

**Submission to the United Nations Human Rights
Committee for its consideration of the 4th periodic
report of India at its 141th Session**

Submitted by **Banglar Manabadhikar Suraksha Mancha (MASUM)** and the **World
Organisation against Torture (OMCT)**

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1. Introduction

Citizens of West Bengal experience high levels of violence and mistreatment at the hands of the State, a reality that is rarely highlighted both domestically and internationally. For years, the people living in the Indo-Bangladesh border area have experienced torture, extrajudicial killings and harrassment. The legislative impunity granted to paramilitary forces, such as the Border Security Force (BSF), particularly impedes victims’ quest for justice.

India shares a border of approximately 4,096 kilometers with Bangladesh. The border was conceived in 1947, decades before Bangladesh was to become an independent state. After the Second World War, the British decided to grant independence to the subcontinent divided along religious lines into two separate territories, India and Pakistan. The task of drawing a border through an incredibly diverse region with a population of over 400 million was given to British lawyer Sir Cyril Radcliffe. Radcliffe, who had never previously visited the subcontinent, had no knowledge of its geography, diversity, and communal tensions. The boundary that divided India and Pakistan cut through rivers, fields, police stations, and, on some occasions, even through people’s homes. In August 1947, while festivities were observed for long-awaited freedom, over 12 million people were forced to migrate across the border, in the face of extraordinary communal violence.¹ Due to the haphazard manner in which the border was drawn between India and Pakistan, many territorial disputes and irregularities emerged on both the Western and Eastern points of the border. When Bangladesh (formerly East Pakistan) became an independent nation state in 1971, it inherited these disputes; the Indo-Bangladesh border continues to face various challenges, such as crossborder smuggling, human trafficking, and other trans-border crimes.² The atrocities in West Bengal have received little attention. There is minimal reporting by Indian newspapers,

¹ Whitehead, Andrew, *Partition 70 years on: The turmoil, trauma - and legacy*, BBC, July 27th, 2017, <https://www.bbc.com/news/world-asia-40643413>.

² A Rather, Zahoor, *India–Bangladesh Border Issues: Challenges and Opportunities*, International Studies, vol. 50, 1–2 (2013) pp. 130–144.

and domestic and international organizations. Furthermore, torture and extrajudicial killings in West Bengal have not gained traction by relevant UN mechanisms.

In the context of the Human Rights Committee's (Committee) examination of India's implementation of and compliance with, the provisions of the International Covenant on Civil and Political Rights (ICCPR), MASUM and the OMCT wish to bring to the Committee's attention its concerns about the discrimination and oppression of people living in West Bengal; torture and death in custody; impunity, gender-based violence and trafficking, the National Human Rights Commission and the situation of Human Rights Defenders. This submission is relevant for the Committee's evaluation of India's implementation of its Covenant obligations and related Covenant rights under articles 2, 3, 6, 7, 8, 9, 10, 12, 14, 15, 17, 19, 22, 24, 26.

2. Discrimination and Oppression of People Living in West Bengal (Articles 2, 3, 12, 17, 26 ICCPR)

One of the most salient issues affecting the population on both sides of the Indo-Bangladesh border is illegal movement and migration within India from the bordering areas. The districts of West Bengal along this border are some of the most deprived places in the country due to the abrupt and irrational demarcation of states in 1947, leading to imbalanced resource distribution, river erosion, inadequate irrigation systems, and a lack of industrial development and administrative initiatives. These factors are the root causes of malnutrition and acute poverty. Governmental programs like rural employment guarantees and various pensions are marred by corruption and nepotism, preventing aid from reaching those who need it most. Poor villagers have no option but to relocate to other states in search of jobs or get involved in illegal means to survive. Alleged cases of malnutrition deaths and cross-border smuggling over the last decades are results of man-made oppression and deprivation. Flaws in BPL listings, partisan approaches, and political nepotism further exacerbate the situation, with the 100-day employment guarantee providing less engagement and irregular payment of wages. Erosion is a severe calamity silently destroying villages and their inhabitants for decades. Several villages, including farmland and dwellings, have been swallowed by the river, while authorities remain inactive. Despite being victims of natural calamities, these villagers have yet to receive any governmental compensation or adequate rehabilitation. Successive spates of river erosion have forced families to migrate to far-off Indian provinces in search of sustenance. The affected population primarily consists of minority communities, including Muslims, Dalits, and Adivasis. Anti-Muslim sentiment has heightened under Prime Minister Narendra Modi and the ruling Bharatiya Janata Party (BJP), which has pursued a Hindu nationalist agenda since coming to power in 2014. The socio-cultural identity of the affected population, being religious minorities or lower caste Hindus, contributes to their marginalization.

