



Tom Lantos  
Human Rights Commission  
United States Congress

# Whose Human Rights Are They Anyway?

A Testimony

**By AJIT SAHI**

*Civil Liberties Campaigner & Investigative Journalist, India*

CHALLENGES & OPPORTUNITIES:  
THE ADVANCEMENT OF HUMAN RIGHTS IN INDIA

**JUNE 7, 2016**

## **SALUTATION**

Honourable Congressmen Joseph R. Pitts and James P. McGovern, I thank you for inviting me to offer my testimony before the **Tom Lantos Human Rights Commission** of the United States Congress.

The topic of this hearing today – CHALLENGES & OPPORTUNITIES: THE ADVANCEMENT OF HUMAN RIGHTS IN INDIA – is momentous for at least three reasons.

First, it seeks to identify obstructions in the observance of human rights and civil liberties in India and explore solutions thereto, rather than merely be an occasion to list such violations, which information is anyway available extensively in the public domain, including on the internet.

Second, it acknowledges the existence of the two countervailing facts – that India has serious human rights challenges and that, at the same time, it offers scope for advocacy to overcome them. This recognition is critical, as it gives heart to campaigners who seek to leverage the constitutional mechanisms in India to combat such human rights violations, unlike in many other countries whose systems barely offer slivers of relief, even when there is a presence of a constitutional mandate.

And three, today's theme provides a singular opportunity to reinforce that part of advocacy that urges the U.S. political system and government to follow their own constitution's mandate to call out violations of such freedoms not just in America but across the world, and predicate their interactions and partnerships with those countries on the latter's human rights records.

## **ANATOMY OF ABUSE**

Both the State as well as non-state actors violate human rights in India on a massive scale, often in conjunction with each other. The behaviour is not only chronic but also industrial grade, with the perpetrators evolving standard operating procedures and protocols. Importantly, as this testimony details, impunity is inbuilt into the apparatus making human rights abuse an everyday affair.

There are many, many ways in which human rights are violated in India. The starkest of these involve severe torture often leading to the victims' deaths. A systematic sabotage of the judicial process has birthed other forms of abuses that deny justice by interminably delays in the trials, during which families and witnesses are often threatened into withdrawing their complaints and testimonies.

Some of the ways in which human rights in India are violated are:

1. Outright murder by way of extrajudicial killing, passed off as death in a shootout with the police or security forces, or as suicide by suspect in police custody or in prison
2. Incarceration and prosecution basis false criminal charges such as of terrorism, sedition, antinational activity, gun-running, murder, conspiracy, rape, etc.
3. Habitual discrimination by those in the bureaucracy, security apparatus and the judiciary emanating from deep-seated prejudices or due to an unwillingness to appear lenient on national security
4. Persecution by both State and non-state actors of dissidents, whistle-blowers and activists
5. Rewarding human rights abusers by political, social and even State patronage

The targets of human rights abuse in India are many. For the purpose of our testimony we speak of:

- Non-Hindus, including Christians and Sikhs but especially Muslims
- The lower rungs of the caste-ridden Hindu society, especially Dalits
- The indigenous tribal people

## **COMMITTED DEMOCRACY, GUILTY STATE**

India's 1.3 billion people make it the second most populated country after China. Many Indians thus fancy it as the world's largest democracy. There is merit in the claim beyond technical accuracy.

It testifies to the sagacity of India's people, impoverished and unlettered though millions still are, that India is arguably the only country among those that won freedom from colonial rule in the last century that has not only sustained but strengthened electoral parliamentary democracy. In Asia or Latin America, Africa or the Pacific, no postcolonial country has distinguished itself as India has by internalizing democratic principles and values so faithfully and deeply over seven decades.

Since the end of British rule over it in 1947, India has seen its governments change always through the ballot, never through the bullet. It has never had coups or overthrows. India's military – the world's third largest – has never threatened the democratic order. A constitutionally provided commission independent of the government manages elections, which are nearly always free and fair and beyond political control. Gerrymandering by political partisans is impossible in India.

India's judiciary fiercely guards its constitutionally mandated independence from government interference. Politicians don't appoint judges; a collegium of India's top judges does. Only last year the government got a law passed in Parliament giving itself the right to appoint judges. The Supreme Court of India summarily binned that law. Over years, India's courts have packed off to prison many politicians, both in federal and state governments, for crimes ranging from corruption to murder.

There is no question that its robust constitutional experience makes India an oasis in the vast inhospitable desert of the countries it shares land and maritime borders with. China is a one-party dictatorship. Pakistan saw multiple coups and constitutions over decades before turning Islamic where rights of non-Muslims citizens are curtailed. Assassinations, military dictators and subversions of the constitution are Bangladesh's history. Civil strife has torn up both Sri Lanka and Nepal. And Myanmar is barely recovering from wasted decades of dictatorship by a cruel military junta.

And yet, in many ways, India shares many of the attributes of its neighbours with regard to widespread violations of human rights and civil liberties of millions of its citizens. The malaise is not only deep rooted in the Indian social and political orders but also across the branches of the government, beginning, of course, with the police and national security agencies, including as well the bureaucracy and, in ways peculiar to the conduct of its mandate, even the judiciary.

A culture of impunity now pervades, not only protecting the perpetrators but emboldening them to continue with the abuses. As the victims are overwhelmingly the marginalized and the disadvantaged, the better-off Indians higher up the social chain are indifferent to the abuses, thus allowing the architecture of prejudice and hatred to manifest in such abuses every day.

## **OFF WITH THEIR HEADS**

A most disturbing abuse is the phenomenon of "custodial killing" – the unnatural deaths of suspects, accused or convicts in the custody of the police or in prison. The practice has eluded resolution for decades despite repeated interventions by the highest court in the land and despite national outrage every now and then at a succession of high-profile cases. In fact, it has been on the increase.

More than 14,000 Indians died in the custody of police or in prisons during 2001-10<sup>1</sup> at four a day for ten years. Prison deaths were eight-and-a-half-times more than the deaths in police custody. This lopsided division between prison and police deaths is profoundly ominous. Whereas the police are known to a law unto themselves, prisons in India are not under the police and their inmates are technically wards of the judiciary. That so many more prison inmates die unnaturally can only mean prison officials do not fear punishment simply because the judiciary is unable to punish them.

