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KEYWORDS: HUMAN RIGHTS DEFENDERS ¹ / HUMAN RIGHTS INSTRUMENTS ¹ / LEGISLATION / IMPUNITY / FREEDOM OF EXPRESSION / ADMINISTRATIVE DETENTION / NON-STATE ACTORS / POLICE

The views represented herein may not necessarily express the views of Amnesty International.

Acknowledging that all human rights are universal and indivisible...

We put forward the following recommendations for the more effective protection of the rights of Human Rights Defenders (HRDs) without implying that such defenders are a special category of people who deserve greater rights than other people. The rights arise from a recognition that, given the role played by HRDs, they only have a peculiar vulnerability that needs to be specifically addressed.

The definition of human rights embodied in international human rights treaties and non-treaty standards should constitute the broadly recognised definition of the term for the State, Statutory bodies, Courts and the Police and all other agents of the State.

The Government of India should support and respect the work of those defending human rights throughout India, in line with the principles set out in the United Nations (UN) *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* adopted by the General Assembly on 9 December 1998.

The valuable contribution made to the protection and promotion of human rights by HRDs in all areas of India should be recognised by the state and given active support.

The Government of India should ensure full support for people's participation in the form of people's movements and their involvement in discussions surrounding development as set out in Article 8(2) of the UN *Declaration on the Right to Development* which calls on states to "encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights".

The Government of India must address seriously threats made to the lives of human rights defenders throughout India whether by agents of the state or non-state actors.

The branding of those defending human rights as 'anti-national' because they may be challenging, through peaceful means, injustices which are apparent in the existing economic, political or social order, should be stopped. HRDs in India are today particularly vulnerable in their work and interventions due to the rise and political legitimacy enjoyed by sectarian groups that use violence with impunity.

NB: Specific recommendations concerning economic actors are given at the end of this document.

1) **Impunity** directly hinders the work of human rights defenders in seeking redress for victims of human rights violations and their relatives. Therefore the Government of India should:

- (i) Ensure that judicial inquiries into all allegations of human rights violations are speedy and time bound, that their reports are made public and mandatorily enforced and that their independence and impartiality are above reproach

- (ii) Ensure compensation for all victims of unlawful arrest or detention in line with Article 9(5) of the International Covenant on Civil and Political Rights (ICCPR);
- (iii) Remove provisions which exist in the ordinary criminal law and in special legislation which provide for sanction for prosecution of public servants, including the police and army and thereby limit the ability of victims to initiate legal proceedings against public servants, even when charged with perpetrating human rights violations. This has been recommended by the UN Human Rights Committee which expressed concern at these provisions facilitating impunity.
- (iv) Protect witnesses, including human rights defenders, who testify against public servants in human rights cases and who may be subjected to threats and intimidation.
- (v) Ensure that those found responsible for human rights violations are brought to justice and prosecuted promptly in accordance with law and standards for fair trial.
- (vi) Ensure that the rule of law is seen to operate in the matter of the state and its functionaries.

2) Ensure full implementation of the **Scheduled Castes and Scheduled Tribes (SC/ST) (Prevention of Atrocities) Act, 1989 and Rules of 1995** which provide for penalties against those perpetrating atrocities on members of these communities who are particularly vulnerable to abuse. In particular, ensure that:

- (i) section 4 of the Act which makes it an offence for a public servant to wilfully refrain from discharging his duty under the act, is rigorously enforced;
- (ii) police officers who put pressure upon victims of atrocities to enter into a compromise with the assailants should be proceeded against under section 4;
- (iii) make full and effective use of the power given by the Act to extern from atrocity-prone villages upper caste persons who have been habitually indulging in atrocities against *dalits*;
- (iv) use the Act also against police personnel who subject the Scheduled Castes and Scheduled Tribes to torture and other atrocities;
- (v) give full effect to the provision in the Act that makes it obligatory to provide victims of atrocities with rehabilitation aimed at ensuring that they do not suffer as a result of the atrocities;
- (vi) section 3 of the Act which lists 22 different forms of atrocities has been under-utilised by state agencies limiting the intended, salutary effect of the legislation. For example, section 3 (1)(x) has been widely used while there remain sub-sections which

have so far simply not been put to use. We call upon the Government of India (GOI) to publicise all provisions of the Act and the Rules which have so far not been put to use.

