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Formerly Indian Muslim Council-USA



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The Advocates for Human Rights, an NGO in special consultative status, in collaboration
with the Indian American Muslim Council

Jamia Teachers Solidarity Association

The Quill Foundation

Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.

Indian American Muslim Council (IAMC) is a Washington, D.C.-based apolitical and non-profit organization dedicated to promoting peace, pluralism and social justice through advocacy and outreach across communities. Founded in August 2002, IAMC is the largest advocacy organization of Indian Muslims in the United States, with 16 chapters across the country. IAMC strives to strengthen India's secular institutions and promote peaceful ethnic and religious co-existence.

The Jamia Teachers Solidarity Association (JTSA) is a New Delhi-based collective of university teachers formed in 2008 after an extrajudicial killing of Muslim men by Delhi Police. JTSA is an important voice against illegal detentions, extrajudicial killings and sectarian witch-hunts by anti-terror law enforcement agencies. It conducts fact-findings, publishes reports and engages in legal aid work. It collaborates with civil society groups on issues of justice and civil rights.

The Quill Foundation is a New Delhi-based autonomous institution engaged in research and advocacy around issues of human rights, justice and equity faced by the underprivileged sections of India, especially Dalits, Muslims, women, sexual minorities and the differently abled. Its constituent Law and Human Rights Cell (LHRC) has been investigating and examining the many ways in which legal and judicial processes form the context of everyday injustices.

I. EXECUTIVE SUMMARY

1. India is the world's largest democracy and a pluralistic melting pot of different religions, cultures, and languages. During the period considered under the Human Rights Council's Universal Periodic Review, however, there has been an alarming rise in discrimination and violence against religious minorities. Violence and discrimination against Muslims and other religious minorities has long been a problem in India, notably during the targeting of Muslims in Gujarat state in 2002, when India's current Prime Minister, Narendra Modi, was leading that state's government. The frequency and scope of such violence, however, has substantially increased in recent years, including since Mr. Modi became Prime Minister in 2014, and can be attributed, at least in part, to the rise in Hindu nationalism connected with his Bharatiya Janata Party (BJP).¹
2. This stakeholder report addresses India's failure to comply with its international human rights obligations to protect members of minority groups. In particular, the report calls attention to serious problems with the treatment of Muslims in India. Significant human rights challenges include: extrajudicial executions committed by police and security personnel, as well as non-State actors; arbitrary and unlawful detentions; torture and cruel, inhuman and degrading treatment of terrorism suspects in police custody; discriminatory laws and practices; harassment of human rights defenders; as well as the targeting of NGOs through prohibitive legislation. Additionally, this report highlights the Indian government's failure to adequately investigate and effectively prosecute perpetrators of these human rights violations against members of minority groups.

II. BACKGROUND AND FRAMEWORK

A. *Constitutional and Legislative Framework*

3. The Indian Constitution provides all citizens with the "right to equality before the law," the right to "the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth," and the "right to freedom of speech and expression."² Further, it specifies that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest" and that every person arrested be presented to the nearest magistrate within 24 hours of the arrest.³ In 1993, India passed the Protection of Human Rights Act which created the National Human Rights Commission (NHRC). The National Commission for Minorities (NCM) is another governmental body charged with monitoring and reporting on human rights violations against minorities and ensuring that minorities are protected and treated equally.⁴
4. In 2011, the Government introduced in Parliament a Prevention of Communal and Targeted Violence (Access to Justice and Reparation) Bill to criminalize "any act or series of acts, whether spontaneous or planned, resulting in injury or harm to the person and or property, knowingly directed against any person by virtue of his or her religious or linguistic identity." The BJP, however, opposed the bill and it was therefore dropped.⁵

B. 2012 UPR

5. As part of the second cycle of the UPR of India in 2012, many Member States expressed concern at India's non-ratification of certain international treaties. Many countries urged India to ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearances.⁶ India accepted the recommendation to ratify the Torture Convention, but it has yet to do so.
6. Additionally, India accepted recommendations to continue cooperating with Special Procedures and to accept, in particular, requests for country visits from Special Rapporteurs (Brazil).⁷ The Government, however, has still not accepted the request from the Special Rapporteur on Torture to visit India, pending since 1993.⁸
7. In its 2012 UPR, India accepted some recommendations related to the rights of religious minorities. India agreed to improve measures to prevent violence against members of religious minorities (Iran),⁹ to strengthen the Federal Government's effort to guarantee freedom of religion to everyone (Holy See),¹⁰ and to put in place appropriate monitoring mechanisms to ensure that the intended objectives of progressive policies for the promotion and projection of the welfare and the rights of the vulnerable, including scheduled castes and tribes and minorities, are achieved (Ghana).¹¹ Further, India agreed to provide more resources for the enjoyment of economic and social rights, especially in favor of vulnerable groups like minorities (Viet Nam).¹²

