

**Challenges & Opportunities: The Advancement of Human Rights in India**  
**Tom Lantos Human Rights Commission**  
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**Testimony by John Sifton, Asia Policy Director, Human Rights Watch**

Mr. Chairman and members of the committee,

Thank you for inviting me to testify today in this well-timed hearing. It was fitting and proper to hold a hearing today to coincide with the arrival in Washington of India's prime minister, Narendra Modi, and on the eve of his historic address to a joint session of Congress. Doing so sends a clear message that while the United States values its improving relationship with India, it remains concerned with India's human rights record.

The Indian government, of course, should be raising its own concerns with the record of the United States on human rights and, speaking as a representative of Human Rights Watch, an international nongovernmental organization that works on over 90 countries worldwide, we encourage Prime Minister Modi to do so. Among the topics he should raise with President Barack Obama are excessive and abusive National Security Agency surveillance practices, discriminatory and excessive use of lethal force by local police, and immigration and asylum practices that violate US obligations under international law.

And just as India should be raising its rights concerns with the United States, the US has an important role to play by raising its concerns with India. It is a false claim, made by some in India and the United States, that because India is a democracy and an ally, the United States should remain silent about India's record. Doing so would be at the expense of the threatened individuals and marginalized communities in India whose plight deserves international attention. Today, we are providing that attention.

India has taken important strides in recent years, in particular with legal reform with respect to the treatment of women, Dalits, and various vulnerable groups. More recently, the government has introduced a "transgender person bill" that, although it needs refinement and further input from civil society, is a good step toward protecting and empowering the country's transgender population. There is also a Mental Health Care Bill and Rights of Persons with Disabilities Bill pending in parliament, aimed at advancing the rights of people with disabilities. But in many areas, the government and local authorities continue to fall short, both with respect to legal reforms and implementation.

My testimony today will focus on several key areas of concern with India's human rights record, which I will review in a moment. Before I turn to those issues, though, I would like to add a quick word about India's system of government.

India, like the United States, has a federal structure of government. As a practical matter, it is primarily up to state governments to maintain law and order. The central government, however, has often used this as an excuse for its own inaction in addressing human rights concerns, and failed to use its power and influence to compel local governments to protect human rights.

For instance, the Modi government has failed to promptly condemn attacks against religious minorities or call on state governments to investigate and prosecute those responsible—some of whom are members or supporters of the ruling Bharatiya Janata Party (BJP). Similarly, while state governments have been responsible for using or misusing problematic national laws to restrict peaceful expression, the Modi government has a record of defending such laws and has been unwilling to take legislative steps to repeal or amend them to bring them in line with international human rights standards.

## **Restrictions on the Right to Freedom of Expression**

Prime Minister Modi has frequently said he and his government are committed to upholding the right to freedom of speech. Yet his government has not only failed to address laws that are frequently used by various state governments against individuals exercising these rights, but has used them, as did previous governments, to treat peaceful criticism as a crime.

Authorities regularly uses India’s seditious law and criminal defamation law to prosecute citizens who criticize government officials. The government has argued before the Indian Supreme Court in support of criminal defamation law—without offering compelling evidence—that monetary compensation through civil lawsuits is not a sufficient remedy for damage to reputation. (Last year, Modi’s government also argued to keep section 66A of the Information Technology Act, an overbroad legal provision that had been routinely misused to restrict online speech. However, the Supreme Court, in a landmark judgment struck it down, calling it unconstitutional.)

Last month, Human Rights Watch released a report, “Stifling Dissent: The Criminalization of Peaceful Expression in India,” which details how Indian government offices, at both national and state levels, use draconian laws such as seditious and criminal defamation to silence criticism.<sup>1</sup> The report also reviews how other vaguely worded laws including hate speech laws on hurting religious sentiments are used to harass and prosecute those expressing dissenting, unpopular, or minority views. In several cases, when interest groups that claim to be offended by books, movies, or works of art pushed for censorship or harassed authors, the government has allowed them a “heckler’s veto” rather than protecting those under attack.

Attacks on free speech by the government and its supporters have prompted condemnation from scholars and activists around the world. In a particularly notable incident earlier this year, authorities used the colonial-era seditious law to arrest students and activists at the Jawaharlal Nehru University in Delhi for alleged anti-national speech. Kanhaiya Kumar, a student union leader at the university, was one of those arrested for seditious in February. The government was acting on complaints by members of the student wing of the ruling Bharatiya Janata Party (BJP), who accused Kumar of making anti-national speeches during a meeting organized on campus.