- (vii) Since the Supreme Court has held that the Special Court under the Act is not a court of original jurisdiction, the Act should be amended to make the special courts instituted under it, to be courts of original jurisdiction so that expeditious trial of offences may be made possible.

3) In light of the widespread use of **preventive detention** to detain human rights defenders:

- (i) Repeal all preventive detention legislation both central and state (including the **National Security Act**).
- (ii) Review sections of the ordinary criminal law which provide for preventive detention including sections 107-110 of the Code of Criminal Procedure (CrPC) to ensure that they are not used to deny human rights defenders their right to peaceful assembly, freedom of expression and freedom to protest peacefully.
- (iii) Review Article 22 of the Indian Constitution which allows preventive detention.
- (iv) Review section 151 of the CrPC (providing for preventive arrest) to ensure that it is not misused to prolong illegal detention of HRDs. In rare cases where such a provision may be seen to be necessary, the police must ensure that the HRDs whose detention they wish to prolong are produced before a judicial magistrate on completion of 24 hours and who has ordered the same.
- (v) Repeal the Unlawful Activities (Prevention) Act, 1967, the Armed Forces Special Powers Act, 1958 and the various Disturbed Areas' Acts in different states and drop the proposal to legislate the new TADA (Terrorist and Disruptive Activities) Bill, i.e.: the Criminal Law Amendment Bill, 2000.

4) In light of the vulnerability of human rights defenders to **arbitrary arrest and detention**, there must be full implementation of the guidelines set out by the Supreme Court in *D. K. Basu vs State of West Bengal* providing safeguards to detainees. These safeguards must be made part of the statute. One additional safeguard is to be added, namely, that the arrest memo (custody memo) bearing signature of the accused and a relative or friend, shall be sent to the Court immediately upon the arrest.

5) In light of threats to the right of **peaceful assembly of human rights defenders** in India, section 144 of the CrPC should not be used to suppress peaceful legitimate activities and as a means of prohibiting activities in defence of human rights. Since prohibitory orders under section 144 are being promulgated indiscriminately and for indefinite periods, it is necessary to add safeguards to that section, namely that its promulgation and continuation shall be subject to review by the Sessions Judge of the concerned district

within 24 hours for which public notice shall be given and the public will be allowed to participate and oppose the promulgation. The same shall also apply to prohibitory orders promulgated by the Police under the various police laws of the various states.

- (vi) In light of the routine use of **unlawful force** against those defending human rights in India:
 - (i) judicial inquiries should be held into all incidents in which force is used against demonstrators. ***The enquiry should be time bound; the report should be made public and mandatorily implemented;***
 - (ii) all guidelines (at national and state level) governing the use of force and firearms by security forces should be reviewed and brought in line with international standards including the UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* and the UN *Code of Conduct for Law Enforcement Officials*. These guidelines shall be enacted into the police manuals of the various states and also the manual for the other armed forces and made public.
- 7) It is seen that in all cities of India, *dharnas* and other **demonstrations** are permitted only in isolated places where they cannot address the public. The rights of the protesters to address the public without causing obstructions to the traffic, etc, must be recognised as a basic right and should be provided for.
- 8) Full implementation of the **Legal Services (Authorities) Act, 1987**, at the state level in order to provide full access to legal aid to all vulnerable groups in society. Full publicity will be given especially in rural areas that the poor people can avail of legal aid as a Fundamental Right.
- 9) Legislation should be passed ensuring the **right to information** and steps taken to repeal the Official Secrets Act, 1923. Since the existing Right to Information acts in the various states contain more exceptions than rights, it should be mandated that in the matter of giving access to information, no restriction shall be placed on the members of the public other than what applies to parliamentarians and legislators when they seek information from the government and state agencies.
- 10) Article 13 of the Human Rights Defenders Declaration which states that “Everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means” shall be respected. HRDs utilising such **rights of association or resources** should not be targeted and victimised for carrying out legitimate and constitutional human rights activities.
- 11) In light of **restrictions on the movement** of human rights defenders and the **monitoring** of human rights activity **by government agencies**:
 - (i) the intimidation of human rights defenders through monitoring and surveillance by government agencies or private agencies promoted by the government should be stopped.

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- (ii) those engaged in human rights activity should be allowed unhindered access to victims of human rights violations in all areas of India (particularly in areas of armed conflict) and to international fora outside India in order to report on human rights concerns or undergo training.
- (iii) the government must ensure the full co-operation of the police and the armed forces in court proceedings.
- (iv) all kinds of censorship and restrictions regarding dissemination of information concerning human rights violations should be removed.