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. Equality and Non-Discrimination

8. **Discriminatory religious-based laws that ban the slaughter of cows.** Several Indian states have passed legislation that bans cow slaughter and makes the sale of beef punishable by up to five years in prison.¹³ Prime Minister "Modi's office has suggested that these bills are models for other states to emulate."¹⁴ Religion-based cow protection laws have a discriminatory impact on Muslims, Christians, and low-caste Dalits (the former Hindu "untouchables" formally known as Scheduled Castes), many of whom consume beef. Attacks on members of religious minorities suspected of slaughtering cows have increased in India.¹⁵ In September 2015, a mob of 200 people murdered Mohammad Akhlaq and injured his son for allegedly killing a cow.¹⁶ In October 2015, Zahid Rasool Bhat was burnt to death for allegedly transporting cows to slaughter.¹⁷ A 22-year-old Muslim man was lynched in Himachal Pradesh state for transporting cows.¹⁸ Protests spread in Gujarat in July 2016 after a video went public showing vigilantes thrashing four Dalits about to skin a dead cow.¹⁹ Prime Minister Modi was forced to denounce cow vigilantes and order arrests.²⁰ But Pravin Togadia, a Hindu nationalist directly connected with RSS-BJP and a former close ally of

Modi's, rejected Modi's call as an "insult" and bluntly said that the cow vigilantes had helped Mr. Modi get elected in 2014.²¹

9. **Scheduled Castes lose affirmative quota benefits if they convert from Hinduism.** The Indian Constitution guarantees freedom of religion and also provides reserved places (reservations) for Scheduled Castes in educational institutions and government jobs. Yet the Government denies reservations to members of Scheduled Castes who convert out of Hinduism.²² In 2009, a commission led by a former Chief Justice recommended non-Hindu Scheduled Castes be eligible for reservations.²³ The government opposed the recommendation in the Supreme Court.²⁴ In February 2016, an Indian minister said allowing non-Hindu Scheduled Castes to benefit from reservations would "encourage conversion and weaken the Hindu religion."²⁵

B. Right to Life, Liberty and Security of Person

10. **Communal violence.** India has a dark history of communal violence against religious minorities. Significant occurrences in recent history include: the 1984 Delhi riots that resulted in the deaths of more than 3,000 Sikhs; the 2002 attacks in Gujarat, which resulted in the deaths of an estimated 1,100 to 2,000 Muslims as well as deaths of Christians and destruction of churches; and the 2007–2008 attacks against Christians in Orissa, which resulted in approximately 100 deaths.²⁶
11. Since 2012, communal violence has been increasing in India. The U.S. Commission on International Religious Freedom has put India on "a negative trajectory in terms of religious freedom," noting the steady increase of religious intolerance and violence.²⁷ In August and September of 2013, communal riots broke out in the Muzaffarnagar district in the state of Uttar Pradesh. Clashes between Hindu and Muslim communities resulted in more than 60 reported deaths and hundreds of injuries,²⁸ including sexual assault.²⁹ Communal violence further escalated during the weekend of September 7-8 by "inflammatory speeches by Hindu political leaders . . . that encouraged attacks on Muslims."³⁰ Human Rights Watch reports that "a curfew was imposed and the Indian army was deployed to restore law and order,"³¹ but in the end more than 42,000 people were displaced by the violence.³²
12. State governments in Muzaffarnagar and Shamli Districts organized relief camps for riot victims,³³ but conditions were woefully inadequate. The Indian National Human Rights Commission reported in December 2013 that approximately 40 children had died due to extreme cold in the camps.³⁴ On December 27, the state government began relocating riot victims from the camps³⁵; Human Rights Watch, which conducted a fact-finding visit to the camps in January 2014, called the removals "forced evictions" as those remaining in the camps still fear return.³⁶
13. The Supreme Court of India has stated that it holds "the state government responsible for being negligent at the initial stage and in not anticipating the communal violence [in Uttar Pradesh] and for taking necessary steps for its prevention." According to news reports, it