After India’s minister for home affairs warned that those who shouted anti-India slogans and challenged India’s sovereignty and integrity during these meetings “will not be tolerated and spared,” two more students were arrested for seditious in the same case; three others had charges

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<sup>1</sup> Human Rights Watch, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india> .

leveled against them. A Delhi court granted Kumar six months of interim bail after police admitted they had no evidence of anti-national sloganeering or incitement to violence. The two other arrested students were also granted bail. The government, however, has not yet admitted that the arrests were based on unfounded charges.<sup>2</sup>

The Modi government should initiate legislative steps toward repealing or amending these laws, many of them relics of colonial rule, and bring them in line with international human rights standards and its own treaty obligations.

### **Clampdown on Civil Society Organizations**

It is well known that Prime Minister Modi is seeking greater foreign investment in the private sector for initiatives such as “Make in India.” At the same time, his government continues to use the draconian Foreign Contribution Regulation Act (FCRA) to restrict foreign funding for civil society groups. The FCRA regulates foreign funding for civil society organizations, but the government has been using it—as several previous governments have—to cut off funds and stymie the activities of organizations that question or criticize the government or its policies.

The FCRA has been criticized internationally for restricting the right of nongovernmental organizations to freely seek and receive financial and other resources for their management and activities. In April 2016, United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai analyzed the FCRA and said the restrictions imposed by the law and its rules “are not in conformity with international law, principles and standards.”<sup>3</sup> He concluded that the law appeared to contravene India’s obligations under the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, because the FCRA “imposes a total ban on associations’ access to foreign funding on vaguely defined grounds for a broad purpose not included in the ICCPR’s enumerated list of legitimate aims.”

The impact of the FCRA on Indian civil society has been severe. When the Indian Home Ministry conducts an investigation pursuant to the FCRA, it often freezes the accounts of the nongovernmental organization (NGO) being investigated, cutting its source of funding, and forcing it to stop its activities. Such tactics have a wider chilling effect on the work of other groups.

The previous Indian government amended the law in 2010 to add vague, overbroad provisions, making the law more restrictive and prone to misuse.<sup>4</sup> While there is no question that NGOs should be held just as accountable under law as any other organizations, the Modi government has used these provisions against activists that question government infrastructure and development projects or seek justice for victims of the 2002 communal riots in Gujarat. Its

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<sup>2</sup> “India: Stop Treating Critics as Criminals,” Human Rights Watch news release, May 24, 2016, <https://www.hrw.org/news/2016/05/24/india-stop-treating-critics-criminals>

<sup>3</sup> Analysis on international law, standards and principles applicable to the Foreign Contributions Regulation Act 2010 and Foreign Contributions Regulation Rules 2011 by United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, April 20, 2016, <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf> (accessed June 2, 2016).

<sup>4</sup> Human Rights Watch Letter to Prime Minister Manmohan Singh of India, April 10, 2008, <https://www.hrw.org/news/2008/04/10/human-rights-watch-letter-prime-minister-manmohan-singh-india>

actions appear to be politically motivated as it targets even those who dare to defend such activists.

In January 2015, the government barred Priya Pillai, a Greenpeace India activist, from boarding a flight to London where she was to speak to members of the British Parliament, alleging that her testimony would have portrayed the government in a negative light. The Delhi High Court ruled that this action by the authorities violated Pillai's rights to travel and to freedom of expression. In April, the government suspended Greenpeace's FCRA registration.

Indian authorities also targeted activist Teesta Setalvad and her husband, Javed Anand, accusing them of violating the FCRA and receiving funds illegally, among other allegations.<sup>5</sup> Setalvad is well-known for her work supporting victims of the 2002 Gujarat riots and for seeking criminal charges against scores of officials, including Prime Minister Modi for his alleged involvement in the riots as the state's then-chief minister.

The Modi government in 2015 put the Ford Foundation on a FCRA watchlist, requiring the foundation to get prior approval from the government for all its programmatic activities in India—an action almost certainly linked to Ford's funding of Teesta Setalvad's organization, Sabrang.