12) The situation of the **breakdown in the criminal justice system in areas of armed conflict** particularly in Jammu and Kashmir and the North East must be addressed urgently as it greatly restricts the right to redress for human rights defenders and victims of human rights violations in those areas. In particular:

- (i) Ensure timely state response to court orders
- (ii) Ensure prompt responses by the courts to habeas corpus petitions.

13) All **cases of encounter deaths** should be registered mandatorily as cases of murder under the Indian Penal Code and investigated by the independent investigating agencies of the state and prosecuted accordingly.

Problems of the criminal justice system severely impact on the work of human rights defenders. They should be addressed as a matter of urgency as they have a direct impact on the ability of HRDs to pursue justice for victims of human rights violations or to clear cases filed against them as a means of harassment.

A. Police

- 1) In light of increasing concerns about the sharp politicisation of the police and paramilitary forces, especially in relation to deep biases and prejudices that have impaired their impartial functioning, especially related to marginalised sections like minorities, tribals and *dalits*, the Government of India should:
 - (i) urgently address the problem of political influence over the police at all levels which facilitates the filing of false criminal cases against HRDs by powerful interests;
 - (ii) implement all the various recommendations of the National Police Commission relating to an independent, democratic and transparent police structure and police adherence to the rule of law;
 - (iii) provide police at all levels with human rights training that addresses the caste, gender, ethnic and communal bias which has been widely documented;
 - (iv) prosecute police personnel who commit atrocities or unlawful acts and punish them in a time bound manner; the victims should be compensated by the state, the amount to be paid in compensation to be recovered from the guilty and indicted police officers;
 - (v) recognise and reward lawful and prompt conduct and speedy investigations that bring the guilty to book by efficient policemen. However, there can be no justification for rewarding those engaged in encounter killings or undertaking any unlawful acts against HRDs;
 - (vi) train police in the lawful performance of their duties. This should not be merely tokenism but should be an ongoing and continuous process and should include awareness and recognition of the work of HRDs.

B. Judiciary

- 1) There should be transparency and accountability in the appointment of the judiciary. Before appointment of a judge there should be an opportunity provided for the members of the public to raise either questions/objections regarding the appointment of a particular judge. The judiciary at all levels should be provided with *sensitisation* programs concerning human rights including gender and caste. HRDs should be permitted to address the judiciary on these matters.
- 2) *Contempt of court* should apply only to wilful disobedience of court orders and not criticism of judicial pronouncements and should not affect healthy critiques of judgements that have violated basic principles of human rights.

- 3) HRDs should have *locus standi* to participate in criminal proceedings at all levels as already provided for under the Consumer Protection Act with reference to consumer associations.
- 4) The High Courts of the country should regularly monitor the subordinate judiciary and hold them accountable to their adherence and application of judicial pronouncements of the Supreme Court and the High Courts in matters that have a direct or indirect bearing on human rights and the functioning of HRDs.
- 5) Court proceedings have shown that HRDs and litigants from the marginalised sections suffer attitudinal and verbal intimidation from officers of the court and advocates. Statutory audio recordings of the proceedings that are thereafter freely available to the public should be one way to guarantee that such verbal intimidation are restricted to the minimum.

C. Statutory bodies

Recognising the important role that national institutions for the protection of human rights can play and mindful of Article 14(3) of the Human Rights Defenders Declaration which calls on states to "ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms... whether they be ombudsmen, human rights commissions or any other form of national institution":

- 1) The Justice Ahmadi Committee Report on Amendments to the Protection of Human Rights Act, 1993 (PHRA) should be made public by the National Human Rights Commissions (NHRC) and implemented.
- 2) ***The Paris Principles of 1991*** dealing with the UN guidelines for the composition and functioning (of national institutions) should be fully implemented within the statute and the working of all statutory bodies including the NHRC.
- 3) Section 19 of the PHRA, should be repealed in order to allow the NHRC and State Human Rights Commission (SHRCs) to independently investigate allegations of ***human rights violations by members of the armed and paramilitary forces***.
- 4) Section 36(2) of the PHRA which provides a ***time limit of one year*** for making a complaint to the NHRC and SHRCs should be ***amended*** to enable complaints to be made without any restriction of limitation in relation to violations of human rights.
- 5) The NHRC should play an active role in ensuring ***incorporation of UN standards in national legislation***.
- 6) The ***recommendations*** of National and State Human Rights Commissions should be made legally binding on the ***respective government and other agencies/individuals to whom they have been addressed***.
- 7) The NHRC and SHRCs should be empowered to ***prosecute*** perpetrators of human rights

violations in a court of law.

