

13 June 2024 ASA 20/8154/2024

HUMAN RIGHTS CHARTER - INDIA

With this human rights charter, Amnesty International urges the newly formed National Democratic Alliance (NDA) - led Indian government to ensure that the protection and promotion of human rights is kept at the centre of all its policies and decisions for the next five years.

Since 2014, Amnesty International has documented a pattern of escalating human rights violations. These include adopting laws and policies without adequate public or legislative consultation that systematically discriminate against religious minorities; rising advocacy of hatred and violence by the leaders of Bharatiya Janata Party (BJP) – India's ruling party at the federal level between 2014 and 2024 - and ideologically affiliated Hindu supremacist groups; normalizing violence and encouraging threats, harassment, and attacks on minority religious communities; summarily punishing those peacefully protesting such abuses, along with their families as a form of collective punishment, including by violating their rights to education, employment, housing, and violations of their freedom of expression, religion, association and non-discrimination; gradual weakening of the autonomous institutions; and a failure by the police to impartially and effectively investigate these crimes.

During the election campaign, Prime Minister Narendra Modi routinely used discriminatory remarks against Muslim minority calling them “infiltrators” who disproportionately collect government benefits and castigated members of the political opposition for allegedly currying favours with Muslim voters.¹ Other BJP political leaders also consistently called on the voters to choose BJP so as to allow the party a free hand to amend the Indian Constitution to suit its majoritarian interests.² The authorities also escalated its exploitation and weaponization of various financial and terrorism laws to systematically crackdown on human rights defenders, activists, critics, non-profit organisations, journalists, students, academics and political opposition.³

The creation of a hate ecosystem, in result, indicated by secrecy, disinformation and disabling voice has cemented collective behaviours and the appeal of authoritarianism and demonization of religious and political minorities in India.

Amnesty International calls on Prime Minister Narendra Modi and the newly formed NDA government to take concrete steps towards addressing these longstanding human rights concerns and to ensure that the new government's policies and form of governance are in line with international human rights standards and norms. Given the scale of the challenges, the situation requires dedicated and robust attention from the new government. With this brief six point agenda, listed with no order of priority, Amnesty International highlights India's human rights obligations in accordance with the rights guaranteed by the country's commitment to international treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESR), as well as by the Constitution of India.

1) Repeal Discriminatory Laws and Policies

In the past ten years, the Indian government has either adopted discriminatory laws or weaponised the existing laws against religious minorities and government critics including human rights defenders, journalists, academics, and students. These include the Citizenship Amendment Act (CAA), 2019, which was operationalised on 11 March 2024

¹ Alex Travalli and Suhasini Raj, “Modi Calls Muslims ‘Infiltrators’ Who Would Take India's Wealth”, *The New York Times*, 22 April 2024, <https://www.nytimes.com/2024/04/22/world/asia/modi-speech-muslims.html>; “INDIA bloc performing ‘mujra’ to please its Muslim vote bank, says Modi in Bihar”, *The Print*, 25 May 2024, <https://theprint.in/politics/india-bloc-performing-mujra-for-its-vote-bank-modi/2101154/>

² “Constitution should be changed to save Hinduism...: BJP's Anant Hegde on how this can happen after Lok Sabha polls 2024”, *Live Mint*, 10 March 2024, <https://www.livemint.com/politics/news/constitution-should-be-changed-to-save-hinduism-karnataka-bjp-mp-on-how-this-can-happen-after-lok-sabha-elections-2024-11710055104748.html>; Shikha Salaria, “‘Need 2/3rd majority to change or make new Constitution’ — BJP Ayodhya MP's remark sparks row”, *The Print*, 14 April 2024, <https://theprint.in/politics/need-2-3rd-majority-to-change-or-make-new-constitution-bjp-ayodhya-mps-remark-sparks-row/2040762/>; Hamza Khan, “Another BJP candidate's remarks on ‘amending Constitution’ give ammo to Congress”, *Indian Express*, 4 April 2024, <https://indianexpress.com/article/india/bjp-candidates-remarks-on-amending-constitution-give-ammo-to-congress-9247529/>