Over time, the incidence of custodial deaths has only increased. In 2013, the Supreme Court of India heard that nearly 12,000 people had died in 2007-12, at over six a day for five years<sup>2</sup>. The Asian Centre for Human Rights (ACHR), an NGO that has tracked custodial deaths since the turn of the century, reports that torture is responsible for 99.99% of the deaths in police custody. "Torture remains endemic, institutionalised and central to the administration of justice," it bluntly says.

Two weeks ago a man who had approached the police in New Delhi, the national capital, to resolve a dispute over cab fare wound up dead the next day, his body floating in a river. The police are yet to register a case of custodial death. In October, a Dalit villager arrested in Agra, the city of the Taj Mahal, died at the police station. A case has been filed with little progress in investigation. In October, too, the High Court in New Delhi ordered security for the widow and aged father of a man allegedly killed in police custody after they complained of pressures and threats from the police.

In February a trial court in Mumbai, India's financial metropolis, sentenced four police constables to seven years in prison each for the death of a 20-year-old man in their custody two-and-a-half years previously. Each policeman was ordered to pay fines of 10,000 Indian rupees, just under USD 150. The policemen had waylaid the victim, the son of roadside vegetable sellers, when he was out for a late night movie. They accused him of stealing a laptop. He died the next day at the police station.

If seven years in prison appears too little punishment, consider this. This verdict was the first ever conviction of policemen for custodial death, even though the western state of Maharashtra, of which Mumbai is the capital city, is the worst offender in India. In October, the state High Court had slammed the Maharashtra government for failing to comply with an earlier order from it to install CCTV cameras at every police station in the state in a bid to prevent custodial killings.

"Is human life so cheap?" the judge asked the government lawyer during the hearing, noting that even though there had been more than 350 cases of custodial deaths in Maharashtra in the 15 years of 1999-2014, merely 13 First Information Reports (FIR), as formal police complaints are known in India, had been registered. Only five policemen were brought to trial. None was convicted.

And why only seven years in jail for those who killed the vegetable seller's son? Because, though charged with murder, which attracts life imprisonment, the guilty policemen were convicted only for "culpable homicide not amounting to murder". When during the trial the vegetable seller asked a specialist lawyer be hired to prosecute the accused policemen, the government wrote to the court saying "custodial death is not so publicly important" and that if the victim's father wanted a specialist lawyer then he should deposit the full fees for one with the state government.

## **YOU HAVE BEEN ERASED**

Besides the unnatural deaths at police stations and in prisons, another alarmingly common practice is that of the "encounter killing" of suspects by the police in shootouts. India is awash with swashbuckler policemen who proudly claim to have killed large numbers in such "encounters".

Nearly all such encounters are suspected of being “fake”, that is, pre-apprehended men and women killed in cold blood. The propensity of the police to thus commit murder has not lessened.

In February police from the northern state of Haryana travelled a thousand miles south to Mumbai and shot a suspect in what they later claimed was an “encounter”. It has taken an intervention by the Supreme Court, no less, to force a lower court in Mumbai to order the arrest of the policemen involved in the encounter. Of course, the firing party has by now gone missing. And even if they are eventually arrested, history says their trial could last years before ending without convictions.

On April 7, 2015, five Muslim men accused of terrorism and in prison for five years were shot dead by police in the southern state of Telangana. The police claimed the men had attacked the police escort that was taking them for a court hearing. Efforts by the families of the slain men to file criminal charges against the policemen involved in the “encounter” met with stiff resistance. Over a year later, the state’s high court is yet to hear the families’ pleas to transfer the probe from Telangana police to the notionally independent federal agency, the Central Bureau of Investigation.

On the day that the Muslim men died in Telangana, police in the neighbouring Andhra Pradesh shot dead 20 men suspected of illegally felling sandalwood. The police claimed the men attacked its patrol, which then fired in self-defence. But evidence showed that the men were tortured and then shot at point-blank range. For once, there was national outrage and the state high court ordered the shooters be booked for murder. Last month, the Special Investigation Team probing the case informed the widow of one of the dead men it was closing the case for a lack of evidence.<sup>3</sup>

The menace of such “fake encounters” has taken such hold in India that in September 2014 the Supreme Court put in place 16-point guidelines for all such cases. Most importantly, the court ruled that regardless of the circumstances of death in an encounter, an FIR must be filed immediately in every case and independent investigation carried out. And until such inquiry isn’t over, no police officer involved in the encounter would be given any out-of-turn promotions or gallantry awards.<sup>4</sup>

## **BOOTS ON THE GROUND**

Then there are the human rights violations suffered by the largely Muslim people of Jammu and Kashmir, India’s northernmost state that adjoins Pakistan and that Islamabad has claimed as its ever since British India was split as India and Pakistan in 1947. The two nations have since fought three declared and one undeclared war over the territory. Their armies face off at their 2,000-odd mile border permanently and often fire at each other. Since at least 1989, when Pakistan-backed armed secessionism by Kashmiri Muslims broke out, Indian troops control the region with a heavy hand.

Inevitably, gross human rights violations at the hands of the Indian soldiers have abounded. The army is accused of killing thousands over the quarter plus century. Thousands others have “disappeared”. Last September an International Peoples’ Tribunal on Human Rights and Justice in Kashmir released a report jointly with a Kashmiri human rights group naming no less than 900 officials from the Indian security forces who, it claimed, had been responsible for a range of human rights abuses in the state during 1990-2014<sup>5</sup>. Of those named, 150 ranked major or above.

For an even longer period than Jammu and Kashmir’s, India’s northeast regions that border China and Myanmar have suffered gross violations of civil rights and curtailment of liberties, again from the presence of the Indian military. The culture of impunity here has legal sanction via a law known as the Armed Forces Special Protection Act (AFSPA) that absolves soldiers of just about any of the crimes of pillage, arson, rape and murder they are accused of having committed in these parts.

In New York last month to attend the United Nations Permanent Forum for indigenous issues, Binalakshmi Nepram, a feisty activist from the tiny northeast state of Manipur, demanded that the region be demilitarized. “Ethnic cleansing, distrust [and] imposition of military laws such as AFSPA have marred relations of the indigenous communities in the region,” she said.

