



6 August 2015 (COI included up to 13 July 2015)

A Commentary on the April 2015 and February 2015 Country Information and Guidance reports issued on India

This commentary identifies what the 'Still Human Still Here' coalition considers to be the main inconsistencies and omissions between the currently available country of origin information (COI) and case law on India and the conclusions reached in the following Country Information and Guidance (CIG) reports issued by the UK Home Office:

- [Country information and guidance report: Women fearing gender-based harm/violence, India, April 2015](#)
- [Country information and guidance report: Background information, including actors of protection, and internal relocation, India, February 2015](#)

Where we believe inconsistencies have been identified, the relevant section of the CIG report is highlighted in blue. An index of full sources of the COI referred to in this commentary is also provided at the end of the document (COI up to 13 July 2015). This commentary is a guide for legal practitioners and decision-makers in respect of the relevant COI, by reference to the sections of the CIG reports on India.

The document should be used as a tool to help to identify relevant COI and the COI referred to can be considered by decision makers in assessing asylum applications and appeals. This document should not be submitted as evidence to the UK Home Office, the Tribunal or other decision makers in asylum applications or appeals. However, legal representatives are welcome to submit the COI referred to in this document to decision makers (including judges) to help in the accurate determination of an asylum claim or appeal.

The COI referred to in this document is not exhaustive and should always be complemented by case-specific COI research.

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A. India CIG: Women fearing gender-based harm/violence (April 2015)

Is there effective protection for women?

The CIG on 'Women fearing gender-based harm/violence' finds that "a person is likely to be able to access effective protection from the state":

Excerpt from CIG on women fearing gender-based harm/violence

1.3.17 In general, a person is likely to be able to access effective protection from the state. However, an assessment of whether a person would be able to access assistance and protection must be carefully considered on the facts of the case. Decision makers must take particular account of past persecution (if any) and past lack of effective protection. In each case, decision makers must identify whether attempts were made to seek protection and what the response of the authorities was, while taking into account that in some cases there may be good reason why a woman was unable or unwilling to seek protection from the authorities.

However it is considered that this position fails to take account a gendered assessment of whether effective protection will be realised in practice. As detailed below, COI included in the CIG and elsewhere in the public domain documents the many issues that women face in accessing the criminal justice system, particularly as victims sexual and gender based crimes.

Indeed, the position on protection highlighted above in paragraph 1.3.17 is more restrictive than that taken in the policy summary of the CIG which considers that in some circumstances protection may be unavailable:

Excerpt from CIG on women fearing gender-based harm/violence

1.4 Policy Summary

[...] Victims of gender based violence may in some circumstances be unable to obtain effective state protection.

This commentary addresses each of the paragraphs of guidance included in the section of the CIG 'Is there effective protection for women?' in turn.

Excerpt from CIG on women fearing gender-based harm/violence

Is there effective protection for women?

1.3.13 There are specific statutory laws in place which provide tough penalties for domestic violence, rape, acid attacks, sexual harassment, trafficking and other related offences. Furthermore, new legislation was adopted in 2013, including a Criminal Law (Amendment) Act which – according to the United Nations Special Rapporteur on violence against women – has improved the legislative framework significantly, introducing new criminal offences and stronger sanctions. The Special Rapporteur did, however, note in a report of April 2014 that effective implementation of these laws, and the allocation of financial resources to support their execution adequately, was reportedly lacking in many instances. (See Violence against women in the country information section)

Whilst the CIG does recognise that effective implementation of the Criminal Law (Amendment Act) is lacking in many instances, it is considered that the above section of the guidance fails to mention the limitations of the Act. It is the view of the UN Special Rapporteur on violence against women, its causes and consequences that the laws that were adopted did not fully reflect the recommendations of the Verma Committee (which was established by the Government to review existing normative gaps following the brutal gang rape and death of a student in December 2012). The UN Special Rapporteur considers that (emphasis added):

- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)

[...] 50. However, the laws that were adopted did not fully reflect the recommendations of the Verma Committee. The opportunity to adopt a holistic approach to violence against women, including addressing the root causes and consequences of such violence, was lost. **In fact, the Criminal Law (Amendment) Act failed to: criminalize existing beliefs and practices linked to chastity; protect women with disabilities, unmarried women, lesbian, gay, bisexual and transgender persons, religious minorities, and girls below 18 years of age from sexual violence; or recognize marital rape as a criminal offence. Moreover, gang rapes and mass crimes involving brutal acts of sexual violence are not considered as multiple crimes against women, but as a single punishable crime under this law.** Many concerns were raised about the deterrent effect of the application of the death penalty, as provided for in the Act. This is a statutory option for the courts in cases of gang rape where a perpetrator is a repeat offender, or if sexual violence results in the death of the victim, or puts the victim in a permanent vegetative state. It is of concern that conviction in such cases may entail higher evidential burdens for the victim, since the death penalty is a consideration in sentencing. The current legislative framework is therefore still in need of reform.

51. Serious concerns were expressed with regard to the insensitive and taunting attitude of some members of Parliament with regard to the Criminal Law (Amendment) Act. The Special Rapporteur regrets that some political leaders are not fully committed to the process of legal and social change as regards women's human rights. [...]

The second paragraph of the guidance below only refers abstractly to the 'restricted implementation' of the 2005 Protection of Women from Domestic Violence Act and to 'corruption'; limited further mention is made of the barriers women face in general in accessing police and judicial protection:

Excerpt from CIG on women fearing gender-based harm/violence

Is there effective protection for women?

[...] 1.3.14 The Protection of Women from Domestic Violence Act 2005 (PWDVA) came into force in October 2006. It enables victims of domestic violence to seek interim protection and residence orders, as well as compensation and maintenance. The Act protects women not only from abuse by a spouse, but also members of the spouse's family. Its definition of violence against women encompasses physical, sexual, psychological, verbal, and economic abuse. Evidence proving abuse is tested on a balance of probabilities; proof beyond reasonable doubt is not required. A victim of domestic violence deals primarily with a Protection Officer and has a right to legal aid, shelter and access to medical care, **although there have reportedly been limitations in the effectiveness of the law due to restricted implementation, as well as corruption.** Women facing imminent and life threatening violence have often had to rely solely on police aid. (See Violence against women in the country information section)

[...] 1.3.15 It has been reported that, despite provisions intended to offer legal, social and financial assistance to victims, **many women victims were reluctant to report incidents to the police due, for example, to fear of reprisals or lack of guarantees of adequate shelter and access to livelihoods. Informal dispute settlement alternatives were often sought by police, family members or community leaders.** Nevertheless, data from the National Crime Records Bureau shows that there has been a substantial increase in the number of criminal incidents reported to the police since 2008, particularly in respect of rape and other crimes against women. The figures also indicate that a high percentage of police investigations into criminal offences against women have resulted in suspects being formally charged and cases proceeding to court. Furthermore, the Criminal Law (Amendment) Act 2013 has made it a criminal offence for a public servant (including a police officer) to fail to record – and then to investigate as prescribed – specified offences in the Penal Code. (See Police and judicial attitudes and responses to violence against women in the country information section).

Whilst the guidance above identifies fear of reprisals when reporting incidents to the police and that informal dispute alternatives are often sought by police, no mention is made of the following numerous other barriers women face in accessing effective protection, despite COI being presented on these in section 2 'Information' at the following paragraphs of the CIG:

Barriers to accessing police protection

Police resources

- Law enforcement and legal avenues for rape victims are inadequate, overtaxed, and unable to address the problem effectively [paragraph 2.5.19]; there are only 10 operational all-female police stations [paragraph 2.6.7]; the proportion of women in the police is seriously low [paragraph 2.6.5]
- Few police stations have specialized women's mechanisms to address the concerns of women, including violence cases, and to provide the assistance and protection that is required during the investigation phase [paragraph 2.6.5]

Police training

- Authorities are yet to fully implement Verma Committee recommendations around police training and reform, and changing how reports of sexual violence are registered and investigated [paragraph 2.5.7]

Police attitudes to violence against women

- Police are reluctant to register cases of crimes against women, especially if the cases are against influential persons [paragraph 2.6.2]
- Victims are often discouraged from reporting to the police [paragraph 2.6.3]
- Law enforcement officers sometimes work to reconcile rape victims and their attackers [paragraph 2.5.19]; female rape victims are encouraged to marry their attackers [paragraph 2.5.19]

Police response to violence against women

- Doctors sometimes further abused rape victims who reported the crimes by using the "two-finger test" to speculate on their sexual history [paragraph 2.5.19] which may be carried out without the victim's consent [paragraph 2.6.5]
- Some rape victims are afraid to come forward and report the crime due to social stigma fear of retribution or reprisals, compounded by lack of oversight and accountability, especially if the perpetrator is a police officer or other official [paragraph 2.5.43; 2.5.47 and 2.6.3]
- Women are subject to acts of coercion and duress in a deliberate attempt to prevent the investigation of cases and punishment of perpetrator [paragraph 2.6.5]

Police abuse of women with impunity

- There is impunity for abuses committed by police officers and the need for civilian oversight [paragraph 2.6.5]; reports that police rape women in custody with impunity [paragraph 2.5.43]; the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) protects the armed forces from effective prosecution in non-military courts for human rights violations committed against civilian women among others [paragraph 2.5.3; 2.5.46; 2.5.47;];

Additional COI on these issues is presented below in [‘Relevant COI omitted from the CIG in relation to effective protection’](#). Further barriers to accessing police protection as documented by these additional sources of COI not included in the CIG include:

- Limited deployment and resources of protection officers
- Police refuse to register cases of rape and domestic violence, viewing the latter as a private matter, or only registering a First Instance Report once they are satisfied of the women's morality; police harass women that do make complaints
- Police are less likely to assist poor women or women without influential contacts

- Police behaviour towards rape victims is often insensitive and aggressive, re-traumatizing the victim, or apathetic, insensitive and taunting attitudes of members of Parliament, with some appearing to justify violence against women
- Police investigations are extremely slow and unscientific, delays in prosecutions

No mention is made in the guidance of the following numerous other barriers women face in accessing a fair trial, despite COI being presented on these in section 2 'Information' at the following paragraphs of the CIG:

Barriers to accessing a fair trial

Judicial resources

- Proportion of women in judiciary is seriously low [paragraph 2.6.5]
- Legal aid is not equally granted to women in practice, particularly to poor and marginalized women [paragraph 2.6.5]

Judicial attitudes to violence against women

- Deeply entrenched patriarchal attitudes of prosecutors, judicial officers and other relevant civil servants contribute to victims not reporting, withdrawing complaints and not testifying [paragraph 2.6.5];

Judicial response to violence against women

- Informal dispute settlement alternatives are often sought [paragraph 2.6.3], mediation and compensation measures are often used as redress mechanisms to address cases of violence against women, thus eroding accountability imperatives, and further fostering norms of impunity [paragraph 2.5.3]; attitudes and prejudices of many village leaders in Khap Panchayats ["village courts"] often lead to a pre-arranged settlement between the families [paragraph 2.6.5]
- Courts have criminalized women victims of violence, including victims of sexual and communal violence [paragraph 2.6.5]

Additional COI on these issues is presented below in ['Relevant COI omitted from the CIG in relation to effective protection'](#). Further barriers to accessing a fair trial as documented by these additional sources of COI not included in the CIG include:

- Prolonged periods of litigation, decade long trials
- Manipulation of medical reports
- Intimidation of victims
- No witness and victim protection programme

It should be noted that an increased number of criminal incidents reported to the police in the following section of the guidance is not necessarily a positive development; it may be a result of more incidents being committed (potentially with a lower proportion of women reporting crimes), rather than necessarily being indicative of an increased number of women coming forward:

Excerpt from CIG on women fearing gender-based harm/violence

Is there effective protection for women?

[...] 1.3.15 It has been reported that, despite provisions intended to offer legal, social and financial assistance to victims, many women victims were reluctant to report incidents to the police due, for example, to fear of reprisals or lack of guarantees of adequate shelter and access to livelihoods. Informal dispute settlement alternatives were often sought by police, family members or community

leaders. Nevertheless, data from the National Crime Records Bureau shows that there has been a substantial increase in the number of criminal incidents reported to the police since 2008, particularly in respect of rape and other crimes against women. The figures also indicate that a high percentage of police investigations into criminal offences against women have resulted in suspects being formally charged and cases proceeding to court. Furthermore, the Criminal Law (Amendment) Act 2013 has made it a criminal offence for a public servant (including a police officer) to fail to record – and then to investigate as prescribed – specified offences in the Penal Code. (See Police and judicial attitudes and responses to violence against women in the country information section).

In relation to the second highlighted point in paragraph 1.3.15 above, the fact that a case may proceed to court cannot be equated with justice being realised. This section of the guidance fails to mention the many barriers to women receiving a fair trial as outlined above. Indeed, COI included in the CIG indicates that there is a documented low conviction rate for cases involving gender/sexual based violence against women:

- Conviction rate for crimes against women reported to only be 22.4% in 2013 [paragraph 2.6.4]

Other sources report on the low conviction rate for crimes against women, particularly Dalit women and the impact this has on access to protection (emphasis added):

- [Asian Human Rights Commission, INDIA: Only an insane police can use a teen rape survivor as 'bait', 13 July 2015](#)
[...] In cases of rape survivors, the chance of a rapist being punished is today near half what it was in the 1970's. In 1973, the year Aruna Shanbaug was attacked, the conviction rate in rape cases was 44.3% as against 27.1 % in 2013, following a little improvement from 24.2% in 2012. **The only thing worse than the dreary conviction rates is the fate of the rape cases pending trial in courts. The rates were 83.4% in 2014, with a slight improvement from 85.1% in 2012.** [...]
- [Inter Press Service, Lack of Accountability Fuels Gender-Based Violence in India, 30 September 2014](#)
[...] **Another reason for the high levels of GBV in India is the dismal conviction rate – a mere 26 percent – in cases involving sexual assault and violence.**
In 3,860 of the 5,337 rape cases reported in the past 10 years, the culprits were either acquitted or discharged by the courts for lack of 'proper' evidence, according to the NCRB. [...]
- [Navsarjan Trust, the All India Dalit Mahila Adhikar Manch \(AIDMAM\) and the International Dalit Solidarity Network \(IDSN\), Alternative report to the UN Committee on the Elimination of all forms of Discrimination Against Women \(CEDAW\) for the examination of the 4th and 5th periodic reports of India at the 58th CEDAW session in July 2014: Multiple discrimination against Dalit women, June 2014](#)
[...] Violence against Dalit women (List of issues 9 and 10)
[...] Most women do not report violence and the studies shows that only **1% of the cases that are actually filed end in convictions. Furthermore, whereas the conviction rate for rapes against women in India is around 25%, it is only 2% for Dalit women.** [...]
- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
[...] 66. The overall conviction rate in India for crimes listed in the Penal Code was 38.5 per cent in 2012, the lowest in 10 years, largely owing to delays in the finalization of cases. According to the National Crimes Records Bureau, the average conviction rate for crimes against women is 21.3 per cent for cases of kidnapping and abduction of women and girls, assault on women, insult to the modesty of women, cruelty by family members and trafficking of girls. Moreover, the annual analysis provided by the Bureau indicates that in 2012, reports of crimes against women had increased by 6.8 per cent over 2011 and by 24.7 per cent over 2008. The proportion of registered cases of crimes

committed against women vis-à-vis crimes in total increased from 8.9 per cent in 2008 to 10.2 per cent in 2012. **The low conviction rate and the higher number of cases registered will not act as a deterrent for future crimes against women, nor will it engender trust in the judicial system.** [...]

70. With regard to systemic failures, **the low rate of prosecution and conviction for acts of violence against women contributes to the lack of effective redress provided to victims.** [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Absence of police reforms threatens national security \[17 February 2014\] \[A/HRC/25/NGO/65\], 25 February 2014](#)

[...] 5. Enormous delays in prosecution and the requirement of the witness to attend court hearings for decades without end, discourages people to voluntarily commit as witnesses to crimes if they had witnessed the commission of a crime. The police overcome this by arranging stock witnesses, often local criminals, who are cited as witnesses in prosecutions that often fail the test of cross-examination in courts. When the prosecution of a crime is based solely upon the confession statement of an accused and witnesses in cases fabricated by the investigator, the criminal trials ends up in acquittals. This is why, India has one of the lowest conviction rates in the civilised world. [...]

With regards to the final paragraph of this section of the guidance, no mention is made of any barriers to accessing NGO shelters that women fearing violence may face:

Excerpt from CIG on women fearing gender-based harm/violence

Is there effective protection for women?

[...] 1.3.16 In addition to the legislative framework criminalising discrimination and violence against women, the state, through the Ministry of Women and Child Development, runs over 600 shelter homes for women. Among these, 'Swadhar' Shelter Homes provide food, clothing, counselling and services, in addition to accommodation. There are also nongovernment-run shelters, some of which receive international funding. The government, in partnership with NGOs, has established 86 rehabilitative homes specifically for victims of trafficking. There are over 800 hostels, mainly in cities, where working women can live for up to three years; some hostels have day care centres for children. The government offers programs designed to help 'marginalised' women gain access to the labour market, such as the Support to Training and Employment Programme (STEP), which conducts skills training. There are 14,059 training centres across the country. (see Single women and Assistance available to women in the country information section)

This is despite COI being included in the CIG that indicates at the following paragraphs:

- A lack of centres providing medical, psychological, legal and socioeconomic support to women and girls who are victims of sexual violence in conflict-affected areas [paragraph 2.5.47]
- An absence of legal, housing, security and financial assistance measures for victims [paragraph 2.6.3]
- Short Stay Homes and Swadhar homes lack proper infrastructure and there are concerns over the quality of services provided clothing, food, medical facilities etc [paragraph 2.9.3]
- Most homes do not allow women with children to stay, and those which do, permit children only up to the age of 8 years and two children at the most [paragraph 2.9.3]

Additional COI (some of which is published after the CIG) further indicates that government shelters are very few in number, face shortages of financial resources and trained personnel, that middle class women do not find it easy to access them, and they are not sufficiently equipped to support children of working women or those who would like to study, and that one stop centres are still at planning stage (emphasis added):

- [United States Department of State, 2015 Trafficking in Persons Report - India, 27 July 2015¹](#)
[...] The Ministry of Women and Child Development funded shelter and rehabilitation services for women and children through two programs – the Ujjawala program, specifically for female sex trafficking victims, **and the Swadhar program, for women in difficult circumstances.** [...] **Victim care services were inconsistent and the number of government shelters was too few.** Contrary to international principles on victim protection, some government-run shelters continued to not permit adult victims to leave the premises. [...] **Both government- and NGO-run shelters faced shortages of financial resources and trained personnel, particularly of counselors and medical staff.** NGOs relied primarily on donor contributions to provide victims services, though some received government funds. The disbursal of government funding to NGOs was sometimes delayed and corruption reportedly drained resources intended for victim care. Due to the lack of government funds, shelter staff, or police escorts, victims were sometimes not transferred from temporary "transit homes" to shelters that provide more long-term care for months after the victim was formally identified. Victims had access to government hospitals for emergency medical services, although long waiting lists made it difficult to obtain surgery and other procedures, and NGOs often had to pay for victims' emergency medical treatment. Some NGOs also funded counselors for government shelters. [...]
- [Immigration and Refugee Board of Canada: India: Violence against women, including domestic violence, homelessness, workplace violence; information on legislation, state protection, services, and legal recourse available to women who are victims of violence \(2013-April 2015\) \[IND105130.E\], 15 May 2015](#)
[...] 4. Government Support Services
4.1 One Stop Centres
[...] According to press release by the Ministry of Women and Child Development, the Ministry introduced a scheme for setting up One Stop Centres [also known as Nirbhaya Centres (The Times of India 3 July 2014)] in every state and union territory, to provide "medical aid, police assistance, legal counseling/court case management, psycho-social counselling and temporary shelter to women affected by violence" (ibid). **These centres were to be implemented during the period of 2015-2017** (ibid.). The Planning Commission's report notes that the Ministry of Women and Child Development was provided additional funds to "design schemes" to address matters affecting women belonging to the most vulnerable groups, including single women and widows (ibid.). [...]
The Times of India reports that the Indian government had agreed to establish 660 Nirbhaya Centres and rape crisis centres across the country (The Times of India 3 July 2014). A 13 March 2015 article by Scroll.in, an "independent news, information and entertainment venture" that "brings into sharp focus the most important political and cultural stories that are shaping contemporary India" (Scroll.in n.d.), reports that the government decided to "roll back" one-stop centres, and instead of providing 660 Nirbhaya Centres "to be rolled out across 640 districts and 20 major metros, there will now only be 36." The same source notes that the budget has been reduced and that a "'convergent model between the PO [protection officers], shelter homes, hospitals, legal aid and the courts has not been put in place'" (Scroll.in 13 Mar. 2015). [...]
4.2 Short Stay Homes, Shelters
The 13 March 2015 press release by the Ministry of Women and Child Development states that the Ministry administers "Swadhar and Short Stay Home Schemes," providing services for the relief and rehabilitation of women in difficult situations including those who are victims of rape (India 13 Mar. 2015b). Delhi's Department of Women and Child Development website indicates that there are three short stay homes in New Delhi (Delhi n.d.b). **SAM:BKS notes that in the absence of short stay homes and facilities for victims and survivors of domestic violence, women are forced to live on the streets** (Jan. 2014, 13). The same source notes that **existing shelters are not sufficiently equipped to support children of working women or those who would like to study** (ibid., 14). **The Associate Professor similarly indicated that women's hostels and shelters "are very few in number and middle class women do not find it easy to access these"** (10 Apr. 2015). **The authors of the report on violence against homeless women in Delhi similarly indicate that the number of women-specific shelters across India is "woefully inadequate"; there are no homeless shelters in the cities of Bangalore,**

¹ N.B. this source post-dates the cut off period for research for this commentary, but given the relevance of the information it was decided to include it.

Mumbai, Kolkata, Guwahati, Dispur, Patna, Gaya and Pune; and in Delhi there is only one shelter for 10,000 homeless women (Chaudhry et al. Mar. 2014, 13).

- [BBC, 100 Women 2014: Violence at home is India's 'failing', 29 October 2014](#)
[...] The southern city of Vijayawada reported the highest rate of domestic violence cases in the country in 2013.
Rashmi Samaram of the city-based NGO Vasavya Mahila Mandali says they receive three to four cases in their counselling centre daily.
"A large number of women are coming out to seek help because NGOs like ours, police and the government's women and child welfare department have been running extensive awareness campaigns here."
Ms Samaram explains how her group provides vulnerable women free legal support and also shelter to abused women.
But Delhi-based activist Rashmi Anand says **most women in other parts of the country have no choice but to stay on in abusive marriages because there is a lack of shelter homes where they can take refuge.**
"It is our biggest failing as Indian society," she says. [...]
- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
[...] 2. [...] The Special Rapporteur regrets that, despite her specific requests prior to and during the mission, no visits to State-run shelters, prisons or detention centres were programmed. She also regrets that no meeting was arranged with the Committee on Amendments to Criminal Law (Verma Committee)
[...] 71. **Women experience obstacles in gaining access to mechanisms of redress, including** legal aid, counselling services and **shelters**. They are also revictimized and exposed to further risk of violence through the denial of redress in the context of informal trials or negotiations between families and community leaders. The payment of financial compensation by the perpetrator or his family for acts of violence against women, in lieu of legal remedies, was a recurrent concern vis-à-vis the formal and informal justice systems. [...]

In relation to whether shelters are able to provide effective protection, note that Article 7 of the 2004² EU Qualification Directive established that protection can be provided by: (emphasis added):

- [European Union, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted](#)
[...] Article 7
Actors of protection
1. Protection can be provided by:
(a) the State; or
(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.
2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system

² N.B. in 2011 the EU recast the Qualification Directive which applies to all EU Member States except the UK, Ireland and Denmark which opted out. The UK continues to be bound by the 2004 Directive. The [recast Directive](#) amends Article 7 (1) relating to actors of protection in so far as it clarifies that protection **can only be** provided by the actors set out in Article 7 (b), and **provided they are willing and able to offer protection in accordance with paragraph 2**. Paragraph 2 now requires that **Protection against persecution or serious harm must be effective and of a non-temporary nature** (emphasis added).

for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts. [...]

An under-resourced shelter offering short-term stays clearly does not come under this definition of actors which are able to provide protection. Note the position of the European Council on Refugees and Exiles (ECRE):

non-state actors should never be considered as actors of protection. Non- State actors cannot be held accountable under international law and are often only able to provide protection which is limited in duration and scope. Given the inclusion of the requirements to provide protection which is effective and non-temporary it is extremely unlikely that non-State actors will be able to fulfil this requirement in practice.³

It should also be noted that the guidance on 'Is there effective protection for women?' does not mention specific protection concerns in relation to dowry violence, acid attacks or forced and child marriage. For example COI included in the CIG details 'concerns about the lack of effective implementation' of the Dowry Prohibition Act [2015] law [paragraph 2.5.17]; that new guideline on acid attacks were not fully implemented in all states by year's end and were inconsistently enforced where implemented [paragraph 2.5.23] and that the Prohibition of Child Marriage Act, 2006 was not 'consistently enforced' [paragraph 2.5.24] or 'adequately enforced due to due to its heavy reliance on community reporting, which rarely happens' [paragraph 2.5.26] and due to police corruption [paragraph 2.5.26].

No mention is made in the guidance of the particular barriers to accessing protection and justice that minority women experience. For COI on particular access to justice issues faced by women of the scheduled castes, see [Barriers to justice for scheduled castes](#).

Also note that the guidance fails to mention the general issues besetting the police force as identified in the CIG on 'Background information, including actors of protection, and internal relocation' [at paragraphs 1.2.1-1.2.4, see [below](#) analysis for details]. Additional COI on these general issues besetting the police and judiciary is also presented below in '[Relevant COI omitted from the CIG in relation to effective protection](#)' on:

- ❖ Overworked and demoralized police officers
- ❖ Poor police working conditions with inadequate training and equipment
- ❖ The police being subject to corruption and political influence
- ❖ Overburdened judiciary
- ❖ Bribery being common in the judicial system
- ❖ Cases proceeding to court- pre-trial detention and low conviction rate
- ❖ Overview of human rights abuses committed by security forces, particularly the police
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- ❖ Barriers to justice for scheduled castes

³ [ECRE, ECRE Information Note on the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted \(recast\), 7 October 2013](#)

Is a woman able to internally relocate within India to escape that risk?

Whilst the CIG emphasises the importance of an individualised assessment of the possibility of internal relocation, it does make a general finding in relation to the reasonableness of relocation for women (highlighted below):

Excerpt from CIG on women fearing gender-based harm/violence

Is a woman able to internally relocate within India to escape that risk?

1.3.19 In general it will not be unduly harsh for a woman, especially if single and without children to support, who is able to access accommodation or is educated or skilled or wealthy enough to be able to support herself, to relocate. However, careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis, taking full account of the individual circumstances of the particular person.

1.3.20 Decision makers need to consider the ability of the persecutor to pursue the person in the proposed site of relocation, whether effective protection is available in that area and any previous attempts to internally relocate.

1.3.21 In the Country Guidance case of MD India CG [2014] UKUT 00065 (IAC) (12 February 2014), the Upper Tribunal, considered that the possibility of the police, or any other person or body, being able to locate, at the behest of an individual's family, a person who has fled to another state or union territory in India, to be remote.' (paragraph 154).

1.3.22 Factors such as the social positioning in terms of class, ethnicity, religion, education, economic independence, region and location (urban or rural), cultural and traditional values, caste, educational profile, marital status, number of children of the person, should all be considered when determining whether relocation is an option, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including support networks and the person's ability to secure access to a livelihood.

1.3.23 For further information on this also the Asylum Instruction(s) on Internal Relocation, Gender issues in the asylum claim and the Country Information and Guidance: India: Background information including actors of protection and internal relocation.

In comparison, the policy summary sets out the profiles for whom relocation may be unduly harsh:

Excerpt from CIG on women fearing gender-based harm/violence

1.4 Policy Summary

[...] Internal relocation to avoid risk of gender based persecution will be viable in many cases but internal relocation may, in some cases, be unduly harsh for women with dependent children, if they are unable to access accommodation, have no support networks and have no real prospect of securing access to a livelihood.

The above section of guidance on 'Is a woman able to internally relocate within India to escape that risk?' at paragraphs 1.3.19 to 1.3.23 provides no summaries of the COI included in the CIG. For an analysis of the issues COI is required for an assessment of the relevance and reasonableness of relocation, see the discussion of the February 2015 CIG 'Background information, including actors of protection, and internal relocation' [*Are those at risk able to internally relocate within India?*](#)

The guidance therefore makes no reference to the profiles of women who are particularly vulnerable, which according to the COI included at the following paragraphs of the CIG include:

- Single women; who are widowed, divorced or separated from their husbands are rejected by society and treated with indifference by the federal government [paragraph 2.7.1]
- Victims of domestic violence lose their financial independence and are forced to rely on their parents, who may not be willing to support them [paragraph 2.7.2]
- Single women who live away from their families face "social and family stigma [paragraph 2.7.2]

- Women from lower caste backgrounds or lower income groups or Muslim women may face additional barriers of discrimination [paragraph 2.7.2]
- Certain categories of single women were found to be extremely vulnerable to poverty, such as elderly women, widows, abandoned or destitute women, homeless and women with disabilities, HIV and AIDs or other health conditions associated with stigma and discrimination [paragraph 2.7.3]

That is, the COI indicates that various profiles of 'single' women are particularly vulnerable, not just those with dependent children.