³ Amnesty International, *India: Crackdown on opposition reaches a crisis point ahead of national elections* (Press Release, 22 March 2024, <https://www.amnesty.org/en/latest/news/2024/03/india-crackdown-on-opposition-reaches-a-crisis-point-ahead-of-national-elections/>)

by virtue of the notification of corresponding rules.⁴ The CAA is a bigoted law that discriminates based on religion and selectively fast-tracks citizenship pathways for Hindus, Parsis, Christians, Jains and Buddhists from the neighbouring countries of Afghanistan, Pakistan and Bangladesh without any reasonable justification.⁵ Further, 12 Indian state governments have also passed anti-conversion laws without adequate legislative consultation that effectively criminalise consensual inter-faith marriages.⁶

Besides enacting or amending legislations, various state governments led by the BJP have adopted policies or practices that systematically discriminate against religious minorities, encouraging their hatred and vilification in the country. To illustrate, in 2022, the Karnataka state government imposed a ban on hijab (head coverings worn by Muslim women and girls) in public schools through an executive order.⁷ The order effectively forced Muslim girls and women to choose between their rights to freedom of expression and religion, and their right to education, hindering their ability to meaningfully participate in society. Despite heavy criticism, the state's high court upheld the ban as did the Supreme Court of India on a split verdict.⁸

In addition to weaponization of laws and policies, Indian authorities are also resorting to various extra-judicial means to punish Muslims. In this regard, various state governments led by the BJP have adopted punitive demolitions as a de-facto state policy. Often initiated under the guise of applying planning laws and regulations to remedy alleged encroachment, state authorities use demolitions as a form of arbitrary punishment specifically targeted to deter and retaliate against marginalised groups, in particular Muslims, after episodes of communal violence and protests.⁹ Amnesty International documented the demolitions of at least 128 properties, including homes, shops and places of worship, largely belonging to Muslims between April to June 2022.¹⁰ In August 2023, authorities in Haryana state demolished at least 300 structures largely belonging to Muslims after communal violence broke out between Hindus and Muslims. These demolitions which are also carried out without due process safeguards amount to forced evictions which constitute a violation of the right to adequate housing among other rights. Numerous incidents have also occurred of authorities arresting Muslims for offering namaz (prayers) both publicly and privately.¹¹ Indian state authorities have also imposed arbitrary bans on sale of meat during Hindu and Jain festivals.¹²

On 5 August 2019, the Indian government unilaterally repealed the critical provisions of Article 370 of the Indian Constitution - which had guaranteed far-reaching powers to the state of Jammu & Kashmir on a wide range of issues except foreign affairs, defence and communication - and extended its control over the region.¹³ Until 5 August 2019, Jammu & Kashmir was the only state in India with a majority Muslim population which otherwise constitutes a

⁴ Amnesty International, *India: Citizenship Amendment Act is a blow to Indian constitutional values and international standards* (Press Release, 14 March 2024), <https://www.amnesty.org/en/latest/news/2024/03/india-citizenship-amendment-act-is-a-blow-to-indian-constitutional-values-and-international-standards/>

⁵ Amnesty International, *India: Citizenship Amendment Act is a blow to Indian constitutional values and international standards* (Press Release, 14 March 2024), <https://www.amnesty.org/en/latest/news/2024/03/india-citizenship-amendment-act-is-a-blow-to-indian-constitutional-values-and-international-standards/>

⁶ Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Odisha, Rajasthan, Uttar Pradesh and Uttarakhand

⁷ "Breaking: Karnataka High Court upholds Hijab Ban", *Live Law*, 15 March 2022, <https://www.liveweb.in/top-stories/hijab-ban-karnataka-high-court-muslim-dress-code-head-scarf-islam-fundamental-right-erp-194187>

⁸ "Supreme Court Passes Split Verdict In Hijab Case; Justice Sudhanshu Dhulia Sets Aside Karnataka HC Judgment", *Live Law*, 13 October 2022, <https://www.liveweb.in/top-stories/hijab-ban-supreme-court-split-verdict-karnataka-religion-fundamental-right-article-25-211510?from-login=78107913>

⁹ Amnesty International, "If you speak up, your house will be demolished": Bulldozer injustice in India (Index: ASA 20/7613/2024) <https://www.amnesty.org/en/documents/asa20/7613/2024/en/>

¹⁰ Amnesty International, "If you speak up, your house will be demolished": Bulldozer injustice in India (Index: ASA 20/7613/2024) <https://www.amnesty.org/en/documents/asa20/7613/2024/en/>