“rebuked the central government, saying that the violence could have been prevented if [Indian] intelligence agencies [had] alerted the district administration in advance.”³⁷

14. India has seen a substantial increase in communal violence since the election of Prime Minister Modi in 2014.³⁸ According to India’s federal interior ministry, India experienced a 17% increase in communal violence in 2015, compared to the previous year (751 vs. 644 incidents). In 2015, 97 people were killed and 2,246 people injured.³⁹ States that have significant instances of communal violence are Uttar Pradesh, Bihar, Maharashtra, Madhya Pradesh, Karnataka, and Gujarat.
15. **Encounter killings.** Extrajudicial executions occur in the context of “Encounter Killings,” or killings that occur during clashes between security forces or law enforcement and alleged armed suspects.⁴⁰ According to the National Human Rights Commission of India (NHRC), between 2008 and 2013, there were 555 registered encounter killings, with the highest numbers reported from Uttar Pradesh (138 killings) and Jharkhand (50 killings).⁴¹ In a previous report, the NHRC recorded nearly half as “fake encounters,”⁴² meaning that the encounters were staged as a pretext for an extrajudicial execution. In April 2015, the police killed 20 woodcutters in Andhra Pradesh, allegedly in self-defense.⁴³ But evidence suggests the victims had been unarmed and had been tortured before dying.⁴⁴ In 2016, the Special Investigation Team closed an investigation against the officers involved, concluding that “the complaint was false.”⁴⁵ Also in April 2015, the police in Telangana state killed five terrorism suspects in custody while they were travelling from jail to a court hearing.⁴⁶ Police asserted that the victims had snatched weapons and opened fire, prompting police to return fire in self-defense. But photographic evidence suggests that the victims were handcuffed and tied to their seats and that the weapons found on the bodies of the victims had been planted.⁴⁷ Efforts to file criminal charges against the police officers have met with stiff resistance.⁴⁸ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions reported in 2013 that encounter killings “have become virtually a part of unofficial State policy” in India.⁴⁹
16. In September 2014, the Supreme Court of India established a 16-point set of guidelines for encounter killings. It ruled that regardless of the circumstances of death in an encounter, officials must file an FIR (police report) immediately in every case and an independent investigation must be carried out. Until the inquiry is over, no police officer involved in the encounter should be given any out-of-turn promotions or gallantry awards.⁵⁰ Yet the April 2015 encounter killings described in the preceding paragraph demonstrate that these guidelines have not been fully implemented on the ground.
17. **Arbitrary Detention.** As discussed in greater detail in paragraphs 31–39 below, human rights defenders report increased police harassment, arbitrary arrest, and detention of Muslims based on the pretext of their purported involvement in terrorist activities.⁵¹
18. **Torture and Cruel, Inhuman or Degrading Treatment of Detainees.** While in custody, many suspects are also subject to torture and ill-treatment.⁵² The Ravi Chander Commission,

charged by the Andhra Pradesh State Minorities Commission with investigating the cases of 20 Muslim suspects, reported that the men were held without charge for several weeks (without appearing in court within 24 hours as required by law and without notification to families for several days, in spite of the families filing missing persons reports) at illegal detention centers and tortured to extract forced confessions of involvement in the Hyderabad bombings.⁵³ Further, in 2015, there were reports that policemen raped detainees.⁵⁴