In the name of fighting armed secessionism the police and the army have had a run of the border state for decades with no questions asked. This January a former Manipur policeman confessed in a newspaper interview to killing an unarmed man in 2009, an incident that was then passed off as an “encounter”<sup>6</sup>. The policeman was dismissed from service and charged with murder after Tehelka, an investigative magazine with which I then worked, had exposed the fraudulent encounter claim<sup>7</sup>. The policeman now says he killed the victim on the instructions of his boss, who’s still with the force.

For 15 years a Manipur rights activist named Irom Chanu Sharmila has been on a fast-unto-death, surviving only because she’s forced fed through a tube. Her main demand: withdraw AFSPA. In an editorial published in July 2015 The New York Times said AFSPA had “fostered a culture of impunity among India’s armed forces that has led to repeated, documented human rights abuses against Indian civilians”<sup>8</sup>. The editorial called for an end to AFSPA, saying the law had “hardened resentment against a military that has too often abused the extraordinary powers conferred by the act”.

In 2013, two high-level official committees, both led by former judges of the Supreme Court of India, were “highly critical of the way the AFSPA facilitated sexual violence and extrajudicial executions,” according to a note by the India chapter of Amnesty International<sup>9</sup>. One of these commissions was in fact established by the orders of the Supreme Court itself in response to a public lawsuit that had sought investigation into 1,528 cases of alleged extrajudicial executions committed by the army and other paramilitary forces in Manipur during 1978-2010. The commission was asked to probe six.

In its report to the Supreme Court in April 2013, the “commission found that all seven deaths in the six cases it investigated were extrajudicial executions, and also said that AFSPA was widely abused by security forces in Manipur”. The commission said the continuation of AFSPA in the state had made a “mockery of the law”. An earlier committee, also headed by a former Supreme Court judge, had in 2005 written that AFSPA had become a “symbol of oppression, an object of hate and an instrument of discrimination and high-handedness”. The committee had recommended AFSPA be repealed.

None of that has happened. Just yesterday, The Indian Express, a leading Indian newspaper, reported that the army officer in charge of India’s Eastern Command, Lieutenant General Praveen Bakshi, had dismissed the allegations of abuse under AFSPA<sup>10</sup>. “In Eastern Command, during the time I have spent there, there has not been a single incident which has been reported where AFSPA has not been used for the right reason,” he said in an interview, saying the law must remain on the statute.

AFSPA provides the army a carte blanche to fight against armed insurgency and secessionism in India’s northeast. Indian soldiers cannot be tried in a civilian court for transgressions of it.

## **THE JUDICIAL CONUNDRUM**

Perhaps the bigger tragedy in this narrative is the abject failure of the Indian judiciary to effectively crush the widespread human rights abuse and violations practiced by the state and its agencies. When at least half a dozen people are being killed every day, obviously only a tiny fraction of such cases manage to gain public attention. In a yet smaller number of such cases the families of the victims succeed in bringing a case before the court. Then the tortuous wait for justice begins.

Less than a month ago, on May 11, the Supreme Court of India acquitted four of 16 men convicted earlier by a lower court in the desert state of Rajasthan for bomb blasts on trains that killed two people in 1993. One man to walk free was arrested in January 1994. He spent 22 years in prison<sup>11</sup>. A brother of his proved luckier: arrested in April 1994, he was bailed in 2008 due to lung cancer.

Across India thousands of innocent citizens belonging to its social and religious minorities have been languishing for years in prison accused of the very serious charges of terrorism, sedition, antinationalism, waging war against state, gunrunning, conspiracy to kill top political leaders, etc. Typically, their arrests are accompanied with high-decibel media attention that copy-pastes versions from the police, damning the accused as guilty already, months or years before the trial may start. Subsequently, the cases move slower than a snail does, often taking ten or twenty years to conclude.

Over several weeks in 2008 I published in Tehelka an exhaustive exposé on the web of lies and deceit in the cases of terror brought against hundreds of Muslims across India<sup>12</sup>. Traveling across India for months to piece together the story from courtroom records, my trail showed the police had fabricated evidence largescale. Police witnesses had been caught lying. In case after case, the courts not merely threw out the charges but also blamed the police for patently shoddy work.

The running thread through my investigation was that all the accused had allegedly belonged to the Students Islamic Movement of India, better known by its acronym, SIMI, which the government described as a shadowy Islamist organization. Formed in 1977, SIMI gained notoriety after decades of obscurity when the government proscribed it two weeks after the September 11, 2001 terror attacks in the U.S. Shortly, police were pinning nearly every terror bombing on it. Then Home Minister L. K. Advani, India's second-most powerful man then, said SIMI wanted to destroy India.

By the time I published my investigation seven years later, police across India had failed to prove a single charge of either sedition or terrorism against the alleged former SIMI members, leading to their acquittals. Unfortunately, most such accused, their numbers in hundreds, had been jailed for years. Police continue to harass many of them with threats of implicating them in other cases.

One would imagine that the Indian judiciary, ever conscious of its constitutional obligations to deliver justice to the hapless, would have long wised up to this by now institutionalized mischief of the police and prosecutorial authorities, and put an end to the pattern of wrongful arrests and years of incarcerations without evidence that inevitably culminated in acquittals. Incredibly, despite a decade and a half since the fraudulence became entrenched, the courts have not delivered.

Of course, the police gradually stopped using the name of SIMI after my investigation triggered an avalanche of public scrutiny and discredited the police versions. But the pattern of arrests, fabrication of evidence, long jailing periods and eventual acquittal continues. Even when it is amply clear from the first day that a case is no more than a house of cards, judicial authorities deny the accused bail while the case drags for years. Often, convictions are based on just a confession obtained under torture by the police, recanted by the accused at the first hearing in court.

With judges, especially those conducting trials, walking in lock step with the prosecution, the police do not care to display even elementary intelligence or professionalism, as the Supreme Court tellingly noted in a high-profile case. On May 16, 2014, as India heard that its most prominent if controversial politician, Narendra Modi, had won an historic parliamentary majority and would be its next prime minister, the Supreme Court was weighing in on a terror case related to Mr. Modi's government of the previous 12 years when he had run the western state of Gujarat.