¹¹ "4 arrested for offering namaz in Lucknow's LuLu Mall: Police", *Hindustan Times*, 19 July 2022, <https://www.hindustantimes.com/cities/lucknow-news/4-arrested-for-offering-namaz-in-lucknow-s-lulu-mall-police-101658233866526.html>; "8 arrested for offering 'namaz' in public in Haridwar", *The Guardian*, 22 July 2022, "Yogi govt to probe video of Namaz at Prayagraj Railway Station | Details", *Hindustan Times*, 22 July 2022, <https://www.hindustantimes.com/videos/news/yogi-govt-to-probe-video-of-namaz-at-prayagraj-railway-station-details-101658499333861.html>; "Four people arrested for offering namaz on Taj Mahal premises", *Zee News*, 26 May 2022, <https://zeenews.india.com/india/four-people-arrested-for-offering-namaz-on-taj-mahal-premises-2467598.html#:~:text=Police%20arrested%20four%20people%20on%20Thursday%20for%20offering,the%20mosque%20in%20Taj%20Mahal%20premises%20on%20Wednesday;,%20Case%20Against%202,000%20People%20For%20Offering%20Eid%20Namaz%20On%20Road%20In%20UP:,%20Police%20,,%20NDTV,%2028%20April%202023,%20https://www.ndtv.com/india-news/case-against-2-000-people-for-offering-eid-namaz-on-road-in-ups-kanpur-police-3986431>

¹² Areeb Uddin Ahmed and Ratna Singh, "Why Delhi's Ban On Selling Meat During Hindu Festival Is Illegal & Violates India's Constitution", *Article 14*, 8 April 2022, <https://article-14.com/post/why-delhi-s-ban-on-selling-meat-during-hindu-festival-is-illegal-violates-india-s-constitution-624f58d311c54>; "Ghaziabad meat shops ordered to shut shop during Navratri", *Indian Express*, 2 April 2022, <https://indianexpress.com/article/cities/delhi/ghaziabad-meat-shops-ordered-to-shut-shop-during-navratri-7848813/>; Ruhi Bhasin and Tanushree Venkatraman, "Day after Sena calls ban religious fanaticism, BMC lifts its two-day meat ban in Mumbai", *Indian Express*, 12 September 2015, <https://indianexpress.com/article/cities/mumbai/after-petition-filed-in-bombay-hc-civic-body-withdraws-ban-on-slaughter-and-sale-of-meat/>; "UP bans liquor, meat in 10 square km area of Mathura-Vrindavan", *Live Mint*, 10 September 2019, <https://www.livemint.com/news/india/up-bans-liquor-meat-in-this-much-area-of-mathuravrindavan-11631265601889.html>; "Ban On Non-Veg In Ahmedabad & Vadodara, Who's Eating Meat In Gujarat?", *HW News*, 17 November 2021, <https://hwnnews.in/news/national-news/ban-non-veg-ahmedabad-vadodara-whos-eating-meat-gujarat/173380>

¹³ The Constitution (Application to Jammu and Kashmir) Order, 2019 C.O. 272, 5 August 2019, <https://cdnbbsr.s3waas.gov.in/s395192c98732387165bf8e396c0f2dad2/uploads/2019/10/20191029100.pdf> <https://pib.gov.in/pressreleaseshare.aspx?prid=1581391>

minority in the country.¹⁴ The revocation was followed by the deprivation of Jammu & Kashmir's statehood and splitting it into two separate union territories governed by the central government.¹⁵ The move was seen as a brutal dismissal of people's protests over the decades against the human rights violations committed by the state and security forces in Jammu & Kashmir and an aggressive gesture to deprive them of their fundamental freedoms.

Recommendations

- Repeal the Citizenship (Amendment) Act 2019 or the amend it to bring in line with international human rights standards.
- Repeal the anti-conversion laws in Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Uttarakhand, and Uttar Pradesh that violate the right to freedom of religion or belief.
- Immediately revoke the ban on women wearing hijabs in educational institutions.
- Impose an immediate moratorium on the de facto policy on demolishing the homes and businesses of Muslims and other marginalized groups suspected or linked to those suspected of criminal offences.
- Order prompt, impartial, independent, and effective investigations into all allegations of collective and arbitrary punishment and discrimination faced by Muslims in the context of punitive demolitions by state officials and actors, including police officials who used excessive and unlawful force to carry out demolitions. Where there is sufficient admissible evidence, bring those suspected of individual criminal responsibility to trial in proceedings that meet international standards of fairness.
- Provide victims of forced evictions with access to remedy which includes adequate compensation, reparation, and guarantees of non-repetition.