C. Administration of Justice, including impunity, and the rule of law

19. **Impunity for non-State actors.** Communal violence against religious minorities in India has increased since the election of Prime Minister Modi, yet many of the individuals responsible for these acts have not been brought to justice. Although there are court cases pending for these incidents, NGOs report religious bias and corruption and intimidation of witnesses in court proceedings.⁵⁵
20. In August 2015, suspected Hindu supremacists shot and killed former Vice Chancellor of Kannada University, M.M. Kalburgi, a recipient of India's highest award for literature and a renowned campaigner against social evils in Hinduism. Police arrested two men, belonging to an extreme Hindu right group, for conspiracy to the murder. They are also accused of involvement in the February 2015 Mumbai slaying of Govind Pansare, a communist leader, who had been outspoken against Hindu right-wing politics.⁵⁶ In 2013, a leading "rationalist" and campaigner against superstition, witch-craft, and "black magic," Narendra Dabholkar, was similarly shot dead in a town near Mumbai.⁵⁷
21. **Impunity for police officers and government officials.** A junior minister in Mr. Modi's government, veterinarian Dr. Sanjeev Balyan, became a first-time Member of Parliament in 2014 following his involvement in the August 2013 anti-Muslim violence, referred above, in Muzaffarnagar. Police made him an accused based on speeches he made before the violence. He was given bail.⁵⁸ In 2016, police officer P.P. Pandey was promoted as Director General of Police (DGP) in Gujarat, becoming the first accused in an encounter killing to head a state police. When Mr. Pandey surrendered in court in 2013, associates of RSS-BJP accompanied him. Mr. Pandey had spent a year and a half in prison before getting bail.⁵⁹
22. In March 2015, a trial court in Delhi acquitted 16 policemen accused of killing 42 Muslim men 28 years previously arbitrarily picked up from Meerut city of Uttar Pradesh, 70 km to Delhi's northeast. Charges were dismissed due to "scanty, unreliable and faulty investigation."⁶⁰
23. **India fails to implement the Indian Supreme Court's 1996 *DK Basu* Guidelines.** The 11 *DK Basu* Guidelines set forth human rights protections for detainees, including the requirement that police officers submit a memo of the arrest signed by the arrestee and a witness, that a friend or relative of the arrestee be informed of the arrest, and that a medical examination of the arrestee be conducted and signed upon arrest and repeated every 48 hours.⁶¹ In *DK Basu v. State of West Bengal*, the Supreme Court on July 24, 2015 reviewed

the status of the Guidelines and issued fresh direction for their implementation after it found the response of state governments inadequate.

D. Freedom of religion or belief, expression and association

24. **Anti-Conversion Laws.** Indian states such as Chhattisgarh, Himachal Pradesh, Gujarat, Madhya Pradesh, Arunachal Pradesh, and Odisha, have passed so-called Freedom of Religion acts, commonly called anti-conversion laws, restricting the freedom of religious minorities. These laws purport to outlaw “improper” conversions of Hindus to other religions, but they fail to define clearly an “improper conversion.”⁶² The laws do not contain evidentiary requirements and are not applied to prohibit forceful conversion *to* Hinduism. Individuals seeking to convert from Hinduism to another religion must seek official authorization, and the ambiguous term “improper” gives authorities the power to accept or reject the legitimacy of a conversion.⁶³ This authorization process serves as a barrier to discourage individuals from converting from Hinduism.⁶⁴ The UN Special Rapporteur on freedom of religion or belief reports that these laws and draft laws “have had adverse consequences for religious minorities and have reportedly fostered mob violence against them.”⁶⁵ In January 2016, authorities in Karnataka state detained 15 Christians after two Hindu nationalist groups, Bajrang Sal and VHP, alleged that the Christians’ conversions had been “improper.”⁶⁶

E. Restrictions on Civil Society

25. Criticized by several countries during the 2008 and 2012 UPRs, the draconian **Foreign Contributions Regulation Act (FCRA)** continues to restrict foreign funding and revoke licenses of NGOs that criticize the government.⁶⁷ Section 3 prohibits “organisations of a political nature” from receiving funds under an FCRA license. Section 5 authorizes the central government to specify any organization as being of a political nature “having regard to the activities of the organisation or the ideology propagated by the organization.”⁶⁸ This broad discretion allows the government to freeze the accounts of organizations that it deems to be “of a political nature” and to initiate criminal proceedings against them.
26. The government uses the FCRA to target its critics in civil society. In January 2015, officials stopped Greenpeace activist Priya Pillai from boarding a flight as she was headed to testify before the British Parliament about human rights abuses in Madhya Pradesh state.⁶⁹ The FCRA bars Greenpeace from making anti-national statements. The Delhi High Court ruled the government’s action unlawful and rejected the government’s assertion that her testimony would have been an anti-national act.⁷⁰ Activist Teesta Setalvad has been a prime target of government retaliation for her work seeking justice for the Gujarat victims and a new trial for Modi and other Gujarat officials implicated in the 2002 violence.⁷¹ In February 2015, the Supreme Court stayed attempts to arrest her under Sections 33–39 of the FCRA for financial embezzlement. As Ajit Sahi testified before the Tom Lantos Human Rights Commission of the U.S. Congress, “The Supreme Court had to stay attempts to arrest her on charges of financial embezzlement through the Citizens for Justice & Peace, her NGO. Her offices and

homes have been raided several times, failing each time to recover incriminating evidence.”⁷² In June 2016, the government suspended the registration of Lawyers Collective, an Indian NGO dedicated to human rights issues, allegedly due to its legal assistance to Setalvad.⁷³