## SORDID TALES FROM GUJARAT

On the afternoon of September 24, 2002, two heavily armed terrorists stormed a large temple complex known as Akshardham in Gandhinagar, the capital of Gujarat and Mr. Modi's home at the time. Before Indian commandos could shoot them down, the ultras had gunned to death 33 people. Gujarat police subsequently arrested six Muslims and charged them with conspiracy for the attack.

In 2006, the trial court ordered four of the accused to be executed and gave life imprisonment to two others. Four years later, the Gujarat High Court upheld the death sentence for three. It would be another four years before the Supreme Court of India would throw out the entire case. In a 280-page judgement<sup>13</sup> the apex court demolished the police case saying that "the story of the prosecution crumbles down at every juncture". In fact, the judgement bears to be quoted at length.

"We intend to take note," wrote the Supreme Court, "of the perversity in conducting this case at various stages, right from the investigation level to the granting of sanction by the state government to prosecute the accused persons under POTA, the conviction and awarding of the sentence to the accused persons by the Special Court (POTA) and confirmation of the same by the High Court. We being the apex court cannot afford to sit with folded hands *when such gross violation of fundamental rights and basic human rights of the citizens of this country were presented before us.*"

"... We intend to express our anguish about the incompetence with which the investigating agencies conducted the investigation of the case of such a grievous nature, involving the integrity and security of the Nation. *Instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing,*" the court wrote. [Emphasis everywhere mine.]

The mention of POTA refers to the Prevention of Terrorism Act that the then Indian government had enacted as law in 2002. The law was applied in this case, as in many others, even though it was repealed in 2004. The "perversity" that the Supreme Court spoke on the part of the state government, the police and the prosecution would be directly laid at the door of Mr. Modi since as the state's chief minister, he had retained the internal security department with himself.

The allegations linking human rights abuses to his government is widely known in this country, too. Soon after Hindu supremacists killed more than 1,000 Muslims in Gujarat on Mr. Modi's watch in 2002, it was the United States government that made known he would not be given a visa should he wish to travel to America, a virtual ban that stayed in place until he became prime minister.

It has taken years of painstaking work by civil society activists and campaigners, always at considerable threats to their personal safety, to force the prosecution of the hundreds who are accused of some of the major killings during that stretch of sectarian violence. Astoundingly, most of the accused belonged to Mr. Modi's political party, the BJP, or its affiliates that are openly Hindu supremacists and opposed to equal rights for India's Muslim and other religious minorities.

The highest-profile person to be convicted for that violence is a former minister of Mr. Modi's in Gujarat, Mayaben Kodnani. A gynaecologist by profession and a BJP leader, she was given 28 years in prison in 2012 for leading a mob of Hindu zealots that had killed 97 people, including 71 women and children. In April 2013, while Mr. Modi was still Gujarat's chief minister, his government mystified many by appealing the Gujarat High Court to convert Kodnani's sentence to capital punishment. Within a month, however, it withdrew that application. Incredibly, she's been on bail for 20 months.



Last Friday a court convicted 24 people accused of killing at least 69 Muslims holed out in a residential building in Ahmedabad, Gujarat's largest city that adjoins the capital, in 2002. The court is slated to pronounce the quantum of punishment on Thursday. The case has reached a conclusion only from the tenacity of the widow of the house-owner, a former Member of Parliament, who had allowed frightened Muslim neighbours to seek shelter at his home from attackers. Evidently his valour came to naught as the mob set his house on fire, charring everyone to death.

Yet another aspect of gross human rights abuses in Gujarat pertains to the encounter killings. Last November, the People's Union for Civil Liberties (PUCL), a widely respected Indian private watchdog, said a "jungle raj" had prevailed in Gujarat during 2005-12, through the years of Mr. Modi's stewardship of its government, with the third highest custodial killings in the country.

Of significance were highly publicized killings during 2002-07 of alleged terrorists that the government claimed were sent by anti-India terror groups in Pakistan, apparently to eliminate Mr. Modi. The encounters ended only after top officers of Ahmedabad Police Crime Branch, involved in each of those killings, were arrested on charges that those killed were actually murdered in cold blood. Court ordered investigations spoke of a massive conspiracy behind the encounters allegedly going all the way up to Mr. Modi and a trusted lieutenant of his, a minister named Amit Shah.

Indeed, Mr. Shah was himself arrested in 2010 in one of those cases and spent three months in jail before being bailed. He was made a prime accused once the charges were filed. However, soon after Mr. Modi became prime minister in 2014 the court discharged Mr. Shah before the trial could begin, saying that the charge against him was politically motivated. Mr. Shah was made president of the BJP, Mr. Modi's political party, shortly after Mr. Modi won a landslide parliamentary majority.

One of the 32 police officers jailed for the encounters, D. G. Vanzara, threatened to spill the beans on Mr. Modi in 2013. Writing a letter from prison announcing his resignation from the police, he said he and the other policemen accused of carrying out the extrajudicial killings "simply acted in compliance with the conscious policy of the government"<sup>14</sup>. He wrote he had "adored" Mr. Modi as "god", but was compelled to come clean as he felt the god was forsaking him for personal glory.

Mr. Vanzara's confessional letter should have strengthened the prosecution's case against Mr. Shah, which was based on the evidence that the police officers had been in close telephonic contact with Mr. Shah while some of those encounters, later exposed as fake, were being carried out. Mr. Vanzara, however, himself was given bail by a court in February 2015, less than a year after Mr. Modi became prime minister. The former police officer once again is a believer in his god.

It must also be pointed out that in the years since the anti-Muslim violence in Gujarat in 2002, Mr. Modi's government made every effort to sabotage the prosecution of those accused, leading to interventions by the Supreme Court of India to, in some cases, move prosecution out of the state of Gujarat, which was virtually unheard of previously. Stings using hidden cameras, carried out by Tehelka in 2007, showed BJP leaders and their affiliates openly claiming that Mr. Modi's government was in on the murderous anti-Muslim violence and had been protecting them from prosecution.