Moreover, although limited, COI is also included on the economic situation of women at section '2.4 Freedom of movement' of the CIG on '[Background information, including actors of protection, and internal relocation](#)' which details that:

- Separated and divorced women in India are vulnerable to labour exploitation, sexual harassment and/or abuse and discrimination [paragraph 2.4.3]
- Single women are rejected by society and treated with indifference by the federal government [paragraph 2.4.5]
- Women residing alone may be viewed (by prospective landlords and others) as having suspect reputations and may have to have family members vouch for them in order to gain access to housing [paragraph 2.4.6]

Additional COI not included in the CIG further documents: the vulnerabilities of single women in general i.e. not just those who have dependent children; that victims of domestic violence are more vulnerable to homelessness; that there are particularly low female labour participation even among urban, educated women (emphasis added):

- [Immigration and Refugee Board of Canada: India: Whether single women and women who head their own households without male support can obtain housing and employment, including in Delhi, Mumbai and Chandigarh; women's housing, land, property and inheritance rights; government support services available to single women and female-headed households, including working women hostels in Delhi, Mumbai and Chandigarh, and shelters and support programs in the country \(2014-March 2015\) \[IND105109.E\], 26 May 2015](#)

1. Overview

[...] According to Dr. Sukant Chaudhury, a faculty member in the Department of Sociology at the University of Lucknow, India, who is cited in the article, **"women can never be accepted as the household head, unless they are widows or deserted by their husbands"** (ibid.). A 2014 article by Press Trust of India (PTI), an Indian news agency, quotes a member of the National Forum for Single Women's Rights [1] as stating that **"[f]or the government, only widowed women qualify as single women[,] leaving out the vast number of separated, abandoned, single mothers or older women who never married [from access to government programs]"** (11 Nov. 2014). Similarly, in a 2012 article by the Hindu, an Indian English-language daily newspaper, a member of India's Planning Commission is quoted as stating that **"[s]o far the recognised categories [for government programs] of single women are widows and divorcees"** (7 Sept. 2012). [...]

A women's rights activist quoted in a February 2015 article by Orissa Diary, a website about Odisha state, reports that single women are marginalized in Indian society and that there are existing social stratifications designed to **"take away single women from the mainstream"** (Orissa Diary 20 Feb. 2015). The 7 March 2014 article by BBC states that **social stigma around divorce "still hangs heavy over women, usually housewives, who are dependent on their husbands"** and that **"[s]ingledom can be cruel and oppressive for women as they are considered complete only when they marry."** The same source notes that **single women in India face violence and other hazards and are "often unable to live a normal life"** (BBC 7 Mar. 2014). [...]

In correspondence with the Research Directorate, an associate professor from Carleton University, whose research focuses on political science, legal anthropology, women studies and law, noted that

"there is a stigma regarding single women" and that the media has reported on this in major cities including Mumbai, Delhi, Chennai and Kolkata (Associate Professor 10 Apr. 2015). **Media sources similarly report that stigma towards single women still exists** (The Independent 8 Mar. 2013; BBC 4 Mar. 2014), **those who choose to be single are seen as "not respectable" and those who choose to live away from their families are seen as having "loose morals"** (ibid.). The Hindu similarly notes that **society "also generally marginalises single women** and cruel caste and community traditions restrain them from living a life of dignity" (7 Sept. 2012).

BBC notes that India's cities are changing and are slowly beginning to accept single women; however, the change is "extremely slow and painful for many who are facing it every day" (7 Mar. 2014). [...]

2. Access to Employment

The Associate Professor stated that, in general,

single women's access to employment would depend on their training, their previous work experience, the duration of their absence from labour markets, their embeddedness in social networks, and the **most important factor would be the support of their natal families, and their access to government or women's organisations.** (Associate Professor 10 Apr. 2015) [...]

3.1 Access to Housing

According to the February 2015 Tribune article, the Minister of Urban Development and Housing and Urban Poverty Alleviation was quoted as stating that women also struggle in terms of access to housing (17 Feb. 2015). The Associate Professor noted **that it is more difficult for single women [than non-single women] to find housing in India** and that women's groups have "highlighted the problem of shelter and residence for single women" in urban and rural areas (Associate Professor 27 Apr. 2015). The same source stated that

[i]n some cases, landlords may set rules for single women renters. For example, landlords may require that single women return by a certain time. Such rules may be difficult for single women to follow depending on their profession. Women working in the hospitality industry or as air hostesses or bar dancers have great difficulty with such rules. (ibid.)

A March 2014 BBC article by a single woman living in India similarly reports that people do not like to rent apartments to "single, professional women" because they are afraid that they will behave "immorally," or be a "bad" influence on neighbors, and that property owners are "always" looking for opportunities to evict single women (BBC 4 Mar. 2014). Sources report that should a single woman host a male friend they could be seen as being involved in prostitution (ibid.; Associate Professor 27 Apr. 2015). [...]

A June 2013 report by UN Women reports that single women of all categories (including elderly, widowed and abandoned women) are those women most vulnerable to poverty, and that many **poor and elderly women "expressed major concerns about temporary housing," including poor dwelling structures and the "financial burden of regular maintenance"** (UN June 2013, 78). [...]

3.2 Land Rights

[...] According to the Associate Professor, feminist literature indicates that

there is a conceptual difference between the ownership of property for women, and control over it. For instance, a woman may have inherited agrarian property but may not be able to even step on it, let alone cultivate it, as it may be under the possession of her male kin. (10 Apr. 2015)

The same source explains that while widowed women have legal rights to inheritance and may have access to their husband's property and shelter, in many cases, "the husband's family might control his property and widowed women might find it difficult to gain access to it" (ibid.). [...]

4. Government Support Services

In the 2012 Hindu article, a member of the National Forum for Single Women's Rights was quoted as stating that there are "'very few laws and government schemes [for] single women'" (7 Sept. 2012). Media sources from 2013 and 2015 report that single women are now being recognized as a "vulnerable group" (Orissa Diary 20 Feb. 2015; The Independent 8 Mar. 2013) and are receiving more support from national and local governments (ibid.). According to the Independent, India's national census now recognizes divorced women; widows under the age of 40 are entitled to a "widow's pension [3]"; and single women are given "priority in recruitment" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. [...]

4.1 Working Women's Hostels

[...] A March 2015 article by the Times of India, An Indian English-language daily newspaper published in Mumbai, Delhi and Ahmadabad, reports that women's hostels in the city of Trichy and rural areas in the district consist of "crammed rooms, unhygienic toilet facilities, inferior quality of food and no guarantee on safety and security." (Times of India 23 Mar. 2015). A woman staying at a hostel reported that a minimum of five people stay in a room meant for two or three and that they have to "compromise" on the quality of food and toilet facilities (ibid.). The same article notes that many of the women's hostels are "manned" by men, violating guidelines, and lack cameras, which put women's safety at risk (ibid.).

- [Immigration and Refugee Board of Canada: India: Violence against women, including domestic violence, homelessness, workplace violence; information on legislation, state protection, services, and legal recourse available to women who are victims of violence \(2013-April 2015\) \[IND105130.E\], 15 May 2015](#)

[...] A March 2014 report on violence against homeless women in Delhi, published on the website of the South Asia Regional Programme Housing and Land Rights Network, reports that **domestic abuse can "greatly" increase a women's chances of becoming homeless** (Chaudhry et al. Mar. 2014, 6).

- [Inter Press Service, There's No Such Thing as Equality in India's Labour Force, 30 March 2015](#)

[...] Cultural norms also scupper women's entry into the formal workforce, say analysts.

"The entrenched Indian patriarchal culture idealises women in, and restrict them to, the roles of housewives and mothers. Notions of socio-ritual superiority of a group or family can be directly linked to higher restrictions on women including their physical mobility and work outside homes," explains Bhim Reddy, associate editor of the Indian Journal of Human Development who has researched extensively on recruitment practices in labour markets.

Reddy adds that a higher school enrolment rate, especially for women between the ages of 14 and 21, has also contributed to an asymmetrical workforce. [...]

"A large section of females in this age group that used to be part of the work force earlier is now in schools and colleges, and this is getting reflected in a drop in the female LFPR," elaborates Reddy.

But research by Everstone Capital, an investment management company, shows that while the number of women enrolling in college has grown manifold, it has not translated into a proportionate increase of women graduates in the workforce.

At 22 percent, the rate of India's female graduates entering the workforce is lower than the rate of illiterate women finding jobs.

Worse, participation of Indian women in the workforce plummeted from 33.7 percent in 1991 to 27 percent in 2012, according to United Nations statistics. In 2011-12, less than 20 percent of the total workers in non-agricultural sectors was women.

Surprisingly, female labour participation has been found to be particularly low even among urban, educated women — a demographic typically assumed to experience fewer social barriers. [...]

According to government statistics, in 2009-10, the proportion of those attending to domestic duties (and therefore out of the formal labour force) was 57 percent among urban females with graduate degrees or higher, compared to just 31 percent among rural females with primary or middle school education.

Experts say the advent of mechanisation and incorporation of new technologies in agriculture and the construction industry have led to the 'masculinisation' (or preference for males for a certain job profile) of employment patterns.

Exploitation and harassment in the workplace have worsened the situation. India passed a new law against sexual harassment last year, under which organisations with more than 10 workers have to set up grievance committees to investigate all complaints.

However, according to a study by Jawaharlal Nehru University, less than 20 percent of employers in the capital, New Delhi, comply with the rules.

Household surveys show that a more welcoming environment would compel many stay-at-home women to take on regular work. At present, issues of transport, workplace safety and hostile attitudes result in many women opting out of full-time employment. [...]

- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
[...] 21. **Widows also face particular vulnerabilities**, as they are often denied and dispossessed of property by their in-laws following the death of a spouse. In addition, social exclusion and poverty lead some widows to engage in sex work and prostitution, and their children to perform hazardous labour or beg on the streets. [...]

Furthermore, this internal relocation section of the CIG makes no reference to the particular economic vulnerabilities faced by women of the scheduled castes, despite including a subsection of COI in the CIG on 'Violence against Dalit and Adivasi women'. COI included in the CIG at the following paragraphs details this to include:

- Dalit women are denied just and equal wages, a fair share in economic distribution, and maternity benefits [paragraph 2.3.3]
- Dalit, Adivasi, other Scheduled castes, tribal and indigenous minority women are often victims of a multiplicity of forms of discrimination and violence, they exist at the bottom of the political, economic and social systems and are often forced to live in displacement settings, experience forced labour practices, prostitution and trafficking [paragraph 2.5.3]
- The intergenerational nature of caste-based discrimination condemns women to a life of exclusion, marginalization and disadvantage in every sphere of life [paragraph 2.5.34]
- Dalit and Adivasi women are denied an education and economic opportunities, and perform dangerous and unprotected work, including bonded labour (debt bondage) and manual scavenging which are both widely regarded as forms of forced labour and modern forms of slavery [paragraph 2.5.34]
- Financial, cultural and physical barriers faced by Dalit women and women from scheduled tribes in gaining access to gynaecological and maternal health services [paragraph 2.5.35]
- People engaged in manual scavenging face significant barriers to entering the labor market, including social boycotts and economic boycotts in retaliation for refusing to clean toilets in the village, gender- and caste-based discrimination in access to employment, and corruption [paragraph 2.5.37]

This internal relocation section of the CIG also makes no reference to the particular economic vulnerabilities faced by disabled women despite including a subsection of COI in the CIG on 'Abuses against women with disabilities'. COI included in the CIG at the following paragraphs details this to include:

- Women with psychosocial or intellectual disabilities are especially vulnerable to institutionalization due to stigma, the dearth of appropriate government community-based services, and a lack of awareness [paragraph 2.5.32]
- Women with disabilities experience a high rate of poverty, lack access to education, employment and health services, especially in rural areas, face multiple challenges, including the lack of adequate access to public spaces and utilities, often experience harassment in public and are excluded from decision-making processes [paragraph 2.5.33]

B. India CIG: Background information, including actors of protection, and internal relocation, (February 2015)

1.2 Consideration of Issues

Are those at risk able to seek effective protection?

The CIG on Background information, including actors of protection, and internal relocation provides the following guidance in relation to whether effective protection is available:

Excerpt from CIG on Background information, including actors of protection, and internal relocation
Are those at risk able to seek effective protection?

1.2.1 Although there are over 1.5 million police personnel in India, the number of officers per capita of the population is relatively low. Each of the 29 states and seven 'union territories' in India has its own, separate police force. Police effectiveness and conduct therefore varies to an extent from state to state. Certain reports have characterized officers at police-station level as being overworked, demoralised and working in poor conditions with inadequate training and equipment, subject to corruption and political influence.

1.2.2 Nevertheless, steps have been taken in various states to improve police effectiveness. Although there has been a substantial increase in the number of crimes recorded by the police in recent years, a high percentage of investigations – particularly for violent and other serious offences – result in suspects being formally charged and cases proceeding to court. There are legal remedies for serious police misconduct such as torture or abuse of office.

1.2.3 The Constitution and the Code of Criminal Procedure guarantee fair trial, and there is a right of appeal at most levels of the judicial system. However the judiciary is overburdened due mainly to understaffing and consequently a large backlog of pending cases has built up, resulting in people on remand spending long periods in detention awaiting trial. Bribery is also common in the judicial system.

1.2.4 In general, a person is likely to be able to access effective protection from the state. In spite of this effective police protection may not always be available in conflict areas where armed insurgent or terrorist groups are active (see conflict areas in the country information).

1.2.5 Decision makers must assess whether effective protection is available in relation to the particular circumstances and profile of the person. Any past persecution and past lack of effective protection may indicate that effective protection would not be available in the future.

The guidance highlighted in blue above identifies the following issues with the criminal justice system which are in turn illustrated by COI in section 2 'Information' at the following paragraphs of the CIG:

- Overworked and demoralized police officers [paragraph 2.7.15]
- Poor police working conditions with inadequate training and equipment [paragraphs 2.7.15 and 2.7.21]
- The police being subject to corruption and political influence [paragraphs 2.7.16, 2.7.25, 2.10.2]
- An overburdened judiciary [paragraphs 2.8.17 and 2.8.18]
- Bribery being common in the judicial system [paragraphs 2.8.14, 2.8.15 and 2.8.16]

Although not specifically mentioned in the guidance above, the COI presented in section 2 'Information' of the CIG also documents that:

- Police refuse to register crime complaints [paragraph 2.7.15];
- The use of illegal detention, torture and ill-treatment to elicit confessions, even ones they know are false [paragraph 2.7.15]
- 'Widespread' human rights abuses committed by the security forces with impunity [in the subsection on 'Human rights violations by the security forces' paragraphs 2.7.23-2.7.25]

including: arbitrary or unlawful killings, such as extrajudicial killings of suspected criminals and insurgents; custodial rape, torture and deaths; and the use of arrest and detention of individuals on false charges, including at the behest of powerful local figures.

Additional COI which further documents these issues affecting the criminal justice system and that human rights abuses committed with impunity by the security forces, particularly the police is presented in the below section [‘Relevant COI omitted from the CIG in relation to effective protection’](#) on:

Despite these serious failings, however, the CIG asserts in paragraph 1.2.4 that “a person is likely to be able to access effective protection from the state”. This is restated in the ‘policy summary’:

Excerpt from CIG on Background information, including actors of protection, and internal relocation
1.3 Policy Summary

- In general, a person is likely to be able to access effective state protection against persecution by non-state actors or rogue state actors.
- A person may, nevertheless in some cases be unable to obtain effective protection for reason of his or her individual circumstances, and effective protection may not always be available in conflict areas where armed insurgent or terrorist groups are active.
- Internal relocation to another area of India is generally viable but will depend on the nature and origin of the threat as well as the personal circumstances of the person.

In addition to the above issues besetting the criminal justice system as detailed both in the CIG and in the public domain, it is considered that limited COI is presented in the CIG that supports the position that “a person is likely to be able to access effective state protection”. The guidance at 1.2.1-1.2.4 highlighted in green above details the following ‘steps’ that have been taken to improve police effectiveness as illustrated by COI in section 2 ‘Information’ at the following paragraphs of the CIG:

- A high percentage of investigations result in suspects being formally charged and cases proceeding to court [paragraph 2.7.18].
- Legal remedies exist for serious police misconduct such as torture or abuse of office [paragraph 2.7.27].
- The Constitution and the Code of Criminal Procedure guarantee fair trial [paragraph 2.8.8]
- There is a right of appeal at most levels of the judicial system [paragraph 2.8.10]

In relation to the first point, COI included in the CIG [at paragraph 2.7.18] indicates that whilst cases may proceed to court, the conviction rate is low; only 25.4% for violent crimes in 2013. This is corroborated by additional sources presented on ‘Cases proceeding to court- pre-trial detention and low conviction rate’ in the below section [‘Relevant COI omitted from the CIG in relation to effective protection’](#) which further document the low conviction rate, that preventative detention for up to a year is lawful in certain cases, and that prolonged pre-trial detention is used with inadequate safeguards, with sources documenting periods of detention for longer than the convicted sentence, with some reporting internment pre-trial periods of decades and others for 10 to 26 years for those deemed ‘unfit’ for trial.

As to the second point, whilst legal remedies might exist in theory for serious police misconduct, no mention is made in the guidance section of the human rights abuses committed by security forces [despite COI being included in a distinct subsection on this at paragraphs 2.7.23-2.7.25], nor of the likelihood of holding such forces to account. An overview of abuses committed, particularly by the police documented by further publicly available sources of COI is presented in the below section [‘Relevant COI omitted from the CIG in relation to effective protection’](#). Indeed, available COI included in the CIG [paragraph 2.7.27] and elsewhere in the public domain indicates that these legal remedies for serious police misconduct are not accessed in practice, but rather that impunity persists.

With regards to the third point, whilst legislation provides for fair trial and right of appeal, this is not necessarily indicative of a fair trial being accessed in practice. In addition to the COI summarised in the guidance section of the CIG on the judiciary being overburdened and bribery being common in the judicial system, COI presented in the CIG also documents arrestees being denied legal counsel or confidential access to their lawyer [2.8.8] or access to competent counsel [2.8.9]. Additional sources of COI presented below in [‘Relevant COI omitted from the CIG in relation to effective protection’](#) further illustrate the numerous barriers to accessing a fair trial including: limited resources; a very low judge to population ratio; ‘enormous delays’ in prosecution (reported as one of the longest in the world) often running into decades; that around 65% of persons held in custody are ‘under trial’, which rises to 80% in Bihar, Andhra Pradesh and Meghalaya states; impediments for witnesses to testify freely such as a lack of witness protection and trials taking decades to conclude; a reliance on confessions to police; poor investigative expertise; suspects detained beyond legal limits; suspects being denied access to counsel, right to confidentiality with counsel; and a presumption of guilt in terrorism related cases. Lastly, whilst a right of appeal might be provided for in law, given the numerous fair trial concerns as identified above, this cannot be equated with access to justice in practice.

Whilst the guidance at paragraph 1.2.4 finds that “police protection may not always be available in conflict areas where armed insurgent or terrorist groups are active”, no further guidance is presented in the CIG on the profiles of persons who may be denied police assistance. This is despite a section of COI being included at 2.9 on ‘Scheduled Castes’ and ‘Scheduled Tribes’ which addresses the social positioning, discrimination and barriers to accessing justice experienced by these communities including:

- Dalits who assert their rights often are attacked [paragraph 2.9.7];
- The systematic abuse of Dalits, including extrajudicial killings and sexual violence going unpunished because authorities failed to prosecute perpetrators or because victims did not report crimes due to fear of retaliation [paragraph 2.9.7];
- Dalits being abused by police [paragraph 2.9.8]; a failure of state institutions to protect Dalit women [paragraph 2.9.9];
- A systemic bias against Dalits and Adivasis make it less likely that crimes against women will be reported, investigated and prosecuted effectively [paragraph 2.9.11]; and
- Police colluding with perpetrators from dominant castes in covering up crimes by not registering or investigating offences against Dalits [paragraph 2.9.11].

Additional COI detailing [‘Barriers to justice for scheduled castes’](#) are presented below in [‘Relevant COI omitted from the CIG in relation to effective protection’](#).

No mention is made in the guidance section of this CIG on access to effective protection for other profiles of persons. Notably, no specific guidance is provided on access to effective protection for religious minorities or women fearing sexual or gender-based violence, despite CIGs having subsequently been published on each of these profiles. The availability of effective protection for each of these profiles will be addressed in the commentary in turn.

Access to effective protection for religious minorities

Whilst the February 2015 CIG on [‘Background information, including actors of protection, and internal relocation’](#) doesn’t specifically address access to effective protection for religious minorities, the April 2015 CIG on [‘Religious minority groups’](#) states that:

Excerpt from CIG on Religious minority groups

2.3 Are those at risk able to seek effective protection?

2.3.1 Whilst there is a functioning criminal justice system, the effectiveness and conduct of the police varies from state to state. (see Rule of law and the judiciary in the Country Information and Guidance India: Background, including actors of protection and internal relocation) **In some instances local police and enforcement agencies have failed to effectively protect religious minorities from communal violence.** Whilst legal protections for religious freedom are generally enforced, prosecutions are brought for violations of religious freedom, and legal protections exist to address discrimination or persecution by private individuals, **authorities implemented some restrictive laws and did not always efficiently or effectively prosecute those who attacked religious minorities.** (See Avenues of redress and protection, in the country information section)

2.3.2 Effective state protection **may be available** for members of religious minority groups. However decision makers must assess whether effective protection is available in relation to the particular circumstances and profile of the person. Any past persecution and past lack of effective protection may indicate that effective protection would not be available in the future in that particular locality. (See relevant section(s) of the Asylum Instruction on Assessing credibility and refugee status).

It should be noted that the above guidance from the CIG on ‘Religious minority groups’ fails to mention the general issues besetting the police force as identified in the CIG on ‘Background information, including actors of protection, and internal relocation’ [at paragraphs 1.2.1-1.2.4, see [above](#) for details].

Whilst the ‘Religious minority groups’ CIG states in the highlighted text above that “in some instances local police and enforcement agencies have failed to effectively protect religious minorities from communal violence” and the authorities “did not always efficiently or effectively prosecute those who attacked religious minorities”, this is not fully consistent with the COI included in the CIG which it is considered indicates that protection is *unlikely* to be available for religious minorities, by documenting that:

- There have been over 600 incidences of communal violence against religious minorities, and victim-survivors of these and past incidences of communal violence have yet to receive justice, or adequate compensation for their loss [paragraph 5.1.3];
- The authorities have “all too often” failed to properly investigate and prosecute suspects after major spates of violence, even after reports by independent inquiries implicating officials and members of law enforcement [paragraph 5.1.5];
- Perpetrators of violence against religious minority women usually hold positions of authority and “often” go unpunished [paragraph 5.1.7];
- The effectiveness of Fast-Track Courts, Special Investigative Teams, and independent Commissions has been limited due to religious bias and corruption [paragraph 7.1.3];
- India has “struggled to protect” minority communities or provide justice due to a lack of political will, political corruption, and religious bias by government officials [paragraph 7.1.4];
- Christian groups reported police were slow to register complaints and file charges following physical attacks or harassment [paragraph 7.1.5];
- There are concerns in civil society over a perceived failure to bring to justice those responsible for communal violence against religious minorities contributing to a climate of impunity [paragraph 7.1.5].

Additional COI detailing [‘Barriers to justice for religious minorities’](#) are presented below in the section [‘Relevant COI omitted from the CIG in relation to effective protection’](#).

Are those at risk able to internally relocate within India?

Whilst the CIG on 'Background information, including actors of protection, and internal relocation' emphasizes the importance of an individualized assessment of the possibility of internal relocation, it does make a general finding in relation to women (highlighted below):

Excerpt from CIG on Background information, including actors of protection, and internal relocation
Are those at risk able to internally relocate within India?

1.2.6 Relocation to another area of India may be viable depending on the nature of the threat from non state agents or from rogue state agents depending on the individual circumstances of the person.

1.2.7 India is a vast country with a population of 1.2 billion. It comprises 36 states and 'union territories'. There are seven cities which have populations of over 5 million and over 600,000 towns and villages. There are no legal restrictions preventing relocation to most parts of the country, including to all the major cities. Although there are no special controls with regard to the movement of women and certain vulnerable groups, their ability to move freely may be restricted, depending on personal circumstances.

1.2.8 In the Country Guidance case of MD India CG [2014] UKUT 00065 (IAC) (12 February 2014), the Upper Tribunal, when considering whether a same sex orientated male who may be at risk of harm from his family could be expected to relocate, held that 'India is a country of 1.2 billion people and we have not been drawn to any evidence that there is a central registration system in place which would enable the police to check the whereabouts of inhabitants in their own state, let alone in any of the other states or unions within the country. We consider the possibility of the police, or any other person or body, being able to locate, at the behest of an individual's family, a person who has fled to another state or union in India, to be remote.' (paragraph 154).

1.2.9 Internal relocation to another area of India is generally viable but consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular person.

Decision makers need to consider the ability of the persecutor to pursue the person in the proposed site of relocation, and whether effective protection is available in that area.

Decision makers will also need to consider the age, gender, health, level of education, ethnicity, religion, financial circumstances/ability to secure access to a livelihood and/or support network of the person, as well as the security, human rights and socioeconomic conditions in the proposed area of relocation, including their ability to sustain themselves.

1.2.10 For women in India, relocation will not in general be unduly harsh, especially when single, without children to support, able to access accommodation and educated or skilled enough to be able to support herself.

The only country information summarised in this section of the CIG is with respect to the size of the country and whether there is freedom of movement (at paragraph 1.2.7). However, this only forms one aspect of the 'relevance' assessment (see below for the other issues that need to be taken into account).

Moreover, no distinct section of COI is included in the CIG on the ability of women to relocate. Instead, limited information is included on the economic situation of women at section '2.4 Freedom of movement' (where it is likely to be overlooked) which details that:

- Separated and divorced women in India are vulnerable to labour exploitation, sexual harassment and/or abuse and discrimination [paragraph 2.4.3]
- Single women are rejected by society and treated with indifference by the federal government [paragraph 2.4.5]
- Women residing alone may be viewed (by prospective landlords and others) as having suspect reputations and may have to have family members vouch for them in order to gain access to housing [paragraph 2.4.6]

This is in contrast to the position taken in the guidance that relocation will not be unduly harsh, especially for single women, COI presented in the CIG indicates that single women face particular vulnerabilities.

Note that the guidance at paragraph 1.2.10 above is almost identical to the guidance given in the April 2015 CIG on [‘Women fearing gender-based harm/violence’](#) at paragraph 1.3.19. For a discussion of the guidance and COI provided in that CIG on the ability of women to internally relocate, see above [Is a woman able to internally relocate within India to escape that risk?](#)

The 2003 UNHCR Guidelines on ‘Internal Flight or Relocation Alternative’ set out the two main analyses that must be undertaken in order to assess whether there is a relocation possibility, which it is useful to base issues for COI research on:

➤ [UNHCR, Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, 23 July 2003](#)

I. The Relevance Analysis

- a) Is the area of relocation practically, safely, and legally accessible to the individual? If any of these conditions is not met, consideration of an alternative location within the country would not be relevant.
- b) Is the agent of persecution the State? National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an internal flight or relocation alternative is not available.
- c) Is the agent of persecution a non-State actor? Where there is a risk that the non-State actor will persecute the claimant in the proposed area, then the area will not be an internal flight or relocation alternative. This finding will depend on a determination of whether the persecutor is likely to pursue the claimant to the area and whether State protection from the harm feared is available there
- d) Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation? This would include the original or any new form of persecution or other serious harm in the area of relocation

II. The Reasonableness Analysis

- a) Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there.

Whilst individualised research specific to a claimant’s profile and to the proposed place of internal relocation is required, the following provides an indication of the relevant issues that need to be addressed in order to follow UNHCR’s approach in assessing the possibility of internal relocation within India, together with some suggested sources.

I. The Relevance Analysis

a) Is the area of relocation practically, safely, and legally accessible to the individual? If any of these conditions is not met, consideration of an alternative location within the country would not be relevant

Following on from the above, COI research is required on:

- Restrictions on entering the proposed site of internal relocation: e.g. the existence of checkpoints and curfews
- Security situation in the proposed site of internal relocation
- Security situation on route to the proposed site of internal relocation

I. The Relevance Analysis

(b) Is the agent of persecution the State? National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an internal flight or relocation alternative is not available.

COI not required on this point.

I. The Relevance Analysis

c) Is the agent of persecution a non-State agent? Where there is a risk that the non-State actor will persecute the claimant in the proposed area, then the area will not be an internal flight or relocation alternative. This finding will depend on a determination of whether the persecutor is likely to pursue the claimant to the area and whether State protection from the harm feared is available there.