a. Economic Disparities and Migration

The lack of work opportunities in West Bengal and the lower wage rates force outward migration. For example, according to a report published by the Reserve Bank of India in 2020, the average daily wage of a non-agricultural worker in West Bengal was INR 291, while in Kerala, it was INR 670. This significant wage disparity compels many people to migrate in search of better livelihood opportunities. Migrant laborers from West Bengal and Bihar contribute significantly to construction projects in more developed states, despite facing poor working conditions, health hazards, and lack of social and financial security. The

Inter-State Migrant Workmen (ISMW) Act provides certain protections for inter-state migrant workers, but the union government has not made concrete efforts to ensure that contractors and employers register their workers, enabling access to benefits under the Act. Additionally, many Indian authorities mistakenly arrest, detain, and charge Indian workers under the Foreigners Act, leading to their eventual transfer to Bangladesh. Many magistrates incorrectly assume that Bengali-speaking Muslims are Bangladeshi citizens who illegally entered India. Moreover, the social security schemes related to livelihood opportunities, pensions, and childcare often do not reach those living outside the border fence. The absence of public health infrastructure, educational institutions, clean drinking water, sanitation, electricity, and proper roads further exacerbates the challenges faced by these communities. This neglect contrasts sharply with the borders between India and Nepal and India and Bhutan, where no such restrictions exist, and a more reputable force, the Seema Suraksha Bal (SSB), is deployed. Stationing the BSF at the border violates the basic tenet of Article 14 of the Indian Constitution, which guarantees equality before the law to all citizens.

b. Violence and Harassment in the Border Area

The border with Bangladesh is heavily militarized and guarded by the BSF, leading to significant disruptions in the lives of local residents. The BSF has constructed a border fence several kilometres inland, cutting off parts of Indian territory and interfering with citizens' daily activities. The presence of BSF personnel often escalates tensions, as they monitor and restrict essential freedoms of movement, leading to harassment of peasants, insecurity among women, and constant apprehension among small-scale traders. The security situation in these areas is dire, with BSF actions posing threats to legitimate Indian citizens rather than protecting them. MASUM's findings indicate that people living outside the border fence face grave challenges in their daily activities. The gates in the fence are opened three times a day at arbitrary and changing times, making it difficult for people to access their farmlands. Identity documents such as Aadhaar and Voter ID cards are often not accepted, and individuals are required to produce specific BSF-issued identity cards, creating a sense of alienation in their own country. Furthermore, the BSF restricts the transportation of household essentials and agricultural equipment, further hindering the livelihoods of local residents. Posted BSF personnel create various obstacles for citizens attempting to use the border roads. They sometimes declare these roads as BSF property and prohibit civilian access, while at other times they demand illegitimate favors for permission to use the roads. The BSF also restricts the building of sheds (Bathanbari) where farmers keep their machinery and tools, forcing them to carry heavy equipment to their lands daily. Local residents experience disruptions in their daily livelihoods, with the BSF presence significantly disturbing normal life.