2) Protect the rights of Dalits and Indigenous Peoples

Since 3 May 2023, the unabated violence continues to take place between ethnic groups in the North-Eastern state of Manipur due to the failure of the Indian authorities to protect human rights in the region.¹⁶ Since the start of the ethnic violence, more than 200 people have been killed and scores others injured. More than 50,000 people have been forced to flee their homes. Now displaced from their homes, they are living in relief camps across Manipur and in the neighboring north-eastern states. Scores of houses and property have been burned, looted, vandalized. This has left entire communities, particularly those belonging to the tribal groups terrorized and devastated.

Despite India's Supreme Court issuing a series of directives to prevent, remedy and punish mob lynching of Dalits and Muslims in the name of cow vigilantism in India, public lynchings continue to take place with impunity to date.¹⁷ These attacks have contributed to a growing sense of insecurity for the marginalised groups, and intensified religious tensions. In the absence of any disaggregated data made available by the Indian government on lynching, Amnesty International analysed media reports and found that between January and December 2023 at least 32 Muslim men and one woman were allegedly killed by vigilantes and radical Hindu groups in the states of Assam, Bihar, Delhi, Haryana, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, and West Bengal.¹⁸

Recommendations

- Ensure prompt, impartial, and effective investigations into unlawful violence, including gender-based violence, against Dalits.
- Impartially, independently, and promptly investigate acts of violence and bring perpetrators to justice, including police officials and other government officials for actively inciting violence and failing to protect civilians in Manipur.

¹⁴ Census 2011, Jammu and Kashmir, 28.44% Hindus and 68.31% Muslims, <https://www.census2011.co.in/religion.php>

¹⁵ The Jammu and Kashmir Reorganisation Act, Act No. 34 of 2019, 9 August 2019, <https://www.indiacode.nic.in/bitstream/123456789/12030/1/A2019-34.pdf>

¹⁶ Amnesty International, *India: Wanton killings, violence, and human rights abuses in Manipur* (Index Number: ASA 20/6969/2023), 12 July 2023, <https://www.amnesty.org/en/documents/asa20/6969/2023/en/>

¹⁷ *Tehseen Poonawalla v. Union of India*, Supreme Court of India (AIR 2018 SUPREME COURT 3354)

¹⁸ In the absence of disaggregated data, Amnesty International collated information on the incidence of lynching in India by analysing news reports on the website of Hindutva Watch which is an aggregator for cases of hate crimes in India, <https://hindutvawatch.org/lynching/>

- Bolster efforts to provide adequate humanitarian relief to those affected by the violence and facilitate the internally displaced persons' right to voluntarily return to their homes in Manipur.
- Meaningfully work together with civil society groups and community members of all ethnic groups in Manipur to ensure that peace and security is restored in a human rights compliant manner.

3) Respect and protect freedom of expression, peaceful assembly and association

The government has enacted and enforced laws that severely restrict the ability of thousands of civil society groups, particularly those that work on human rights or the rights of marginalized communities to carry out their legitimate human rights work. By Indian government's own admission, the licenses granted under the Foreign Contribution (Regulation) Act (FCRA) of over 20,600 non-profit organisations (NPOs) have been cancelled in the last 10 years, with nearly 6,000 of these cancellations occurring since the beginning of 2022.¹⁹

In April 2016, the UN Special Rapporteur on freedom of peaceful assembly and association published a legal analysis asserting that the FCRA did not conform to international law and standards. In June 2016, the UN Special Rapporteurs on human rights defenders, on freedom of expression, and on freedom of peaceful assembly and association called on the Indian government to repeal the FCRA.²⁰ In October 2020, then-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." Despite calls from UN authorities for repeal or revision of the law, the Indian government instead amended the FCRA in 2020, prohibiting the transfer of foreign contribution by FCRA registered NPOs to other registered organisations, restricting public servants from receiving foreign funds and putting a 20% cap on administrative expenses - such as travel and operations costs and staff salaries - a dilution from 50% in the 2010 FCRA, thus further increasing the burden on civil society.²¹

The Indian government has also weaponized central financial agencies to carry out coordinated raids which are presented as "surveys" to harass, intimidate, silence, and criminalize independent critical voices in the country including media organizations such as BBC and non-profit organizations such as Amnesty India, Greenpeace and Centre for Equity Studies. These raids constitute intrusive scrutiny and burdensome administrative requirements and violate the rights to association and privacy protected under international human rights law, including the International Covenant on Civil and Political Rights, to which India is a party.