## **HINDU NATION**

This experience of Gujarat leads us to a sine qua non about human rights in India: the existence of a powerful non-State actor that has emerged as the biggest challenge for India's constitution. This is the Rashtriya Swayamsevak Sangh (RSS), translating as National Volunteer Corps, a mammoth Hindu supremacist organisation that is the ideological mentor of and big brother to the BJP. Established in

1925 before India's freedom from Britain, the RSS is openly committed to turning India into a Hindu State with severely curtailed civil and political rights for its non-Hindu citizens, by now 260 million.

Indeed, since Mr. Modi assumed power in 2014 there has been a sharp uptick in attacks on religious minorities by vigilantes suspected to be connected with the RSS. Adding insult to injury, not only has the prime minister not weighed in to admonish the culprits, his administration has refused to act.

This has not gone unnoticed by the U.S. Congress, 34 of whose members, including the co-chairs of this commission, wrote to Mr. Modi on February 25 to "relay their concerns about the increasing intolerance and violence experienced" by India's religious minorities. The Indian government's response came not from Mr. Modi but from the spokesperson of its foreign ministry. He said it was "unfortunate" that the U.S. Congress' members "have chosen to focus on just a few incidents".

The attitude is of a piece with the overall conduct of the government on every case of attack on religious minorities. Last September, a mob beat a Muslim man to death at his home in a village in the northern state of Uttar Pradesh, on the suspicion that he had cooked beef. Cow slaughter is banned in much of India as the animal is sacred for Hindus. The police named men connected with the BJP. When last week a forensic report said the meat in the dead man's house was indeed beef, a BJP MP demanded that dead man's family be arrested and the accused held released.

In March, in the eastern state of Jharkhand that the BJP rules, two Muslims, one a 13-year-old child, were found hanged to death in March. Police arrested five members of a self-styled "cow protection" group for the crime. The BJP insists these are stray incidents not part of a larger pattern.

The holy cow is, of course, only one of the issues exploited by the RSS and its partners to commit atrocities on Indian Muslims. Around the country vigilante groups have sprung up obsessing over marriages between Muslim men and Hindu women, and vowing to prevent such unions that they have fancifully termed "love jihad". Two months ago Hindu groups erupted in protest in a small town in the southern state of Karnataka as a Hindu woman wed a Muslim man. The protesters marched to the wedding and bullied the woman's father. Police protected as the lovers wed.

Three years ago a Muslim man was slain in Uttar Pradesh for wanting to marry a Hindu. He was shot on the day the couple approached the court for a marriage license. His partner later said the court office had for six months stonewalled their plea and instead warned them against the marriage.

Yet another nefarious design of the RSS family is the aim to convert non-Hindus such as Muslims and Christians to Hinduism. It is indeed an official policy of the RSS that, since in its version of Indian history the ancestors of all of India's Christians and Muslims were Hindus, making the descendants Hindus would only be a reconversion, a sort of homecoming. There have been wide reports of pressure, threat of violence, and even monetary allurements to convert such people to Hinduism.

Meanwhile, another festering agenda of the RSS types continues to gain steam since Mr. Modi became prime minister. This is a call to boycott businesses and shops owned by Muslims, as also to not allow Muslims to live in what are deemed as Hindu areas. Last week it was reported that residents of a Hindu neighbourhood in the Gujarat city of Vadodara had written to the municipality protesting a move to relocate 300 Muslim families there. A representation from the Hindus said were Muslims to live there it would "hamper the peace-loving nature here".

Recently, Mr. Modi nominated to Parliament a controversial far right politician whose economics courses at Harvard University were terminated five years ago after he published an op-ed in an Indian newspaper calling to raze mosques across India and deny Indian Muslims voting rights.

## TOOTHLESS WATCHDOG

That India needed a focused statutory body with regard to safeguarding human rights and civil liberties increasingly began to be felt during the 1980s as an excessively violent insurgency roiled the country in the eastern state of Punjab, bordering Pakistan. The heavy hand of the state's counterinsurgency operations, in equal parts manifesting through the actions of both the state police and the Indian army, took human rights abuses of innocent civilians to sky-high levels.

After a decade of the civil strife the Indian State managed to put out the insurgency around 1991. But that experience, India's bloodiest since freedom from Britain, led to a transformation of its national security paradigms. One consequence was a law that set up a National Human Rights Commission (NHRC) in 1993, a quasi-judicial body mandated to protect and promote human rights.

To be headed always by a former Supreme Court Chief Justice, the Commission was empowered to, among others, investigate cases of human rights abuses, including proactively, by public servants. Of the five other members, one each would include a former Supreme Court judge and a former High Court Chief Justice. The creation of the Commission was widely hailed as a step in the right direction.

But nearly a quarter century later, the NHRC has mostly served to disappoint. Far from turning out to be a game changer, the NHRC has virtually been rendered a paper tiger, especially in cases of national security and terrorism, whereby it has rarely challenged the official narratives. Perhaps it has already resigned to its irrelevance, for nothing else can explain its listless performance.

Such is the seriousness that the list of the cases of deaths in police custody on the NHRC website is not updated to include data from after 2004-05. Ditto for atrocities by armed forces and paramilitary organizations, as well as for cases of torture, illegal detention, unlawful arrest and false implication.

The last update in the list of cases that the NHRC has taken up proactively, that is, at its own initiative without a complaint filed to it, is from 2014. Each report says that the commission issued notices to the relevant government authorities to file their responses. In not one has there been any update on if at all any response was filed, and if the case had any meaningful closure. The page on "fake encounters" has only one incident listed – from all the way back in 1999-2000.

If at all the NHRC has made any dent into the formidable superstructure of human rights abuse, it has been no more than the prick of a pin. On May 31, 2016, the NHRC reported it had ordered that a sum of half a million Indian rupees – less than USD 7,500 – be paid to the family of a Dalit teenage domestic help who had died in a "mysterious blast" at the home of a police officer where he worked.

The incident occurred in Uttar Pradesh nearly five years ago in 2011. The commission notes that its repeated directions to the police over years to investigate the nature of the blast had come to naught. The case is now buried. It is anybody's guess when – if – the compensation would be paid.