F. Human Rights and Counter-Terrorism

1. The Armed Forces (Special Powers) Act (AFSPA) and the Public Safety Act (PSA)

27. **Armed Forces (Special Powers) Act (AFSPA)** During India’s 2008 and 2012 UPR, several countries recommended that the AFSPA be repealed. The AFSPA remains in effect in government specified “disturbed areas,” giving military personnel and police extraordinarily wide discretion to use force against civilians, including the right to shoot to kill, to raid houses, and destroy any property that is “likely” to be used by insurgents, and “to arrest without warrant” even on “reasonable suspicion” a person who has committed or even “about to commit a cognizable offence.”⁷⁴ The AFSPA also results in immunity from prosecution as prosecution requires sanction of the Central Government, which is rarely granted in practice.⁷⁵
28. **Jammu and Kashmir:** Disputed by Pakistan, India’s northernmost state has seen several wars. The Special Rapporteur on extrajudicial, summary and arbitrary executions has expressed concern about killings and disappearances conducted by Indian security forces in this Muslim-majority region.⁷⁶ The International Peoples’ Tribunal on Human Rights and Justice in Kashmir, an NGO, reports that over 900 army personnel, as many as 150 of them major or ranked higher, are individually responsible for murders and disappearances, among others.⁷⁷ It noted the “extrajudicial killings of 1,080 people and enforced disappearances of 172 people” during 1990-2014.⁷⁸
29. **PSA Excesses:** The Public Safety Act (PSA) allows detention of individuals without official charges or judicial review and is in effect only in Jammu and Kashmir.⁷⁹ During 2004-14, more than 690 individuals, including activists, opposition leaders, lawyers and journalists, have been considered “terrorists, insurgents and separatists” and detained under the PSA.⁸⁰ Many reported being tortured and denied access to lawyers or families for up to two years.⁸¹ “PSA detentions [are] a revolving door to keep people [that the State] can’t or won’t convict through proper legal channels lock up and out of the way.”⁸² The PSA also protects state officials from prosecution.⁸³
30. **Manipur encounter killings:** In July 2016, the Supreme Court of India ruled AFSPA cannot be in place indefinitely and ordered an investigation into over 1,500 cases of killings by security forces in Manipur, a small state in India’s northeast, during 1978-2010.⁸⁴ Ruling that “the use of excessive force or retaliatory force” was impermissible,⁸⁵ the court noted evidence that as many as half of the cases that had been investigated involved fake encounters.⁸⁶ Earlier, a Supreme Court-appointed commission led by a former judge found

15 of 62 cases to have been “faked.”⁸⁷ The Government has yet to implement the Supreme Court’s orders on Manipur.