Weeks before the General Elections that were scheduled to begin in April 2024, the Indian authorities escalated their crackdown on political opposition using the Prevention of Money Laundering Act (PMLA). In March 2024, the Enforcement Directorate, the investigating agency under PMLA arrested Arvind Kejriwal, the Chief Minister of Delhi state and member of the opposition party Aam Aadmi Party. Shortly before, the Income Tax authorities had frozen the bank accounts of the Indian National Congress, the largest opposition party in India.

People who protest or criticize the government or express otherwise officially disfavored views are frequently labeled "anti-national" and the authorities target them by bringing politically motivated criminal cases under the overbroad counterterrorism law, the Unlawful Activities Prevention Act (UAPA) or by alleging financial fraud or irregularities. In May 2020, seven UN special procedures mandate holders wrote to the Indian government raising concerns over UAPA's incompatibility with India's obligations under international human rights law. In particular, they raised "serious concerns regarding the designation of individuals as 'terrorists' in the context of ongoing discrimination directed at religious and other minorities, human rights defenders and political dissidents, against whom the law has been used." In October 2020, the then-United Nations High Commissioner for Human Rights Michelle Bachelet urged the Indian government "to release people charged under the UAPA for simply exercising basic human rights that India is obligated to protect." As of June 2024, the Indian authorities are wrongfully prosecuting at least 34 human rights defenders under the UAPA. One of the human rights defenders, Stan Swamy, 84, a well-known tribal rights activist who was detained for nine months under UAPA, died in July 2021 in custody, prompting the UN

¹⁹ Amnesty International, *Weaponizing Counterterrorism: India's Exploitation of Terrorism Financing Assessments to Target Civil Society* (Index: ASA 20/7222/2023), <https://www.amnesty.org/en/latest/news/2023/09/india-government-weaponizing-terrorism-financing-watchdog-recommendations-against-civil-society/>

²⁰ OHCHR, *Analysis on International Law, Standards and Principles Applicable to the Foreign Contributions Regulation Act 2010 and Foreign Contributions Regulation Rules 2011*, 20 April 2016, <https://www.ohchr.org/sites/default/files/Documents/Issues/FAssociation/InfoNoteIndia.pdf>

²¹ Amnesty International, *Weaponizing Counterterrorism: India's Exploitation of Terrorism Financing Assessments to Target Civil Society* (Index: ASA 20/7222/2023), pg. 12 <https://www.amnesty.org/en/latest/news/2023/09/india-government-weaponizing-terrorism-financing-watchdog-recommendations-against-civil-society/>

Special Rapporteur on human rights defenders to say his death “will forever remain a stain on India’s human rights record.”

Besides misusing UAPA to prosecute critics, Indian authorities have also been using other measures to shrink the space for dissent, in particular for peaceful protests.²² During the 2024 farmers protest, the Haryana police was reported to use drones to dispense tear gas grenades and using excessive and unlawful force on protesters leading to the death of at least one protester.²³ Rather than investigating reports of violence against protesters and bringing suspected perpetrators to justice, the authorities have resorted to hindering access to protest sites, censoring social media and using draconian laws against protesters who have been peacefully voicing their opposition to the new laws.²⁴

In the three years since the abrogation of Article 370 of the Indian Constitution, Amnesty International has documented the Indian government’s drastic intensification of the repression of the people of Jammu & Kashmir, including journalists and human rights defenders by subjecting them to multiple human rights violations. These violations include restrictions on rights to freedom of expression; to freedom of peaceful assembly; to liberty and security of person; to movement; to privacy; and to remedy and access to justice. The authorities have committed these violations with absolute impunity.²⁵

Recommendations

- Drop the charges and immediately release all human rights defenders, journalists, and others held on charges related solely to the exercise of their rights to freedom of expression.
- Repeal or amend all laws – including the Unlawful Activities (Prevention) Act (UAPA) – which criminalize or impose arbitrary or sweeping restrictions on the human right to freedom of expression and bring them in line with international human rights law and standards.
- Pending the repeal or amendment of UAPA, drop the charges against human rights defenders, journalists, and others held under the law for merely exercising their human rights.
- Ensure the effective, thorough, impartial and independent investigation into the death of Father Stan Swamy and all other deaths in custody and ensure accountability for the deaths.
- Amend the Foreign Contribution (Regulation) Act (FCRA) so that it does not interfere with the exercise of the rights to freedom of expression, peaceful assembly, public participation and association, including the right to seek and receive funding from international sources, and refrain from using it for political reasons to suppress the activities of civil society organizations.
- Release all those arbitrarily detained in Jammu and Kashmir, drop politically motivated charges against critics of the government, and protect people’s right to peaceful protest.
- Promptly, impartially, independently and thoroughly investigate cases of deaths, serious injuries and other violations of physical integrity caused by the unlawful use of force by law enforcement officials during protests.
- Repeal the Jammu & Kashmir (Public Safety Act).
- Ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4) Protect the right to privacy