In order to assess whether internal relocation is a possibility to escape the risk of persecution from a particular (and known) armed group, information is required on the following issues:

- Origins and ideology
- Affiliates
- Strength and regions of operation
- Recent activities and targets of attacks

It is imperative to conduct up-to-date COI research addressing the threat and reach of a particular armed group.

Where the non-state agent of persecution is an individual, for example a family member, evidence is required on their motivation and the ability to pursue the claimant. This is likely to be highly individualised evidence, rather than published country information, unless the individual in question has a public profile.

I. The Relevance Analysis

d) Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation? This would include the original or any new form of persecution or other serious harm in the area of relocation.

In addition to researching the risk of harm arising from a claimant's particular profile, it will be necessary to research any new human rights abuses that might affect the claimant in the proposed new area of relocation based on their personal circumstances, for example arising from their gender, ethnicity, religion, political opinion etc .

For COI on the lack of protection for women in India see the COI presented further above on the discussion on the April 2015 India CIG: 'Women fearing gender-based harm/violence' [Is there effective protection for women?](#)

For COI on the particular lack of protection for religious minorities in India see the COI presented above on the discussion on [Access to effective protection for religious minorities](#).

For COI on the particular lack of protection for scheduled castes, see the COI presented below on ['Barriers to justice for scheduled castes'](#) in ['Relevant COI omitted from the CIG in relation to effective protection'](#).

II. The Reasonableness Analysis

a) Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there.

According to the UNHCR Guidelines on Internal Relocation, on this point it is necessary to assess (emphasis added):

- [UNHCR, Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, 23 July 2003](#)
- **The applicant's personal circumstances** (Of relevance in making this assessment are factors such as age, sex, health, disability, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, educational, professional and work background and opportunities, and any past persecution and its psychological effects. In particular, lack of ethnic or other cultural ties may result in isolation of the individual and even discrimination in communities where close ties of this kind are a dominant feature of daily life. Factors which may not on their own preclude relocation may do so when their cumulative effect is taken into account. Depending on individual circumstances, those factors capable of ensuring the material and psychological well-being of the person, such as the presence of family members or other close social links in the proposed area, may be more important than others)
- **The existence of past persecution** (Psychological trauma arising out of past persecution may be relevant in determining whether it is reasonable to expect the claimant to relocate in the proposed area. The provision of psychological assessments attesting to the likelihood of further psychological trauma upon return would militate against finding that relocation to the area is a reasonable alternative)
- **Safety and security, respect for human rights**
- **Possibility for economic survival** (If the situation is such that the claimant will be unable to earn a living or to access accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative. It would be unreasonable, including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence)

For suggested sources to consult when researching the situation for a particular profile of women in a proposed area of relocation see the ['Useful sources to consult on the economic situation for women in India'](#).

Relevant COI omitted from the CIG in relation to effective protection

Illustrative, non-exhaustive, sources of COI published between January 2014 to 13 July 2015 [with original emphasis] which were not included on the CIG are presented below on:

Barriers to protection in general

- ❖ [Overworked and demoralized police officers](#)
- ❖ [Poor police working conditions with inadequate training and equipment](#)
- ❖ [The police being subject to corruption and political influence](#)
- ❖ [Overburdened judiciary](#)
- ❖ [Bribery being common in the judicial system](#)
- ❖ [Cases proceeding to court- pre-trial detention and low conviction rate](#)
- ❖ [Overview of human rights abuses committed by security forces, particularly the police](#)
- ❖ [Barriers to legal remedies for serious police misconduct](#)
- ❖ [Barriers to fair trial](#)
- ❖ [Barriers to justice for religious minorities](#)
- ❖ [Barriers to justice for scheduled castes](#)

Barriers to women accessing police protection

- ❖ [Police resources for dealing with women's cases](#)
- ❖ [Police training for dealing with women's cases](#)
- ❖ [Police and authorities' attitudes to VAW](#)
- ❖ [Police response to VAW](#)
- ❖ [Police abuse of women with impunity](#)

Barriers to women accessing a fair trial

- ❖ [Judicial resources for dealing with women's cases](#)
- ❖ [Judicial attitudes to VAW](#)
- ❖ [Judicial response to VAW](#)

N.B. Partial excerpts from the following reports were included in the CIG but as it is considered that the CIG omitted relevant information further relevant excerpts have been reproduced under the respective headings above from: April 2014 Report of the Special Rapporteur on violence against women, its causes and consequences; 2014 Amnesty International submission to the UN Committee on the Elimination of Discrimination against Women; July 2014 UN Committee on the Elimination of Discrimination against Women, Concluding observations.

Overworked and demoralized police officers

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)
[...] Role of the Police and Security Apparatus [...]
The police continued to be overworked, underpaid [...]
- [Amnesty International, Amnesty International Report 2014/15 - The State of the World's Human Rights - India, 25 February 2015](#)
[...] The overburdened and underfunded criminal justice system contributed to justice being denied to those who suffered abuses, and to violations of the fair trial rights of the accused. [...]
- [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)
[...] F. Rule of Law: 9 / 16 [...]
The police also suffer long shifts and understaffing in relation to the size of the population [...]

Poor police working conditions with inadequate training and equipment

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)
Executive summary [...]
Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under resourced court system contributed to infrequent convictions.” [...]
- [Asian Human Rights Commission, INDIA: Place primacy on reforming the criminal justice process, 25 June 2015](#)
[...] the Union Government, in its 2015 budget, has reduced the budgetary allocation for police in Indian states. The reduction in Union allocation is of an estimated USD \$133 million from the USD \$560 million allocation last year.
Though, on the face of it, of the USD \$296 billion non-plan expenditure earmarked in the Union budget, USD \$8.6 billion allocated for the police appears huge, this amount is split between the Border Security Force, the Indo-Tibetan Border Police, the Assam Rifles, Sashastra Seema Bal, the Central Reserve Police Force, immigration units under the Central Intelligence Bureau, and the Land Port Authority. These entities are either specialist national institutions or paramilitary units not engaged in civilian policing.
The USD \$8.6 billion spending is also shared for constructions along India's land borders with Pakistan, Bangladesh, Burma and Nepal. In fact, out of the USD \$8.6 billion Union allocation, after deducting expenses for the above paramilitary units and for other non-policing activities, there is hardly anything left for modernising the police. For instance, there is no allocation for setting up enough forensic laboratories, or for modernising the existing ones. What is reserved for training of police officers is a mere USD \$4 million. And, this amount too is to be availed by officers of the rank of Superintendent of Police or above, whereas officers below this rank undertake most primary and advanced investigations.
On the other hand, between 80-90% of the police budget allotted by various state governments is spent on salaries and provident fund payments. Hence, the reduction in the Union budget for the police, at a time when it needs to be increased, will adversely affect not just the police but also all persons residing in India. All of this goes to show the priority given by the Union and state governments to reforming the police. [...]

- [U.S. Department of State Overseas Security Advisory Council, India 2015 Crime and Safety Report: Chennai, 1 June 2015](#)
 [...] The ratio of police officers to citizens is approximately 1 officer per 632 citizens (the worldwide average is 350 officers per 100,000 citizens). With the population of Tamil Nadu at well over 74,319,357 people and a density of over 26,553 people/square mile, policing is a difficult task. While the numbers of reported incidents increase every year, many more incidents go unreported. [...] Police stations are located throughout Tamil Nadu and surrounding cities. They are staffed by one or more police officers and are open 24/7. However, the majority of police officers will be insensitive, ill-equipped, and lack training. [...]
- [U.S. Department of State Overseas Security Advisory Council, India 2015 Crime and Safety Report: Mumbai, 20 April 2015](#)
 [...] Police Response
 Mumbai police are short staffed, lack training, and are overworked but seem to do a reasonable job in securing the city. Police response in is fair. The police do an effective job managing large scale protests and are responsive to security requests. Further information on the Mumbai Police can be found at <https://mumbaipolice.maharashtra.gov.in>. [...]
- [U.S. Department of State Overseas Security Advisory Council, India 2015 Crime and Safety Report: New Delhi, 16 April 2015](#)
 [...] Police Response
 The ratio of police officers to citizens is approximately 141:100,000, well below the worldwide average of 350:100,000. With the population of Delhi well over 21,753,486 people and a density of over 29,259 people per square mile, policing is certainly a difficult task. While the numbers of reported incidents increase every year, many more go unreported.
- [Asian Human Rights Commission, INDIA: What else does the country expect of its criminal justice process? 2 April 2015](#)
 [...] Crime “investigation” in India is nothing but the shoddy work of the police – an institution neither equipped nor expected to undertake scientific investigation. Crime investigation, and therefore the trial, is heavily dependent upon witness statements.
 In jurisdictions where the police is expected and equipped to undertake modern crime investigation, witness statements are used far less in trials. Such trials have more certainty in accurately placing guilt upon the accused. Acquittal rate in such jurisdictions is far lower than in India and the possibility of miscarriage of justice is more remote. [...]
- [Asian Legal Resource Centre, Written statement* submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status, INDIA: Criminal justice reforms elementary to control violence against women, 20 February 2015](#)
 [...] Scientific crime investigation, if at all carried out, is limited to high-profile cases involving the politically powerful or financially rich. [...] The police force lacks morale, direction, and discipline. [...]
- [Human Rights Watch, World Report 2015 - India, 29 January 2015](#)
 [...] Impunity
 [...] Proposed police reforms have also languished even as police continue to commit human rights violations with impunity. These include arbitrary arrest and detention, torture, and extrajudicial killings. In several states, police are poorly trained and face huge caseloads. [...]
- [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)
 [...] F. Rule of Law: 9 / 16 [...]

The police also suffer long shifts and understaffing in relation to the size of the population [...]
- [Asian Human Rights Commission, INDIA: Apathy to criminal justice reforms will only perpetuate torture, 7 November 2014](#)

[...] It is not the high-ranking police officers -- who often receive advanced crime investigation training and other facilities like good salaries -- that investigate crimes. The police constables, their immediate superiors like the Sub Inspectors and Circle Inspectors, who walk the beat, investigate crimes. These officers work in inhuman conditions. Expecting them to treat the ordinary citizen humanely and respect their rights is a demand farfetched. [...]

➤ [Asian Human Rights Commission, INDIA: A law against torture is of no use, 25 June 2014](#)

[...] The country's criminal justice system is a farce. Investigation agencies lack resources and adequate skill to undertake crime investigation. The country's police service is no place for a self-respecting officer. India's policing has not progressed beyond the colonial construct that was used for social control in the colony. And this control was achieved through the use of brute force with impunity. Torture, amongst other forms of violence committed by the uniformed officer in the colony and post-colony, is the most terrifying tool used. Investigations in India begin and end with torture. [...]

➤ [Asian Human Rights Commission, INDIA: Criminal justice reform duty of state, not court, 16 April 2014](#)

[...] The Asian Human Rights Commission (AHRC) appreciates the observations made by the Supreme Court of India that the Indian criminal justice process will immensely benefit from crime investigating agencies adopting scientific investigation methods. The apex court has said that the old style of conducting investigations, relying on confession statements and oral evidence in criminal trials, often results in gross miscarriage of justice. Miscarriage of justice can be corrected to a large extent if the investigation process adopts, and adapts itself to, utilizing new developments in science and technology, said the court. [...]

One could spend time wondering why it has taken the Supreme Court of India so long to make such a basic observation. It is trite to argue that the criminal justice process in India has had, and continues to suffer from, serious defects. These defects are of such nature and magnitude that they often lead to acquittal of the accused. Investigation of crime depends upon oral testimonies of the accused and the witnesses that often fail to stand the test of cross-examination in trials. The over dependence on oral testimonies is due to minimal resources and training being provided to crime investigation agencies for them to conduct investigation through any other means. [...]

Crime investigation, drawing upon advancement in technology and science, calls for the constitution of a resourceful, trained, and equipped division of forensic investigators. However, this is the lowest priority for the Indian government. Samples collected from crime scenes, and other material objects that need to be sent for forensic examinations, are often wrapped in newspapers. Contamination of scientific evidence begins at the point where such evidence is first collected. It is the responsibility of the Indian state to provide all necessary training and infrastructure to law enforcement agencies so the prevailing unscientific ineptitude can be replaced with quality investigative work. [...]

➤ [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Absence of police reforms threatens national security \[17 February 2014\] \[A/HRC/25/NGO/65\], 25 February 2014](#)

[...] 4. Only a negligible number of police officers in India know to undertake crime investigation using scientific methods and for these officers, there are hardly any tools to undertake such investigations. Arresting a suspect and torturing the person in some of the most heinous means to extract confession and information is what criminal investigation is. So much so, policy makers, police officers and the general public believes that the moment a crime is reported if the suspect is not arrested immediately, there is no progress to investigation. Unlike in other advanced jurisdictions where arrest of a suspect is made only after a reasonable amount of investigation points to the individual who might have committed the crime under investigation, in India, when a crime is reported the first thing the investigator is expected to achieve is the arrest of the suspect. [...]

The police being subject to corruption and political influence

- [BBC, India woman 'set on fire by police' in Uttar Pradesh, 7 July 2015](#)

[...] A woman in the northern Indian state of Uttar Pradesh has died after alleging that she was set on fire by two policemen inside a police station after she refused to pay a bribe. Neetu Dwivedi, 40, told a magistrate before her death that the policemen asked her for 100,000 rupees (\$1,578). She had gone to the police station to free her husband, who had been detained for questioning in a crime. The accused policemen deny the charge and say she tried to immolate herself. The policemen have been suspended and Uttar Pradesh Chief Minister Akhilesh Yadav has ordered an inquiry into the case. [...]

In her dying declaration before a magistrate and reporters, she alleged that she was abused and humiliated by her attackers when she refused to pay the bribe. [...]
- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

Executive summary [...]

The most significant human rights problems were police and security force abuses, including extrajudicial killings, torture, and rape; widespread corruption that contributed to ineffective responses to crime, including those against women and members of scheduled castes or tribes; and societal violence based on gender, religious affiliation, and caste or tribe.

b. Disappearance

There were allegations that police failed to file required arrest reports for detained persons, resulting in hundreds of unresolved disappearances. Police and government officials typically denied these claims. The central government reported that state government screening committees informed families about the status detainees. There were reports, however, that prison guards often required bribes from families to confirm the detention of their relatives.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

[...] Authorities allegedly also used torture as a means to extort money or as summary punishment. [...] On June 10, police officer Rahul Pandey allegedly raped a woman while other police officers watched in a police station in Hamirpur, Uttar Pradesh. The woman had visited the police station after the police arrested her husband. The police officers allegedly demanded a bribe from the woman, which she reportedly refused to pay. The three other on duty police officers on duty did not intervene. Police arrested Pandey on charges of rape and removed three other officers from duty. [...]

Role of the Police and Security Apparatus [...]

The police continued to be overworked, underpaid, and subject to political pressure. Political demands to identify perpetrators quickly after terror attacks and rapes often led to wrongful arrests. [...] Section 4. Corruption and Lack of Transparency in Government

[...] Corruption: Corruption was present at all levels of government. The CBI registered 583 cases of corruption between the months of January and November. The commission operated a free hotline and a web portal. NGOs noted the payment of bribes to expedite services, such as police protection, school admission, water supply, or government assistance. Civil society organizations drew public attention to corruption throughout the year, including through demonstrations and websites that featured stories of corruption. [...]
- [U.S. Department of State Overseas Security Advisory Council, India 2015 Crime and Safety Report: New Delhi, 16 April 2015](#)

There is a common perception that the police are corrupt and cannot be trusted. In some cases, police officers are involved in the crime, while other times police are bribed to turn a blind eye. Many victims do not go to the police for fear of persecution and harassment. Even those who are witnesses to crimes avoid getting involved in a judicial process that is painfully slow, inconvenient, and ineffective. These practices have corroded public confidence, and there is no certainty of punishment for criminals. [...]

- [Asian Legal Resource Centre, Written statement* submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status, INDIA: Criminal justice reforms elementary to control violence against women, 20 February 2015](#)
[...] The Indian police are notorious for corruption, nepotism, and for the use of brute force to extract confessions and bribes. Scientific crime investigation, if at all carried out, is limited to high-profile cases involving the politically powerful or financially rich. Merit is not observed in recruitment or promotion of officers. Instead, from constable to inspector general, illegal nexus between the officer and politicians draw career graphs. The police force lacks morale, direction, and discipline. [...]
- [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)
[...] C. Functioning of Government: 9 / 12
Political corruption has a negative effect on government efficiency and economic performance. India was ranked 85 out of 175 countries and territories surveyed in Transparency International's 2014 Corruption Perceptions Index. Though politicians and civil servants at all levels are regularly caught accepting bribes or engaging in other corrupt behavior, a great deal of corruption goes unnoticed and unpunished. [...]
Domestic and international pressure has led to legislation to address corruption. Following years of large-scale civic mobilization by Anna Hazare and other activists, Parliament passed the Lok Pal and Lokayuktas Act, which the president signed in January 2014. The law creates independent government bodies tasked with receiving complaints of corruption against public servants or politicians, investigating the claims, and pursuing convictions through the courts. At the federal level, the new institution is called Lok Pal, and the law requires states to set up their own anticorruption bodies called Lokayuktas within one year. The act builds on prior legislation such as the 2005 Right to Information Act, which is widely used to improve transparency and expose corrupt activities. However, there are questions about its enforcement. Since 2008 at least 29 right to information activists have been murdered and 164 have been assaulted or harassed.[...]
[...] F. Rule of Law: 9 / 16 [...]
[...] Police torture, abuse, and corruption are entrenched in the law enforcement system. [...] Citizens frequently face substantial obstacles, including demands for bribes, in getting the police to file a First Information Report, which is necessary to trigger an investigation of an alleged crime. [...]
- [BBC News, Five police investigated after Delhi launches WhatsApp anti-bribery campaign, 13 August 2014](#)
Five policemen in India are being investigated for alleged corruption after officials received complaints on a newly-launched helpline number. Since its launch on 6 August, the helpline has received more than 3,700 WhatsApp messages and 622 calls. Officials said they had received two video and three audio messages and were investigating the reported incidents. Correspondents say there have long been allegations of corruption in the Delhi police force - and the rest of India. Delhi police commissioner BS Bassi last week launched a new helpline number [9910641064], asking the public to send audio or video messages via the instant messaging service WhatsApp "if any cop seeks a bribe or harasses a person". [...]
Ms Pillai is part of the vigilance department which investigates policemen after complaints of bribery, corruption, bad behaviour with complainants and inaction on complaints. [...] Of the five video and audio files received on the helpline, Ms Pillai said her department had initiated action in two cases, involving five policemen, for demanding - and accepting - bribes. In the first case, a complainant sent a video recording of an assistant sub-inspector receiving a bribe of 400 rupees (\$6.5; £3.9) while in the second incident, an audio recording revealed four policemen demanding and accepting bribes from a shopkeeper over a period of a year. "We have registered cases against the erring police officers under India's Prevention of Corruption Act and action has been initiated against them," Ms Pillai said. The policemen have been suspended. [...]
- [Asian Human Rights Commission, INDIA: A law against torture is of no use, 25 June 2014](#)
[...] The state of affairs in the prosecution department is equally appalling. It is of such nature that police officers on court duty often refer to the prosecutors' office as their public toilet, since this is

what the officers find the prosecutors' office most convenient for. State prosecutors in India are not appointed on merit, but on the assessment of their political allegiance.

These officers are underpaid, ill trained, and, like their counterparts in the police, are deeply corrupt. Prosecutors who receive both state salaries and bribe money – from streams of accused seeking bail and for weakening the prosecution – is common in India's crowded court verandas. Anyone in India who has had to pay a fine in court for a petty traffic offense knows that the money paid, in addition to fulfilling the petty fine, has been split as a bribe for the prosecutor, the court clerk, and the relevant police officer. Often, this money includes a bribe for the magistrate as well.

In addition to the general concern of delay and overcrowding in courts, India's judiciary is corrupt to the core. Indians pay tax to employ corrupt judges, from the Magistrate's Court to the Supreme Court. Every Chief Justice who has thus far served the country has agreed to this shameful fact. [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; INDIA: Omnipresent corruption affects all \[26 May 2014\] \[A/HRC/26/NGO/47\], 4 June 2014](#)

[...] 9. Corruption is what decides whether, at the local level, a police officer should accept a complaint regarding a commission of a crime or not. Corruption dictates the contours of the investigation in its entirety, in that a crime investigation is a commodity that can be purchased by the rich and politically influential. Persons who commit crimes can either escape detection or avoid punishment by bribing the investigating officer.

10. Officers are corrupt irrespective of their rank. Corruption in the police begins with the induction of the officer; vacancies are filled at the whims of the ruling political party, with politicians at all levels including ministers and their cronies demanding and accepting bribes for such appointments. Once inducted, the officer begins extorting his beat to pay-off what is, in essence, an investment. [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Absence of police reforms threatens national security \[17 February 2014\] \[A/HRC/25/NGO/65\], 25 February 2014](#)

[...] 3. [...] Police officers of all ranks demand and accept bribe, and officers are state agents that the ordinary Indian would not trust to share information. [...]

Overburdened judiciary

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

Executive summary [...]

[...] A lack of accountability for misconduct at all levels of government persisted. Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under resourced court system contributed to infrequent convictions." [...]

[...] The judiciary remained backlogged, leading to lengthy delays and the denial of due process. [...]

[...] Pre-trial detention:

[...] Lengthy arbitrary detention was a significant problem because of the overburdened and under resourced court systems and a lack of legal safeguards. The government continued efforts to reduce lengthy detentions and alleviate prison overcrowding by using "fast track" courts, which specify a trial date or timeline, provide directions for case management, and encourage the use of bail. These courts were criticized for failing to uphold due process. Critics contended that poor detainees were unable to afford bail and remained in detention.[...]

[...] Denial of Fair Public Trial

The judicial system remained seriously overburdened and lacked modern case management systems, often delaying or denying justice. An analysis of the data kept by the Ministry of Law and Justice reported a 34 percent vacancy of judges in the high courts as of August 1. [...]

- [Amnesty International, Amnesty International Report 2014/15 - The State of the World's Human Rights - India, 25 February 2015](#)
[...] The overburdened and underfunded criminal justice system contributed to justice being denied to those who suffered abuses, and to violations of the fair trial rights of the accused. [...]
- [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)
[...] F. Rule of Law: 9 / 16
The system is severely backlogged and understaffed, leading to lengthy pretrial detention for a large number of suspects, many of whom remain in jail beyond the duration of any sentence they might receive if convicted. [...]
- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Remedies to human rights violations a mirage \[17 February 2014\] \[A/HRC/25/NGO/46\], 25 February 2014](#)
[...] According to a statement made by the Prime Minister of India in the Lok Sabha in 2010, India has the largest backlog of cases in the world. This situation has not improved, since today, the country has an estimated 30 million cases pending disposal. Of this a substantial number of cases are more than a decade old. An estimated four million cases are pending before the country's High Courts and the Supreme Court itself has an estimated 65,000 cases pending before it.
In 2008 the Government of India set itself the target of having 50 serving judges per million people by 2013. However in 2012, when it became clear that India was far short of this goal, a less ambitious 5-year plan was announced: a doubling of the number of judges in "subordinate" courts (excluding High Courts and the Supreme Court). India's current ratio stands at less than 15 judges per million, and even if the new target were achieved, India would still be nowhere near to the United States, for example, where there are over 100 judges per million.[...]

Bribery common in the judicial system

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)
[...] e. Denial of Fair Public Trial
The law provides for an independent judiciary, but judicial corruption was widespread. [...]
- [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)
[...] F. Rule of Law: 9 / 16
The judiciary is independent of the executive branch. Judges have displayed considerable activism in response to public interest litigation matters. However, in recent years some judges have initiated contempt-of-court cases against activists and journalists who expose judicial corruption or question verdicts. Contempt-of-court laws were reformed in 2006 to make truth a defense with respect to allegations against judges, provided the information is in the public and national interest. The lower levels of the judiciary in particular have been rife with corruption, and most citizens have great difficulty securing justice through the courts.. [...]
- [Asian Human Rights Commission, INDIA: Apathy to criminal justice reforms will only perpetuate torture, 7 November 2014](#)
[...] Prevention of crime and safeguarding justice are the two basic tenets that India's criminal justice process is unable to do. What it is capable, however, is the generation of fear in large sections of the population and providing for the vested interests of the rich and powerful. For the poor the justice process does not exist, whereas for the rich and influential, it is nothing more than a commodity that could be purchased through bribes, and influence. [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; INDIA: Omnipresent corruption affects all \[26 May 2014\] \[A/HRC/26/NGO/47\], 4 June 2014](#)

[...] 6. Institutions supposed to address corruption, such as the judiciary, the prosecution, and the specialized investigative apparatuses, are all corrupt. Corruption thrives in a non-transparent Indian judiciary to such an extent that a substantial number of former Supreme Court judges, including Chief Justices, have been openly accused of corruption, with damning documentary evidence available in the public domain. Yet, virtually none of these judges and their corrupt actions has been investigated. The morale of the judiciary is such that former Supreme Court judges have sold their offices for sexual gratification. [...]

- [Transparency International, Fighting corruption in South Asia, 21 May 2014](#)

[...] Executive Summary

Hardly a speech is delivered in South Asia without mention of the need to fight corruption in the region. Yet despite the lofty promises, corruption is on the rise. This report shows how a serious lack of political will on the part of governments to make laws work, means that government action to fight corruption is largely ineffective.

The report draws on the findings of in-depth research on anti-corruption efforts in Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka, which analysed almost 70 institutions across the six countries. While none of the institutions assessed were found to be free from corruption risks, this report focuses in particular on the judiciary and anti-corruption agencies as critical actors in the fight against corruption. It highlights common challenges in the region and presents the governments of South Asia with a clear set of urgent priorities which need to be addressed in order to translate their anti-corruption rhetoric into concrete action.

The key findings of the report are:

1. Citizens find themselves unable to access key information on how their governments are performing in order to hold them to account.
2. The lack of meaningful protection for whistleblowers means that the chances of detecting wrongdoing by those in positions of power are slim.
3. Widespread political interference in the critical work of anti-corruption agencies and the judiciary makes them ineffective in keeping a check on government.

[...] Whistleblowers left out in the cold

[...] In India meanwhile a new whistleblower protection law was passed in early 2014, but it falls well short of recognised international standards. Moreover, the agency responsible for implementing the act lacks adequate powers and has a poor record of enquiring into complaints and imposing penalties. Anti-corruption watchdogs: Tied up and toothless

[...] To compound the problem, in many cases, the vital watchdog institutions of the judiciary and anticorruption agencies are unable to keep a check on government abuse. This is particularly true of anti-corruption agencies in India, Nepal and Sri Lanka and the judiciary in Bangladesh, which have all been accused of selecting cases for political motives. The effectiveness of these supposedly independent accountability bodies is seriously undermined by systematic political interference and manipulation, either through deliberate restrictions on their powers to tackle corruption or through tight government control over appointments, transferrals and removal from office of senior staff. Through politically motivated appointments to key positions within these institutions, governments are often found to assert strong influence on the outcomes of key decisions, which may affect their effectiveness and credibility.

[...] SELECTIVE INVESTIGATIONS AND PROSECUTIONS

Anti-corruption agencies and the judiciary in South Asia do not always effectively and impartially investigate and try corruption cases.

The Commission for Investigation of Abuse of Authority in Nepal and the Central Bureau of Investigation in India stand accused of allowing political agendas to influence critical decisions. In India, for example, in the high profile case of the Sant Singh Chatwal Bank fraud allegations, two directors of the Commission refused to file an appeal against Chatwal's acquittal, against the advice of their own investigators. A request for information regarding the reasoning behind this decision was subsequently rejected by the Bureau, prompting the Information Commission to impose a fine on the Bureau's public information officer. [...]

POWERLESS OVERSIGHT BODIES

Why are these supposedly independent oversight bodies operating in such an ineffective and partisan manner? The reality is that in many cases they are being deliberately weakened and disempowered by vested political interests. The most obvious manifestation of such political interference is the limitation of the powers of these institutions to perform their anti-corruption role. In two out of the six South Asian countries anti-corruption agencies do not have the power to begin both investigations and prosecutions against government officials without the consent of government. [...]

In two other countries, similar restrictions have recently been overturned. In Bangladesh, the requirement for the Anti-Corruption Commission to obtain permission from the government before filing a corruption case against a judge, magistrate or public servant was recently struck down by the High Court. In India, a similar provision requiring the Central Bureau of Investigation to get prior government approval before conducting an investigation or launching a prosecution against a senior public officer was deemed unconstitutional by the Supreme Court. [...]

Cases proceeding to court- pre-trial detention and low conviction rate

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

Executive summary

[...] Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under resourced court system contributed to infrequent convictions.”

[...] d. Arbitrary Arrest or Detention

[...] Pretrial detention

[...] The law permits preventive detention in certain cases. The National Security Act allows police to detain persons considered security risks anywhere in the country, except Jammu and Kashmir, without charge or trial for as long as one year. [...] The Public Safety Act, which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for as long as two years without visitation from family members. [...]