For several years, section 144 of the Criminal Procedure Code (CrPC) has been in effect in many parts of West Bengal. Section 144 provides broad powers to limit human rights in the interest of public order. Under this provision, movement of certain commodities, association of people, and practices, such as fishing and growing certain crops, have been prohibited within a range varying from one to eight kilometers from the border³. The authorities have restricted the movement of essential items that do not seem to be related to maintaining

³ See e.g. Vishwanath, Apurva & Dhapola, Shruti, *Explained: How Section 144 CrPC works*, The Indian Express, 2019, <https://indianexpress.com/article/explained/what-is-section-144-crpc-prohibitory-orders-india-cao-citizenship-act-6175056/>.

public order, like milk powder and other baby foods, and essential medicine⁴. Moreover, section 144 restricts assembly and movements of citizens from 5 pm onwards, forcing farmers to return home early and hindering their agricultural productivity. Although the Supreme Court has indicated that certain applications of Section 144 CrPC are an abuse of power⁵, the provision still applies.

Recommendations:

- Relocate the border crossing and fence to align with the actual border rather than extending several kilometers into the country;
- Enforce the Inter-State Migrant Workmen Act by mandating the registration of migrant workers to ensure they receive due protections, including social and financial security;
- Strengthen oversight and transparency in the implementation of rural employment guarantees, pensions, and other social welfare schemes to combat corruption and ensure benefits reach the intended recipients;
- Implement comprehensive anti-discrimination policies to protect religious and ethnic minorities, particularly Muslims, Dalits, and Adivasis;
- Reassess the deployment of Border Security Force (BSF) personnel along the Indo-Bangladesh border by replacing it with less militarized forces like the Seema Suraksha Bal (SSB) where appropriate;
- Ensure that border management practices, such as the opening of gates and issuance of identity documents, are transparent, consistent, and do not disrupt the daily lives of local residents;
- Amend the application of Section 144 of the Criminal Procedure Code (CrPC) to prevent abuse of power and ensure that restrictions are proportionate, necessary, and transparent, with clear justifications related to maintaining public order.

3. Torture and Death in custody (Articles 6, 7, 9, 10 ICCPR)

Despite official claims of torture being “alien” to India’s culture,⁶ police in India routinely use torture and disregard arrest protocols without consequences. There are unfortunately no comprehensive and up-to-date statistics as to the number of custodial deaths in India. Having said this, it was reported that data from the Ministry of Home Affairs and the National Human

⁴ The movement of the following commodities near the border has been restricted through Section 144 CrPC. These commodities have been listed under Schedule ‘A’ of the order: Rice, Wheat products, kerosene, mustard oil, sugar, coconut, textile goods including yarn, cement, iron & steel materials, bidi leaves, tyre, tubes, wax, bleaching powder, baby food, machine parts, stationery articles, grocery, cattle, milk powder, gunny bags, goat-skin, soaps, betelnut, chili, cloves, fruits, electric goods, cycle and parts, cinnamon, glass, tile making materials, motor tyre, rickshaw tyre, cigarettes, flour grinding stone, photo materials, copper, salt, chira, charcoal, cycle-rickshaw, coal tar, glass panel, cardamom, torchlight, iron rail, soybean, tea, medicine, fertilizer, cosmetics, black paper, plastic, utensils, fish, brass, mats, timber, camphor, razor blades, goat, pulses, wrist watch, aluminium, silver, potatoes, gas light, eggs, molasses, gold.

⁵ *Anuradha Bhasin vs Union of India*, 2020.

⁶ Asian Human Rights Commission, *Attorney general Mukul Rohatgi says torture is alien to Indian culture. Is he right?*, 9 May 2017, <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-005-2017/>.

Rights Commission indicate an increase of 300% of deaths in police custody between 2022 and 2023.⁷

MASUM documented 328 incidents of torture and deaths in custody from 2013 to 2020 in West Bengal. The cases recorded by MASUM are only the tip of the iceberg, as in many instances victims and their families do not report torture and other forms of violence by the border authorities.