Amnesty International is concerned about the expansion of government control over online content through the draconian Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, which amend the already problematic IT Rules of 2021.²⁶ Through a notification, the Ministry of Electronics and Information Technology (MeitY) authorised a “fact check unit of the central government” to identify online content “in respect of any business of the Central Government” as “fake or false or misleading”. As a result, online

²² Amnesty International, *India Protests Explained*, 8 February 2021, <https://www.amnesty.org.au/india-protests-explained/>

²³ Amnesty International, *India: Right to peaceful protest under threat due to mounting restrictions and escalating crackdown on farmers’ march*, 14 February 2024, <https://www.amnesty.org/en/latest/news/2024/02/india-right-to-peaceful-protest-under-threat-due-to-mounting-restrictions-and-escalating-crackdown-on-farmers-march/>; Amnesty International, *India: The price of protest must not be death*, 22 February 2024, <https://amnesty.ca/human-rights-news/india-the-price-of-protest-must-not-be-death/>

²⁴ Amnesty International, *India Protests Explained*, 8 February 2021, <https://www.amnesty.org.au/india-protests-explained/>

²⁵ Amnesty International, *“We are Being Punished by The Law” – Three Years of Abrogation of Article 370 in Jammu & Kashmir* (Index: ASA 20/5959/2022), <https://www.amnesty.org/en/documents/asa20/5959/2022/en/>

²⁶ Amnesty International, *India: New Amendment to the Information Technology Rules that threatens tress freedoms must be withdrawn* (Index: : ASA 20/6734/2023), <https://www.amnesty.org/en/wp-content/uploads/2023/05/ASA2067342023ENGLISH.pdf>

intermediaries, including social media companies and internet service providers, are now required to take down any such content. If intermediaries fail to remove such content, they risk losing their safe harbor protections, and may be held liable in a court proceeding for any third-party information hosted on their platforms. The rules were notified without adequate and meaningful consultation with journalists, press bodies, and civil society organisations.

These arbitrary, overbroad and unchecked censorship powers granted by the 2023 IT rules to the Indian government threaten the rights to freedom of expression and opinion enshrined in the Indian Constitution and under international human rights law. In the guise of combatting online misinformation and disinformation, the Indian government has given itself the power to decide which information posted online is fake, false or misleading – terms that are inherently subjective and lack a clear legal definition. In effect, the government empowers itself to be the sole arbiter of truth on the internet. In March 2023, the Supreme Court stayed the creation of the fact-check unit until the Bombay High Court decides the challenges to the IT rules amendment.²⁷

The rules also come at a time when press freedoms, and the safety and security of journalists, are under serious attack in India and surveillance of journalists and activists continues with impunity. Those targeted with spyware await accountability for past violations. In 2021, following revelations by Amnesty International in the Pegasus Project about the spyware produced by the Israeli company NSO, the Supreme Court of India set up a technical committee to investigate abuses involving the software.²⁸ In 2022, the committee concluded their investigation, but the court has not made the findings of the report public. The court further noted that the Indian authorities “did not cooperate” with the technical committee’s investigations.

India has also emerged as a global leader of internet shutdowns for five years in a row.²⁹ In 2022, according to Access Now, it imposed a total of 84 total internet shutdowns in the country of which more than half were imposed in Jammu & Kashmir. The staggering number of shutdowns were imposed to stop protests, control elections and silence populations. Overbroad censorship and internet shutdowns are a violation of the rights to freedom of expression and peaceful assembly.

Recommendations

- End broad, indiscriminate internet shutdowns. Ensure any restriction on internet comply with the requirements of legality, necessity, proportionality and non-discrimination and is limited in temporal scope and publish every shutdown order in line with the Indian Supreme Court directives.
- Repeal the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 along with the 2023 amendment.