[...] The HRLN [Human Rights Law Network] in Kochi, Kerala, noted that certain prisoners with mental disabilities in the Kerala central prison who were considered “not fit for trial” had been awaiting trial for 10 to 26 years. According to the NGO, the prisoners had been in detention far longer than their potential sentences. In June 2013 the HRLN filed a writ petition with the Kerala High Court for the release of those prisoners. The court responded by issuing an order directing the state government to provide adequate medical treatment to the accused in order to render them fit for trial.

Lengthy arbitrary detention was a significant problem because of the overburdened and under resourced court systems and a lack of legal safeguards. The government continued efforts to reduce lengthy detentions and alleviate prison overcrowding by using “fast track” courts, which specify a trial date or timeline, provide directions for case management, and encourage the use of bail. These courts were criticized for failing to uphold due process. Critics contended that poor detainees were unable to afford bail and remained in detention. [...]

- [Amnesty International, Amnesty International Report 2014/15 - The State of the World's Human Rights - India, 25 February 2015](#)

[...] Prolonged pre-trial detention

Prolonged pre-trial detention and overcrowding in prisons persisted. As of December 2013, over 278,000 prisoners – more than two-thirds of the country's prison population – were pre-trial detainees. Dalits, Adivasis and Muslims continued to be disproportionately represented in the pre-trial prison population. Indiscriminate arrests, slow investigations and prosecutions, weak legal aid systems and inadequate safeguards against lengthy detention periods contributed to the problem.

In September, the Supreme Court directed district judges to immediately identify and release all pre-trial detainees who had been in prison for over half of the term they would have faced if convicted.

Following advocacy by Amnesty International India, the government of Karnataka state directed state authorities to set up review committees to monitor lengthy pre-trial detention. [...]

- [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)
[...] F. Rule of Law: 9 / 16
[...] The lower levels of the judiciary in particular have been rife with corruption, and most citizens have great difficulty securing justice through the courts. The system is severely backlogged and understaffed, leading to lengthy pretrial detention for a large number of suspects, many of whom remain in jail beyond the duration of any sentence they might receive if convicted. [...]
- [Amnesty International, India: Supreme Court order on undertrials must spur systemic changes, 5 September 2014](#)
[...] A landmark order by India's Supreme Court directing the release of all undertrial prisoners who have spent more than half of the maximum punishment for the crime they are charged with in pre-trial detention should lead to long-term changes to the criminal justice system, Amnesty International India said today. "The Supreme Court's order is inspiring and welcome," said Divya Iyer, Research Manager at Amnesty International India. "Two out of three prisoners in India are undertrials. Excessive pre-trial detention violates detainees' right to a fair and speedy trial, and leads to overcrowding in jails."
"Releasing eligible undertrials is however only the first step. Authorities need to also set up various mechanisms to prevent excessive pre-trial detention in the future. These include proper prison record management, informing undertrials about their rights, better co-ordination to ensure that undertrials attend their court hearings, and improved legal aid." [...]
- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
[...] 66. The overall conviction rate in India for crimes listed in the Penal Code was 38.5 per cent in 2012, the lowest in 10 years, largely owing to delays in the finalization of cases. According to the National Crimes Records Bureau, the average conviction rate for crimes against women is 21.3 per cent for cases of kidnapping and abduction of women and girls, assault on women, insult to the modesty of women, cruelty by family members and trafficking of girls. Moreover, the annual analysis provided by the Bureau indicates that in 2012, reports of crimes against women had increased by 6.8 per cent over 2011 and by 24.7 per cent over 2008. The proportion of registered cases of crimes committed against women vis-à-vis crimes in total increased from 8.9 per cent in 2008 to 10.2 per cent in 2012. The low conviction rate and the higher number of cases registered will not act as a deterrent for future crimes against women, nor will it engender trust in the judicial system. [...]
- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Remedies to human rights violations a mirage \[17 February 2014\] \[A/HRC/25/NGO/46\], 25 February 2014](#)
[...] 3. [...] One of the most serious concerns affecting the realisation of adequate and effective remedies to human rights abuses to victims is the enormous delay in adjudications. A litigation to complete in India could take often more than a decade. According to a statement made by the Prime Minister of India in the Lok Sabha in 2010, India has the largest backlog of cases in the world. This situation has not improved, since today, the country has an estimated 30 million cases pending disposal. Of this a substantial number of cases are more than a decade old. An estimated four million cases are pending before the country's High Courts and the Supreme Court itself has an estimated 65,000 cases pending before it.
[...] 5. The Union Minister for Law and Justice, Mr. Kapil Sibal, while assuming office in 2013, promised radical changes to end this impasse. However, the unaddressed huge backlog of cases poses what Mr. Sibal's immediate predecessor in office stated, a "threat to constitutional democracy" that challenges the rule of law framework which has "failed to guarantee order and stability in society". [...]
[...] 6. Delays in adjudication alone is not what that threatens rights to remedies for human rights abuses. Refusing to register complaints is the defining character of India's criminal justice system. This practice received the maximum and deserving bad press perhaps in 2013 when it was repeatedly

revealed, that in many cases of sexual abuse against women including in cases of rape, the police have refused to register complaints. So much so, the most recent amendment to the criminal law in India, made effective through the Criminal Law (Amendment) Act, 2013, promulgated on 2 April 2013 incorporated a new Section to the Indian Penal Code, 1860, Section 166 A, that makes it a punishable offense for a public servant, to fail to register cases of sexual abuse against women.

7. Yet the fact that the implementation of this provision is least followed is proved through subsequent cases reported from India, where once again the police were accused and later proved of having failed to register cases after receiving credible complaints of sexual abuses against women. So far, not a single police officer in India who has contravened this provision of law has been charged with a crime punishable under this section or placed on trial. [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Absence of police reforms threatens national security \[17 February 2014\] \[A/HRC/25/NGO/65\], 25 February 2014](#)

[...] 5. Enormous delays in prosecution and the requirement of the witness to attend court hearings for decades without end, discourages people to voluntarily commit as witnesses to crimes if they had witnessed the commission of a crime. The police overcome this by arranging stock witnesses, often local criminals, who are cited as witnesses in prosecutions that often fail the test of cross-examination in courts. When the prosecution of a crime is based solely upon the confession statement of an accused and witnesses in cases fabricated by the investigator, the criminal trials ends up in acquittals. This is why, India has one of the lowest conviction rates in the civilised world.

[...] 7. Long delays in prosecution, often running into decades, places India in that category of countries that holds a substantially large number of under trial prisoners. Of persons held in custody, convicted or otherwise, the national average is that 64.7% are under trials. In some states like Bihar, Andhra Pradesh and Meghalaya, this percentage of under trials exceed 80% of the total number of persons held in custody in state facilities. [...]

8. A substantial number of these individuals are poor, many illiterate, and unable to afford for a privately paid legal defence. When their cases come finally for a trial, they might have stayed in under trial detention much more than the maximum number of years they could be convicted for the offense alleged against them. A shortcut the trial courts then adopt is to encourage the suspect to plead guilty, and to set off the under trial detention in lieu of the sentence and release the person from custody. While this one hand renders a gross miscarriage of justice, on the other, artificially increases the national average in conviction rates. This explains why there is a substantial spike in the conviction rate in India from a meagre 4% (1998) to 32% (2013). Analysed from the background facts, that this spike is achieved without having any revolutionary changes brought into the capacity of trial courts in India to clear the backlogs of cases as well as no reforms implemented to improve the capacity of the local police to investigate crimes, it exposes the monstrosity of the problem as well as the manipulation of crime statistics in India by the government, for which the country's judiciary has played a condemnable role. [...]

Overview of human rights abuses committed by security forces, particularly police

- [Asian Human Rights Commission, INDIA: Police term custodial death of woman as suicide, 10 July 2015](#)

The Asian Human Rights Commission has received information about a woman, Ms. Victoria Dayoun Kharkongor, being found dead inside the toilet of the Dispur Police Station in Guwahati on 5 July 2015. The police claim that she was mentally ill and hung herself inside the toilet. According to the preliminary police reports, Ms. Victoria was found loitering around International Hospital in Guwahati and was later handed over to the police by the Hospital authority. The family of Ms. Victoria suspects foul play. The autopsy report, which might help explain the death, is not yet available. [...]

Ms Victoria's family suspects foul play based on the fact that the police have no proof to substantiate that Ms Victoria was mentally ill, and nor do they have the expertise of declaring a person mentally ill. Furthermore, they noticed an injury around Ms Victoria's neck which does not look like a suicide injury. Lastly, the police asked her mother to sign a blank paper; when she questioned this, they replied that they need to write down the list of her daughter's belongings, but she never got the bag containing all her clothes and documents. She only got one mobile phone, pan card, identity card and railway ticket from Ms Victoria's handbag, which was handed over to her by the police. [...]

➤ [BBC, India woman 'set on fire by police' in Uttar Pradesh, 7 July 2015](#)

[...] A woman in the northern Indian state of Uttar Pradesh has died after alleging that she was set on fire by two policemen inside a police station after she refused to pay a bribe.

Neetu Dwivedi, 40, told a magistrate before her death that the policemen asked her for 100,000 rupees (\$1,578).

She had gone to the police station to free her husband, who had been detained for questioning in a crime.

The accused policemen deny the charge and say she tried to immolate herself.

The policemen have been suspended and Uttar Pradesh Chief Minister Akhilesh Yadav has ordered an inquiry into the case. [...]

In her dying declaration before a magistrate and reporters, she alleged that she was abused and humiliated by her attackers when she refused to pay the bribe. [...]

➤ [Asian Human Rights Commission, INDIA: Place primacy on reforming the criminal justice process, 25 June 2015](#)

[...] Torture is widespread in India. Every day cases of torture are reported in India, from police stations, and other sites of state custody. India does not have a law that criminalises torture. While criminalising torture is important, it is equally relevant to ask the question: will criminalisation help end the practice?

The Asian Human Rights Commission (AHRC), having studied 550 cases of custodial torture reported from India between 2005 and 2015, is of the opinion that State agents in India resort to torture for three main reasons. They are: (i) to force persons in custody to confess to crime; (ii) to extract bribes from persons in custody or from their family members; and (iii) to intimidate and silence persons to stop them from speaking against State agencies, powerful politicians, or financially or politically influential persons.

The State condones torture; fear created by allowing widespread use of torture is exploited to control the population. Besides, over the past 60 years India has invested the least in its criminal justice institutions in comparison to the investment in other sectors.

Lack of investment has left the Indian crime investigation and prosecution apparatuses in suspended animation, where protocols followed are mostly of British colonial times. Even the language used is "questioning a suspect" and not "interviewing a suspect" that is used in advanced jurisdictions. Cadets at the police academy are trained to use physical violence as an element of surprise and to subdue a suspect. Slapping, punching, caning, or kicking of persons in public while they are taken into custody is hence a common street event in India.

Most police officers believe that they have a right to ill-treat persons in their custody and to use force while interviewing suspects. This approach finds resonance within the bureaucracy, and with most politicians, who are ultimately responsible for reforming the criminal justice process. Prime Ministers, Chief Ministers, and even many judges believe that to police India what is required is a rough and tough cop and not a skilled service provider in police uniform.

This approach, of treating a suspect as a person with the responsibility to confess crime, has cemented the practice of obtaining confession first and then basing the investigation on this confession. Under pressure, police officers use torture to obtain the confession. It will be trite to argue that the investigation that follows, based on a confession made under duress, is destined to fail to prove the crime in trial.

Since torture is condoned as part of crime investigation, State officers also use it as and when it suits them. In a country where corruption is omnipresent, the impunity with which torture is employed has also led to its use, or the threat of its use, as a tool for extracting bribes from citizens. Besides, absence of infrastructure also forces the police to demand favours from persons ill fated to have to seek their services. Such favours include fuelling or paying repair bills of police vehicles, paying

telephone bills of police officers, paying rent for police stations, and buying office stationary for police stations.

Despite this, the Union Government, in its 2015 budget, has reduced the budgetary allocation for police in Indian states. The reduction in Union allocation is of an estimated USD \$133 million from the USD \$560 million allocation last year. [...]

➤ [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

Executive summary [...]

The most significant human rights problems were police and security force abuses, including extrajudicial killings, torture, and rape [...]. Other human rights problems included disappearances, hazardous prison conditions, arbitrary arrest and detention, and lengthy pretrial detention. [...]

a. Arbitrary or Unlawful Deprivation of Life

There were reports that the government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents, especially in areas of conflict such as Jammu and Kashmir, the northeastern states, and the Maoist belt. [...]

There were continuing reports of custodial death cases, in which prisoners or detainees were killed or died in police custody. Decisions by central and state authorities not to prosecute police or security officials despite clear evidence in these cases also remained a problem. The National Crime Records Bureau (NCRB) reported 118 cases of custodial deaths during 2013 (the most recent statistics available). [...]

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law does not permit authorities to admit coerced confessions into evidence, but NGOs and citizens alleged that authorities used torture to coerce confessions. In some instances these confessions were submitted as evidence in capital cases. [...]

According to human rights experts, the government continued to try individuals arrested and charged under the repealed Prevention of Terrorism Act and Terrorist and Disruptive Activities Act. When these laws were in effect, a confession made to a police officer was treated as admissible as evidence in court. [...]

There were continued reports that police raped detainees. NGOs stated the NHRC underestimated the number of rapes committed in police custody. Some rape victims were afraid to report the crime due to social stigma and the possibility of retribution, compounded by lack of oversight and accountability, especially if the perpetrator was a police officer or other official. There were reports that police officials refused to register rape cases. The NHRC is authorized to investigate rape cases involving police officers. By law the NHRC can request information about the army and paramilitary forces, but it has no mandate to investigate cases pertaining to such entities. [...]

d. Arbitrary arrest or detention

The law prohibits arbitrary arrest and detention, but both occurred during the year. Police also used special security laws to delay judicial reviews of arrests. Pretrial detention was arbitrary and lengthy, sometimes exceeding the duration of the sentence given to those convicted. [...]

Role of the Police and Security Apparatus

According to Human Rights Watch, cases of arbitrary arrest, torture, and forced confessions by security forces remained common. Political demands to identify perpetrators quickly after terror attacks and rapes often led to wrongful arrests.

[...] Arrest Procedures and Treatment of Detainees

Arbitrary Arrest

The code of criminal procedure prohibits arbitrary arrest or detention, but police continued to arrest citizens arbitrarily. Police detained individuals for custodial interrogation without identifying themselves properly or providing arrest warrants. On May 23, the NHRC [National Human Rights Commission] filed a complaint to the Assam police director general, based on media reports that a youth named Siddharth Kaushik Dutta was subjected to torture in a police station in Jorhat district of Assam. The police took no action on the complaints made by the mother of the victim. [...]

Pre-trial detention

Those detained on criminal charges must be informed promptly of the charges against them and of their right to legal counsel. Under the criminal code, a magistrate may authorize the detention of an accused person for a period of no more than 90 days prior to filing charges. Under standard criminal procedure, the accused must be released on bail after 90 days. The code also allows police to summon

individuals for questioning, but it does not provide authority for police to detain individuals involuntarily for questioning before placing them under arrest. There were incidents in which authorities allegedly detained suspects beyond the legal limit for police custody.

There were reported cases in which police denied suspects the right to meet with legal counsel, as well as cases in which police unlawfully monitored suspects' conversations and denied their right to confidentiality. The constitution mandates that defendants with "economic or other disabilities" will be provided free legal counsel, but need is not assessed systematically. By law authorities must allow family members access to detainees, but this was not always observed. Arraignment of detainees must occur within 24 hours unless the suspect is held under a preventive detention law. [...]

➤ [Asian Human Rights Commission, INDIA: Minor tortured in police custody in Madhya Pradesh, 15 June 2015](#)

[...] The AHRC has received information about the torture of a minor in custody at Kotwali Police Station, Katni, Madhya Pradesh. A video has been recently broadcasted in different national news networks in India displaying actions of the police, who were seeking to extract a confession from Ravi, a minor, by viciously torturing him in the Police Station. Ravi was arrested along with another minor and an adult in a case involving computer theft.

Although the video helped in suspending two police constables, it also infuriated the SHO SPS Bhagel, since Ravi mentioned the name of the policemen who tortured him. The SHO (as alleged by the family) came to Ravi's house, broke the gates and arrested him, while allegedly also recovering 6 grams of smack (heroin). They beat and roughed up Ravi in the house, asking him if he would inform the same to the media. When his mother protested, a lady constable beaten her up too and threatened to beat his sister-in-law as well. They also beat up his brother and then took Ravi to the Police Station. The family alleges that Ravi was kept in the Kotwali Police Station for one day before being produced before the Juvenile Justice Board. [...]

➤ [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: extrajudicial executions and torture are defining characters of India's security establishment \[25 May 2015\] \[A/HRC/29/NGO/45\], 5 June 2015](#)

[...] 6. (b) On arbitrary and unlawful arrest and deaths in custodies: Custodial torture and deaths arising out of custodial torture is not a rare occurrence in India. Torture is the most commonly used tool by the police. Contrary to popular perception, torture is not often used to extract a confession from the suspect, but as a tool for social control in India.

7. On the other hand, crime investigations begin and end with confessions obtained through torture. In such a setting, modern crime investigation has no place in Indian policing. Law enforcement in India therefore is not a process that follows the normative frameworks of fair trial but an activity that state agencies engage in to rule by fear. [...]

➤ [UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 6 May 2015](#)

[...] 41. [...] The Special Rapporteur notes the order of the Supreme Court in relation to encounter killings, in the matter of People's Union for Civil Liberties (PUCL) & Anr. v. State of Maharashtra & Ors., 17 that "no out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt".

42. The Special Rapporteur welcomes the order of the Supreme Court and calls upon the Government to ensure its full and proper implementation. He notes with concern reports that police officers who have been suspended upon their arrest in cases of suspected extrajudicial killings and charged with extrajudicial killings have been reinstated in senior positions in the police force by the State. The Special Rapporteur is concerned that this will encourage impunity and may impede the criminal trials against the reinstated officers.

[...] 46. The Special Rapporteur recommended that the National Human Rights Commission issue guidelines on the conduct of inquests and autopsies in all cases of suspected unlawful killings (see A/HRC/23/47/Add.1, para. 122). At the time of writing the present report, the Special Rapporteur was not aware of any steps taken in this regard.

[...] 61. Cases of extrajudicial killings continue to be reported by State actors and non State actors alike. Impunity remains a serious problem and the lack of accountability in the majority of instances of State actors is a principal concern. Legislation and policy, such as the Armed Forces (Special Powers) Act and similar, remain a real impediment to proper accountability and should be promptly repealed or amended. There is a need for fully independent bodies to be established to ensure that investigations are properly conducted and perpetrators are held to account. [...]

➤ [Asian Human Rights Commission, INDIA: A man from Bihar crippled after 7-year ordeal under the Police Authority of Kerala, 5 May 2015](#)

[...] The AHRC has received information from Nervazhi, a local human rights organisation, regarding the brutal torture done under the police custody of various police stations in Kerala. The man tortured is Mr. Martim P.A. who was tortured in a way that has crippled him. A series of unfortunate events occurred in the life of Martim, and it all began in the year 2008 at Thrikakkara Police Station. In that Station, the police not just once, but countless times, brutally tortured Martim holding him as a suspect of virtually every theft in the District.

Over the years, Martim has been imprisoned in various jails, and was finally serving time in Viyoor Central Jail from the year 2010. During his time in prison, he became paralyzed and was taken to Thrissur District Hospital in the year 2012.

It is known that Martim is not financially equipped to hire a lawyer for his defence, but nobody bothered to make him aware him about his right to counsel, as per the Indian Constitution. As a result, his case has not been put to trial and he has not been released.

This is an account of common man. After all these years of injustice, his story was finally documented by Nervazhi at Thrissur District Hospital, where he lays bedridden and crippled for life. The doctor at the hospital has pronounced his final verdict that Martim suffers from Brain Tuberculosis due to the physical torture he underwent all these years and, even if he is cured from tuberculosis in his brain, he will remain bedridden forever.

On the 27th April 2015, Nervazhi filed a complaint through their lawyers before the State Human Rights Commission, requesting the Commission to intervene in this case. It has been reported that more than 30 million cases are pending in the Indian courts and justice is always delayed. How can common persons like Mr Martim survive in this system, which ignores the principles of democracy and the rule of law, and allows impunity for acts of torture? [...]

➤ [Asian Human Rights Commission, INDIA: Is it for the police to form a policing policy? 23 March 2015](#)

[...] It is true that the police arrest persons without adequately investigating the complaints they receive, and the practice must be condemned. However, a more fundamental issue is the Indian police's capacity to undertake proper investigation. Crime investigation in India begins and ends with a confession, though a confession is inadmissible as evidence. Indian police is stagnated in a mind-set of the dark ages where the investigation officer plays the role of the grand inquisitor.

Often, a confession is the result of brute forms of torture. Most Indian police officers believe that a confession made under duress is true. Once the confession is extracted, the police prepare a case diary to fit the confession. Indeed, this is fabrication of evidence. The Indian police are not equipped to undertake proper investigation and end this practice. The policing institution, and those responsible for formulating India's policing policy, do not believe this practice must end.

In such a working environment, arrest of the respondent in a complaint and extracting a confession is the only means available to the police to investigate a crime. Most police officers, and the country's bureaucracy, believe that India cannot be policed with a civilised police. It is for this reason that since independence, no government has put in place a policy to reform the police.

This approach to policing has demoralised the institution and the officers. It has allowed police officers to get away with the crimes they commit. [...]

➤ [Amnesty International, Amnesty International Report 2014/15 - The State of the World's Human Rights - India, 25 February 2015](#)

[...] Despite progressive legal reform and court rulings, state authorities often failed to prevent and at times committed crimes against Indian citizens, including children, women, Dalits and Adivasi (Indigenous) people. Arbitrary arrest and detention, torture and extrajudicial executions often went unpunished.

Arbitrary arrests and detentions

Arbitrary arrests and detentions of protesters, journalists and human rights defenders persisted. National Human Rights Commission data indicated that 123 illegal arrests and 203 cases of unlawful detention were reported from April to July [2014].

Extrajudicial executions

Proceedings continued before the Supreme Court relating to a petition seeking investigations into over 1,500 alleged “fake encounters” – a term referring to staged extrajudicial executions – in Manipur state. Courts in Delhi, Bihar and Punjab convicted police personnel of being involved in fake encounter killings. The National Human Rights Commission ordered compensation for the families of people killed in a number of fake encounters. It also expressed concern about fake encounter killings in Uttar Pradesh by the state police.

In February, the country’s top investigative agency charged former officers of India’s internal intelligence agency with murder and kidnapping in an investigation into a fake encounter case in Gujarat in 2004. The Gujarat and Rajasthan state governments reinstated into service police officers on trial for their alleged involvement in fake encounter cases after they were released on bail from pre-trial detention.[...]

[...] Torture and other ill-treatment

Torture and other ill-treatment continued to be used in state detention, particularly against women, Dalits and Adivasis. A deeply flawed anti-torture bill lapsed with the end of the central government's term in May.

In August, the Bombay High Court directed the installation of closed-circuit television cameras in all police stations in Maharashtra to curb the use of torture. [...]

➤ [Human Rights Watch: World Report 2015 - India, 29 January 2015](#)

[...] Impunity

Proposed police reforms have also languished even as police continue to commit human rights violations with impunity. These include arbitrary arrest and detention, torture, and extrajudicial killings. [...]

➤ [Freedom House: Freedom in the World 2015 - India, 28 January 2015](#)

[...] F. Rule of Law: 9 / 16 [...]

Police torture, abuse, and corruption are entrenched in the law enforcement system. The police also suffer long shifts and understaffing in relation to the size of the population. Citizens frequently face substantial obstacles, including demands for bribes, in getting the police to file a First Information Report, which is necessary to trigger an investigation of an alleged crime. Custodial rape of female detainees continues to be a problem, as does routine abuse of ordinary prisoners, particularly minorities and members of the lower castes. According to the Working Group on Human Rights in India and the United Nations, 14,231 people died in police custody between 2001 and 2010, and approximately 1.8 million people are victims of police torture every year. This is likely an underestimate, since it only includes cases registered with the National Human Rights Commission (NHRC). [...]

Security forces operating in the context of regional insurgencies continue to be implicated in extrajudicial killings, rape, torture, arbitrary detention, kidnappings, and destruction of homes. The criminal procedure code requires the government to approve the prosecution of security force members, but approval is rarely granted, leading to impunity. The Armed Forces Special Powers Act grants security forces broad authority to arrest, detain, and use force against suspects in restive areas; civil society organizations and multiple UN human rights bodies have called for the act to be repealed. A number of other security laws allow detention without charge or based on vaguely worded offenses. [...]

➤ [Asian Human Rights Commission, INDIA: Apathy to criminal justice reforms will only perpetuate torture, 7 November 2014](#)

[...] Lack of transparency in procedures followed in detention centres, most importantly at the police stations in the country, is one of the reasons why custodial violence is uncontrollable in India. The impossibility in India to prove that a detainee has been ill-treated in custody, results in impunity for law-enforcement officers.

Even if litigation is initiated, it takes ages to be decided by the country's courts. [...]

Indeed, installing modern devices inside police stations and other detention facilities will have a positive effect. But cameras alone cannot prevent torture. Furthermore, custodial violence in India is not used to extract confession alone. It is used to demand bribes, to force a complaint to withdraw legitimate accusations, to silence human rights defenders and social activists, and even to suppress political opposition.

Incidents of torture are not limited to detention centres. It happens inside police vehicles, houses rented by law enforcement agencies to question and illegally detain persons, and above all in board daylight in front of thousands of people. Torture in India is not a secret. It is the quintessence of law enforcement in India. [...]

➤ [Asian Human Rights Commission, INDIA: Custodial death and torture by police must end in Meghalaya, 29 May 2014](#)

[...] The Civil Society Women's Organisation (CSWO), an anti-corruption and women's rights organization, Shillong, is deeply concerned of widespread torture by police leading to deaths including deaths in custody and other similar human rights violations in Meghalaya. [...]

The CSWO is concerned at the high frequency of arbitrary arrests on suspicion leading to torture, maiming, and death of people who are unlawfully detained or picked up in the state. One of the prime principles of criminal justice that holds an individual innocent till proved guilty is hardly followed by police personnels. Police plays the role of judge and jury for any person accused of a crime without giving any right to defend themselves. Police cannot have the right to pronounce punishments as it is not their duty.

It has been observed by CSWO that to collect evidence, police use force and methods of torture while they ignore complaints based on information obtained under right to information applications as it proves widespread corruption. Also in the name of investigation, police use verbal and nonverbal threats and torture for confessions for crimes they never committed. Police also threaten to harass by piling more cases on those who complain as observed in many cases. [...]

➤ [Asian Human Rights Commission, INDIA: Detainee succumbs to torture by police, 22 May 2014](#)

[...] The Asian Human Rights Commission (AHRC) has received information from Civil Society Women's Organization (CSWO), an anti-corruption and women's rights organization based in Shillong, Meghalaya regarding the custodial death of an 18-year-old youth Mr. Balsan S. Marak. Balsan was arrested under dubious circumstances on charges of kidnapping and torture of women on 13 May. He was in police custody over night. The next day he was presented before the magistrate remanded to a 14-day judicial custody lodged in Tura District jail. Balsan was taken to Tura Civil Hospital on two occasions, on 17 May and 19 May, for a fever, ear problems, and orthopedic complication. He died in the early morning of 20 May. His body carries marks of torture and apparently was beaten at chest with rifle butt. A magisterial inquiry has been ordered. However, AHRC fears that the officers will distort the evidence and threaten eye-witnesses. There is risk that the independent investigation may be compromised, a trend continuously observed by AHRC in such cases, and consequently, the perpetrator police officers will go unpunished. Police all over the country are routinely violating the guidelines issued by the Supreme Court as well as National Human Rights Commission that aims to prevent arbitrary arrest and custodial torture. AHRC is concerned of the rising brutality of law enforcement officers amidst impunity. [...]

➤ [Asian Human Rights Commission, INDIA: Criminal justice reform duty of state, not court, 16 April 2014](#)

[...] The reason such change, essential for health of Indian society, has not been ushered in is that agencies undertaking crime investigations are used for social control rather than solving crime. It follows that arbitrary arrests, disappearances, and extrajudicial executions are common in India. Social control is achieved by misusing uniformed state agencies to gear them to use brute force – and torture, with impunity – in order to instill fear and subservience in the population. Prolonged periods of abuse of investigation agencies for social control has demoralised these agencies to such an extent that they engage in horrendous crimes committed with impunity against ordinary citizens. The Indian polity encourages and nurtures this criminal character of investigation agencies. [...]