An illustrative case is the case of Gautam Mondal, a physically challenged Dalit man who was tortured to death in police custody on 7 May 2019. Three days before his death, Mondal was returning from work when he was caught in a clash at the railway station between passengers and railway personnel for cancelled trains. Although not having participated in the violent fight, police arrested Mondal and brought him to the police station. When his mother was able to visit him on 4 May 2019, Mondal reported that he has been severely tortured, and his mother saw marks of injuries all over his body. Shortly after, Mondal was sent to the Dum Dum Correctional Home. The police reported that this transferal had been ordered by the Magistrate. However, investigations by a local non-governmental organization revealed that the police did not produce Mondal before a court but instead, it was a police officer who also works as a court clerk, who made the order on behalf of the Chief Judicial Magistrate. Four days after his arrest, the police informed the family that Mondal had died in custody. A post-mortem examination was only conducted after protests by the family and villagers. The family submitted a criminal complaint to the police. However, the police refused to register the complaint.

Recommendations:

- Ratify the International Convention against Torture and its Optional Protocol;
- Criminalize torture in line with international law;
- Establish a system of detention monitoring;
- Collect data on custodial deaths;
- Create accessible and victim-friendly mechanisms for reporting torture and custodial death and ensure that victims and their families can submit complaints without fear of reprisal.

4. Extrajudicial killings and “Order to Shoot” suspected smugglers (Articles 6, 7)

MASUM has documented 19 incidents of extrajudicial killings from July 2018 to June 2021. The incidents involved 24 Muslim victims, six Dalit victims, and one victim from the Adivasi (Scheduled Tribe) community.⁸ One such case, is the case of Baser Ali, 38 years old daily laborer from Assam. He was shot by personnel of the BSF on 15 May 2019. On that day, Ali had gone to take a bath in the Kaljani River at 7 in the morning when four members of the Border Security Forces surrounded him with speed boats as they reportedly suspected Ali to be involved in cow smuggling. The police drove over his body leaving him gravely injured. They subsequently dragged him to the board of the river and shot him in the neck at close range. Later on the same day, the police from Tufanganj Police Station arrived at the

⁷ The Sunday Guardian, *Bengal sees 300% jump in police custody deaths in one year*, 29 October 2023, <https://sundayguardianlive.com/top-five/bengal-sees-300-jump-in-police-custody-deaths-in-one-year#:~:text=The%20number%20of%20deaths%20in,the%20National%20Human%20Rights%20Commission.>

⁸ Cases are on file with MASUM.

crimescene and drove the body to the police station. The next day on 15 May 2019, the Magistrate of Tufanganj went to the police station to inquest the body and to direct the police to note areas of injuries on the body. Shortly after, a post mortem examination was performed. On the same day, the brother of the victim lodged a complaint at the Tufanganj Police Station against the BSF personnel. The complaint has been registered but the perpetrators have not been identified yet.⁹

Many victims of extrajudicial killings are allegedly involved in cross-border cattle smuggling. Smuggling is frequent in the border area because the lack of employment opportunities results in extreme poverty. Not seldom have people resorted to smuggling simply to avoid starvation. Many victims of extrajudicial executions had low-income jobs such as daily wage labour or farming. The crushing obligation to feed their families left them with no options other than engaging in crimes. Instead of apprehending alleged smugglers and handing them over to the police for conducting further investigations, the BSF tortures and kills the victims. Investigations by Human Rights Watch indicate that members of the BSF are operating under orders to simply shoot suspected smugglers.¹⁰

The BSF personnel typically claim that they resort to killing only in self-defense, but these claims cannot be substantiated according to the fact findings conducted by MASUM. For instance, the BSF allegedly shot Jaharuddin Sheikh while he was engaged in smuggling cattle across the border. His body showed three bullet injuries, one on his abdomen and two on his back. Therefore, the victim must have had his back towards the BSF personnel making an attacking rather unlikely.¹¹ Moreover, in all the cases of extrajudicial executions documented by MASUM, the victims were found to be unarmed. One such case is the case of Samser Pramanik, a 17-year-old Muslim boy was a migrant worker from Cooch Behar. In March 2020, when a nationwide lockdown was imposed in India in the wake of the pandemic, Samser and many other migrant workers lost their jobs and the means to make a living away from home. Forced by circumstances of extreme hunger and poverty, Samser resorted to smuggling cattle across the border and was brutally tortured in custody and later killed by the BSF personnel.¹²