5) Protect autonomous human rights institutions

In May 2024, the Global Alliance for National Human Rights Institutions’ (GANHRI) Sub Accreditation Committee (SCA) deferred the National Human Rights Commission of India’s re-accreditation by 12 months for the second time after considering the NHRCI’s failure to adequately address the escalating human rights violations in India, lack of pluralism in selection and appointments of its duty holders and insufficient cooperation with human rights bodies, amongst others.³⁰ The NHRCI is mandated to address all human rights violations in India and ensure consistent follow up with state authorities.³¹ However, currently, the autonomous commission is riddled with political appointments acting as de-facto extensions for former government servants or parliamentary members associated with the ruling political party.³² The opaque selection process characterised by diminishing voices has resulted in the appointment of former Chief Justice of India, Arun Kumar Mishra who has delivered several judgements in favour of

²⁷ Anmol Kumar Bawa, “Supreme Court Stays Centre’s Notification Of ‘Fact Check Unit’ Under IT Rules Till Final Decision By Bombay HC”, *Live Law*, 21 March 2024, <https://www.livelaw.in/top-stories/supreme-court-kunal-kamra-editors-guild-notifying-fact-check-unit-it-rules-2023-252998>

²⁸ Amnesty International, *India: Damning new forensic investigation reveals repeated use of Pegasus spyware to target high-profile journalists*, 28 March 2023, <https://www.amnesty.org/en/latest/news/2023/12/india-damning-new-forensic-investigation-reveals-repeated-use-of-pegasus-spyware-to-target-high-profile-journalists/>

²⁹ Access Now, *#KeepItOn: 2022 elections and internet shutdowns watch*, 26 September 2022, <https://www.accessnow.org/elections-internet-shutdowns-watch-2022/>

³⁰ Khadija Khan, “Why has a UN body withheld accreditation to India’s NHRC?”, *Indian Express*, 21 May 2024, <https://indianexpress.com/article/explained/explained-law/un-accreditation-india-nhrc-9342732/>

³¹ GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 20-24 March 2023, available at <https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/SCA-Report-First-Session-2023-EN.pdf>, pg.

³² The All-India Network of NGOs and Individuals, *Analysis of NHRC call for Applications for various positions January 2018 – September 2023*, <https://ainni.in/wp-content/uploads/2023/09/Analysis-of-NHRC-Vanancy-2018-to-2023.pdf>

the government and against the marginalised populations as the NHRCI's chairperson;³³ seven police officers with chequered record as Special Monitors and former director of the national Intelligence Bureau as a member of the commission.³⁴ The Intelligence Bureau has been known for targeting civil society organisations for opposing projects that harm the environment and accused them of backing armed groups – accusations that have acted as barriers for organisations to secure funding and operate freely.³⁵

The NHRCI has also failed to take any meaningful steps to address the increasing detention of human rights defenders under UAPA, misuse of FCRA to hinder the legitimate human rights work of civil society, the rising violence in Manipur and the intensification of repression of journalists and human rights defenders in Jammu & Kashmir.

Recommendations

- Ensure that the National Human Rights Commission and other constitutional authorities can function independently, without political appointments and interference, and the Indian authorities act on the Commission's recommendations.

6) Uphold corporate accountability and labour rights

Workers in India face multiple barriers in their ability to exercise their rights to freedom of expression, freedom of peaceful assembly, freedom of association and collective bargaining. A 2022 report that covered interviews with 91 women workers in 31 factories in Indian garment production regions found that every single woman had experienced or witnessed gender-based violence by male supervisors and managers, primarily to push the women to meet targets.³⁶ Extensive aggression towards Dalit workers also remains pervasive in garment factories. Stable employment, including secure long-term contracts with equal pay and conditions for most women continues to remain a distant prospect.³⁷ In 2019, the International Labour Organisation (ILO) had stated that inclusive growth of India will not be achieved unless the share of informal employment falls. However, as the ILO has stated, with "over 90 per cent of the entire workforce being informal (defined as those without any social insurance), and 85 per cent of the nonagricultural workforce being informal India is an outlier among low-middle income countries in this regard."³⁸

In India, new consolidated labour laws were brought in 2020 ostensibly to standardize the laws and regularize benefits and worker protections.³⁹ However, they have been used to create barriers to workers' organizations, including putting limitations on unions and promoting employer-friendly "flexible" working.⁴⁰ The rules are particularly strict for workers in special economic zones (SEZs) and in practice, SEZs restrict the right to organize for collective bargaining contrary also to India's international human rights obligations.