2. *Other counter-terrorism measures*

31. India has repeatedly used its anti-terror laws against innocent Muslims across the country as well as against innocent tribal people in the regions where Maoist insurgency activity is common. The laws have been used to ban and outlaw organizations of Muslims, rendering them a suspect community. The Unlawful Activities Prevention Act (UAPA) and the Maharashtra Control of Organized Crimes Act (MCOCA) give police and investigating agencies wide and discretionary powers, resulting in arbitrary arrests and other due process violations.
32. **UAPA made increasingly draconian:** Enacted in 1967, UAPA was amended in 2004, 2008 and 2012. UAPA now gives investigating agencies sweeping powers to arrest, search, and detain suspects based merely on “personal information.”⁸⁸ Authorities may keep an accused under arrest without charge for up to 180 days,⁸⁹ three times the duration for ordinary cases. UAPA prohibits the release of a charged defendant on bail.⁹⁰ The law creates a presumption of guilt.⁹¹ UAPA abandoned a previous law’s provision that allowed police officers to be punished for malicious prosecution,⁹² and a separate provision that had required a Review Committee to assess whether the evidence is sufficient to prosecute.⁹³
33. Under the UAPA the government has discretion to designate, by simple notification, any organization as “unlawful,”⁹⁴ if the government sees that organization as a threat or potential threat to the country’s “sovereignty and integrity,” or as promoting “enmity between different groups” or as making “imputations prejudicial to national integration.” The law allows a judicial tribunal to confirm or reject the designation, but it does not specify the standards for adjudication.⁹⁵ UAPA also criminalizes membership in an “unlawful” organization and any act of “helping” a terrorist organization.⁹⁶
34. **Vague definition of terrorism:** UAPA loosely defines terrorism as “any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people.”⁹⁷ In practice, this definition lumps together political dissenters and members of the banned Maoist insurgents.⁹⁸ Authorities use the definition to label Muslims as members of the Students’ Islamic Movement of India (SIMI), an organization the government has banned since September 2001.⁹⁹
35. **Ban on SIMI and its repercussions:** The 15-year ban on SIMI has enabled the arrest and incarceration of Muslims across the country under the pretext that they are aiding and abetting the activities of a banned organization.¹⁰⁰ Moreover, extra-legal “national security” concerns have swayed judicial pronouncements, to the detriment of the rule of law. In a 2013 report, stakeholder JTSA revealed a pattern of prejudice inherent in the SIMI arrests, investigations, and prosecutions in Madhya Pradesh state,¹⁰¹ which, interestingly, has

witnessed not a single terror incident. In almost all cases police had not even alleged violence. Most FIRs (police reports) are nearly identical. An overwhelming number of cases pertain to seizure of SIMI posters, pamphlets, and other literature, which themselves have never been declared “unlawful.” Many accused spent years in prison accused of nothing more than shouting pro-SIMI slogans in public and carrying posters. Some were accused of publicly addressing people about SIMI and *jihad*.¹⁰²

36. **Judicial abdication in Madhya Pradesh:** Despite weak evidence and procedural violations, courts have convicted many people under the UAPA. In 2013, a Madhya Pradesh court convicted 14 Muslims accused of furthering SIMI’s activities by printing, distributing, and possessing SIMI literature. The evidence came from a witness who was a member of the Bajrang Dal, an affiliate of the RSS-BJP. After another prosecution witness turned hostile, news media reported the police had detained him. He allegedly committed suicide during the trial. The state high court later criticized the prosecution and the trial court.¹⁰³
37. **17 years of MCOCA:** The MCOCA, adopted in 1999, contains provisions that go further than UAPA in violating international human rights standards. It allows confessions to police officers to be admitted into evidence. MCOCA enables prosecutors to use such confessions to implicate a co-accused or other individuals named in the confession.¹⁰⁴ An overwhelming number of people charged under MCOCA are Muslims.¹⁰⁵ Police use of torture on individuals accused under MCOCA in Maharashtra has been widespread.¹⁰⁶ MCOCA disallows anticipatory bail for six months, and officials therefore allegedly can use the law to engage in preventive detention.¹⁰⁷
38. **Mumbai train blast injustice:** On July 11, 2006, more than 180 people died as seven bombs went off in local trains in Mumbai.¹⁰⁸ In 2015, a trial court found 12 of the 13 people arrested for crime guilty and sentenced them to death and life sentences.¹⁰⁹ The case highlights human rights violations under MCOCA, especially in conjunction with UAPA. Initially the crux of the case rested on intercepted cellular phone communications (another power that MCOCA allows), which became the basis for the police to take the suspects under custody. But the evidence in the final charge sheet was based only on confessions of a majority of the accused, all of whom later recanted and even wrote a public letter addressed to India’s highest authorities detailing the torture to which they had been subjected to extract the confessions.¹¹⁰
39. According to a study conducted by the Quill Foundation on terror prosecution in Maharashtra state since 1993, an overwhelming number of the more than 460 persons accused in terror cases have been declared innocent after spending an average of three to six years in prison.¹¹¹ More than half of the accused in the state were doctors, engineers, and educated professionals in the cusps of their careers, almost all of whom have been forced to take on traditional occupations or start small businesses, or who remain unemployed. The conviction rate in these cases is very low. Only 42 of 93 cases filed since 2001 against alleged members of the

banned group SIMI, with more than 200 accused, have concluded. Of these, 39 resulted in acquittals. The other three saw convictions with sentences of two years each.