For that matter, what price human life snuffed out in the custody of the police, in prison, officials in the encounters? In another release also issued on May 31, 2016, the NHRC reported with satisfaction that it had managed to get various governments across India to pay 11.77 million Indian rupees – USD 175,000 – in 44 cases of human rights violations. Of these, 28 pertained to "violation of right to life" – deaths/ killings/ murders of citizens in prisons and at police stations. These 28 deaths took place in 12 of India's 29 states over an unspecified period of time.

While individual pay-outs are not listed, the release mentions one case in which it had got the Indian government to pay half a million rupees – USD 7,500. This was in Manipur when a man was killed in – what else? – an “encounter” by Assam Rifles, a paramilitary organisation, which the Union Defence Ministry “could not prove to be genuine”. Might anyone have been punished, too? Of course not.

Fifteen of those 28 deaths occurred in Uttar Pradesh, India’s most populated state with 200 million people – large enough to be the world’s fifth most populated country were it one.

## **SHOOT THE MESSENGER**

It was feared that with the victory of Mr. Modi’s BJP and his ascension as prime minister violations of human rights would gain fresh momentum. Those fears have been proved right. In the last two years, there has been a systematic attempt by both the State and non-state actors to silence the opponents of human rights abuses. Such attempts are now boldly targeting nationally and internationally renowned personalities, including top lawyers and activists, as well as NGOs.

On June 1, the Indian Government’s Ministry of Home Affairs that oversees national security announced it was suspending for six months the permission granted Lawyers’ Collective, a prominent group of legal eagles who routinely sue public officials for human rights abuses and provide legal aid to victims, to receive international funding. By directly attacking the Collective the government has virtually taken on its founder Indira Jaising, a feisty lawyer who turned 76 on Friday and who had been the second-highest ranked lawyer for the government preceding Mr. Modi’s.

The government’s case is that it was illegal for the Collective to accept 110 million rupees, USD 1.64 million today, in international funding during 2009-12 as Ms. Jaising then served as the previous government’s Additional Solicitor General, which made her a public official and therefore illegible for such funding. In September, the ministry had sent the Collective a notice seeking an explanation. Both in September and now, the government’s notices, Ms. Jaising said, have appeared in news media reports before being received by her.

Last week, leading human rights activists and organizations in India, including Amnesty and Greenpeace, condemned the move against Ms. Jaising. The action of the government against the Collective shows that “the inevitable consequence of questioning or criticising the present government’s policies is repression and criminalisation”, the statement said.

With her lawyer husband, Anand Grover, a cofounder of the Collective with her, Ms. Jaising has legally challenged the discharge of BJP President, Mr. Shah, as an accused in the case of encounter killings in Gujarat. Among other briefs, she also represents Teesta Setalvad, one of India’s best known rights activists, who, too, the government has been targeting with charges of corruption.

The granddaughter of independent India’s first attorney general, Ms. Setalvad has been as a one-woman army fighting for the victims of the 2002 anti-Muslim violence in Gujarat. This had placed her in Mr. Modi’s crosshairs. More than once Ms. Setalvad’s legal intervention prompted the Supreme Court to transfer the trial of cases from 2002 out of Gujarat, which led to many convictions.

She has also worked very closely with Zakia Jafri, the widow of the former MP who had died with 68 others as a rampaging mob set his house set on fire, an incident referred to above. The conviction last week of 24 people for those killings, mentioned above, came after the Supreme Court ordered a trial, basis petitions from Ms. Setalvad’s NGO, Citizens for Justice and Peace, as well as the NHRC.

In fact, the Supreme Court had ordered Mr. Modi's government in Gujarat at the time to reinvestigate as many as 10 cases of the 2002 vintage – also on Ms. Setalvad's intervention. The biggest of the case that Ms. Setalvad had piloted was a complaint by Ms. Jafri, the widow, alleging that Mr. Modi, as the state chief minister, had at a closed-door meeting told his top officials to allow the anti-Muslim violence to take place. She demanded that Mr. Modi be prosecuted on that charge.

The Supreme Court had constituted a Special Investigation Team (SIT) reporting directly to it go into the allegations. The SIT submitted a report in 2012 absolving Mr. Modi of the charge, even though an amicus curie lawyer appointed to the SIT by the Supreme Court disagreed with the finding and, in a dissenting report, wrote that there was indeed prima facie evidence of Mr. Modi's involvement.

The SIT's rejection of the allegation by Ms. Jafri against Mr. Modi is widely misquoted as suggesting that the Supreme Court has cleared Mr. Modi of any involvement in the sectarian violence that occurred on his watch. That is false reporting. The truth is that Ms. Jafri has challenged the SIT report at the Gujarat High Court, where it has been wounding its way for the last couple years.

It is in this context that the government's actions against both Ms. Jaising and Ms. Setalvad strongly appear to suggest vendetta politics. In the case of Ms. Setalvad, the Supreme Court had to stay attempts to arrest her on charges of financial embezzlement through the CJP, her NGO. Her offices and homes have been raided several times, failing each time to recover incriminating evidence.

Yet another lawyer who the government has sought to trash is Rohini Salian, a former public prosecutor, India's version of district attorney, in the state of Maharashtra. A year ago, in June 2015, Salian stunningly accused the National Investigation Agency (NIA), a federal agency, of pressuring her to go soft in her prosecution of Hindus linked to the RSS who had been accused of carrying out terror attacks<sup>15</sup>. In an interview with The Indian Express, she said she had asked to be relieved.

The case related to a bombing in a small textile town of Maharashtra in 2008 in which four Muslims had died. Though initially a few Muslims were arrested for the bombing, a bright police officer of Maharashtra, Hemant Karkare, tasked with its investigation, sensationally unearthed a conspiracy by Hindu groups and individuals, which led to the arrest of 12 of them. But the prosecution of the case turned cold after Mr. Karkare died in terrorist fire in the infamous attack in Mumbai in November 2008, in which more than 160 people died at luxury hotels, a train station and eateries.

Following Mr. Karkare's death, the investigation and prosecution of the case was transferred to the NIA, which was set up after the 2008 attack on Mumbai. After Ms. Salian's newspaper interview published, the government, instead of protecting her, allowed the NIA to sack her as prosecutor. Salian said she had got "favorable orders" from the court in this case, whereas the NIA did not want her to get any more such favorable orders. "The meaning was very clear," she told the newspaper.

