommendations

- a. Launch mass outreach campaigns to persuade communities and families of children who have been out of school—either due to the pandemic or other reasons—to return to school. Enable schools to assess students' level of learning and to provide necessary support through free extra tutoring, counselling, and addressing other needs.
- b. Endorse and implement the Safe Schools Declaration.

## Rights of Lesbian, Gay, Bisexual, and Transgender Persons

33. In a landmark September 2018 ruling with global significance, India's Supreme Court decriminalized consensual adult same-sex relations.<sup>40</sup> This was one of the main recommendations on LGBT rights during the last UPR.

34. The Transgender Persons (Protection of Rights) Act, which was passed in December 2019, fails to provide full protection and recognition including the right to self-identify, which India's Supreme Court recognized in a historic judgment in 2014. Its provisions are also contrary to international standards for legal gender recognition.<sup>41</sup>

## 35. Recommendations

- a. Amend the Transgender Persons (Protection of Rights) Act to conform with international standards.
- b. Ensure LGBT persons enjoy all fundamental rights, without discrimination.

## Rights of Persons with Disabilities

36. India accepted recommendations during the third cycle to "take holistic measures to protect the rights of persons with disabilities," but many remain locked up in overcrowded and unsanitary institutions.<sup>42</sup> Women and girls with disabilities are at a heightened risk of sexual violence and face

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<sup>36</sup> An August 2021 parliamentary standing committee report noted that 77 percent of students were deprived of attending online classes, while 40 percent of students had not accessed any remote learning. "Plans for Bridging the Learning Gap caused due to School Lockdown as well as Review of online and offline Instructions and Examinations and Plans for re-opening of Schools," Report No.328, Parliamentary Standing Committee on Education, Women, Children, Youth and Sports, August 2021, [https://rajyasabha.nic.in/rsnew/Committee\\_site/Committee\\_File/ReportFile/16/144/328\\_2021\\_8\\_15.pdf](https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/16/144/328_2021_8_15.pdf) (accessed March 9, 2022).

<sup>37</sup> "India's Covid crisis sees rise in child marriage and trafficking," <https://www.bbc.co.uk/news/world-asia-india-54186709>, BBC, September 18, 2020, (accessed March 9, 2022).

<sup>38</sup> UNICEF, "Rapid Assessment of Learning during School Closures in the Context of Covid," 2020, <https://www.unicef.org/india/media/6121/file/Report%20on%20rapid%20assessment%20of%20learning%20during%20school%20closures%20in%20context%20of%20COVID-19.pdf> (accessed March 9, 2022).

<sup>39</sup> "Children and Armed Conflict: Report of the Secretary-General," S/2021/437, May 6, 2021, para. 239, (accessed March 12, 2022).

<sup>40</sup> "India: Supreme Court Strikes Down Sodomy Law," Human Rights Watch news release, September 6, 2018, <https://www.hrw.org/news/2018/09/06/india-supreme-court-strikes-down-sodomy-law> (accessed March 9, 2022).

<sup>41</sup> Kyle Knight, "India's Transgender Rights Law Isn't Worth Celebrating," *The Advocate*, December 5, 2019, <https://www.hrw.org/news/2019/12/05/indias-transgender-rights-law-isnt-worth-celebrating> (accessed March 9, 2022).

<sup>42</sup> Human Rights Watch, "Treated Worse than Animals:" Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India, December 2014, <https://www.hrw.org/report/2014/12/03/treated-worse-animals/abuses-against-women-and-girls-psychosocial-or-intellectual> (accessed March 4, 2022).

obstacles in accessing justice.<sup>43</sup>

37. The 2017 mental health care bill prohibited people with psychosocial disabilities from being chained. However, in January 2019 the media reported that thousands of people with psychosocial disabilities remained shackled in the state of Uttar Pradesh.<sup>44</sup>

### 38. Recommendations

- a. Create and implement a national de-institutionalization policy with a time-bound action plan, based on the values of equality, independence, and inclusion for persons with disabilities, and shift progressively to voluntary community-based mental health and independent living services.
- b. Fully implement laws and policies to protect rights in cases of sexual violence against women and girls with disabilities.
- c. Implement the existing ban on shackling.

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<sup>43</sup> Human Rights Watch, *Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India*, April 2018, <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities> (accessed March 4, 2022).

<sup>44</sup> Mental Healthcare Act, No. 10 of 2017, <https://egazette.nic.in/WriteReadData/2017/175248.pdf> (accessed March 8, 2022), art. 95(d); "Supreme Court Shocked at Chaining of Inmates in U.P. Mental Asylum," *The Hindu*, January 3, 2019, <https://www.thehindu.com/news/national/sc-shocked-at-chaining-of-inmates-in-up-mental-asylum/article25901395.ece> (accessed March 8, 2022).