- 8) **Human rights courts** should be set up in each district in each state. There should be a schedule of offences of human rights violations indicating the punishment thereof, and the rules necessary for the functioning of the District Human Rights Courts should be passed.
- 9) There should be **full transparency in the appointment** of chairpersons and members of various commissions, ensuring that they are fully representative of civil society bearing in mind Article B1 of the Paris Principles which states that "The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civil society) involved in the protection and promotion of human rights".
- 10) **Interim and annual reports** of all the statutory commissions should be published in a timely manner, even if they have not been tabled in Parliament.
- 11) A statutory framework for co-operation for all statutory commissions, namely, NHRC, National Commission for Women (NCW), National Commission for Minorities (NCM) and the National Commission for Schedule Castes and Schedule Tribes, should be established especially in those cases where HRDs are involved. Currently, the chairpersons of the above commissions are meeting and co-operating as a matter of practice. Such co-operation should be made statutory.
- 12) An **independent investigative wing** of the NHRC should be established which would be totally independent in terms of recruitment and transfers of the police and armed forces. The personnel in this wing should not be on deputation from any of the state or central wings of the police. This investigative wing shall be the common investigative agency for all the commissions.
- 13) **State Human Rights Commissions** in those states where they do not already exist and statutory **State Women's Commissions, State Minorities Commissions and State SC/ST Commissions** in all states should be established promptly.
- 14) The SHRCs should monitor and carry out the directions of the NHRC pertaining to that state.
- 15) Appointments to all National Institutions should be non-political and include representatives of civil liberties/ human rights/ democratic rights/ non-governmental organizations (NGOs), as recommended by the UN Committee on the Elimination of Discrimination against Women in January 2000.
- 16) All new state and central laws having a bearing on human rights shall be referred to the NHRC by the governments concerned before they are tabled. The NHRC shall review the proposed legislation through public hearings to which all human rights organizations and the general public shall be invited.
- 17) The provision in the PHRA that bars the NHRC or the SHRC from enquiring into matters

into which another commission of enquiry is investigating shall be repealed.

- 18) The NHRC should effectively publicise its orders, internal directives of functioning, directives to state governments and other proceedings/documents as and when they come out.

- 1) The GOI should review all legislation with a view to bringing it into line with the provisions of international human rights treaties to which it is a party. It should formulate policies to ensure the effective implementation of the provisions of these treaties.
- 2) The GOI should develop public information strategies to disseminate India's human rights obligations to all under its jurisdiction. These strategies should include Freedom of Information legislation, involve central and state authorities and local self-government and NGOs and pay particular attention to radio and vernacular media.
- 3) The GOI should ratify the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment without limiting reservations or declarations. It should withdraw all existing limiting reservations and declarations, particularly the reservation to Article 9 of the ICCPR concerning rights on arrest and detention.
- 4) The GOI should present all reports to the UN treaty bodies in full and on time. It should ensure that these reports are published and disseminated throughout India.
- 5) The GOI should respect the provisions of the Declaration on HRDs and the UN Commission on Human Rights' (UNCHR) resolutions on co-operation with UN human rights bodies. It should fully promote and protect the rights of NGOs and the HRDs, including their access to international and national human rights fora and bodies.
- 6) The GOI must respect the provisions of article 4 of the ICCPR and notify the UN of any state of emergency.
- 7) The GOI should become party to all provisions allowing individual right of petition to the UN -- the Optional Protocols to the ICCPR and "Convention on the Elimination of All Forms of Discrimination Against Women" (the Women's Convention); Article 14 of the "Convention on the Elimination of All Forms of Racial Discrimination" (CERD). When it ratifies the "Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment", it should make a declaration under Article 22 to the same purpose.
- 8) The GOI should support international initiatives to strengthen UN human rights monitoring mechanisms, in particular
 - 0the establishment of a special rapporteur on HRDs;
 - 1the elaboration and the adoption of an optional protocol to the International Convention on Economic, Social and Cultural Rights (ICESCR) allowing individual right of petition as agreed at the UN World Conference on Human Rights in 1993.
- 9) The GOI should present a report on its efforts to promote and give effect to the Declaration on HRDs as requested at the 1999 session of the UNCHR.
- 10) The UN monitoring mechanisms and international human rights organizations including the International Committee of the Red Cross (ICRC) should be given full and unhindered access to all areas of India including areas of armed conflict.