Mr. Modi's government has also been clamping down on any sort of dissidence and disagreements with it. In January 2015, Priya Pillai of Greenpeace, an activist little known outside her circles shot to fame after the Indian government barred her from flying out to London to make a presentation before British Members of Parliament on the human rights abuses in the central Indian state of Madhya Pradesh in a case relating to the taking of poor people's lands for an industrial project.

An immigration official told her that she could not be allowed to go as her name was on a "database of individuals" who can't leave the country. "Have I been clubbed together with drug peddlers and smugglers?" she asked. "This government can't treat people who disagree with their viewpoint." When she moved court, the government told the judge that by speaking before the British MPs she would have created a "negative image" about India and "whittle[d] down foreign investments".

The Delhi High ruled in her favor. "Criticism, by an individual, may not be palatable; even so, it cannot be muzzled," ruled judge Rajeev Shakhder. "Many civil right activists believe that they have the right, as citizens, to bring to the notice of the state the incongruity in the developmental policies of the state. The state may not accept the views of the civil right activists, but that by itself, cannot be a good enough reason to do away with dissent."<sup>16</sup> Ms. Pillai's right to travel, he wrote, "cannot be impeded only because it is not in sync with [the] policy perspective of the executive".

The judge came down especially hard on the government's claim that Ms. Pillai was involved in "antinational activities". "Travelling abroad and espousing views [without any criminal intent] cannot, in my opinion, put Ms. Pillai in the category of an anti-national element," he wrote.

"If the view advanced on behalf of the [government] is accepted, it would result in conferring... arbitrary power in the executive, which could, based on its subjective view, portray any activity as anti-national. Such a situation, in a truly democratic country, which is governed by rule of law, is best avoided." The judge ordered the government to remove Ms. Pillai's name from the database, expunge the word "offloaded" from her passport, and allow her to travel abroad.

Three months ago, judge Shakhder was suddenly transferred from the Delhi High Court to another high court, that in the southern state of Tamil Nadu. Although such transfers are done by a collegium of a few senior-most Supreme Court judges, many of India's leading lawyers condemned the action saying and wrote a letter to the Chief Justice of India voicing their opposition to the transfer. The signatories to the letter included three of India's most renowned lawyers – former Attorney General Soli Sorabjee, Fali Nariman and K. K. Venugopal – who wrote that the transfer had "really shocked" members of the bar, especially because his consent for the transfer was not taken as is the practice. "We are disappointed by the lack of transparency in the case," the letter said.

In November, Mr. Modi's government arbitrarily cancelled the license of Greenpeace India and told it to wind up in 30 days. Greenpeace said the move was a "clumsy tactic" to silence dissent. I have already written of the government's action against Ms. Jaising who was Ms. Pillai's lawyer.

Two months ago, the Supreme Court granted bail to a wheelchair-bound professor at Delhi University who had been arrested in 2014 on charges of being connected with a proscribed outfit that is said to be behind a four-decade-old armed insurgency across central India. While ordering his release on bail, the court criticized the government of Maharashtra for its treatment of Dr. Saibaba.

"You have been especially unfair to him, especially knowing his medical condition," a Supreme Court judge hearing the case said in the court. "Why do you want to keep him in jail if key witnesses have been examined? You are unnecessarily harassing the petitioner." Saibaba is a known critic of the government's counterinsurgency operations aimed at liquidating thousands of "Maoist" insurgents. He has systematically exposed, through his writings and investigations, the government's dubious practices such as falsely accusing innocents of being Maoists or of being their supporters.

The Indian government's security operations across at least four states in central India, most significantly in Chhattisgarh which is the heartland of tribal India, has brought it much criticism over the years. In 2011, the Supreme Court outlawed a people's militia, made up of tribal men and women, that was being run with the active connivance of the government to attack the Maoists.

But instead of correcting the flaws in its counterinsurgency operations, the government has doubled down against those who question its practices. Chhattisgarh is a no-go area today for activists, journalists and lawyers who refuse to toe the government's line. In March, a journalist in Jagdalpur

was arrested for forwarding a message on WhatsApp that criticized the regional police chief for the targeting of innocents in anti-Maoist operations. The journalist, Prabhat Singh, is widely cited as a rare reporter who has courageously exposed fraudulent arrests and encounter killings in the region.

Just a few days previously Mr. Singh had filed a police complaint over death threats given to him by people who he alleged were members of a vigilante group supported by the police. The police refused to file an FIR basis his complaint. The Hindustan Times, a leading India newspaper, reported in March that the regional police chief had once at a press conference singled out Mr. Singh and threatened him with reprisals if he did not stop his investigative reporting against the police<sup>17</sup>.

Within days, a second journalist was arrested in the Dantewada district neighbouring Jagdalpur. Dantewada is the hotbed of both the Maoist activity and the government's counterinsurgency ops. Deepak Jaiswal, a reporter with a Hindi language newspaper, had long been critical of the government, according to the New York-based Committee to Protect Journalists (CPJ)<sup>18</sup>. He was, however, arrested not for his reporting of the police actions but on a seven-month-old complaint against him for a story that alleged authorities at a local school had helped students cheat at exams.

"Jaiswal is the fourth journalist to be arrested in the state in the last nine months... Journalists and lawyers told CPJ during a visit to Chhattisgarh this month that there is a sustained campaign to silence critical reporting in parts of the state," the statement by the Committee said.

In February, two women lawyers who had migrated to Jagdalpur in 2013 and courageously taken up cases of behalf of victims of police atrocities, were forced by their landlord to leave the house. The lawyers, Shalini Gera and Isha Khandelwal, claimed that the police had threatened their landlord with consequences if he did not turn them out of his house. With no one else willing to rent them a house, the lawyers were forced to leave town, ending their legal activism of nearly three years.

Calling themselves the Jagdalpur Legal Aid Group, the lawyers, who earlier numbered four, had faced constant threats from the police. Even local lawyers were constantly trying to block them from practising in the courts. It also riled the police that the collective had gained international renown for its work, being also profiled by The New York Times<sup>19</sup>, which brought focus to police excesses.