- [Asian Legal Resource Centre: Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Remedies to human rights violations a mirage \[17 February 2014\] \[A/HRC/25/NGO/46\], 25 February 2014](#)
[...] The uniformed forces of the state commit a substantial number of human rights violations reported from India. This includes offences committed by the local police and the armed forces of the Union, of varying nature and gravity, including custodial rape, torture and extrajudicial executions. [...]
- [Asian Legal Resource Centre: Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Absence of police reforms threatens national security \[17 February 2014\] \[A/HRC/25/NGO/65\], 25 February 2014](#)
[...] 3. [...] Crime investigation, even as of today, begins and ends with confession statements extracted through brute forms of torture. [...] Indian police is notorious for torturing and threatening informants, that today fearing that an informant would be unsafe at the hands of the police, people do not approach the police with complaints or other sensitive information. [...]
- [Asian Human Rights Commission, INDIA: Local police torture a lawyer in Thrissur, Kerala state, 25 February 2014](#)
[...] The Asian Human Rights Commission (AHRC) has received information regarding the case of brutal attack by the local police of a lawyer, practicing at Thrissur courts. It is reported that the incident happened when the victim in the case, Ms. R. K. Asha, went to help her client and friend Ms. Neethu. The Sub-Inspector of Police, Mr. Lalkumar, stationed at Thrissur East Police Station not only assaulted the lawyer, but detained in custody her son, on fabricated charges and assaulted the lawyer's minor daughter at the police station. The children had accompanied their mother since the lawyer was travelling at night. The Thrissur Bar protested against the incident and has organised a public rally demanding immediate action against the police officer. [...]

Barriers to legal remedies for serious police misconduct

- [Amnesty International, "Denied": Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir, 30 June 2015](#)
[...] 1. Background
[...] Amnesty International's research over a number of years has repeatedly uncovered patterns of impunity, including unlawful government orders to the police not to register complaints of human rights violations against the security forces.
One of the primary facilitators of impunity for security force personnel has been the existence of provisions like Section 7 of the Armed Forces Special Act (AFSPA), 1990 under which members of the security forces are protected from prosecution for alleged human rights violations. Similar to clauses in a number of other Indian laws, this legal provision mandates prior executive permission from the central or state authorities for the prosecution of members of the security forces. These provisions, called "sanctions" in India, have been used to provide virtual immunity for security forces from prosecution for criminal offences.
To date, not a single member of the security forces deployed in Jammu and Kashmir over the past 25 years has been tried for alleged human rights violations in a civilian court. An absence of accountability has ensured that security force personnel continue to operate in a manner that facilitates serious human rights violations. A former senior military official publicly argued in October 2013: "Immunity under AFSPA allows our soldiers to make mistakes. Insurgency will come to an end, you need to train soldiers better, I agree, but don't remove the AFSPA."
Following a visit to India in March 2012, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions expressed concern that sanction provisions in India "effectively render a public servant immune from criminal prosecution... It has led to a context where public officers evade

liability as a matter of course, which encourages a culture of impunity and further recurrence of violations.” These fears are well founded. [...]

➤ [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

Executive Summary

[...] A lack of accountability for misconduct at all levels of government persisted. Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and underresourced court system contributed to infrequent convictions.

a. Arbitrary or Unlawful Deprivation of Life

[...] There were continuing reports of custodial death cases, in which prisoners or detainees were killed or died in police custody. Decisions by central and state authorities not to prosecute police or security officials despite clear evidence in these cases also remained a problem. [...]

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

[...] The NHRC [National Human Rights Commission] received and investigated prisoner complaints of human rights violations throughout the year, but some activists indicated that many complaints were not filed due to fear of retribution from prison guards or officials.

Prisoners could register complaints with state and national human rights commissions, but these commissions could only recommend that authorities redress grievances. Government officials often failed to comply with a 2012 Supreme Court order to the central government and local authorities to conduct regular checks on police stations to monitor custodial violence. [...]

Role of police and security apparatus [...]

Authorities used several laws, including the criminal procedure code and the AFSPA, to avoid holding security forces accountable for accusations of human rights abuses.

The effectiveness of law enforcement and security forces varied widely throughout the country. There were cases of officers at all levels acting with impunity, and examples of security officials held accountable for illegal actions were rare. Military courts investigated cases of abuse by the armed forces and paramilitary forces. Cases against law enforcement officers were tried in public courts. Authorities sometimes transferred officers after they were convicted of a crime. [...]

[...] The National Human Rights Commission (NHRC) recommended that the Criminal Investigations Department investigate all police encounter deaths in which alleged suspects are killed while being pursued, arrested, or reportedly trying to escape. Many states did not follow this nonbinding recommendation and continued to conduct internal reviews only at the discretion of senior officers.

While NHRC guidelines direct state governments to report all cases of deaths from police actions to the NHRC within 48 hours, state governments did not consistently comply with the guidelines. The NHRC also directed state governments to provide monetary compensation to families of victims, but the state governments did not consistently comply with the guidelines. The armed forces were not required to report custodial deaths to the NHRC. According to the NCRB [(National Crime Records Bureau)], 51,120 complaints were registered against police officers nationwide in 2013. Only 53 cases of 1,250 ended in conviction, with 101 cases ending in acquittals. [...]

Arrest Procedures and Treatment of Detainees

Arbitrary Arrest

On May 23, the NHRC filed a complaint to the Assam police director general, based on media reports that a youth named Siddharth Kaushik Dutta was subjected to torture in a police station in Jorhat district of Assam. The police took no action on the complaints made by the mother of the victim. [...]

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

[...] Government Human Rights Bodies: The NHRC is an independent and impartial investigatory and advisory body, established by the central government, with a two-pronged mandate to investigate and remedy instances of human rights violations and to promote public awareness of human rights. It is directly accountable to parliament but works in close coordination with the Ministry of Home Affairs and the Ministry of Law and Justice. It has a mandate to address official violations of human rights or negligence in the prevention of violations, intervene in judicial proceedings involving allegations of human rights violations, and review any factors (including acts of terrorism) that infringe on human rights. The NHRC has the ability to issue summonses and compel testimony, produce documentation, and requisition public records. The NHRC also recommends appropriate remedies for alleged wrongs in the form of compensation to the victims of government killings or their families. It has neither the

authority to enforce the implementation of its recommendations nor the power to address allegations against military and paramilitary personnel.

Human rights groups claimed that institutional and legal impediments hampered the work of the NHRC. While the NHRC has the authority to initiate investigations and to request that state governments submit reports, it has no ability to enforce these requests, press charges, or grant compensation. It cannot investigate human rights violations by the armed forces. Human rights NGOs criticized the NHRC's budgetary dependence on the government and its policy of not investigating abuses more than one year old. They claimed the NHRC did not register all complaints, dismissed cases arbitrarily and did not investigate cases thoroughly, rerouted complaints back to the alleged violator, and did not adequately protect complainants.

According to the NHRC's statistics, the commission received 10,320 new complaints through July. There were 36,544 old and new complaints under review, of which 11,229 complaints were processed. Twenty-three of the 29 states also have human rights commissions, which operate independently under the auspices of the NHRC. In seven states the position of chairperson remained vacant. Human rights groups alleged that state committees were influenced by local politics and less likely to offer fair judgments than the NHRC.

In the course of its nationwide evaluation of state human rights committees, the HRLN observed that most state committees had few or no minority, civil society, or female representatives. The HRLN claimed the committees were ineffective and at times hostile toward victims, hampered by political appointments, understaffed, and underfunded. [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: extrajudicial executions and torture are defining characters of India's security establishment \[25 May 2015\] \[A/HRC/29/NGO/45\], 5 June 2015](#)

[...] 3. [...] The fact is that legal remedies for human rights abuses in India are a distant possibility. The ALRC has arrived at this conclusion with its experience of having worked and analysed the capacity of India's justice process to be able to provide effective and timely legal remedies. The legal system in India is clogged with enormous delays that often extend to decades, thereby rendering seeking a remedy to human rights abuses through India's legal process a wasteful exercise.

4. Besides, in cases of extrajudicial execution, more commonly referred to as "encountered killings" in India, the nucleus of a legal remedy, as in any other criminal investigation, is located in the willingness and the capacity of the law enforcement agency to undertake impartial, prompt, and scientific crime investigation. The ALRC is of the opinion that the law enforcement agencies in India lack the capacity and willingness to undertake such investigations.

5. Between January and May 2015, the ALRC has reported 25 cases of extrajudicial executions from the states of Andhra Pradesh and Telangana. The state police in both states were not even willing to undertake autopsies and file reports to the National Human Rights Commission in India on the two occasions the Commission directed them to do so. This reiterates ALRC's observations that human rights violations committed by law enforcement agencies in India are not an aberration against which corrective actions can be taken, but are, on the contrary, what is expected of law enforcement agencies as their duty in India. [...]

[...] 8. The ALRC has not come across more than 16 cases during the past 10 years where police officers or other law enforcement officers were investigated, prosecuted, and punished for custodial deaths. Such low number of convictions is not because torture or custodial deaths do not happen in state custody. It indicates the extent of impunity that law enforcement agencies enjoy in India for acts of crime –including extrajudicial killings –in which they engage. India does not have a policing policy or a national police commission that could initiate or augment a reform policy that could lead to ending the practice of torture or extrajudicial executions. [...]

- [South Asia Human Rights Documentation Centre, Gujarat's Anti-Terrorism Bill, Another Building Block in the Edifice of Authoritarianism \[HRF/233/15\], 15 April 2015](#)

[...] The Gujarat Control of Terrorism and Organised Crime [GCTOC] Bill is the latest effort at the devolution of authoritarianism. [...]

Immunity from Prosecution

There is a major problem with Section 25 of the GCTOC Bill that makes the government immune from any legal action for "anything which is in good faith done or intended to be done in pursuance of this

Act.” The Unlawful Activities (Prevention) Act 2004 granted immunity from prosecution to the union and state governments, and their employees. The 2008 amendments did not alter the provisions in the 2004 Act on immunity from prosecution for government officers and authorities and for members of the armed forces. Thus, an individual wrongly arrested, detained, and/or imprisoned under the GCTOC has virtually no legal recourse to seek compensation or combat impunity. The bail provisions are outlined in Section 20(4) of the bill. Under the provisions, as in TADA, at a bail hearing the judge is forced to make a preliminary judgment of the guilt of the accused. In ordinary bail proceedings, a judge is supposed to weigh various factors—such as ties to the community, reputation, employment status—that would indicate the likelihood of absconding, rather than simply likelihood of guilt. In addition, under Section 20(4.b) of the bill as in TADA, when the public prosecutor opposes a bail application, no suspect may be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence of which he is suspected, and that he is not likely to commit any offence while on bail. By reversing the ordinary burden of proof, the task of the accused to show reasonable grounds of innocence at such an early stage of the proceedings is made unreasonably difficult. [...]

➤ [Amnesty International: Amnesty International Report 2014/15 - The State of the World's Human Rights - India, 25 February 2015](#)

[...] Impunity was widespread for human rights abuses by state and non-state actors. Despite progressive legal reform and court rulings, state authorities often failed to prevent and at times committed crimes against Indian citizens, including children, women, Dalits and Adivasi (Indigenous) people. Arbitrary arrest and detention, torture and extrajudicial executions often went unpunished. [...]

Extrajudicial executions

Proceedings continued before the Supreme Court relating to a petition seeking investigations into over 1,500 alleged “fake encounters” – a term referring to staged extrajudicial executions – in Manipur state. Courts in Delhi, Bihar and Punjab convicted police personnel of being involved in fake encounter killings. The National Human Rights Commission ordered compensation for the families of people killed in a number of fake encounters. It also expressed concern about fake encounter killings in Uttar Pradesh by the state police.

In February, the country’s top investigative agency charged former officers of India’s internal intelligence agency with murder and kidnapping in an investigation into a fake encounter case in Gujarat in 2004. The Gujarat and Rajasthan state governments reinstated into service police officers on trial for their alleged involvement in fake encounter cases after they were released on bail from pre-trial detention.

Impunity – security forces

Despite some signs of progress, **almost absolute impunity for violations by Indian security forces continued.** Legislation providing virtual immunity from prosecution such as the Armed Forces Special Powers Act and Disturbed Areas Act were still in force in Jammu and Kashmir and parts of north-east India, despite ongoing protests.

In January, the army dismissed without trial charges of murder and conspiracy filed against five of its personnel by the Central Bureau of Investigation. The Supreme Court had ruled in 2012 that the army should try its personnel by court-martial for the extrajudicial executions of five villagers from Pathribal, Jammu and Kashmir, in 2000. In September, an army court-martial convicted five soldiers of killing three men in an extrajudicial execution in Machil, Jammu and Kashmir state, in 2010. In November, an army investigation charged nine soldiers in a case involving the killing of two Kashmiri teenagers in Budgam district.

Perpetrators of past violations in Jammu and Kashmir, Nagaland, Manipur, Punjab and Assam continued to evade justice. [...]

➤ [Human Rights Watch, World Report 2015 - India, 29 January 2015](#)

[...] Lack of accountability for security forces and public officials responsible for abuses perpetuates impunity and leads to further abuses. Police reforms are urgently needed to make the force rights-respecting and accountable. [...]

Impunity

Members of India’s security forces continue to enjoy impunity for serious human rights violations.

In a rare case in November 2014, the army reported that a military court had sentenced five soldiers, including two officers, to life in prison for a 2010 extrajudicial execution of three innocent villagers. The army ordered a military trial after using the draconian Armed Forces Special Powers Act (AFSPA) to block prosecution by civilian courts.

The army also chose a military trial for the alleged March 2000 extrajudicial killing of five civilians in Pathribal in northern Jammu and Kashmir state. However, in January, the army court of inquiry dismissed charges against five officers. AFSPA, which has been in force for decades in Jammu and Kashmir and India's northeastern states, has provided effective immunity to members of the armed forces for killings of civilians and other serious human rights violations. Numerous independent commissions in India have recommended repealing or amending the law but the government has failed to do so in the face of stiff opposition from the army.[...]

[...] Proposed police reforms have also languished even as police continue to commit human rights violations with impunity. These include arbitrary arrest and detention, torture, and extrajudicial killings. [...]

➤ [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)

[...] The NHRC is headed by a retired Supreme Court judge and handles roughly 8,000 complaints each year. While it monitors abuses, initiates investigations, makes independent assessments, and conducts training sessions for the police and others, its recommendations are often not implemented and it has few enforcement powers. The commission also lacks jurisdiction over the armed forces, one of the principal agents of abuse in several parts of the country, further hampering its effectiveness. The NHRC nevertheless makes a substantial contribution to accountability by submitting reports to international bodies such as the UN Human Rights Council, often contradicting the government's account of its performance. [...]

➤ [BBC News, Five police investigated after Delhi launches WhatsApp anti-bribery campaign, 13 August 2014](#)

Five policemen in India are being investigated for alleged corruption after officials received complaints on a newly-launched helpline number. Since its launch on 6 August, the helpline has received more than 3,700 WhatsApp messages and 622 calls. Officials said they had received two video and three audio messages and were investigating the reported incidents. Correspondents say there have long been allegations of corruption in the Delhi police force - and the rest of India. Delhi police commissioner BS Bassi last week launched a new helpline number [9910641064], asking the public to send audio or video messages via the instant messaging service WhatsApp "if any cop seeks a bribe or harasses a person". [...]

Ms Pillai is part of the vigilance department which investigates policemen after complaints of bribery, corruption, bad behaviour with complainants and inaction on complaints.[...] Of the five video and audio files received on the helpline, Ms Pillai said her department had initiated action in two cases, involving five policemen, for demanding - and accepting - bribes. In the first case, a complainant sent a video recording of an assistant sub-inspector receiving a bribe of 400 rupees (\$6.5; £3.9) while in the second incident, an audio recording revealed four policemen demanding and accepting bribes from a shopkeeper over a period of a year. "We have registered cases against the erring police officers under India's Prevention of Corruption Act and action has been initiated against them," Ms Pillai said. The policemen have been suspended. [...]

➤ [South Asia Human Rights Documentation Centre, Akshardham Judgment – I The Law at Work \[HRF/231/14\], June 2014](#)

The 16 May 2014 Supreme Court judgment in the Akshardham temple attack case has acquitted six innocent men who were tortured and then made to suffer imprisonment. The Supreme Court has come down hard on the investigating agencies of Gujarat and the way in which the lower judiciary has functioned in this case. [...]

The Supreme Court in its judgment expressed itself in no uncertain terms about how innocents are framed and the shoddy nature of investigations, conveying its 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 (p 280, para 136) [...]

The role of the lower courts was not a happy one. They failed in not considering the deposition of some brave doctors who deposed in favour of the accused pointing out that they "had complained of severe beating by the police prior to recording of the confessional statements" (p 65, para 48). As is expected in such situations the medical records such as the X-ray plates were missing from the file (p 65, para 48). It is distressing that the lower court and the high court did not take umbrage at the suppression of both evidence and documents by the prosecution. " [...]

[...] "And yet the reliefs it provided to the acquitted fell far short of what it loftily claimed. There was no court order granting monetary compensation or other restitution for those who had lost 11 years of their lives for a crime they did not commit. No orders were given for the prosecution of those who had held these men in illegal police custody, concealed evidence, fabricated evidence, and committed torture. Nor were there orders against elected and other public officials for dereliction of duty." [...]

➤ [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Remedies to human rights violations a mirage \[17 February 2014\] \[A/HRC/25/NGO/46\], 25 February 2014](#)

1. [...] The jurisprudence developed by the country's courts is model to developing and advanced jurisdictions alike in interpreting state responsibility on safeguard human rights guarantees. The judiciary in India enjoys a unique position, shared with only three other jurisdictions in Asia - Japan, Hong Kong and South Korea - concerning independence and absolute non-interference by the executive and by other powerful organs of the state, including the armed forces.

2. Yet, India is one of the least performers in the world when it comes to realisation of fundamental human rights guarantees to all its citizens, irrespective of their economic, religious and social status. The country performs poorly by comparison to rest of the world democracies, concerning the actualisation of remedies to human rights abuses.

3. One of the most serious concerns affecting the realisation of adequate and effective remedies to human rights abuses to victims is the enormous delay in adjudications. A litigation to complete in India could take often more than a decade. According to a statement made by the Prime Minister of India in the Lok Sabha in 2010, India has the largest backlog of cases in the world. This situation has not improved, since today, the country has an estimated 30 million cases pending disposal. Of this a substantial number of cases are more than a decade old. An estimated four million cases are pending before the country's High Courts and the Supreme Court itself has an estimated 65,000 cases pending before it.

[...] 5. The Union Minister for Law and Justice, Mr. Kapil Sibal, while assuming office in 2013, promised radical changes to end this impasse. However, the unaddressed huge backlog of cases poses what Mr. Sibal's immediate predecessor in office stated, a "threat to constitutional democracy" that challenges the rule of law framework which has "failed to guarantee order and stability in society".

6. Delays in adjudication alone is not what that threatens rights to remedies for human rights abuses. Refusing to register complaints is the defining character of India's criminal justice system. This practice received the maximum and deserving bad press perhaps in 2013 when it was repeatedly revealed, that in many cases of sexual abuse against women including in cases of rape, the police have refused to register complaints. So much so, the most recent amendment to the criminal law in India, made effective through the Criminal Law (Amendment) Act, 2013, promulgated on 2 April 2013 incorporated a new Section to the Indian Penal Code, 1860, Section 166 A, that makes it a punishable offense for a public servant, to fail to register cases of sexual abuse against women.

7. Yet the fact that the implementation of this provision is least followed is proved through subsequent cases reported from India, where once again the police were accused and later proved of having failed to register cases after receiving credible complaints of sexual abuses against women. So far, not a single police officer in India who has contravened this provision of law has been charged with a crime punishable under this section or placed on trial. [...]

9. [...] The fact that there is no independent crime-investigating agency in India, places the responsibility of investigating such crimes with the same agency negating the premises of independence and honesty in investigations. [...]

11. India today also lacks a legislation that provides witness protection. Threatening and intimidating of witnesses particularly in cases where the victims are pursuing a criminal complaint against a state agent, like a police officer is common in India.

12. Often the Public Prosecutor, who appears for the victim in a criminal case, joins forces with the prosecuted state agent, thereby undermining the security of the victim as well as the witnesses in the case. Additionally, the office of the Public Prosecutor, is one of the most corrupt and inept institutions in the entire criminal justice administration setup in the country that is least spoken about or investigated so far.

13. India also lacks a legal and normative framework that sets universally acceptable standards for punitive and monetary compensation in cases where financial compensations are awarded for human rights abuses. Monetary compensation awarded for a human rights violation varies wildly between jurisdictions. For example if a civil litigation for compensation in a case of custodial torture fetches an award of Rupees one million in one state, the award may be as less as Rupees 25,000 in another case, tried and adjudicated in another jurisdiction under similar circumstances. The Supreme Court of India has so far refused to lay down any yardsticks for its lower courts while adjudicating similar claims. The payment of paltry compensation, as low as, sometimes a few thousand rupees serves as one of the most disheartening as well as discouraging factors for victims to approach the court seeking compensation for human rights abuses. Additionally the costs of the litigation far exceed the award, often ten to twenty times of the compensation awarded.

14 [...] victims of human rights abuses face an exceptionally uphill task when they chose to pursue legal remedies against their cause.[...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Absence of police reforms threatens national security \[17 February 2014\] \[A/HRC/25/NGO/65\], 25 February 2014](#)

[...] The Police Complaints Authority (PCA) constituted at the district and state levels, post the Prakash Singh case, is a far cry of what an independent police complaints' adjudication body should be. These entities are manned by serving police officers and retired lower court judges, who consider appointment to the PCA a post retirement employment opportunity. This is the reason why, so far no critical actions have ever reported to have been taken by the PCAs across the country, against police officers. [...]

- [Human Rights Watch, World Report 2014 - India, 21 January 2014](#)

[...] An independent judiciary and free media also acted as checks on abusive practices. However, reluctance to hold public officials to account for abuses or dereliction of duty continued to foster a culture of corruption and impunity. [...]

Barriers to fair trial

- [Asian Human Rights Commission, INDIA: Place primacy on reforming the criminal justice process, 25 June 2015](#)

[...] The situation of the Judiciary is equally appalling. The Union budget for 2015 has only earmarked a pittance of USD \$13 million, which is a meagre 0.04% of the total budget spending, for the Judiciary. When translated into actual practice, this means no additional judges will result in a country that has one of the widest people to judge ratios in the world, and no additional infrastructure for courts to function, where delays in adjudication is perhaps the longest in the world. The limited budget will also stall the computerisation of court registries. [...]

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

[...] d. Arbitrary Arrest or Detention

[...] Pre-trial detention

[...] There were incidents in which authorities allegedly detained suspects beyond the legal limit for police custody. [...]

There were reported cases in which police denied suspects the right to meet with legal counsel, as well as cases in which police unlawfully monitored suspects' conversations and denied their right to confidentiality. [...]

[...] The law permits preventive detention in certain cases. The National Security Act allows police to detain persons considered security risks anywhere in the country, except Jammu and Kashmir, without charge or trial for as long as one year. [...] The Public Safety Act, which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for as long as two years without visitation from family members. Detainees are allowed access to a lawyer during interrogation, but police in Jammu and Kashmir routinely employed arbitrary detention and denied detainees, particularly the destitute, access to lawyers and medical attention. [...]

The HRLN [Human Rights Law Network] in Kochi, Kerala, noted that certain prisoners with mental disabilities in the Kerala central prison who were considered "not fit for trial" had been awaiting trial for 10 to 26 years. According to the NGO, the prisoners had been in detention far longer than their potential sentences. In June 2013 the HRLN filed a writ petition with the Kerala High Court for the release of those prisoners. The court responded by issuing an order directing the state government to provide adequate medical treatment to the accused in order to render them fit for trial.

Lengthy arbitrary detention was a significant problem because of the overburdened and under resourced court systems and a lack of legal safeguards. The government continued efforts to reduce lengthy detentions and alleviate prison overcrowding by using "fast track" courts, which specify a trial date or timeline, provide directions for case management, and encourage the use of bail. These courts were criticized for failing to uphold due process. [...]

[...] Denial of Fair Public Trial

The law provides for an independent judiciary, but judicial corruption was widespread.

The judicial system remained seriously overburdened and lacked modern case management systems, often delaying or denying justice. An analysis of the data kept by the Ministry of Law and Justice reported a 34 percent vacancy of judges in the high courts as of August 1.

Trial Procedures

The criminal procedure code provides for public trials, except in proceedings that involve official secrets or state security. Defendants enjoy the presumption of innocence, except as described under UAPA [Unlawful Activities Prevention Act] conditions, and may choose their counsel. The state provides free legal counsel to poor defendants, but access to competent counsel often was limited, especially for the poor, and the strained justice system usually resulted in major delays in court cases. The law allows defendants access to relevant government evidence in most civil and criminal cases, but the government reserved the right to withhold information and did so in cases it considered sensitive.

While defendants have the right to confront accusers and present their own witnesses and evidence, underprivileged defendants sometimes did not exercise this right due to lack of proper legal representation.

Defendants have the right not to testify or confess guilt. Courts must announce sentences publicly, and there are effective channels for appeal at most levels of the judicial system [...]

➤ [US Department of State, Country Report on Terrorism 2014 - Chapter 2 - India, June 2015](#)

[...] Legislation, Law Enforcement, and Border Security:

India continued to address terrorism-related activities through existing statutes, including the Unlawful Activities (Prevention) Act (UAPA) (1967), the SAARC Convention on Suppression of Terrorism Act (1993), and various state-level laws. The UAPA presumes the accused to be guilty if the prosecution can produce certain incriminating evidence indicating the possession of arms or explosives or the presence of fingerprints at a crime scene, regardless of whether criminal intent is demonstrated. State governments held persons without bail for extended periods before filing formal charges under the UAPA. Other state-level counterterrorism laws reduce evidentiary standards for certain charges and increase police powers to detain a person and his or her associates without charges and without bail for extended periods. [...]

➤ [UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 6 May 2015](#)

[...] 44. The country visit report included some of the challenges in the accountability process, for which it was recommended that the State consider launching a process of reflection on the need to reform its judiciary with the aim of reducing the length of judicial proceedings and strengthening the independent functioning of the judiciary (see A/HRC/23/47/Add.1, paras. 67 and 125). The Special Rapporteur is not aware of any such process, as recommended, being undertaken.

[...] 52. In his country visit report, the Special Rapporteur recommended that the State establish an effective witness and victim protection programme (see A/HRC/23/47/Add.1, para. 116). No programme has yet been created by the State. [...]

➤ [South Asia Human Rights Documentation Centre, Gujarat's Anti-Terrorism Bill, Another Building Block in the Edifice of Authoritarianism \[HRF/233/15\], 15 April 2015](#)

[...] India has no dearth of laws to deal with violent activity. [...]The Gujarat Control of Terrorism and Organised Crime (GCTOC) Bill is the latest effort at devolution of authoritarianism. As passed, it has many problems. [...]

Detention without Charge

It brings back the detention of suspects for up to 180 days without charge. This is far beyond the maximum length permitted under Section 167(2)(a) of the CrPC, which is 90 days.

Use of Confessions

It has reincarnated one of the most dangerous aspects of the Terrorist and Disruptive Activities (Prevention) Act (TADA) of 1987, which allowed confessions before a police officer admissible in evidence. Section 32 of the Prevention of Terrorism Act (POTA) had a similar provision. Confessions made by a person before a police officer of rank not lower than a superintendent of police become admissible as evidence during the trial. This flies in the face of Article 20(3) of the Constitution, which proscribes the state from compelling a person to be a witness against himself. Even though the substantive content of this constitutional guarantee has been read down over the years, the admissibility of such confessions as evidence in trial is nevertheless inconsistent with the present exposition of the law. In addition, it is directly contrary to the intention of the provisions of the Indian Evidence Act. Under the Evidence Act, confessions made to a police officer or in police custody are not admissible in evidence on the ground that such provisions may lead to the use of torture and other coercion by the police to obtain evidence. Section 27, which is an exception to the above rule, carves a limited opening of admissibility if a fact discovered pursuant to a confession in police custody can be independently corroborated.

The GCTOC does not explicitly prohibit statements made to the police and extracted under torture from being admissible in evidence against an accused. This provision also violates the right of an accused set out in Article 14(3) (g) of the International Covenant on Civil and Political Rights (ICCPR)—that of not being “compelled to testify against himself or to confess guilt.” India has ratified the convention. The prohibition of torture is absolute. However, India does not appear to be committed to bringing an end to it. [...]

➤ [Asian Human Rights Commission, INDIA: What else does the country expect of its criminal justice process? 2 April 2015](#)

A statement made in court by the driver of a movie actor has again exposed the abundant opportunities for exploitation of the criminal justice process in India; defending his employer, the driver has stated it was the driver, not the actor, behind the wheel when the vehicle sped out of control, killing a person sleeping on the pavement and causing injuries to three others. [...]

The Indian social media is following the case, with comments mostly against the justice process, underlining a common sentiment in India: “the rich and powerful can get away with anything.” One cannot find fault with this public sentiment.

It is the right of an accused in a criminal trial to summon witnesses on behalf of the accused. This case is not an exception. What, however, stands out, is the time the justice process has taken to complete the trial. Despite 12 years having passed, the case is still under trial. One of the curses of the Indian justice process is scandalous delay in adjudication. Anyone, with little effort can prolong the process well beyond a decade. Such delay questions prefixing the word “justice” to the process. [...]

There are many options available for an investigating officer to prove who was at the wheel and what caused a road accident. Science and expertise in crime investigation have advanced to such levels that fingerprinting is now considered out-dated technology. [...] Had crime investigation in India been an advanced science, and had Indians respected their justice process, people would think twice before

attempting to negate a crime investigation by giving a defence witness testimony owning up to the crime. [...]