IV. RECOMMENDATIONS

40. The authors of this joint stakeholder report suggest the following recommendations for the Government of India:

Reform of Domestic Legislation

- Repeal laws, such as the discriminatory and unconstitutional anti-conversion laws in the states of Maharashtra, Madhya Pradesh, Chhattisgarh, Odisha, Gujarat and Himachal Pradesh, that discriminate against religious minorities. Repeal cow slaughter laws and action against consumption of beef in the light of the Bombay High Court ruling that eating beef is not illegal.
- Enact a law providing for punishment of sectarian violence by individuals or groups, including propagating violence or threats of violence against religious and social minorities.
- Permit Scheduled Castes and Tribes to retain eligibility for reservations regardless of their religion and not be penalized for converting from Hinduism.
- Sign into law criminal procedure amendments passed by Parliament in 2010 that would require the police to record a formal reason under law for making a warrantless arrest.
- Enact Prevention of Torture law making torture by police and other law enforcement agencies a criminal offense punishable by imprisonment and fines.
- Remove from UAPA provisions for in-camera proceedings; secret witnesses; warrantless search, seizure and arrest; and 180-day detention without being charged; and institute judicial inquiry into its abuse and misuse by police across states.
- Repeal the AFSPA and the PSA.
- Remove from MCOCA the provision that allows use of confession to police as evidence and institute judicial inquiry into its abuse and misuse by police across states.
- Criminalize public threats and retaliatory action by lawyers associations, political parties, politicians or individuals against lawyers defending terrorism suspects.
- Ratify the U.N. Convention Against Torture and allow a country visit to India by the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Addressing Accountability and Impunity

- Release a comprehensive white paper on the problem of “encounter killings.”¹¹²
- Pursuant to the Supreme Court of India’ ruling of July 2016, conduct a time-bound inquiry into encounter killings of more than 1,500 citizens in Manipur by Indian security forces and initiate prosecution of officials allegedly responsible.

- Investigate all allegations of human rights violations during counterterrorism operations, including of "fake encounter" killings and other extrajudicial executions, and prosecute those found responsible regardless of position. Ensure that salaries and/or retirement benefits of responsible officials should be directed instead to financial compensation for victims. An independent commission should be created to investigate the implementation of AFSPA and PSA and allegations of abuses.
- Create an independent commission of enquiry to investigate the extent of malicious prosecution and prejudiced investigations UAPA, MCOCA and POTA.
- Investigate, prosecute, and end the practice of awarding promotions, wage increases and service awards to government officials, police officers, and military personnel accused of violating human rights.
- Investigate and prosecute government officials, political leaders, and others who incite religious violence. Create a governmental inquiry into the activities of political leaders and members of the RSS-BJP and their affiliates who incite violence against religious minorities.

Standards of Treatment of Prisoners/Law Enforcement Actions

- Implement the seven directives of the Supreme Court for police reform given in its order of 22.09.2006 to create: 1) a National Security Commission for the selection and placement of heads of Central Police Organizations, as well as State Security Commission to insulate the police from extraneous influences; 2) Police Establishment Board to give it functional autonomy; 3) Police Complaints Authority to ensure accountability; 4) the Model Police Bill 2015, which is based on the "Model Police Act" prepared by the Soli Sorabjee committee in 2009, after incorporating civil society's suggestions; and 5) independent ombudsman to receive, investigate and recommend action on complaints against law enforcement personnel
- Ensure that officials responsible for apprehension, arrest, detention, custody and imprisonment follow applicable international standards, particularly relating to clear identification of law enforcement officials and official documentation of the arrest; access to family and legal counsel; examination upon admission to and regularly during detention; prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions; and monitoring of all counterterrorism operations.
- Codify the full set of guidelines for police officers making arrests that are contained in the landmark 1997 Supreme Court D.K. Basu case, and consider expanding them to apply to the police and other detaining authorities in circumstances outside a formal arrest to prevent torture and ill treatment.
- Ensure that police training in counterterrorism operations includes respecting due process, nondiscrimination, and humane treatment.

Rehabilitation of victims

- Provide rehabilitation through employment commensurate with qualifications to victims of illegal detention and torture, and create national policy to pay adequate financial compensation to such victims and to the family of those killed in fake "encounter killings".
- Create a national policy for providing financial compensation, a certificate of character and rehabilitative employment to individuals who have been wrongfully accused and subsequently acquitted of terrorism.