## **REWARD THE PERPETRATOR**

It should come as no surprise that when a culture of impunity for the perpetrator and persecution for the dissident prevails, the State becomes a handy tool for promoting and rewarding those who aid and abet its nefarious agenda of human rights violations. Examples abound across India.

The junior minister for agriculture in Dr. Modi's government is a man named Sanjeev Balyan. A veterinarian by profession, Dr. Balyan became a first-time Member of Parliament in 2014 as part of the historic mandate that Mr. Modi won for his party. Although junior to many other MPs elected that year, Dr. Balyan's credentials to becoming a ministership are well established.

In August-September 2013 a wave of sectarian violence in Uttar Pradesh led to the death of some 60 people, most of them Muslims. Dr. Balyan is an accused in the case, with the police claiming his public speeches just before the violence had contributed to its eruption. He is on bail in the case. The BJP and Dr. Balyan deny his complicity in the violence calling the charges politically motivated.

Less than two months ago, a police officer named P. P. Pandey was promoted as Director General of Police (DGP) in Gujarat. His elevation as the topmost police officer in the state is unprecedented in

free India's history. He is the first head of state police who is an accused in a case of encounter killing. The case pertains to the period Mr. Modi ran the state government. Mr. Pandey is accused of the illegal detention of the suspects who were eventually killed in a staged encounter.

Mr. Pandey's resurrection is remarkable in that he had spent a year and a half in prison since his arrest in 2013 for his alleged role in that encounter. Within four days of being bailed in February 2015 he was made additional DGP. Usually, a DGP is appointed only when an incumbent retires. But the Gujarat government of Mr. Modi's successor chief minister was in such a hurry that it summarily transferred the incumbent to the central government to make way for Mr. Pandey to take over.

Prior to his arrest Mr. Pandey had gone "missing" for 90 days. When he appeared in court to surrender he was accompanied by top leaders of the Vishwa Hindu Parishad, literally the World Hindu Council, a far-right associate of the RSS and Mr. Modi's BJP, whose many members had been accused in and convicted for the anti-Muslim violence cases in Gujarat in 2002.

## **THE PATH AHEAD**

For the last four years, a civil society campaign that seeks to blunt the practice of human rights abuses has grown in strength across India. Named the "People's Campaign Against the Politics of Terror", it advocates for the immediate implementation of multiple steps by the government that would go a long way in curbing the systemic violations of human rights and violations.

To begin with, it is imperative that the Indian government bring in place a mechanism by which police officers who falsely framed innocent people in terror cases can be punished for their illegalities. Another demand is that the government recognize the wrongs committed and suitably compensate and rehabilitate the victims of such fraudulent criminal cases.

There is also a need to bring an end to the continued failure of the judiciary in recognizing that the police and prosecution in nearly all the cases are prone to falsifying evidence. The judiciary perforce must evolve stringent checks on the police versions, especially in cases of national security and terrorism. Judges must also be made to realize that denying bails to the accused in such fabricated cases does incalculable harm not just to those individuals but also to the fundamental principles of justice.

A big responsibility, of course, rests on the international community which is engaging with India ever more closely, especially for the enhancement of business and trade relations. The United States itself has in recent years firmed up its strategic partnership with India as both governments align increasingly on a host of issues of common interest, including regional security and defense.

It is imperative that the concerns of human rights become an essential part of such relationships and exchanges between the two nations and their governments. And it is the responsibility of activists and campaigners on both sides to continue building up advocacy to bring adequate pressure on both sides to evolving a framework that mandatorily includes the human rights perspective.



Endnotes:

1. <http://achrweb.org/reports/india/torture2011.pdf>
2. <http://timesofindia.indiatimes.com/india/11820-custodial-deaths-in-five-years/articleshow/26283098.cms>
3. <http://www.thequint.com/india/2016/05/21/red-sanders-encounter-sit-to-close-probe-for-lack-of-evidence>
4. <http://supremecourtofindia.nic.in/outtoday/ar12551999.pdf>
5. <http://www.theguardian.com/world/2015/sep/12/indian-forces-kashmir-accused-human-rights-abuses-coverup>
6. [http://archive.tehelka.com/story\\_main42.asp?filename=Ne080809murder\\_in.asp](http://archive.tehelka.com/story_main42.asp?filename=Ne080809murder_in.asp)
7. <http://indianexpress.com/article/india/india-news-india/imphal-encounter-6-years-later-the-admission-yes-i-shot-him-dead-he-was-unarmed-officer-told-me-to/>
8. [http://www.nytimes.com/2015/07/25/opinion/end-abuses-by-the-indian-military.html?\\_r=0](http://www.nytimes.com/2015/07/25/opinion/end-abuses-by-the-indian-military.html?_r=0)
9. <https://www.amnestyusa.org/sites/default/files/asa200422013en.pdf>
10. <http://indianexpress.com/article/india/india-news-india/afspa-required-to-handle-insurgency-in-north-east-no-cases-of-misuse-reported-army-2837626/>
11. <http://indianexpress.com/article/india/india-news-india/babri-masjid-demolition-train-blast-tada-supreme-court-acquitted-in-babri-anniversary-train-blasts-case-nisar-2824883/>
12. <http://www.telegraph.co.uk/news/worldnews/asia/india/10286774/Narendra-Modi-blamed-for-fake-encounter-killings-policy-in-Gujarat.html>
13. <http://www.tehelka.com/2008/08/expose-the-simi-fictions/>
14. <http://supremecourtofindia.nic.in/outtoday/CrI.AppealNo.2295-2296of2010.pdf>
15. <http://indianexpress.com/article/india/india-others/since-this-new-govt-came-i-have-been-told-to-go-soft-on-accused-hindu-extremists-special-public-prosecutor/>
16. <http://indianexpress.com/article/india/high-court-quashes-look-out-circular-against-greenpeace-activist-priya-pillai/>
17. <http://www.hindustantimes.com/india/chhattisgarh-another-journo-arrested-focus-on-police-intimidation/story-rbmLnDHPI3dmRWJomb54EK.html>
18. <https://cpj.org/2016/03/second-indian-journalist-arrested-in-chhattisgarh-.php>
19. <http://www.nytimes.com/2015/03/02/world/shoestring-legal-aid-group-helps-poor-in-rural-india.html>