- [Asian Legal Resource Centre, Written statement* submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status, INDIA: Criminal justice reforms elementary to control violence against women, 20 February 2015](#)

[...] The police in India represent fear and ineptitude. However, it is this very force that victims of sexual abuse have to depend upon for lodging a complaint and further for investigation. It is the same police that file the investigation report in court, based on which a criminal trial takes place. With a flawed investigation, there is not much a prosecutor and a judge can do to serve justice. The inability of the Judiciary to complete trials within a reasonable time only adds to the problem. A failed investigation and a decade long trial not only render the initial complaint meaningless, but also make a mockery of the justice process. [...]

- [Asian Human Rights Commission, INDIA: Criminal justice reform duty of state, not court, 16 April 2014](#)

[...] The reason such change, essential for health of Indian society, has not been ushered in is that agencies undertaking crime investigations are used for social control rather than solving crime. It follows that arbitrary arrests, disappearances, and extrajudicial executions are common in India. Social control is achieved by misusing uniformed state agencies to gear them to use brute force – and torture, with impunity – in order to instill fear and subservience in the population. Prolonged periods of abuse of investigation agencies for social control has demoralised these agencies to such an extent that they engage in horrendous crimes committed with impunity against ordinary citizens. The Indian polity encourages and nurtures this criminal character of investigation agencies.

[...] Unfortunately, other than complaining about the inordinate delay in adjudication, the Indian judiciary has failed to force the state to provide adequately for the judiciary to undertake its work. It is again trite to state that the single largest impediment for witnesses to freely testify in court is the delay the cases undergo, with decades going by before trials are completed. If one knows that one would have to visit the courts for ten years or more, forget about the reality of the lack of witness protection in India, how many witnesses to a crime would be willing to testify? [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Remedies to human rights violations a mirage \[17 February 2014\] \[A/HRC/25/NGO/46\], 25 February 2014](#)

[...] India today also lacks a legislation that provides witness protection. Threatening and intimidating of witnesses particularly in cases where the victims are pursuing a criminal complaint against a state agent, like a police officer is common in India.

Often the Public Prosecutor, who appears for the victim in a criminal case, joins forces with the prosecuted state agent, thereby undermining the security of the victim as well as the witnesses in the case. Additionally, the office of the Public Prosecutor, is one of the most corrupt and inept institutions in the entire criminal justice administration setup in the country that is least spoken about or investigated so far. [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Absence of police reforms threatens national security \[17 February 2014\] \[A/HRC/25/NGO/65\], 25 February 2014](#)

[...] 5. Enormous delays in prosecution and the requirement of the witness to attend court hearings for decades without end, discourages people to voluntarily commit as witnesses to crimes if they had witnessed the commission of a crime. The police overcome this by arranging stock witnesses, often local criminals, who are cited as witnesses in prosecutions that often fail the test of cross-examination in courts. When the prosecution of a crime is based solely upon the confession statement of an accused and witnesses in cases fabricated by the investigator, the criminal trials ends up in acquittals. This is why, India has one of the lowest conviction rates in the civilised world.

[...] 7. Long delays in prosecution, often running into decades, places India in that category of countries that holds a substantially large number of under trial prisoners. Of persons held in custody, convicted or otherwise, the national average is that 64.7% are under trials. In some states like Bihar, Andhra Pradesh and Meghalaya, this percentage of under trials exceed 80% of the total number of persons held in custody in state facilities. [...]

A substantial number of these individuals are poor, many illiterate, and unable to afford for a privately paid legal defence. When their cases come finally for a trial, they might have stayed in under trial detention much more than the maximum number of years they could be convicted for the offense alleged against them. A shortcut the trial courts then adopt is to encourage the suspect to plead guilty, and to set off the under trial detention in lieu of the sentence and release the person from custody. [...]

Barriers to justice for religious minorities

➤ [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

[...] Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

[...] Other Societal Violence or Discrimination

Societal violence based on religion continued to be a concern. A report submitted to the government by three senior police officials from Maharashtra, Uttar Pradesh, Tamil Nadu, and one IB representative entitled "Strategy for Making Police Forces More Sensitive Towards Minority Sections" acknowledged bias within the police force against Muslims and reported the Muslim perception of police as "communal, biased, and insensitive." [...]

➤ [Immigration and Refugee Board of Canada, India: Treatment of Sikhs in Punjab \(2013-April 2015\) \[IND105132.E\], 12 May 2015](#)

[...] 2.2.1 Government Inaction

Despite "large public demonstrations seeking an end to impunity," hundreds of criminal cases pertaining to Sikh murders in 1984 that were closed by the police have not been reopened (AI 25 Feb. 2015, 179). Minority Rights Group International (MRG)'s World Directory of Minorities and Indigenous Peoples reports that although several commissions have been set up by the government in order to investigate the 1984 riots, there has been "no move to punish the perpetrators of the violence or even to prosecute cases against them" (n.d.). A 29 October 2014 article by Human Rights Watch reports that only 30 people have been convicted since the 1984 violence; no police officers have been convicted and no prosecutions for rape have been made.

In correspondence with the Research Directorate, an associate professor with the Department of Asian Studies who is also Chair of Punjabi Language, Literature and Sikh studies at the University of British Columbia stated that there is a "continued silence" regarding what happened to Sikhs in 1984 (Associate Professor 27 Apr. 2015). The same source notes that

[t]he government has consistently resisted investigation, and even investigations that have been pursued have ended largely in nothing in terms of real action. There are many cases languishing in the courts, and many powerful political leaders with ties to the violence remain powerful. There has been no effort at reconciliation along these lines, no memorials built by the government to acknowledge what went wrong. Anyone who brings up 1984 is deemed anti-national. This continues today. (ibid.)

[...] 4. Recourse and Protection in Cases of Mistreatment

[...] The Assistant Professor stated that India has a "largely robust, open, and independent judicial system in which Indian citizens can approach the courts for relief including against illegal or inappropriate actions by the state and its agents" (10 Apr. 2015). While the judicial system is independent, "it is also subject to periodic interpersonal pressure from government/political officials or ideological corruption to its stated impartiality" (ibid.). The Assistant Professor further stated that the constitutional rights and liberties of Indian citizens can be abridged by the government through the implementation of various types of national security legislation for "disturbed areas" of the country experiencing insurgency or insurrection. To the best of my knowledge, none of these special national security legislations are currently in effect in Punjab. (ibid.)

The Co-Director of ENSAAF indicates that recourse is not available to Sikhs or political activists opposing the ruling government in Punjab (22 Apr. 2015). Government officials use procedural tactics in order to demonstrate that they are following the law, however "the police or state government may influence the decision of judges resulting in an unfair trial or no trial at all" (ibid.). The Co-Director further notes that if a Sikh community member, activist or member of an opposition party reports mistreatment to the police, the police do not follow up on the complaints and police officers and or government officials are not suspended or prosecuted" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. [...]

➤ [UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 6 May 2015](#)

[...] B. Killings related to communal violence

28. In his country visit report, the Special Rapporteur noted that tension between various communities in India frequently resulted in incidents of communal violence. Numerous reports concerning major incidents of communal violence indicated an often wilful failure by State forces to protect citizens. The Special Rapporteur documented reports of apparent tolerance by State forces of attacks against religious minorities. More alarming were reports that State agents were actively involved in attacks on the lives and rights of such minorities. The Special Rapporteur highlighted statistics from 2011 that indicated that 91 people had died that year in incidents of communal violence (See A/HRC/23/47/Add.1, paras. 43 and 44). Statistics for 2013 indicate that the figure has only decreased slightly to 71 deaths.

29. During the country visit, special attention was drawn to the high level of communal violence in Gujarat. In his report, the Special Rapporteur expressed concern at the lengthy and less than effective conduct of the inquiries carried out at that time into the events. He recommended that the Nanavati-Metha Commission, established in 2002 and appointed to investigate the events that took place in Gujarat that year, should ensure that their findings are published in a swift and transparent manner. At the time of drafting the present report, the Nanavati-Metha Commission had concluded its investigation, 12 years and more than 20 extensions later, and submitted its final report to the Chief Minister of Gujarat in 2014. The report has not been made public and the content of the report is unknown. The Special Rapporteur calls on the Government to make the Commission's full report public.

30. In the context of investigating and addressing communal violence, the Special Rapporteur mentioned in his country visit report the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill of 2011, which aimed at preventing communal violence and ensuring accountability for the failure to prevent such violence and protect life and property. The Bill also introduced the principle of command and/or superior responsibility, and stipulated the rights of victims to reparations and remedies. The Special Rapporteur notes that the Bill has not been passed. The Special Rapporteur welcomes the statement made by the Prime Minister on 17 February 2015 expressing strong condemnation of religious violence and undertaking to act strongly in this regard [...]

➤ [US Commission on International Religious Freedom, USCIRF; Annual Report 2015; 2015 Country Reports: Tier 2; India, 30 April 2015](#)

[...] Key Findings

[...] Despite the country's status as a pluralistic, secular democracy, India has long struggled to protect minority religious communities or provide justice when crimes occur, which perpetuates a climate of impunity. Incidents of religiously-motivated and communal violence reportedly have increased for three consecutive years. [...]

Background

[...] Religious minority communities frequently accuse the RSS [Rashtriya Swayamsevak Sangh], VHP [Vishva Hindu Parishad] and other Hindu-nationalist groups and individuals of intolerance, discrimination, and violence against them. In addition, they cite police bias in failing to investigate sufficiently and arrest perpetrators of violence. Moreover, religious minority communities voice concern that high-ranking BJP [Bharatiya Janata Party] members protect or provide support to these groups. [...] The country has experienced periodic outbreaks of large-scale communal violence against religious minorities, including in Uttar Pradesh in 2013, Odisha in 2007-2008, Gujarat in 2002, and Delhi in 1984. India has established special structures, such as Fast-Track Courts, Special Investigative

Teams, and independent commissions, to investigate and adjudicate crimes stemming from these incidents. However, their impact has been hindered by limited capacity, an antiquated judiciary, inconsistent use, political corruption, and religious bias, particularly at the state and local levels. As a result, a climate of impunity continues to exist in some Indian states, exacerbating the social and religious tensions among communities. [...]

Religious Freedom Conditions 2014–2015

Violations against Christians

[...] Reportedly, local police seldom provide protection, refuse to accept complaints, rarely investigate, and in a few cases encourage Christians to move or hide their religion. [...]

Redress for Past Large-Scale Violence

The Indian courts are still adjudicating cases stemming from large-scale Hindu-Muslim communal violence in Uttar Pradesh in 2013 and in Gujarat in 2002, Hindu-Christian communal violence in Odisha in 2007-2008, and Hindu-Sikh communal violence in Delhi in 1984. NGOs, religious leaders, and human rights activists allege religious bias and corruption in these investigations and adjudications. [...]

➤ [Christian Solidarity Worldwide, In Depth India, 20 April 2015](#)

[...] CAN'T THE GOVERNMENT HELP?

The current ruling party, the Bharatiya Janata Party (BJP) is the political arm of Hindutva. Unfortunately, the government's very close affiliation to this organisation, which has a large civil society following and heads other nationalist organisations under it, is part of the problem. These organisations are spreading their ideologies all over India. Reports suggest that the movement "has vowed to free India of Christians and Muslims by 2021". Hatred towards Christians as the 'other' is spreading to such an extent that India today is moving away from the secular state it was intended to be when it was founded. Figures show that incidents against Christians in India have jumped 55% since the new government took office in May 2014.*

After a long silence despite numerous attacks on Christians, finally in February this year, Prime Minister Modi said, "We cannot accept violence against any religion on any pretext and I strongly condemn such violence. My government will act strongly in this regard." But this commitment has yet to materialise. [...]

➤ [Internal Displacement Monitoring Centre, India; Countrywide response urgently required to address chronic internal displacement, 20 April 2015](#)

[...] National response

Despite strong civil and human rights provisions in the Constitution, India has no national policy or legislation that addresses the needs of those displaced by armed conflict, inter-communal violence or human rights violations. In the absence of national guidance to regulate assistance and protection to IDPs, state authorities are left to decide the extent and scope of the relief to IDPs. As a result, responses are often ad-hoc and discretionary with significant differences between regions and sometimes between IDP groups. Socially excluded communities, such as scheduled castes and tribes and religious minorities, often disproportionately affected by displacement caused by conflict and natural hazards, also tend to be excluded from government assistance (ECHO, 14 October 2013). [...]

➤ [Amnesty International, Amnesty International Report 2014/15 - The State of the World's Human Rights - India, 25 February 2015](#)

[...] Communal violence

A string of communally charged incidents in Uttar Pradesh prior to elections led to an increase in tensions between Hindu and Muslim communities. Three people were killed in clashes in Saharanpur, Uttar Pradesh state, in July. Politicians were accused of, and in some cases criminally charged with, making provocative speeches. Communal clashes also occurred in some other states. In December, Hindu groups were accused of forcibly converting several Muslims and Christians to Hinduism.

In January, survivors of violence between Hindus and Muslims in Muzaffarnagar, Uttar Pradesh, in late 2013 were forcibly evicted from relief camps. Investigations into the violence were incomplete. Thousands of people, mainly Muslims, remained displaced at the end of the year.

November marked the 30th anniversary of violence in Delhi in 1984 which led to the massacre of thousands of Sikhs. Hundreds of criminal cases closed by the police citing lack of evidence were not reopened, despite large public demonstrations seeking an end to impunity.

Progress in investigations and trials in cases related to the 2002 violence in Gujarat, which killed at least 2,000 people, mostly Muslims, continued to be slow. In November, the Nanavati-Mehta Commission, appointed in 2002 to investigate the violence, submitted its final report to the Gujarat state government. The report was not made public. [...]

- [Society for Threatened Peoples, Written statement* submitted to the UN Human Right's Council by the Society for Threatened Peoples, a non-governmental organization in special consultative status; Religious Freedom in India and Pakistan, 23 February 2015](#)

[...] The growing influence of Hindu nationalists in India is leading to a targeted marginalization of Christians and Muslims and to a general climate of intimidation and violence against other faiths. India's democracy is at a crossroads. If Prime Minister Narendra Modi fails to take action against the Hindu extremists, India's reputation as a nation of law is at stake. More and more often, churches or mosques are burned down – and people of other faiths are forced to convert to Hinduism. Christians and Muslims in India are not only demanding better protection, but also clear words and actions of the Prime Minister to ensure religious freedom in Asia's largest democracy. [...] Because the government prefers to remain silent, the Hindu nationalist movements Rashtriya Swayamsevak Sangh (RSS) and Vishva Hindu Parishad (VHP) – which are close to Modi's Bharatiya Janata Party (BJP) – feel encouraged in their attempts to exclude other faiths and to practice forced conversions. [...]

- [Human Rights Watch, World Report 2015 - India, 29 January 2015](#)

[...] Treatment of Minorities

More than a year after communal violence killed over 60 people, mostly Muslims, and displaced tens of thousands in Muzaffarnagar and Shamli districts of Uttar Pradesh state, both the central and the state governments had not provided proper relief or justice. The BJP even chose Sanjeev Balyan, charged with inciting violence during the riots, as their candidate in parliamentary elections and appointed him as a minister, intensifying Muslim insecurities.

[...] Two separate reports—one by a think tank and another by three senior police officials—found a deficit of trust between Muslim communities and the police. Muslims perceive the police to be communal, biased, and insensitive in part because of the misconduct of some police personnel, especially during communal tensions. [...]

- [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)

[...] F. Rule of Law: 9 / 16 [...]

[...] The criminal justice system fails to provide equal protection to marginalized groups. Muslims, who make up 13 percent of the population, are underrepresented in the security forces as well as in the foreign and intelligence services. [...]

The constitution bars discrimination based on caste, and laws set aside quotas in education, government jobs, and seats in elective offices for historically underprivileged scheduled tribes, scheduled castes (Dalits), and groups categorized by the government as "other backward classes." However, members of the lower castes and minorities continue to face routine discrimination and violence. [...]

- [Christian Solidarity Worldwide, Freedom of religion or belief, 9 September 2014](#)

[...] SUMMARY OF CONCERNS

The scars of the 2008 massacre continue to plague the Christians in Odisha (formerly Orissa) State as they endeavour to eke out an existence. With no visible will from the state or central government to bring the perpetrators to justice, the Christians continue to live in a climate of insecurity and with the fear of further attacks. Many were forced to leave their homes with little resources to start afresh, and have received little financial aid from the state.

The lack of will by state institutions to deter future communal violence means that the plight of religious minorities in Odisha and the rest of India is disconcerting. [...]

KEY CONCERNS

[...] A 2014 visit to Odisha by Christian Solidarity Worldwide to meet victim-survivors of the violence revealed that six years on there has still been no justice for these people, and the perpetrators continue to roam the streets freely. The seven accused Christians are still serving life imprisonment. [...]

- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
 [...] 16. Numerous testimonies shared on recurrent episodes of communal violence against religious minorities, including Muslims and Christians, reflect a deep sense of insecurity and trauma of women living in those communities. Experiences included women being stripped, burned, attacked with objects inserted into their vaginas and sexually assaulted in myriad ways because of their religious identity. It was reported that perpetrators of those crimes usually held positions of authority and often went unpunished. Further, those minorities are allegedly excluded from access to education, employment and adequate housing on equal terms with other citizens, despite the existence of affirmative action schemes and measures by the Ministry of Minority Affairs and the National Commission for Minorities aimed at empowering minority women through the provision of knowledge, tools and training.
 [...] 67. Impunity for crimes relating to communal violence is the norm. [...]
- [Asian Legal Resource Centre, Written statement* submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Hurt, hunger and humiliation for the refugees of the Republic, 4 March 2014](#)
 [...] 1. The Asian Legal Resource Centre (ALRC) draws the attention of the Human Rights Council to the disastrous aftermath of the sectarian attacks in September 2013 on the religious minorities in Muzaffarnagar and neighboring areas of Uttar Pradesh in India. The government of Uttar Pradesh has recently admitted in front of the Supreme Court of India that out of the 65 deaths, 50 came from the minority community alone. [...]
 5. [...] Four months after the violence, the police have largely failed to arrest and prosecute those responsible for the attacks, including brutal cases of rapes and gang rapes, 13 of which have been registered. The failure to act by the police in rape cases has forced other victims into silence. These developments have forced the community to marry even their underage daughters in hopes of protection. Local camps have witnessed hundreds of such marriages. [...]
- [Christian Solidarity Worldwide, Communalism in an election year, February 2014](#)
 [...] Executive Summary
 [...] The most visible outworking of communalism is the violence which it engenders against religious minorities. Communal violence often has a long genesis and significant after-effects. In spite of largely robust legislation, impunity is a recurrent factor in communal violence, often reflecting a level of complicity from the administration and deep systemic problems with the Indian Police Service. The lack of punishment provides no disincentive to the continuation of violence. [...]
 Communalism and communal violence
 [...] In spite of largely robust legislation, impunity is a recurrent factor in communal violence, often reflecting a level of complicity from the administration. A senior Uttar Pradesh police officer, Dr V.N. Rai, is widely quoted as saying that if communal violence continues beyond 48 hours, this can only be due to a level of official complicity.
 There are deep structural problems involved here, with police overwhelmingly beholden to political authority as the relationship between the two remains largely unchanged since colonial times. The overall condition of the police system in India is highly concerning, with pervasive political interference, systemic corruption, understaffing, lack of training, and atrocious working conditions being among the most serious problems. Police have a reputation across the country for being ineffective, partisan, and abusive, and the level of trust between police and the public is extremely low. Despite a series of recommendations, including from the Dharam Vira Commission in 1982, and a landmark Supreme Court ruling in 2006 that central and state governments must enact laws to reduce political interference in the police, comprehensive police reform has not been undertaken and continues to be a pressing unmet need for India.
 The lack of punishment for perpetrating incidents of violence provides no disincentive to its continuation. Even when police take the side of the victims, inaction is commonplace. Sometimes 'compromises' are brokered between perpetrators and victims, which effectively exonerate perpetrators and take the place of justice.
 [...] Case study: Kandhamal District, Odisha State
 Five years after the traumatic communal violence targeting the Christian community in Kandhamal and several other districts in August 2008, the reverberations of the attacks continue. Episodes of

communal violence such as this need to be viewed in the context of a long historical time frame: they often have a long genesis, and their impact continues to be felt for years. [...]

According to government figures, 38 people were killed. Local monitoring groups who have documented the impact of violence say that at least 90 people were killed and 54,000 displaced. Approximately 5,600 houses were damaged or destroyed, as well as upwards of 300 churches.

[...] JUSTICE

Although there have been a number of convictions recently, and the post-violence conviction rate is higher than the low national average, still the overall picture shows widespread impunity. Fast track courts set up to deal with communal violence cases have now been closed, and legal aid groups operating in the area say progress has slowed further as a result. Following the violence, 827 FIRs were filed from the 3,232 complaints which local human rights defenders say were taken to the police. FIRs are pre-requisites for police investigations. Of these FIRs, 315 cases (almost 40%) were not pursued. In the 259 cases which have been concluded, 184 have resulted in acquittals, while 477 people have been convicted in 75 cases, mostly for lesser offences such as arson; and many have since been released. Only six have been convicted for their role in any of the killings.

Even some of the most serious cases have received cursory investigations or none at all. A young Hindu Dalit woman was gang raped, and she said that the police have done nothing for her, the fast track court did not give her an opportunity to testify, and those whom she identifies as her rapists are on bail in her own village and have made threats against her life. A Catholic nun was gang raped, and bravely read a statement to the press on 24 October 2008 to appeal for justice, believing that her case would be ignored by police. Many murder cases are also deemed to have been arbitrarily downgraded to lesser offences or dismissed, and human rights activists are preparing to move the Supreme Court to reopen approximately 30 such cases.

Prospects for the delivery of justice are hampered by several factors.

Firstly, many victims and witnesses lack any confidence in the police, public prosecutors and courts. They perceive there to be a close relationship between the state administration and Sangh Parivar, and do not see the state as acting on their behalf. They believe that pursuing justice through the courts is unlikely to bring any benefits, and involves far higher risks to their safety than simply keeping a low profile and declining to cooperate. Without addressing this confidence issue, it is difficult to imagine any fundamentally different outcomes in future.

Secondly, a related factor is that witness intimidation has been widespread and has gone unchecked. Aggressors have frequently demanded that Christians should withdraw their police cases or face further violence. Victims or witnesses and defendants often live close to each other, in a region with very limited police cover. It is quite conceivable that they could travel home on the same bus after a court hearing. Yet the fears of victims and witnesses and their requests for protection are often treated with disdain: in one anecdotal example from 2012, a judge mockingly asked whether he was expected to stand outside a victim's house with a stick, in order to protect the witness. A Christian community leader told CSW about filing a case when he was threatened after testifying in a fast track court in early 2013, but he was granted no protection and now lives in fear. Episodes such as these further sap the confidence of victims or witnesses, making many unwilling to testify.

Thirdly, the court system is very difficult for victims to navigate, and in practice they are entirely reliant on the pro bono assistance of legal aid groups, which is inevitably limited in scope. [...]

Case study: Karnataka State

[...] Impunity

The police response to communal violence in Karnataka has typically been very weak, and it is usually the case that perpetrators of the violence are not arrested. Victims have also attested to the active complicity of the police in the violence they faced, which has drained their confidence in the justice system. In some instances the police have been known to invite the perpetrators and victims to meet together to come to a compromise, rather than follow the formal course of justice. In the testimony of one woman heard by CSW, police said, "If your own people are asking you to leave Jesus, listen to them. Why are you creating problems in the society?" [...]

Barriers to justice for scheduled castes

- [Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2015 - Case study: Discrimination against Dalit women in Ahmedabad, 2 July 2015](#)

[...] The challenges Dalit women face, though overlapping with general issues of urban poverty and gender discrimination, are in many ways distinct from the issues that face the female population as a whole. Ahmedabad has a number of active women's organizations, but while these often have a large Dalit constituency among their members, their focus generally is not on specific incidents of discrimination. While a trade union may periodically train its members on issues of sexual violence and harassment, for example, it usually avoids taking up human rights issues related to atrocities against Dalit women. [...]

Sexual harassment, too, remains a serious challenge for women in Indian cities in general, but is especially acute for Dalit women, who are vulnerable due to their secondary status. For example, Leena Patel, a Dalit journalist and social worker interviewed for this research, highlighted the experiences of Dalit women working in the city's diamond polishing industry. The 'hypocrisy', as Patel describes it, is that 'untouchability is their motto, but the dominant caste owner doesn't have any problem touching Dalit women'. She heard similar stories from Dalit women recruited to work as cleaners at wedding parties, who felt helpless in the face of harassment. 'In fact, a few of the women considered sexual overtures as a normal behaviour of the contractors who offered them work. They said, if they protested against men touching them, they would not be given the job the next time.' [...]

- [Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2015 - India, 2 July 2015](#)

[...] Violence against Dalits is also widespread and continued throughout 2014, driven by the persistent effects of India's caste system and the lack of justice for victims. One of the most shocking incidents occurred in October in Bihar, when a Dalit boy was beaten and burned to death for letting his goat graze on the grass of an upper-caste landholder. The landholder was subsequently taken into police custody. Though attacks on Dalits are common throughout the country, the situation is particularly difficult in Bihar, often cited as India's most lawless province, where the population is overwhelmingly rural and often located in remote areas. Some activists believe that the appointment of Jitan Ram Manjhi, a Dalit, as Bihar's chief minister in May sharpened tensions as Manjhi's calls for greater rights for the Dalit community were resented by upper-caste members. Manjhi resigned from his post in February 2015 just before he was to face a vote of confidence in the state assembly, claiming his decision was intended to avert violence after he and his supporters allegedly received death threats. [...] While Dalits still face violence and discrimination in cities, strict social hierarchies are harder to enforce and violence generally is not as pervasive and brutal. Severe inequalities persist, however, with Dalits making up a large proportion of those engaged in the urban informal labour sector as domestic workers, rickshaw-pullers, street vendors and other poorly paid sectors. [...]

The challenges are especially acute for Dalit women, who are further exploited due to caste-gender prescriptions. Manual scavenging, for instance – the practice of removing human waste – is often 'reserved' for Dalit women, particularly in rural areas but frequently in urban centres as well, including by local government and municipal corporations who pay menial wages for this degrading and unsanitary task. This is despite the Supreme Court reaffirming in March 2014 that the practice was prohibited. In some cases, certain Dalit castes are expected to do the job and may be pressured or intimidated if they attempt to access alternative livelihoods. [...]

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

[...] Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

[...] According to a Dalit rights activist, approximately 20 Dalit families in Ramayapalem, Andhra Pradesh, faced social ostracism by upper-caste village residents in retribution for voting independently during the May general elections. The families were barred from drawing water from a common well in the village, forcing them to walk two and one-half miles and pay another village to obtain safe drinking water. The upper-caste families also refused to supply milk to the 20 Dalit families. As of the

end of the year, the Prakasam district policy in Andhra Pradesh had not registered a case against the alleged caste discrimination. Intervention of district authorities did nothing to help the 20 Dalit families. [...]

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

[...] Women

[...] Women in conflict areas, such as in Jammu and Kashmir, the Northeast, Jharkhand, and Chhattisgarh, as well as vulnerable women, including Dalit or tribal women, were often victims of rape or threats of rape. National crime statistics indicated that, compared with other caste affiliations, rape was most often perpetrated against Dalit women.

[...] National/Racial/Ethnic Minorities

[...] Dalits who asserted their rights often were attacked, especially in rural areas. As agricultural laborers for higher-caste landowners, Dalits often worked without monetary remuneration. [...] Crimes committed against Dalits often went unpunished, either because authorities failed to prosecute perpetrators or because victims did not report crimes due to fear of retaliation. [...]

➤ [BBC News, How land disputes are fuelling caste clashes in Rajasthan, 24 June 2015](#)

[...] A heap of mud and bricks are all that distinguish this plot of land from the rest of the village of Dangawas in the northern Indian state of Rajasthan.

Last month however, it was the scene of a brutal attack on its Dalit (formerly known as untouchables) occupants, who remain at the bottom of the country's outlawed but still prevalent caste system.

Members of the upper caste Jat community had assaulted 16 Dalits who had been squatting there with a view to 'reclaiming their ownership of the land'.

Three people died in the incident, which marks the latest confrontation between the two communities in the state.

But authorities are reluctant to peg it as "caste violence" and are instead calling it a land dispute between two families. [...]

One woman Papudi, whose hands and legs were broken in the violence said that on the morning of 14 May they were suddenly attacked by around 200 to 250 Jats, who rushed forward, armed with sticks, bricks and boulders and "attacked us like savages". [...]

Police in Dangawas have so far arrested just six of the dozens named in a complaint.

Local police officer Amarjeet Singh Bedi said the matter was now being probed by the federal Central Bureau of Investigation (CBI) and all further arrests would be made by them.

Badri Narayan, a prominent pro-Dalit campaigner, says that the low rate of convictions in cases of caste violence was worrying. He believes the rise in such incidents is linked to instances where Dalits try to assert themselves. [...]