Recognising the obligation of the *Government of India to take action against non-state actors who threaten the work of human rights defenders*, whether the state orders, connives in or acquiesces to such abuses or not:

- 1) The state should **provide protection to human rights defenders in the face of threats from non-state actors** including right-wing Hindu groups, members of dominant castes, mafia-type criminal organizations, contractors, companies and political groups.
- 2) Prompt independent and impartial investigations into the activities of these groups should be held with the aim of holding them accountable and establishing any links with state machinery.
- 3) The state should support the work of human rights defenders working within communities, in particular by addressing social and cultural pressures and discrimination which human rights defenders face including discrimination on the basis of gender, religion and caste.
- 4) In light of threats to the work of human rights defenders in areas of armed conflict, from "renegades" or "counter-insurgents" who operate under the direct or indirect command of the security forces, the Government of India should take immediate steps to disband those armed groups which are not under the direct control of the security forces; ensure a clear chain of command to all wings of the security forces; independently investigate allegations of abuses by such "renegade" or "counter-insurgent" groups; bring those found responsible to justice and take action against any state agents found to have acquiesced to such abuses.
- 5) The state should give up the counter insurgency strategy of attacking the soft targets, that is, the social support base of the armed groups with the aim of isolating the latter. Such a strategy has led to immense suffering of the common people and human rights defenders in areas of armed conflict.

- 1) The role of the **UN High Commissioner for Human Rights should be strengthened** in relation to human rights defenders:
 - by including in the office's brief the activities of monitoring and protection of human rights defenders;
 - by putting the issue of human rights defenders on the agenda of every country visit undertaken by the High Commissioner;
 - by recourse to new mechanisms of urgent action and prevention for the protection of defenders.
- 2) The capacity for intervention of thematic and country rapporteurs, independent experts and special representatives, to ensure that the situation of human rights defenders is included in their mandates should be reinforced.
- 3) UN Agencies and International Financial Institutions should fully respect the human rights standards that governments have adopted in global fora such as the UN and the International Labour Organization.
- 4) In its contacts with armed groups, the International Committee of the Red Cross should explain the work of human rights defenders and remind such groups that defenders are non-combatants and part of the civilian population.

Recognising that human rights defenders have a role in raising concerns about human rights abuses carried out by both sides to a conflict, calling on armed opposition groups / movements operating in several parts of India to:

- Respect the work of HRDs who are members of the civilian population and whose rights should therefore be respected including their right to freedom of expression.
- Desist from condemning the activities of HRDs operating in areas of armed conflict and branding them as state agents or frontal groups as they are engaged in efforts to promote respect for human rights amongst all sides to the conflict.
- Abide by international humanitarian law - particularly by refraining from activities prohibited under Common Article 3 of the Geneva Conventions including torture, hostage-taking and killings of civilians.
- Ensure fairness and accountability in their systems of justice.
- Abide by the spirit of international human rights standards.

A. TO THE STATE

1) STATE AS ECONOMIC ACTOR

The State shall protect, support and ensure freedom of HRDs engaged in protecting the livelihood issues of people including the right to protection of employment and wages, land reforms, right to unionise, and right to free expression in conformity with:

- i) the Fundamental Rights
- ii) the Directive Principles
- iii) the right of SC/ST, women, children and minorities
- iv) the ICCPR and the ICESCR

2) STATE AS FACILITATOR FOR ECONOMIC ACTORS

It shall be the constitutional responsibility of the Indian State to ensure that the rights mentioned in A. 1) are not violated by the economic actors facilitated by the state.

The state shall ensure the rights of HRDs who support, or organise protests against anti-people policies of international economic actors such as the WTO, the IMF and the World Bank which violate or infringe upon rights to livelihood of the Indian people and the sovereignty of the Indian nation state.

3) STATUTORY BODIES

The NHRC and the SHRCs should have the jurisdiction to enquire into violations committed by economic actors on HRDs

B. TO ECONOMIC ACTORS

- 1) The right of HRDs to obtain information pertaining to economic activities of the state and non-state actors should be legally ensured and the process of seeking information should be free from harassment and attacks.
- 2) HRDs shall have the right to protection from violations caused by the established economic actors such as multinational companies and transnational companies in the process of protesting or monitoring their activities.