Reform of the National Human Rights Commission

- Require state human rights commissions to report back to the NHRC on actions taken on complaints the NHRC forwards to them for review.
- Amend the statute to empower NHRC to investigate encounter killings, custodial torture and other forms of human rights violations by law enforcement agencies and prison authorities, and make its findings and recommendations for prosecution legally binding
- Make the NHRC guidelines legally binding and require prompt action on NHRC guidelines to investigate "encounter killings".
- Reduce politicization of the NHRC by requiring a transparent appointments process that includes public hearings and participation from civil society groups.
- End the NHRC practice of using serving or retired police officers on investigative teams.

¹ Aman Sharma, *Communal riots up 17% in 2015 under NDA*, Times of India, Feb. 25, 2016, available at: <http://economictimes.indiatimes.com/news/politics-and-nation/communal-riots-up-17-in-2015-under-nda/articleshow/51130192.cms>; *BJP, Sangh behind rise in religious violence in 2015*, The Hindu, May 2, 2016, available at:

http://www.theadvocatesforhumanrights.org/ethical_issues_in_the_practice_of_human_rights_law.html.

² U.N. Human Rights Council, *National report submitted in accordance with paragraph 15(a) of the annex to human rights council resolution 5/1* (Mar. 6, 2008) available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=13940, 4, ¶ 15.

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²⁹ *India: Stop Forced Evictions of Riot Victims*, *supra* note 28.

³⁰ *Ibid.*

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³³ *Ibid.*, 28.

³⁴ *Ibid.*, 28–29. “In October and December of 2013, a team from the Indian National Human Rights Commission team assessed the state government efforts for relief and rehabilitation of displaced persons. The NHRC reported that approximately 40 children died due to extreme cold in the relief camps and made several recommendations to the state governments. The recommendations included providing compensation to families of those who died in the camps, providing adequate clothing and blankets, registering the names and addresses of all displaced persons, providing drinking water, improving sanitation, and providing regular medical checkups. State government officials claimed that they provided proper compensation to the displaced families as well as blankets, drinking water, medical check-ups, and free medicine to those in the camps. The media and civil society activists, however, reported that conditions in the camps were “unhygienic and subhuman.”

³⁵ *Ibid.*, 29. “Some of those affected alleged that they were being forcefully evicted from their camps without being provided proper alternative shelters or due compensation. A journalist who visited the area stated that bulldozers demolished approximately 30 tents in the Loi relief camp. According to official sources, 4,783 persons were living in the relief camps in Muzaffarnagar and Shamli at year’s end.”

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¹⁰⁷ Maharashtra Control of Organised Crime Act, 1999, No. 30, available at <http://www.satp.org/satporgtp/countries/india/document/actandordinances/maharashtra1999.htm>, ¶ 21.

¹⁰⁸ *All you need to know about the 7/11 Mumbai train blasts*, The Hindu, Sept. 30, 2015, available at <http://www.thehindu.com/news/cities/mumbai/all-you-need-to-know-about-711/article7640887.ece>.

¹⁰⁹ Amir Khan, *7/11 Mumbai train blasts verdict is out: 12 out of 13 accused found guilty*, The Indian Express, Sept. 12, 2015, available at: <http://indianexpress.com/article/india/india-others/2006-mumbai-serial-train-blasts-verdict-12-out-of-13-accused-convicted/>.

¹¹⁰ Pranali Lotlikar Chindarkar & Drishti Mishra, *2006 Mumbai train blasts accused pure as ray of light, innocent as new-born child: Advocate Yug Chaudhry*, DNA India, Oct. 1, 2015, available at <http://www.dnaindia.com/mumbai/report-2006-mumbai-train-blasts-accused-pure-as-ray-of-light-innocent-as-new-born-child-advocate-yug-chaudhry-2130495>.

¹¹¹ Quill Foundation, *Terror Prosecution in Maharashtra: 1993–2015*, forthcoming.

¹¹² The white paper should include information about: the total number of encounter killings across the country; the number in which NHRC guidelines were followed; the number and details of those encounter killings against which there are allegations that the police did not act in self-defense; the number of encounter killings found to be false by either courts/ magisterial/ judicial probes; action taken against police officers found to be involved in fake encounters.