➤ [UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 6 May 2015](#)

[...] 49. The Special Rapporteur welcomes the introduction of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill of 2014, which includes new categories of offences; specifies the duties of a public servant, including to register a complaint or First Information Report; provides that the Exclusive Special Courts must be established at the district level to try offences; and adds a chapter on the rights of victims and witnesses, including taking immediate action in respect of any complaint relating to the harassment of a victim, informant or witness. Effective implementation of this legislation remains essential. [...]

62. Vulnerable and marginalized groups must be protected from all forms of violence, including lethal violence, and institutions tasked with monitoring, investigating and prosecuting the perpetrators of such violence must be strengthened. There is a need to put in place measures to address the barriers faced by vulnerable and marginalized groups in gaining access to justice. [...]

➤ [UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 6 May 2015](#)

[...] B. Killings of vulnerable persons

1. Scheduled castes and tribes and other marginalized communities

[...] 48. The Special Rapporteur also noted with concern that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 did not incorporate Dalit Muslims and Christians into the definition of scheduled castes and tribes. A recommendation was made that the legislation should be

reviewed to extend the definition (see A/HRC/23/47/Add.1, para. 104). The Committee on the Elimination of Discrimination against Women noted in 2014 that Dalit women were particularly vulnerable as they faced multiple forms of discrimination presenting barriers to justice and that poor implementation of the Act was of concern (see CEDAW/C/IND/CO/4-5, para. 10 (d)). The Special Rapporteur is aware of the recent passing of the Constitution (Scheduled Castes) Orders (Amendment) Bill, 2014, and welcomes the inclusion of additional communities to the list of scheduled castes, but reiterates the importance of ensuring the protection of all marginalized communities in practice through effective implementation of the related legislation, as well as the conduct of relevant education and awareness-raising campaigns reaching out to all communities. [...]

➤ [Amnesty International, Amnesty International Report 2014/15 - The State of the World's Human Rights - India, 25 February 2015](#)

[...] Prolonged pre-trial detention

[...] Dalits, Adivasis and Muslims continued to be disproportionately represented in the pre-trial prison population. [...]

➤ [Human Rights Watch, World Report 2015 - India, 29 January 2015](#)

[...] Treatment of Minorities

[...] Dalits (so-called Untouchables) and tribal groups continued to face discrimination and violence. The difficulties the Dalit community has in obtaining justice were highlighted by recent court verdicts in four cases in Bihar and one in Andhra Pradesh states. In each of the cases, the courts overturned convictions in high-profile incidents that took place between 1991 and 2000 involving killings of Dalits due to lack of evidence, highlighting the failure of prosecutorial authorities. [...]

➤ [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)

[...] F. Rule of Law: 9 / 16 [...]

[...] The criminal justice system fails to provide equal protection to marginalized groups. [...] Particularly in rural India, informal councils issue edicts concerning social customs. Their decisions sometimes result in violence or persecution aimed at those perceived to have transgressed social norms, especially women and members of the lower castes.

The constitution bars discrimination based on caste, and laws set aside quotas in education, government jobs, and seats in elective offices for historically underprivileged scheduled tribes, scheduled castes (Dalits), and groups categorized by the government as "other backward classes." However, members of the lower castes and minorities continue to face routine discrimination and violence. Dalits are often denied access to land and other public amenities, are abused by landlords and police, and work in miserable conditions. [...]

➤ [Inter Press Service, Battle Heats Up Over Legalisation of Sex Work in India, 16 January 2015](#)

[...] "We had been trying to get the community in this village to stop manual scavenging but they were too scared to resist," Sanjay Dumane, associate convenor of Jan Sahas, tells IPS. "After what happened to Rani Devi [Dhela], some of them decided to fight back."

But there was fierce resistance from the village police who not only refused to register a complaint, but also advised the women to accept their place in society.

It was only after they approached police authorities at the district level that action was taken.

"A platoon of police vans came into the village with senior officers who warned the upper castes that they would be jailed if they were found violating the law on manual scavengers," says Dumane. [...]

➤ [Human Rights Watch, India: Caste Forced to Clean Human Waste 'Manual Scavenging' Persists With Local Officials' Support, 25 August 2014](#)

[...] Difficulties in Accessing the Criminal Justice System

Due to pervasive discrimination, Dalits require significant assistance in accessing the criminal justice system when they are victims of crime. While people throughout India face police inaction and outright refusals to investigate their complaints, these problems are exacerbated for people on the lower rungs of the economic and social ladders.

In rural India, to file a complaint, victims of crime must ordinarily identify and travel to the police station with jurisdiction to investigate. Those who attempt to do so are often rebuffed. Victims who are poor and without legal counsel are vulnerable to police refusal to register and investigate

complaints because they cannot afford to pay bribes, cover costs of investigation as the police typically demand, or call upon local influential figures to intervene with the police on their behalf. Traditional gender-bias means that women are particularly likely to be ignored.

People from manual scavenging communities are susceptible to this type of treatment due to perpetuation of caste bias by police and local government officials. Activists and rights groups told Human Rights Watch that police routinely fail to register and investigate complaints of crimes against Dalits when the perpetrators are of a dominant caste. In particular, police will not register cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act—a law crucial to protect people who work as manual scavengers. [...]

➤ [Asian Human Rights Commission, INDIA: Poverty will remain unless public justice system is reformed, 15 August 2014](#)

[...] India's battle against poverty has reached the phase of "elimination" from "alleviation" said President Pranab Mukherjee in his address to the nation. [...] Take the status of thousands of social welfare schemes launched by the provincial and central governments to alleviate poverty; why does poverty remains so high despite them? Huge leakages from these programs, including various forms of corruption, come readily to mind. Why does corruption continue despite being illegal? Why do the poor not fight against it despite knowing that it is their money and resources that are stolen? The answer is simple: they do not because they know that the criminal justice system is not only corrupt itself, but is also skewed heavily in favour of the vested interests entrenched in the system, from feudal landlords to the corporations.

The police, the first point of contact between the aggrieved citizenry and the state, scare them and they do so intentionally. Even if they dare to take the risk of approaching them, the prosecution (as underfunded, inefficient, incompetent, and overburdened as the police) fails them yet again. At the end of the chain comes the dreaded trial system masquerading as courts of law. Something as simple as a case of local level fudging of funds earmarked for the poor can drag on for decades with the usurpers having the best lawyers and the victims the worst.

The poor, understandably, neither have time nor means for fighting these treacherous battles of redress; battles that come with real threat of physical violence. They know that the police, again, will be bought by the usurpers and adding one more opponent to struggle against. Another major issue that puts the reforms in public justice system at the core of fighting poverty is that a faulty justice system reinforces itself and worsens the situation. [...]

➤ [UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of India*, 24 July 2014](#)

[...] Women from scheduled castes and scheduled tribes

34. The Committee is concerned that Dalit women and women from scheduled tribes face multiple barriers in gaining access to justice, owing to legal illiteracy, lack of awareness of their rights and limited accessibility of legal aid. It notes with concern the financial, cultural and physical barriers faced by Dalit women and women from scheduled tribes in gaining access to gynaecological and maternal health services, their limited knowledge of birth registration procedures and the existence of bureaucratic obstacles and financial barriers that prevent them from registering births and obtaining birth certificates for their children. [...]

➤ [Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2014, 3 July 2014](#)

[...] India

[...] A National Tribunal organized by civil society in September heard numerous cases of violence against Dalit women and concluded that there had been a failure of state institutions to protect them. Much of this violence was rooted in their everyday poverty and disempowerment in caste based societies, often with the collusion of police, judiciary and medical personnel. [...]

➤ [BBC News: Viewpoint: India must stop denying caste and gender violence, 11 June 2014](#)

When I think of Badaun, the small village in India's Uttar Pradesh state near the spot where two young girls were raped and then hanged from a mango tree, one detail out of all of the horror is inescapable: their deaths were by no means inevitable.

The cousins were members of a caste grouping known as Other Backward Classes (OBC), low on the caste totem pole, which made them fatally vulnerable to the men from the far more privileged Yadav caste, accused of their rapes and lynchings. [...]

The girls had gone out to the fields late at night as is the practice in places where there are no indoor toilets. [...]

According to a Reuters report, when the girls did not come back, the father of one went to report the missing children to the police. The constable on duty slapped him and sent him away. This is the detail that cannot be forgotten.

[...] the Badaun crimes highlighted two factors common to many similar atrocities: the refusal of the chiefly privileged caste police officers to intervene in time to save the lives of victims from less powerful castes, and the determination of the local community, however underprivileged, to force a response from an indifferent state and civil society. [...] The price communities perceived as powerless pay for demanding justice is high: they are often exposed to threats and violence.

The National Crime Records Bureau (NCRB) records crimes against scheduled castes and scheduled tribes - the most disadvantaged groups - in a separate category. These crimes are grievously under-reported, but even so the figures for 2012 are revealing: 651 cases of murder, 3,855 cases where people were hurt, 1,576 cases of rape, 490 cases of kidnapping and abduction, and 214 cases of arson. [...]

- [Inter State Adivasi Women's Network \(ISAWN\) of Mainland India Indigenous Women's Forum of North East India \(IWFNEI\) Asia Indigenous Peoples Pact \(AIPP\), Chian Mai, Thailand, India NGO CEDAW Shadow Report And status of Adivasi/Tribal Women in India For the 58th Session of CEDAW \(IV & V Periodic Report\), June 2014](#)

[...] FAILURE IN LEGAL REMEDIES:

In spite of the existence of Schedule Tribes (ST)/Schedule Caste (SC) Atrocity Prevention Act, violence against adivasi women is rarely prosecuted under this law, or treated seriously. The criminal justice system has failed to bring justice to Indigenous/tribal women survivors.

There is very weak access to the justice system of the country by adivasi/tribal women. The legal and judiciary system is not gender sensitive and is male dominated. Likewise, most adivasi/tribal women are not aware of their rights including to due process, and have little access to competent lawyers. Further, many adivasi/tribal women in custody of the police or other authorities end up being raped or sexually abused. There is also no legal support in addressing the criminal cases filed against indigenous women's human rights defenders, such as Dayamani Barla, Soni Sori and few others.

Impunity for witch hunting created by lack of law enforcement and weak governance in backward areas where adivasi populations live, cause innocent indigenous women to be persecuted for personal and material jealousies. No concerted efforts have been taken to prevent through addressing the root cause of marginalisation, lack of education health care, weak governance and police apathy. [...]

ARTICLE 6: TRAFFICKING, EXPLOITATION AND PROSTITUTION

[...] Several cases of police atrocities have been reported, who physically tortured innocent tribal young women in railway stations and police stations. It has been our experience that several times we have to fight with the police for registering complaints related to domestic workers issues in Delhi. There are cases of police taking bribes from the placement agencies and maid's owners to silent the cases. [...]

- [Navsarjan Trust, the All India Dalit Mahila Adhikar Manch \(AIDMAM\) and the International Dalit Solidarity Network \(IDSN\), Alternative report to the UN Committee on the Elimination of all forms of Discrimination Against Women \(CEDAW\) for the examination of the 4th and 5th periodic reports of India at the 58th CEDAW session in July 2014: Multiple discrimination against Dalit women, June 2014](#)

[...] Non-implementation of the legal framework - Access to justice for Dalit women

Violations against Dalit women are largely committed with impunity for the perpetrator due to weak or failing state institutions. Fear of social ostracism, threat to personal safety and security as well as complicated, time consuming and costly legal proceedings coupled with delays and irregularities in Criminal Procedures mean Dalit women face persistent discrimination in access to justice. In many cases, the judiciary fails to enforce the laws that protect Dalit women from discrimination. In cases of rape or sexual assault the perpetrators are often able to exploit social pressures by convincing the

victim's family to drop the case on the grounds that it would tarnish the woman's reputation, damaging her future marriage prospects or her married life.

In 2014, the UN Special Rapporteur on Violence against Women reported on violence against Dalit women and allegations of de facto caste-based discrimination, perpetrated by police officers, public representatives and community members. Almost all cases show that Dalit women are punished by police officers when trying to file a complaint or threatened to remain silent, also by means of physical assaults and rape and threats of further recourses. The report further reveals that women are often denied of their right to medical treatment for their injuries and that perpetrators are usually released on bail without arrest, police investigation or prosecution. In 2006 in India, the official conviction rate for Dalit atrocity cases was just 5.3%xxx According to the Special Rapporteur on Violence against Women (2014), the low rate of prosecution and conviction for acts of violence against women contribute to the lack of effective redress provided to victims. Several studies and submissions document the challenges facing Dalit women with regard to access to justice. The National Campaign on Dalit Human Rights (NCDHR) has published a detailed study of violence against Dalit women in four states in India, including Tamil Nadu. In it, they found that for 86% of instances of violence experienced by women in the four states, they did not or were unable to gain entry to the legal system at all. This means that their cases do not appear on any official figures. In less than 1% of cases were the perpetrators convicted by the courts. In 17.4% of instances of violence, police obstructed the women from attaining justice. In 26.5% of instances of violence, the perpetrators and their supporters, and/or the community at large, prevented the women from obtaining justice. And, in 40.2% of instances of violence, the women did not attempt to obtain legal or community remedies for the violence primarily out of fear of the perpetrators or social dishonour if (sexual) violence was revealed, or ignorance of the law, or the belief that they would not get justice. Many times, legal proceedings are so complicated, tardy, time consuming, costly and unfriendly to Dalits that they do not approach courts or other law enforcing agencies for their redress. As noted in a study on 'Gender Violence and Access to Justice for Dalit Women' by Navsarjan Trust and Minority Rights Group International, Dalit women face severe difficulties in accessing justice and are extremely vulnerable to violence, sexual abuse and other atrocities. The 2014 report 'Justice under Trial: Caste discrimination in access to Justice' by the National Dalit Movement for Justice (NCDHR) finds serious obstacles to Dalits obtaining justice in crimes against them and reports growing impunity when victims are Dalits. The report findings mirror many of the findings in the April 2014 Nazdeek and NCDHR report 'Claiming Justice' based on an extensive field study conducted in five states in India. The report documents the experiences and reflections of using the criminal justice system as told by victims, witnesses, human rights defender and public officials. Moreover, the Special Rapporteur on Violence Against Women has noted that, "women belonging to marginalized groups including scheduled castes are often unregistered citizens or lack identifications cards" that "contribute to a culture of normalization of violence against women".

➤ [Amnesty International, India: Authorities must impartially investigate gang-rape and murder of Dalit girls, 30 May 2014](#)

[...] Crimes against Dalits are often not properly registered or investigated, conviction rates are low, and there is a large backlog of cases. Police are also known to collude with perpetrators from dominant castes in covering up crimes by not registering or investigating offences against Dalits. [...]

➤ [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)

[...] 15. Violence against various groups is also of concern. Dalit and Adivasi women and women from other scheduled castes and tribes and other "backward classes" are frequent victims of multiple and intersecting forms of discrimination, as well as violence. Caste-based discrimination, which also includes intra-caste hierarchies, continues to be pervasive and widespread. The intergenerational nature of caste-based discrimination condemns women to a life of exclusion, marginalization and disadvantage in every sphere of life. Many of those women are denied an education and economic opportunities, and perform dangerous and unprotected work, including bonded labour (debt bondage) and manual scavenging, which are both widely regarded as forms of forced labour and modern forms of slavery. Women represent the vast majority of manual scavengers in the country, and are commonly from scheduled castes and minority groups. While legislation has been adopted to eradicate bonded labour and manual scavenging, reports and

interlocutors indicate that there is a consistent failure in the implementation of such laws and a tendency to minimize the significance of the problem. [...]

60. Although telephone hotlines are available, the police are usually the first point of contact for many women, according to reports received. Victims of violence, who require from the State special security, shelter, public housing, health care and socioeconomic protection, often face significant challenges. Many services are channelled through providers that lack sufficient resources. Numerous allegations were made of de facto caste-based discrimination, perpetrated by police officers, public representatives and community members, with regard to access to services. [...]

70. With regard to systemic failures, the low rate of prosecution and conviction for acts of violence against women contributes to the lack of effective redress provided to victims. Redress begins with the filing of domestic incident reports and a First Information Report. As noted above, this is deficient in many respects. Compensation payment is dependent on the filing of a case, which is dependent on the availability of protection officers and the provision of some form of legal identification. Women belonging to marginalized groups, including irregular migrants, domestic workers, scheduled castes and tribes and so-called backward castes are often unregistered citizens, or lack identification cards. Such factors contribute to a culture of normalization of violence against women. [...]

Police resources for dealing with women's cases

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)
[...] Section 6. Discrimination, Societal Abuses, and Trafficking in Persons
[...] Women
[...] Law enforcement and legal recourse for rape victims was inadequate, overtaxed, and unable to address the problem effectively.
[...] The Ministry of Women and Child Development promulgated guidelines for the establishment of these social services, but because of the lack of funding, personnel, and proper training, services were primarily available only in metropolitan areas. [...]
- [Asian Human Rights Commission, INDIA: Understanding the Rape Republic, 18 June 2014](#)
[...] The process of investigation and trial remains extremely slow and unscientific. [...]
Additionally, males disproportionately dominate the police and the armed forces, whereas women comprise little more than 6% of such forces. [...]
- [Asian Legal Resource Centre, Written statement* submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status INDIA: Reinforcing subordination of women in law and practice, 4 June 2014](#)
[...] 10. Inadequate resource allocations for implementation of laws and policies promoting women's equality remain a challenge. The Prohibition of Domestic Violence Act 2005 is an example. Gender budgeting, though adopted in 1990s for mainstreaming gender in state apparatus, is yet to be proved as a strategy rather than a mere catchphrase. [...]
- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
[...] 59. The lack of implementation of the Protection of Women from Domestic Violence Act was a concern often raised. Under the Act, women victims require the assistance of a protection officer to lodge a complaint and to file a domestic incident report. The recruitment and deployment of protection officers in the country is limited; they often work part-time and lack the resources to assist victims to file complaints. For instance, in the State of Rajasthan, with a population including approximately 27 million women, there are only 607 designated protection officers and 118 organizations registered as service providers. The inadequacy of resources to provide a mandatory service is a reflection of a failure to act with due diligence. The Special Rapporteur was informed that the central Government is considering providing financial assistance to states to fund full-time

protection officers. In addition, concerns were raised with regard to the lack of protection for people in same-sex relationships, due to the language in the law as regards jurisdiction.

60. Although telephone hotlines are available, the police are usually the first point of contact for many women, according to reports received. Victims of violence, who require from the State special security, shelter, public housing, health care and socioeconomic protection, often face significant challenges. Many services are channelled through providers that lack sufficient resources. Numerous allegations were made of de facto caste-based discrimination, perpetrated by police officers, public representatives and community members, with regard to access to services. [...]

Police training for dealing with women's cases

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

[...] Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

[...] Women

[...] The Ministry of Women and Child Development promulgated guidelines for the establishment of these social services, but because of the lack of funding, personnel, and proper training, services were primarily available only in metropolitan areas. [...]

Police and authorities' attitudes to violence against women

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

[...] Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

[...] Women

[...] Police officers sometimes worked to reconcile rape victims and their attackers, in some cases encouraging female rape victims to marry their attackers.

- [Immigration and Refugee Board of Canada: India: Violence against women, including domestic violence, homelessness, workplace violence; information on legislation, state protection, services, and legal recourse available to women who are victims of violence \(2013-April 2015\) \[IND105130.E\], 15 May 2015](#)

[...] 3. Legal Recourse

[...] In a 2013 article on protection for victims of domestic violence, Biswajit Ghosh, a professor of sociology at the University of Burdwan, whose research interests include women and children's rights and domestic violence in India, notes that the ability to provide timely justice to women is affected by the "apathetic and often negative roles of the police" and their inability to stand by victims and implement justice for women (Ghosh 2013, 413). The same source further notes that people who have strong political or economic power have the ability to influence police "to act in their favour" therefore, the police "seem to be reluctant to act against any influential person" (ibid.). Country Reports 2013 similarly states that "[p]olice officials, especially in smaller towns, were reluctant to register cases of crimes against women, especially if the cases were against influential persons" (US 27 Feb. 2014, 42). [...]

- [BBC News, The Indian women who keep silent about sexual violence, 8 March 2015](#)

[...] 5. Are the police under political pressure?

The case of Bapi Das's wife was a disturbing one. The police recorded it as a case of consensual sex followed by murder.

But the post-mortem report contradicted this, saying it was a case of forced sex. Bapi Das is now pursuing a petition with the Human Rights Commission in Delhi and Calcutta seeking justice. A local citizens' human rights group that helped Mr Das to file the petitions feels that the police are under political pressure to undercount cases of rapes. [...]

- [Asian Legal Resource Centre, Written statement* submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status, INDIA: Criminal justice reforms elementary to control violence against women, 20 February 2015](#)

[...] The Asian Legal Resource Centre (ALRC) is of the opinion that the root cause of the problem lies in the dysfunctional criminal justice machinery in the country. While some of the initiatives taken by the government have been welcome, only if the government is willing to fix the dysfunctional criminal justice machinery can there be effective reduction in crime against women in India.

Justice J.S. Verma, former Chief Justice of India, shares this opinion. In his report to the government, filed in the capacity of the Chairperson of the Judicial Committee appointed by the Government of India, in the wake of the 2012 New Delhi rape case, Justice Verma has stated that "...the root cause behind sexual assault upon women is a failed criminal justice process, particularly the police and delay in prosecutions.

It is this reformation of the criminal justice institutional framework in India that no government has prioritised. The Indian police are notorious for corruption, nepotism, and for the use of brute force to extract confessions and bribes. Scientific crime investigation, if at all carried out, is limited to high-profile cases involving the politically powerful or financially rich. Merit is not observed in recruitment or promotion of officers. Instead, from constable to inspector general, illegal nexus between the officer and politicians draw career graphs. The police force lacks morale, direction, and discipline. [...]

The police in India represent fear and ineptitude. However, it is this very force that victims of sexual abuse have to depend upon for lodging a complaint and further for investigation. It is the same police that file the investigation report in court, based on which a criminal trial takes place. With a flawed investigation, there is not much a prosecutor and a judge can do to serve justice. [...]

- [Development and Cooperation, Miles apart, -sisters in pain, 4 July 2014](#)

[...] Cequin, a non-profit organisation funded by the Government of Delhi, works mostly with Muslim women from poor households. Its campaign, Awazuthao or Raise Your Voice, organises rallies, safety walks and other activities aimed at changing societal attitude towards women.

The collective coordinator Bushra Qmar says that DV remains a delicate subject in Indian society, and while it is easier for women in the lower strata of society to report it – although the police may not follow up on it –, there are hardly reported cases among the upper echelon of society. A community mobiliser in the same organisation, Amin Mohammed, attributes this to the need of the upper class to "look respectable". An abused woman would hardly ever alert the justice system, he maintains. [...]

the gang rape and subsequent violent death of a young student in Delhi on 16 December 2012, shocked Indian society and triggered a lot of public agitation. A number of new fast-track courts for rape cases were created, however, there are still many loopholes in the justice system. A culture whereby women are regarded as commodities is still deeply ingrained, especially in the rural areas. [...]

- [Asian Human Rights Commission, INDIA: Understanding the Rape Republic, 18 June 2014](#)

[...] Politician Babulal Gaur, Home Minister in Madhya Pradesh, has justified rape, saying 'Rape is sometimes right'. According to Ramsevak Paikara, Home Minister of Chhattisgarh, 'No one commits rape intentionally, it happens by mistake'. And, then there is Mulayam Singh Yadav, a prominent senior politician who has said, 'Boys make mistakes, why hang them?' And, then there is Abu Azmi, a senior politician, who supported Yadav by stating that 'women who were raped should also be hanged'.

These statements and perceptions expose the tip of the iceberg; and can help one understand how India's institutions, and the individuals representing the institutions, are certainly not free from authoritarian and misogynistic ideas that further propagate the repression of victims of sexual assault. [...]

- [Asian Legal Resource Centre, Written statement* submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status INDIA: Reinforcing subordination of women in law and practice, 4 June 2014](#)
[...] 6. Security of person and property for women, however, supersedes all forms of violence. Gender based violence, rampant all over India, circumscribes women's access to livelihood opportunities and personal development while restricting their mobility. Despite several amendments in criminal laws favouring women, law enforcement remains inaccessible to women due to the high level of insensitivity and lack of professionalism in country's criminal justice mechanism. It is an established fact that women prefer silence over approaching law enforcement institution, such as the police, especially if the violence is sexual in nature. Women are also discouraged from seeking justice for sexual violence as they are perceived as symbols of "honour" for the family and community. [...]
- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
[...] A. Violence against women in the family
8. According to numerous interlocutors, the physical, sexual and psychological abuse of women in the private sphere is widely tolerated by the State and the community. The perpetrators include husbands, in-laws and other family members. Many victims live in family settings that are rooted in deeply entrenched patriarchal and customary practices that are sometimes harmful to women. The widespread socioeconomic dependency of women subordinates them to their husbands and other family members. The fear of social exclusion and marginalization, and the lack of effective responses to violence, keeps them in a context of continuous violence and intimidation. [...]
51. Serious concerns were expressed with regard to the insensitive and taunting attitude of some members of Parliament with regard to the Criminal Law (Amendment) Act. The Special Rapporteur regrets that some political leaders are not fully committed to the process of legal and social change as regards women's human rights. [...]
- [Amnesty International, India: Submission to the UN Committee on the Elimination of Discrimination against Women, 58th session, June 2014, 2014](#)
[...] VIOLENCE AGAINST WOMEN FROM DISADVANTAGED GROUPS
Some public officials and political leaders have contributed to the culture of impunity for violence against women by appearing to justify violence against women. Commenting on the trial of a gang-rape case from Mumbai in April 2014, a former Chief Minister from the state of Uttar Pradesh stated, "Should rape cases be punished with hanging? They are boys, they make mistakes." In May 2014, responding to the rape and murder of two Dalit girls, the Home Minister of the state of Madhya Pradesh said rape was a social crime which was "sometimes right and sometimes wrong". [...]

Police response to violence against women

- [Asian Human Rights Commission, INDIA: Only an insane police can use a teen rape survivor as 'bait', 13 July 2015](#)
[...] The police in Maharashtra sent a 17-year-old rape survivor back to her assaulters as "bait", not once but twice. The insensitivity of placing a minor in this situation is manifest. The girl must still have been struggling with the trauma. But, the police also went ahead and botched up the ploy by following the girl too closely the first time around and then being nowhere close the second time. The policemen thus ended up getting the minor raped again. [...]
Another important aspect of SoP [Standard Operating Procedure] for rape investigation is securing the alleged crime scene to ensure that evidence does not get destroyed. The fact that the police decided to use the rape survivor as "bait" shows that they were aware of the crime scene and the accused persons allegedly involved. It is baffling that they went ahead with this inane ploy that could endanger the safety of the survivor rather than securing the crime scene and collecting evidence, including DNA for forensic inquiry. [...]

➤ [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

[...] Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

[...] Women

[...] Doctors sometimes further abused rape victims who reported the crimes by using the invasive "two-finger test" to speculate on their sexual history. In addition to the outlawing of the "two-finger test," in March the government formulated new guidelines for treating rape victims, which included mandatory forensic and medical examinations within designated areas in all hospitals for rape survivors.

While the trial of six defendants in a high-profile 2012 Delhi rape case took place quickly, rapes occurring outside of the national capital were not investigated swiftly. Many investigations and legal proceedings relating to earlier rape cases during the year remained pending.

On June 12, police initiated an investigation against four police officers for the alleged gang rape of a woman inside a police station in the Hamirpur district of Uttar Pradesh, when she went to seek the release of her detained husband. [...]

The law provides for protection against some forms of abuse against women in the home, including verbal, emotional, and economic abuse, as well as the threat of abuse. The law recognizes the right of a woman to reside in a shared household with her spouse or partner while a dispute continues, although a woman may seek accommodations at the partner's expense. Although the law also provides women with the right to police assistance, legal aid, shelter, and medical care, domestic abuse remained a serious problem. Lack of law enforcement safeguards and pervasive corruption limited the effectiveness of the law. [...]

[...] Police officials, especially in smaller towns, were reluctant to register cases of crimes against women, especially against persons of influence. [...]

➤ [Asian Human Rights Commission, INDIA: Wife gang-raped by husband's friends in Kerala; police stonewall victim, 15 May 2015](#)

[...] The Asian Human Rights Commission has received information from Nervazhi, a human rights organisation based in Thrissur District of the Indian state of Kerala concerning the case of Mary (name changed) who was gang-raped by her husband's friends. Mary struggled to lodge a complaint against the perpetrators with the local police. The police refused to accept Mary's complaint and insulted her at the police station, labelling her as a woman with loose morals. The policemen ordered Mary to not visit the police station again with such complaints of sexual abuse as, according to the policemen, such complaints lodged by persons with poor morals cannot be investigated. The case sheds light on the fact that lodging a complaint with the Indian police is always a difficult task. This case adds one more to the list of innumerable cases of rape in India where the police have been blamed for not recording the victim's complaints and conducting investigations. [...]