The US State Department has raised concerns over the restriction that were put on Ford, and in May 2015, the US ambassador to India expressed concerns in general over challenges faced by civil society organizations in the country and the “potentially chilling effects” of the “regulatory steps focused on NGOs.”<sup>6</sup>

Yet the harassment has continued. Most recently, the government has initiated investigation of two well-known lawyers, Indira Jaising, a former Additional Solicitor General, and her husband, Anand Grover, a former UN Special Rapporteur on the right to health. On May 31, the Modi government temporarily suspended the FCRA status of the Lawyers Collective, an organization founded by Grover and Jaising, citing alleged violations under the FCRA.<sup>7</sup> Many believe that the focus on the Lawyers Collective is politically motivated and that the government is attempting to disempower and weaken them because of their work in assisting and supporting Priya Pillai of Greenpeace India and Teesta Setalvad. Jaising and Grover have also routinely represented people in cases against the current government, as well as the president of the ruling party, Amit Shah, protesting his discharge in an alleged case of extrajudicial killing.<sup>8</sup>

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<sup>5</sup> “India: Stop Harassment of Activists,” Human Rights Watch news release, February 21, 2015, <https://www.hrw.org/news/2013/10/31/india-end-funding-restraints-organizations>

<sup>6</sup> Suhasini Haidar, “Crackdown on NGOs worries US,” *The Hindu*, May 6, 2015, <http://www.thehindu.com/news/national/antingo-action-could-have-chilling-effect-on-civil-society-us-ambassador/article7176804.ece> (accessed June 2, 2016).

<sup>7</sup> Order from the Foreigners Division (FCRA wing) of the Ministry of Home Affairs of the government of India placing Lawyers Collective under temporary suspension, May 31, 2016, [https://fcraonline.nic.in/home/PDF\\_Doc/LawyersCollective\\_01062016.PDF](https://fcraonline.nic.in/home/PDF_Doc/LawyersCollective_01062016.PDF) (accessed June 2, 2016).

<sup>8</sup> Response of Lawyers Collective on the Suspension of Registration under the Foreign Contribution (Regulation) Act, 2010 <http://www.lawyerscollective.org/news/response-of-lawyers-collective-on-the-suspension-of-registration-under-the-foreign-contribution-regulation-act-2010.html> (accessed June 2, 2016).

Some argue that India's judiciary and media institutions ensure that India's civil society can't be silenced. That is generally true. But it's also true that targeting prominent human rights lawyers does have a chilling effect on some groups—especially smaller organizations and those representing marginalized communities—and hampers those who seek legal interventions to ensure justice.

In an ironic twist, even as the authorities use the FCRA to tighten restrictions on civil society groups, in March 2016 the government quietly slipped in an amendment during the budget session that retroactively legalizes funding by foreign entities to political parties.<sup>9</sup> This amendment to the FCRA law also shows the government's hypocrisy about foreign funding. The FCRA was first enacted primarily to prohibit political parties, politicians, and election candidates from accepting foreign support to prevent foreign interests from affecting Indian elections.

The Indian government should stop its harassment of NGOs and human rights defenders, and amend the FCRA so that it does not interfere with the rights to freedom of expression and association and cannot be misused for political reasons to choke off the peaceful activities of civil society organizations.

### **Violence Against Religious Minorities**

Religious minorities, especially Muslims and Christians, have come under increasing threat of harassment and violence and have expressed concern that the authorities are not doing enough to protect them. Since the BJP came to power two years ago, several party leaders have made inflammatory remarks against minorities, while militant Hindu groups that claim to support the Modi government have threatened and harassed Muslims and Christians, in some cases even physically attacking them.

Hindu vigilante groups have killed six Muslim men in separate incidents across the country in 2015 and early 2016 over suspicions that they had killed, stolen, or sold cows for beef. The violence took place amid an aggressive push by several BJP leaders and militant Hindu groups to protect cows, which many Hindus consider sacred, and for a ban on beef consumption.

In the most recent attack, in March 2016 in Jharkhand state, a Muslim cattle trader, Mohammed Mazlum Ansari, 35, and a 12-year-old boy, Mohammed Imteyaz Khan, were found hanging from a tree. Their hands were tied behind their backs and their bodies bore signs of mistreatment.<sup>10</sup>

Militant Hindu groups have also attacked Christian churches in several Indian states in the last two years.