Indian authorities are also failing to protect workers from violations of human rights at work, including through failures to enforce minimum wage levels.⁴¹

³³ "Choosing Justice Mishra as new NHRC chief a 'brazen blow' to rule of law, human rights", Counterview, June 3, 2021, <https://www.counterview.net/2021/06/choosing-justice-mishra-as-new-nhrc.html?m=1> (accessed June 15, 2021); Alok Prasanna Kumar, "Justice Arun Mishra to Head NHRC: 'Ignoble' Record Haunts Chair," The Quint, June 3, 2021, <https://www.thequint.com/voices/opinion/justice-arun-mishra-national-human-rights-commission-head-implications-supreme-court-controversial-judgments#read-more> (accessed June 8, 2021); "Justice Arun Mishra takes over as NHRC chief, Congress leader opposes his appointment," Scroll.in, June 2, 2021, <https://scroll.in/latest/996461/justice-arun-mishra-takes-over-as-nhrc-chief-congress-leader-opposes-his-appointment> (accessed June 8, 2021).

³⁴ "Post-Retirement, Controversial Top Cop Rakesh Asthana Lands NHRC 'Monitor' Role", The Wire, 3 December 2023, <https://thewire.in/government/rakesh-asthana-narendra-modi-nhrc>; Special Monitor, National Human Rights Commission, India, available at <https://nhrc.nic.in/contact-us/special-monitor> (last accessed on 15 March 2024)

³⁵ Amitav Ranjan and Priyadarshi Siddhanta, "IB report to PMO: Greenpeace is a threat to national economic security," Indian Express, June 11, 2014, <https://indianexpress.com/article/india/india-others/ib-report-to-pmo-greenpeace-is-a-threat-to-national-economic-security/> (accessed June 10, 2021).

³⁶ Business & Human Rights Resource Centre, Asia Floor Wage Alliance (AFWA) and Society for Labour and Development, The Fashion Industry and widespread abuse of female garment workers in Indian factories, 2022. https://media.business-humanrights.org/media/documents/2022_GBVH_Briefing_final_je2K7Ei.pdf

³⁷ Working conditions of migrant garment workers in India: A literature review / International Labour Office, Fundamental Principles and Rights at Work Branch. - Geneva: ILO, 2017

³⁸ International Labour Organisation, Informal Employment Trends in the Indian Economy: Persistent informality, but growing positive development (2019), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_emp/@ifp_skills/documents/publication/wcms_734503.pdf

³⁹ The Code on Wages, 2019 No. 29 of 2019, The Occupational Safety, Health and Working Conditions Code, 2020 No. 37 of 2020, The Code on Social Security, 2020 No. 36 OF 2020, The Industrial Relations Code, 2020 No. 35 of 2020, Code on Wages (Central Advisory Board) Rules, 2021, Bringing into effect the provisions of the Code on Wages, 2019 relating to Central Advisory Board.

⁴⁰ India Development Review, How the new labour laws deny workers their basic rights , September 2020. How the new labour laws deny workers their basic rights | IDR (idronline.org). <https://idronline.org/denying-workers-their-rights-labour-law-reform-bill-codes/>) and <https://labour.gov.in/labour-codes>

⁴¹ ILO, India Wage Report Wage policies for decent work and inclusive growth, 2018 and HOME Sourcing Journal, Indian Garment Workers Protest 'Prolonged Delay' in New Minimum Wage, 14 February 2024

Recommendations:

- Implement legislation that ensures companies of all sizes and sectors, as well as investors and public procurement agencies, undertake robust and transparent human rights and environmental due diligence in line with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises (OECD Guidelines), which go beyond risk-mitigation and require preventative and timely remedial actions.
- Urgently review wage-setting policies and practices to ensure that garment factory workers earn an adequate living wage according to ILO standards and ensure worker participation in the wage-setting process. Wage levels should be periodically reviewed and adjusted based on appropriate up-to-date data such as cost of living and inflation statistics.
- Indian authorities must strengthen laws on racial and gender-based equity in pay and the elimination of all forms of gender-based discrimination, violence and harassment in the workplace. This must include requiring companies to publish and implement inclusion policies including taking a zero-tolerance approach to workplace gender-based violence and harassment.
- Strengthen enforcement of labour laws and reforms, including by ensuring regular and rigorous labour inspections. Investigate all potential breaches of labour law, including practices such as underpayment of wages and excessive and underpaid overtime. Where offences are uncovered, penalize employers appropriately, including through prosecutions if required, and ensure adequate remedy for affected workers.
- Ratify core ILO conventions 87 and 98 on the right to freedom of association and collective bargaining.