➤ [Immigration and Refugee Board of Canada: India: Violence against women, including domestic violence, homelessness, workplace violence; information on legislation, state protection, services, and legal recourse available to women who are victims of violence \(2013-April 2015\) \[IND105130.E\], 15 May 2015](#)

[...] 3. Legal Recourse

[...] AI's 2014/2015 report notes that "authorities did not effectively implement new laws on crimes against women that were enacted in 2013, or undertake important police and judicial reforms to ensure that they were enforced" (AI 2015, 182). The same source adds that in April 2014, the UN Special Rapporteur on violence against women noted that authorities are unable to ensure "accountability and redress" for survivors of violence (ibid.). A 23 February 2015 article by the Deccan Chronicle, the largest circulated English language newspaper in South India (Deccan Chronicle n.d.), reports that "[w]ith no legal recourse for victims of marital rape, filing a case under the Domestic Violence Act or filing for a divorce seems to be the only way out for women" (ibid. 23 Feb. 2015). IPS notes that one of the reasons high levels of gender-based violence exists is due to the "dismal conviction rate - a mere 26 percent- in cases involving sexual assault and violence" (IPS 30 Sept. 2014). In her article on support for female victims of domestic violence in India, Snell-Rood similarly indicates that the police "rarely" register or investigate cases of domestic violence and sometimes harass women who make such complaints (Snell-Rood 2015, 65). A 26 August 2013 article by UNICEF reports

that violence against women goes unreported since women and children fear victimization and social stigmatization and because law enforcement is "weak" (UN 26 Aug. 2013). [...]

The Associate Professor noted that:

recourse is available to women facing violence including domestic abuse under the Act. However, women complainants face [a] legal system that is often slow, cumbersome, and riddled with corruption. Many women may face divorce or desertion, homelessness and retaliatory abuse from inlaws for having followed this course of action. (27 Apr. 2015)

The same source notes that poor women have the most difficulty "navigating" through the legal system and "the police are less likely to help the poorest women" (ibid.). The Associate Professor added that "women who live in states which have not allocated resources to enforce the Domestic Violence Act have even greater difficulties accessing recourse to violence including domestic violence" (ibid.). [...]

4.3 Helpline and Rape Crisis Assistance Programs

[...] According to the Delhi Commission for Women's website, the Rape Crisis Cell is a free legal service specifically for victims of rape that provides legal services including: assisting the prosecutor in the trial, opposing the bail application of the accused and facilitating the recording of statements (Delhi 17 Oct. 2014).

Scroll.in notes that

[o]nly two of Delhi's hospitals have experimental rape crisis desks/centres. The situation for victims outside the metros is far worse; the availability of actual, useful aid on the ground is entirely dependent on the presence of local NGOs and the willingness of individual police and district officials to step in and assist victims. (13 Mar. 2015) [...]

➤ [Amnesty International, Amnesty International Report 2014/15 - The State of the World's Human Rights - India, 25 February 2015](#)

[...] Women's rights

Violence against women remained widespread. The authorities did not effectively implement new laws on crimes against women that were enacted in 2013, or undertake important police and judicial reforms to ensure that they were enforced. Rape within marriage was still not recognized as a crime if the wife was over 15 years of age. A number of public officials and political leaders made statements that appeared to justify crimes against women, contributing to a culture of impunity. [...]

➤ [Human Rights Watch, World Report 2015 - India, 29 January 2015](#)

[...] Women's Rights

[...] Legal reforms were introduced in response to the 2012 Delhi gang-rape and murder, but at time of writing the Indian government had yet to introduce monitoring and reporting mechanisms to track their implementation. Reports of rape—including of Dalit women, individuals with disabilities, and children—continued to make national news in 2014, leading to protests. [...]

➤ [Freedom House, Freedom in the World 2015 - India, 28 January 2015](#)

[...] According to India's most recent National Family Health Survey report, covering the years 2005 and 2006, 37 percent of married women between ages 15 and 49 have experienced physical or sexual violence at the hands of their husbands. A 2014 study indicated that the risk is especially high for women who are more educated or earn more than their husbands. A 2006 law banned dowry-related harassment, widened the definition of domestic violence to include emotional or verbal abuse, and criminalized spousal rape. However, reports indicate that enforcement is poor. [...]

➤ [UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combines fourth and fifth periodic reports of India, 24 July 2014](#)

[...] 36. The Committee, noting that a bill on the rights of persons with disabilities is pending before Parliament, is concerned that women with intellectual or psychosocial disabilities can be denied legal capacity and committed to institutions without their consent and without recourse to any meaningful remedy or review. It is particularly concerned that women with intellectual disabilities can be sterilized without their consent. The Committee is further concerned that women with disabilities experience a high rate of poverty, lack access to education, employment and health services, especially in rural areas, face multiple challenges, including the lack of adequate access to public spaces and utilities, often experience harassment in public and are excluded from decision-making

processes. It is equally concerned at the lack of disaggregated data on persons with disabilities and that responses to violence against women with disabilities fail to take account of the type of impairment, whether physical, sensory or intellectual. [...]

- [Asian Human Rights Commission, INDIA: Where police ignore distress calls, 27 June 2014](#)
[...] A group of men had broken into a female friend's house and were holding her hostage. I was frantically calling the Senior Superintendent of Police, the local police station, and officials in the district administration. Every passing minute sent shivers down my spine. I thought to myself: what are these police stations for, if they cannot respond to such emergencies?
[...] The police did not answer any calls, leaving us all flummoxed. Other friends in the media and in the women's movement were contacted who were finally able to reach the police and make them act. The hostage situation was broken the following morning. The hostage was rescued, thankfully before she got violated. But, this was only possible because the woman was well connected and her friend could reach people in positions of influence promptly. What would have happened to an ordinary woman with no such contacts is anybody's guess. [...]
- [Asian Human Rights Commission, INDIA: Understanding the Rape Republic, 18 June 2014](#)
[...] The redress system faced by a sexual assault victim has enormous challenges, ranging from legal to cultural. Filing a First Information Report (FIR), the first step in seeking justice, is hard in India. But, it is nothing less than a Herculean task when a woman complains of sexual assault. Due to the culture of enforcement of laws in the country, legal texts alone don't determine her rights and entitlements. Negative stereotyping and attacking the self-esteem of the rape survivor is one of the prime reasons for not reporting the crime and accessing the criminal justice system. Moreover violence against women in India is an institutionalised phenomenon. Before noting the FIR, policemen often satisfy themselves with knowledge of whether the victim wore the 'right' clothing', ate the 'right' food, kept the 'right' male friends, or uses 'questionable' modern electronics like a mobile phone. The 2013 amendments, though they expand the definition of sexual assault and promise to be more sensitive to women, also carry forward negative elements. They retain discriminatory and stereotype concepts like 'insult' or 'outrages to women's modesty' in order to define a criminal act. [...]
Sociologically speaking, a society based on a patriarchal structure, prescribes male dominance and promotes authoritarian personalities. Law enforcement agencies are based on masculine ideologies. Institutions like the police and the military provide space for such personalities. They foster the tendency to impose power and control over women and their autonomy. This is why police often refuse to register cases of sexual assault, and even if they register them, there is little to no guarantee of justice. [...]
- [Asian Human Rights Commission, INDIA: Restore the rule of law, curb sexual violence in U.P., 13 June 2014](#)
[...] Since India's general election, Uttar Pradesh has witnessed sharp escalation of sexual violence and lawlessness. The rape of a session court judge in her official residence, guarded by the Provincial Armed Constabulary round the clock, highlights the extent of violence and lawlessness in the state. There is no indication that the Uttar Pradesh state government, or the union government, is taking steps to stop this violence and enforce the law. It is as if law enforcement agencies have been sent on holiday since the elections. And yet, some of the rapes reported have been committed by the police officers inside police stations. [...]
It is the responsibility of the Chief Minister to ensure that the law is strictly enforced. The Uttar Pradesh Chief Minister has taken no effective steps to control the situation and enforce the law. He has failed to carry out his constitutional obligations.
It is also the responsibility of the DGP of Uttar Pradesh to ensure that the police force discharge their duties and curb violence immediately. However, the DGP and other high-ranking officers in Uttar Pradesh have failed to intervene. Rather, the police have either neglected or connived with the attackers, a major cause for continued violence. [...]
- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
[...] 62. Concerns were voiced with regard to the investigation of cases and the prosecution and punishment for crimes committed against women. [...]

72. [...] Responses to violence against women with disabilities often fail to adapt to the type of impairment, whether psychological, physical, sensory or intellectual. [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Remedies to human rights violations a mirage \[17 February 2014\] \[A/HRC/25/NGO/46\], 25 February 2014](#)

[...] 6. Delays in adjudication alone is not what that threatens rights to remedies for human rights abuses. Refusing to register complaints is the defining character of India's criminal justice system. This practice received the maximum and deserving bad press perhaps in 2013 when it was repeatedly revealed, that in many cases of sexual abuse against women including in cases of rape, the police have refused to register complaints. So much so, the most recent amendment to the criminal law in India, made effective through the Criminal Law (Amendment) Act, 2013, promulgated on 2 April 2013 incorporated a new Section to the Indian Penal Code, 1860, Section 166 A, that makes it a punishable offense for a public servant, to fail to register cases of sexual abuse against women.

7. Yet the fact that the implementation of this provision is least followed is proved through subsequent cases reported from India, where once again the police were accused and later proved of having failed to register cases after receiving credible complaints of sexual abuses against women. So far, not a single police officer in India who has contravened this provision of law has been charge with a crime punishable under this section or placed on trial. [...]

Police abuse of women with impunity

- [BBC, India woman 'set on fire by police' in Uttar Pradesh, 7 July 2015](#)

[...] A woman in the northern Indian state of Uttar Pradesh has died after alleging that she was set on fire by two policemen inside a police station after she refused to pay a bribe.

Neetu Dwivedi, 40, told a magistrate before her death that the policemen asked her for 100,000 rupees (\$1,578).

She had gone to the police station to free her husband, who had been detained for questioning in a crime.

The accused policemen deny the charge and say she tried to immolate herself.

The policemen have been suspended and Uttar Pradesh Chief Minister Akhilesh Yadav has ordered an inquiry into the case. [...]

In her dying declaration before a magistrate and reporters, she alleged that she was abused and humiliated by her attackers when she refused to pay the bribe. [...]

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

[...] c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

[...] There were continued reports that police raped detainees. NGOs stated the NHRC underestimated the number of rapes committed in police custody. Some rape victims were afraid to report the crime due to social stigma and the possibility of retribution, compounded by lack of oversight and accountability, especially if the perpetrator was a police officer or other official. There were reports that police officials refused to register rape cases. The NHRC is authorized to investigate rape cases involving police officers. By law the NHRC [National Human Rights Commission] can request information about the army and paramilitary forces, but it has no mandate to investigate cases pertaining to such entities. [...]

On June 10, police officer Rahul Pandey allegedly raped a woman while other police officers watched in a police station in Hamirpur, Uttar Pradesh. The woman had visited the police station after the police arrested her husband. The police officers allegedly demanded a bribe from the woman, which she reportedly refused to pay. The three other on duty police officers on duty did not intervene. Police arrested Pandey on charges of rape and removed three other officers from duty.

[...] Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

[...] Women

[...] Women in conflict areas, such as in Jammu and Kashmir, the Northeast, Jharkhand, and Chhattisgarh, as well as vulnerable women, including Dalit or tribal women, were often victims of rape or threats of rape. National crime statistics indicated that, compared with other caste affiliations, rape was most often perpetrated against Dalit women. [...]

➤ [Inter Press Service, Battle Heats Up Over Legalisation of Sex Work in India, 16 January 2015](#)

[...] According to U.N. reports, about 70 percent of sex workers in India are abused by their clients and the police. Abuse, say activists, is often under-reported by sex workers due to a lack of knowledge of their basic rights. [...]

➤ [Asian Human Rights Commission, INDIA: Understanding the Rape Republic, 18 June 2014](#)

[...] The culture of impunity for sexual violence is widespread and has contributed much to propagate the crime. Both de-jure and de-facto culture of impunity for crimes, including sexual crimes, is one of the prime contributory factors for such crimes. In India, de-jure impunity is propagated through several legal instruments that validate immunity for state actors. A provision called 'prior sanction' was incorporated in several security legislations for this purpose. Section 45, 132, 197 of the Code of Criminal Procedure, section 125 and 126 of the Army Act, 1950, section 45 of Unlawful Activities (Prevention) Act, 1967, and section 6 of the Armed Forces Special Powers Act (AFSPA), 1958, state that no court shall take cognizance of any offence committed by certain state actors unless prior sanction is granted by the appropriate government authority. It has been observed that the 'sanction' for prosecution is granted only in the rarest of rare cases; invariably, authorities, at their discretion, reject an application for 'prior sanction'. [...]

De-facto impunity is equally prevalent in the criminal justice system and its enforcement institutions. Police authorities often deny or block access to justice, by refusing the registration of allegations. [...]

Routine practices of torture by security enforcement agencies create a fear psychosis. It discourages formal complaint, propagating a culture of impunity at all levels of the administration of justice. Such a culture is tolerated under different laws and practices with state 'acquiescence'. The principle of due diligence is too narrowly adopted in the legal system to hold private actors accountable for violence against women.

Sociologically speaking, a society based on a patriarchal structure, prescribes male dominance and promotes authoritarian personalities. Law enforcement agencies are based on masculine ideologies. Institutions like the police and the military provide space for such personalities. They foster the tendency to impose power and control over women and their autonomy. This is why police often refuse to register cases of sexual assault, and even if they register them, there is little to no guarantee of justice. [...]

➤ [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)

[...] 23. Women living in militarized regions, such as Jammu and Kashmir and the northeastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency. Testimonies also highlight the impact of that situation on women's health, including psychological disorders such as posttraumatic stress disorder, fear psychosis and severe anxiety, with such conditions having a negative impact on women's physical well-being. Additionally, the freedoms of movement, association and peaceful assembly are frequently restricted. The specific legal framework that governs those areas, namely, the Armed Forces (Special Powers) Act and its variations, allows for the overriding of due process rights and nurtures a climate of impunity and a culture of both fear and resistance by citizens.

24. Violence against women in custodial settings remains a concern [...]

63. [...] Impunity for abuses committed by police officers and the need for civilian oversight was highlighted. [...]

69. As noted above, the Special Rapporteur was not provided with data on any measures to ensure redress for women victims of violence in the areas under the Armed Forces (Special Powers) Act and its variations. The norm of impunity that governs those territories is of great concern, as victims and

their families are prevented from exercising their right to know the truth about violations, have no access to effective remedies and are not given guarantees of non-recurrence. [...]

- [Asian Legal Resource Centre, Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; India: Remedies to human rights violations a mirage \[17 February 2014\] \[A/HRC/25/NGO/46\], 25 February 2014](#)

[...] 8. In addition, crimes committed by the armed forces of the Union, particularly the detachments of the Indian Army or one of its many para-military units are excluded from being registered as crimes by the local police. In places where the notorious Armed Forces (Special Powers) Act, 1958 is in operation, the law provides statutory impunity to the armed forces from prosecution of crimes. In states like Jammu and Kashmir, and Manipur, where the armed forces deployed in these areas commit criminal offences with impunity in large numbers, including rape of women and extrajudicial execution of civilians, there has been no prosecutions so far of the armed forces in a civilian court. Neither has there been any commendable increase in the number of cases registered against members of the armed forces, even if the offence is of that nature covered under Section 166 A of the Penal Code.

9. The uniformed forces of the state commit a substantial number of human rights violations reported from India. This includes offences committed by the local police and the armed forces of the Union, of varying nature and gravity, including custodial rape, torture and extrajudicial executions. The fact that there is no independent crime-investigating agency in India, places the responsibility of investigating such crimes with the same agency negating the premises of independence and honesty in investigations.

10. Henceforth, even though offences like custodial rape, torture and extrajudicial executions in India is at an alarmingly high rate, there are hardly any cases registered against the members of these state agencies. Substantive impunity that has led to deep-rooted demoralisation and has fuelled corruption at all levels is the hallmark of the country's crime investigation agencies. [...]

- [Amnesty International, India: Submission to the UN Committee on the Elimination of Discrimination against Women, 58th session, June 2014, 2014](#)

[...] VIOLENCE BY ARMED GROUPS AND SECURITY FORCES

Amnesty International has documented cases of sexual violence allegedly perpetrated against women and girls by armed groups and security forces. Women victims of sexual violence often face challenges while seeking access to justice, including barriers to registering complaints and impediments to effective investigation and prosecution. This is true of the situation in the state of Jammu and Kashmir and the north-eastern states of India, which have experienced several years of conflict. [...]

Under the Armed Forces Special Powers Act (AFSPA), versions of which are in force in Jammu and Kashmir and parts of north-eastern India, prior permission from the central government is mandatory before a member of the armed forces can be prosecute. [...]

Judicial resources for dealing with women's cases

- [UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 6 May 2015](#)

[...] 3. Protection of victims and witnesses

[...] 52. In his country visit report, the Special Rapporteur recommended that the State establish an effective witness and victim protection programme (see A/HRC/23/47/Add.1, para. 116). No programme has yet been created by the State. [...]

54. The Special Rapporteur has been informed of instances where the Supreme Court has filed petitions, with the assistance of human rights lawyers, requesting the protection of witnesses or victims of violence. For example, the Supreme Court directed that seven women survivors of gang rape during communal violence in Uttar Pradesh in 2013 be provided with two security personnel each until the completion of the trial, or until each of the women so desires. While this is a positive step,

access to legal recourse may be more difficult for some individuals, especially those from poorer and marginalized sections of society. Furthermore, the Special Rapporteur has been informed that the security cover provided often falls short of constituting a comprehensive witness protection programme. [...]

- [Asian Human Rights Commission, INDIA: Understanding the Rape Republic, 18 June 2014](#)
[...] The judicial system cannot be spared either. It, too, inherits perceived dominating ideologies over women's bodily autonomy, and administers the law accordingly, encouraging impunity for sexual violence. The country's judicial system, hailed, as one of the most powerful institutions for protection and promotion of human rights, is still not congenial to female victims of sexual assault. An inadequate number of judges [...] are barriers to justice in all types of violations. Cases of sexual assault are not immune to this trend. [...]
- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)
[...] 65. [...] Other accounts highlight the denial of the right of women to a fair trial, owing to a failure to receive legal assistance to pursue their cases. [...]

Judicial attitudes to violence against women

- [Asian Human Rights Commission, INDIA: Understanding the Rape Republic, 18 June 2014](#)
[...] India's judiciary has adopted and exhibited prejudiced attitudes against women from time to time and justified impunity for sexual assault. In October 2013, a Delhi High Court judge was found sermonizing in an order when he prescribed 'girls are morally and socially bound not to indulge in sexual intercourse before a proper marriage, and if they do so, it would be to their peril and they cannot be heard to cry later on that it was rape.' The judge ignored the law of the country to uphold things in which he had been trained, and undermined the principle of the rule of law. [...]
The country's political leaders, who have immense influence over ordinary citizens, do not lag behind in pronouncing and promoting misogynistic ideologies regarding sexual assault, reinforcing impunity. The media also reflects their perceptions. [...]
These statements and perceptions expose the tip of the iceberg; and can help one understand how India's institutions, and the individuals representing the institutions, are certainly not free from authoritarian and misogynistic ideas that further propagate the repression of victims of sexual assault. [...]
- [Amnesty International, India: Submission to the UN Committee on the Elimination of Discrimination against Women, 58th session, June 2014, 2014](#)
[...] CONCEPT OF MODESTY IN CRIMINAL CODE
[...] The use of the concepts of morality and modesty in legislation and judicial decisions perpetuate stereotypes about women's expected conduct and behavior and can impede women's access to justice. Their use does not adequately protect the human rights of women and girls, including their right to live free from violence. They also violate India's international legal obligations to amend all laws containing gender discriminatory provisions. [...]

Judicial response to violence against women

- [US Department of State, Country Report on Human Rights Practices 2014 - India, 25 June 2015](#)

[...] Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

[...] Women

[...] There were reports of village councils ordering the rapes of women to resolve local disputes in West Bengal and Jharkhand. The Kolkata High Court expressed concerns over the increasing prevalence of village councils using rape and violence against women for revenge. In July, Jharkhand village council leader Ghosal Pasi ordered the rape of a 13-year-old girl while spectators from the village watched as punishment for her brother's alleged sexual harassment of a woman. The police arrested Ghosal Pasi and the man who raped the girl, Nakabandi Pasi, and sent them to judicial custody. [...]

➤ [BBC, Indian gang rape victim faces 'purification ritual', 14 June 2015](#)

A woman who was gang raped for eight months in Gujarat, western India, is now not only pregnant as a result, but has been ordered to face "purification tests" by her community's local courts. [...]

Such a ritual is limited to the villages of Gujarat's Devipujak community, to which the victim belongs.

The Devipujak group follows a strong caste and religious system and has its own community courts which decide on various matters including infidelity and rape.

It is not clear whether these hearings are condoned or condemned by the authorities, but they have never been investigated by the police. [...]

➤ [BBC, India marital rape victims' lonely battle for justice, 26 May 2015](#)

[...] A government minister recently stirred a debate when he told the parliament that marital rape could not be criminalised in India as "marriages are sacrosanct" in the country. [...]

In February, India's Supreme Court rejected Rashmi's plea to declare marital rape a criminal offence. The court said it was not possible to order a change in the law for one person. [...]

Supreme Court lawyer Karuna Nundy who specialises in human rights litigation and gender justice says Indian law provides little relief to victims of marital rape.

"At the moment, a wife can file a case under the domestic violence act which are dealt with in a civil court. It gives a woman a legal right to separate from her husband on the grounds of cruelty.

"But what is the legal provision to punish the act of crime? Any sexual act which is forced or is being done without the consent of the woman is a crime. The relationship of the victim with the perpetrator makes no difference."

A number of studies done over the years suggest that sexual violence in marriage is prevalent in India.

[...] The victims of "marital rape" say they fight a lonely battle because their suffering falls under no category of Indian legal system. Moreover, society often blames them for maligning the institution of marriage.

However, Save the Family Foundation, a men's rights group, cautions against criminalising marital rape.

"We have already seen how 498A, the anti-dowry law, has been largely misused by women in India to harass men and their family. The Central Woman Commission of India has accepted that a number of rape cases reported each year are false. How can one prove a marital rape? Taking bedrooms to court is a dangerous idea," a spokesman said.

As we wrap up the interview, Rashmi uncovers her face and says: "On every court hearing, I see my husband and his family completely unaffected and without any regrets about what has happened.

"Why is it that a woman has to hide her identity to stop being hounded? Why am I looked down upon if I tell the world that I have been raped by my husband?" [...]

➤ [Immigration and Refugee Board of Canada: India: Violence against women, including domestic violence, homelessness, workplace violence; information on legislation, state protection, services, and legal recourse available to women who are victims of violence \(2013-April 2015\) \[IND105130.E\], 15 May 2015](#)

[...] 4.4 Other Support Services

[...] A 27 February 2013 article by UN Women reports the use of Nari Adalats, Women's Courts, to address matters of violence against women. A 22 December 2013 article by the New York Times indicates that Nari Adalats are emerging in order to assist "women shut out of more formal systems of justice." According to the New York Times, such courts originated in 1995 in a Gujarat village in order to fight domestic violence, and have heard thousands of cases pertaining to assault, child marriage and dowry disputes (The New York Times 22 Dec. 2013). The same source reports that Nari Adalats are

"not able to issue legally binding judgements," and that they "depend on strong relationships and the trust of poor women and village leaders" (ibid.). [...]

The 27 February 2013 article by UN Women indicates that women are often unable to access formal justice systems as "a result of discrimination from filing complaints at the police station to drafting witness statements" (UN 27 Feb. 2013). The same source explains that "issues of violence" are addressed at monthly meetings organized by "self-help groups (SHGs)" and other groups, then referred to justice committees (Nyaya Samitis), who begin an investigation (ibid.). The Nari Adalat court is

convened following the investigation, where a decision is issued by the women's court along with members of the village committee in the presence of the ... village head. This provides community support to the decisions made by the justice committee. Though informal, these decisions provide faster redress to women, especially since they are in line with legal provisions. Where decisions are not enforced or cases are too sensitive, they are referred to formal legal channels" (ibid.). [...]

- [Asian Legal Resource Centre, Written statement* submitted to the UN Human Rights Council by the Asian Legal Resource Centre, a non-governmental organization in general consultative status, INDIA: Criminal justice reforms elementary to control violence against women, 20 February 2015](#)

[...] With a flawed investigation, there is not much a prosecutor and a judge can do to serve justice. The inability of the Judiciary to complete trials within a reasonable time only adds to the problem. A failed investigation and a decade long trial not only render the initial complaint meaningless, but also make a mockery of the justice process. [...]

- [Asian Human Rights Commission, INDIA: Understanding the Rape Republic, 18 June 2014](#)

[...] The judicial system cannot be spared either. It, too, inherits perceived dominating ideologies over women's bodily autonomy, and administers the law accordingly, encouraging impunity for sexual violence. The country's judicial system, hailed, as one of the most powerful institutions for protection and promotion of human rights, is still not congenial to female victims of sexual assault. An inadequate number of judges, prolonged periods of litigation, manipulation of medical reports, intimidation of victims, and non-protection of witnesses are barriers to justice in all types of violations. Cases of sexual assault are not immune to this trend. Corruption and political influence are two blameworthy factors. [...]

- [UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014](#)

[...] 71. Women experience obstacles in gaining access to mechanisms of redress, including legal aid, counselling services and shelters. They are also revictimized and exposed to further risk of violence through the denial of redress in the context of informal trials or negotiations between families and community leaders. The payment of financial compensation by the perpetrator or his family for acts of violence against women, in lieu of legal remedies, was a recurrent concern vis-à-vis the formal and informal justice systems. [...]

Useful sources to consult on the economic situation for women in India

Source	Type of source (information taken directly from website)	Website's search function
Internal Displacement Monitoring Centre (IDMC), India country page	The IDMC is part of the Norwegian Refugee Council (NRC), an independent, non-governmental humanitarian organisation. It provides: - India figures analysis - Country overview - Publications, news, blog posts and maps	- Advanced search function which allows for: - BOOLEAN searches (AND, OR, NOT) and searches for phrases ("....") - It is not possible to search within particular time frames but searches can be organised by date and limited by theme
International Committee of the Red Cross (ICRC), India pages	In India, the ICRC's New Delhi delegation promotes international humanitarian law regionwide and visits people detained in connection with the situation in Jammu and Kashmir. It also support the Indian Red Cross Society and the Maldivian Red Crescent Society. The India country page contains: Latest News	- Country pages - Simple search function which allows for: keyword searches, phrases, organises search results by relevance and date
OHCHR, India country page	United Nations Human Rights: Office of the High Commissioner for Human Rights. Key documents Include: - Most recent concluding observations - Country visits by Special Procedures - News archives	- News archive has advanced search function which allows for searches by country: - India page has simple search function which allows for key word search only
Relief Web, India country page	Relief Web is a specialised service of UNOCHA (see below) which provides reliable disaster and crisis updates and analysis to humanitarians. It provides: - Updates and analysis from more than 4,000 global information sources - Situation reports, analysis, maps and info-graphic on crises and natural disasters.	- Country and thematic pages - Advanced search function which allows for BOOLEAN searches (AND, OR, NOT) and searches for phrases ("....") - Limits searches by: Country; organisation; theme; content format; feature; disaster type; vulnerable groups; publication date (by month); language
Social Institutions and Gender Index [OECD: Organisation for Economic Cooperation and Development]	About the SIGI: Discriminatory social institutions are defined as the formal and informal laws, attitudes and practices that restrict women's and girls' access to rights, justice and empowerment opportunities. These are captured in a multi-faceted approach by SIGI's variables that combine qualitative and quantitative data, taking into account both the de jure and de facto discrimination of social institutions, through information on laws, attitudes and practices. The variables span all stages of a woman's life in order to show how discriminatory social institutions can interlock and bind them into cycles of poverty and disempowerment.	- Country page does not have a search function - Homepage allows for keyword search only
UNHCR, India country page	UNHCR is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. UNHCR country pages provide: - Statistical snapshot - Latest news	- Country page does not have a search function - UNHCR home page has an advanced search function which allows for BOOLEAN

	○ UNHCR fundraising reports ○ Background, analysis and policy ○ Statistics ○ Maps ○ Partner directory ○ India Fact Sheet	searches (AND, OR, NOT, ALL) and keyword by title • Limits searches by category, country of origin, country of asylum • Searches within time frames
UN News Centre 'Advanced Search'	Provides news and key UN resources: ○ Latest developments ○ Maps of the region ○ Statement from the UN Secretary General; Security Council; General Assembly ○ Aid/development: UN Agencies & Programmes	• The advanced search function allows for: • 3 distinct key word/set phrases • Searches within time frames • Searches limited by subject
World Bank, India pages	India country page provides: ○ Overview ○ Projects & Programs ○ Data [world development indicators] ○ Research ○ News & Views	• Home page has an 'advanced search function' which allows for keyword search, refined by 'file type', region, country, topic, date, project and language • Research tab has search function which can be refined by timeframes, specific date ranges, document type, topic and theme

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