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<sup>9</sup> MK Venu, "Revealed: Jaitley Redefines 'Foreign' as 'Indian' to Get BJP, Congress Off the Hook for FCRA Violation," *TheWire.in*, April 2, 2016, <http://thewire.in/2016/04/02/revealed-jaitley-gifts-bjp-congress-a-clean-chit-retrospectively-on-fcra-violation-27134/> (accessed June 2, 2016).

<sup>10</sup> Jayshree Bajoria, "India's Cow Protection Groups Raise Tensions," Human Rights Watch dispatch, March 21, 2016, <https://www.hrw.org/news/2016/03/21/dispatches-indias-cow-protection-groups-raise-tensions>

The authorities have not robustly pressed for the prosecution of those responsible for violent attacks on minorities. The impunity enjoyed by assailants is contributing to a sense of government indifference to growing risks facing religious minorities.

The central government needs to be doing more to protect religious minorities in the country. It should publicly condemn as well as fully prosecute attacks on religious minorities, act to reassure marginalized populations and religious minorities that the government will take all necessary steps to protect them, and work with civil society groups to promote tolerance.

### **Treatment of subjugated castes and other vulnerable persons**

In recent years India has made considerable progress toward protecting the rights of vulnerable populations. In 2015, the government enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, strengthening protections for Dalit and tribal communities, and making it easier for them to pursue justice. After the 2012 gang rape and murder of a young student in Delhi, the government undertook legal reforms, introducing new and expanded definitions of rape and sexual assault, criminalizing acid attacks, providing for a right to medical treatment, and instituting new procedures to protect the rights of women with disabilities who experience sexual assault. India has also enacted a Right to Education law guaranteeing free and compulsory elementary education to all children ages 6 to 14.

At the same time, the Indian government has failed to implement laws to protect Dalits and tribal groups from discrimination and violence. For instance, Human Rights Watch research has found that despite a right to education law that mandated free and compulsory elementary education for all children, discrimination against children from Dalit, tribal and Muslim communities has led to high dropout rates among these children.<sup>11</sup> Those who drop out often end up being subjected to the worst forms of child labor or early marriage.

A 2016 report on caste-based discrimination by the UN special rapporteur for minority issues noted how caste-affected groups continued to suffer exclusion and dehumanization.<sup>12</sup> The report also noted that atrocities and violence against Dalits had increased by 19 percent in 2014 compared to the previous year.

Moreover, despite legal prohibitions, the practice of “manual scavenging”—cleaning of human waste from private and public dry toilets, and open drains—a caste-designated occupation that is mainly imposed upon Dalit women, has persisted. Human Rights Watch research found that authorities in most areas in India have institutionalized the practice of local governments and municipalities employing manual scavengers.<sup>13</sup>

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<sup>11</sup> Human Rights Watch, *“They Say We’re Dirty”: Denying an Education to India’s Marginalized*, (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/04/22/they-say-were-dirty/denying-education-indias-marginalized>.

<sup>12</sup> UN Human Rights Council, Report of Special rapporteur on minority issues, Rita Izsák, UN Doc. A/HRC/31/56, January 2016, <http://idsn.org/wp-content/uploads/2016/03/Special-Rapporteur-on-minority-issues-report-on-caste.pdf> (accessed June 3, 2016).

<sup>13</sup> Human Rights Watch, *Cleaning Human Waste: “Manual Scavenging,” Caste and Discrimination in India*, (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>.

The Modi government launched the ambitious Swachh Bharat Abhiyan or the Clean India Campaign in 2014, which includes a plan to eradicate manual scavenging and end open defecation by building more toilets and changing people's attitudes to sanitation. Any US support toward government initiatives on sanitation should ensure that all new sewage systems are sanitary and will not need to employ manual scavengers.

Members of the US Congress should include the issue of caste discrimination in their dialogues with the Indian authorities. The United States government should also encourage US companies investing in India to ensure that their hiring and management practices do not further entrench caste or other discrimination.

### **Impunity for Rights Abuses**

The draconian Armed Forces Special Powers Act (AFSPA) remains in force in Jammu and Kashmir and in other northeastern states. AFSPA has been widely criticized by rights groups and numerous independent commissions have recommended repealing or amending the law, but successive governments have not done so in the face of stiff army opposition. A May 2015 report by the UN special rapporteur on extrajudicial, summary, or arbitrary executions noted that “impunity remains a serious problem” and expressed regret that India had not repealed or at least radically amended AFSPA.<sup>14</sup>

In several states, proposed police reforms again stalled in 2015 even as police committed serious violations including arbitrary arrests, torture, and extrajudicial “encounter” killings.

Security forces in the Maoist-affected central Indian state of Chhattisgarh have been implicated in serious human rights violations including sexual assault. At the same time, journalists, lawyers, and civil society activists in the state are facing harassment and arbitrary arrest.<sup>15</sup> In recent months, the rise of vigilante groups, sometimes with covert state support, in the Bastar region of Chhattisgarh state has reportedly become a serious threat for dissenting voices.

The armed movement by Maoist groups poses a serious security challenge across several states in central and eastern India. The Maoists have committed numerous serious abuses, including extortion, recruitment of children into combat, attacks on schools and targeted killings.

The government's security response to the Maoist threat has also resulted in serious human rights violations. State security forces – typically police and paramilitary forces – have arbitrarily arrested, detained, and tortured villagers, who are mostly from tribal communities. Police have often attempted to discredit human rights activists by describing them as Maoists or Maoist supporters. The government claims that in its fight against the Maoists it hopes to win the hearts and minds of the local population, but this outcome will prove elusive so long as its security forces violate people's rights.

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<sup>14</sup> UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, UN Doc. A/HRC/29/37/Add.3, May 2015.

<sup>15</sup> “India: High Cost for Reporting in Chhattisgarh,” Human Rights Watch news release, April 18, 2016, <https://www.hrw.org/news/2016/04/18/india-high-cost-reporting-chhattisgarh>.

## Women's Rights

Despite strong laws at the national level, women and girls across India continue to suffer routine domestic violence, acid attacks, rape, and murder. The government has failed to hold public officials accountable when they fail to enforce policies designed to protect women and children. In rural areas, discriminatory and abusive practices by local authorities continue unabated. Unofficial village councils in several Indian states, called *khaps*, made up of men from dominant castes who often enjoy political patronage, issue edicts restricting women's mobility and rights, and condemning couples for marrying outside their caste or religion. For instance, in August 2015, village leaders in Uttar Pradesh state allegedly ordered the rape of two Dalit sisters to pay for the "sins" of their brother who had eloped with a higher-caste woman.

## India's Role in Global Affairs

India has been clear that it wants to take on an increasing role in global affairs. President Obama has backed India's position that it should have a permanent seat at the UN Security Council. But for India to strengthen its claim for a place among world powers, it needs to embrace the promotion of human rights and democratic institutions as a central part of its foreign policy.

All too often India has not spoken out on human rights issues, whether in the region, or on matters of global concern. For example, India maintains a close security relationship with neighboring Bangladesh, but has been silent while the Bangladesh government carries out a campaign of extrajudicial killings, enforced disappearances, and intimidation of media and civil society groups. India has also said little and done less to assist other countries seeking to end the slaughter of civilians in Syria.<sup>16</sup>

To change this, the government can start by taking a more leading role in promoting human rights at the regional level, for instance, in Afghanistan, Sri Lanka, and Burma. The government should also end its practice of generally abstaining from country-specific resolutions at the UN Human Rights Council and UN General Assembly.

## Conclusion

Progress on human rights in India will continue to falter unless the Modi administration takes better steps to ensure justice and accountability for all citizens, protect vulnerable communities, and protect the free exchange of ideas and dissent. Lack of effective implementation of laws and policies remain a persistent challenge. Government officials are not held accountable and impunity persists for police and other security personnel who are shielded by laws from being prosecuted for serious human rights abuses. We urge members of Congress to press the United States to prioritize these vital issues with India's government, and to raise them directly in interactions with the Indian government, in the months and years ahead.

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<sup>16</sup> Meenakshi Ganguly, "India and US should not miss this chance to set a global example," *Hindustan Times*, May 28, 2016, <http://www.hindustantimes.com/analysis/india-and-us-should-not-miss-this-chance-to-set-a-global-example/story-17Fv6qYZzUBxDYFpQ7950M.html> (accessed June 5, 2016).