Recommendations:

- Establish independent and impartial investigations into all allegations of extrajudicial killings, ensuring that those responsible are identified, prosecuted, and appropriately punished;
- Ensure that BSF personnel receive training on human rights standards and adhere to principles of proportionality and non-lethal force in their operations;
- Implement mechanisms for oversight and accountability to prevent abuses and ensure compliance with legal and ethical standards;
- Provide assistance and support to the families of victims of extrajudicial killings to pursue justice and seek redress.

⁹ Case on file with MASUM.

¹⁰ Human Rights Watch, “‘Trigger Happy’: Excessive Use of Force by Indian Troops at the Bangladesh Border’ 9 December 2010.

¹¹ Case on file with MASUM.

¹² Ibid.

5. Impunity for Torture and Extrajudicial killings (Articles 2, 7, 14, 15 ICCPR)

There is a culture of impunity for serious human rights violations including torture and extrajudicial killings. Prosecuting state officials implicated in abuses is made extremely difficult by several Indian laws, Specifically, Section 197 of the Criminal Procedure Code protects all government officials and members of security forces. This section stipulates that no court can acknowledge any offense (except sexual offenses) allegedly committed by a public servant in the course of official duties without prior approval from the central or state government. This is another major obstacle to obtaining justice since this authorization is rarely granted.¹³ A statement recently issued by Human Rights Watch on the human rights violations committed by the BSF stated that the organization was not aware of any cases in which Indian authorities have held BSF soldiers accountable for abuses they have committed.¹⁴

Similar privileges and protection have been extended to the member of the Armed Forces of Union. As stated in the Armed Forces Special Power Act (AFSPA). Section 6 establishes that no legal proceeding can be brought against any member of the armed forces acting under the AFSPA without the permission of the Central Government. This section leaves the victims of the armed forces abuses without a remedy. Similarly, as per Criminal Procedure Code section 45, “no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government. Moreover, section 19 of Human Rights Protection Act states that when the National Human Rights Commission receives a complaint of a human rights violation by the armed forces, it cannot independently investigate the case but can only seek a report from the central government and make recommendations.

Armed with this protection and privilege under the law, the public servants, judges and magistrates, armed forces have become unaccountable to anyone. The Supreme Court of India has opined against the unbridled extension of impunity, already back in 1981, when it observed “nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights”.¹⁵ The judiciary in India has also played an unfair and prejudiced role during most important and crucial issues for the country, like the Gujarat massacre,¹⁶ program on Sikhs or demolition of Babri Mosque.¹⁷ When the alleged offenders belong to ruling political dispensation of that time, courts failed to provide justice. The lower judiciary of India is heavily dependent on the police and other law enforcement agencies.

Victims of extra-judicial killings rarely get justice. Since 2015, 49 cases that MASUM submitted have been rejected (by two courts Lalbagh Additional Chief Judicial Magistrate

¹³ E.g. an application under the Right to Information Act (RTI) was filed to know the number of instances where the government has granted sanction for prosecution of security forces operating in Jammu and Kashmir between 1989 to 2011. The response to the RTI revealed that out of the 44 applications made during this period, sanction was granted to none of them. See Working Group on Human Rights, *Factsheet - UPR 2017 - India 3rd Cycle Universal Periodic Review*, 2017, p. 9.

¹⁴ Human Rights Watch, *India: Investigate Alleged Border Force Killings*, February 9th, 2021, <https://www.hrw.org/news/2021/02/09/india-investigate-alleged-border-force-killings>.

¹⁵ *Kishore Singh vs. State of Rajasthan* (AIR 1981 SC 625).

¹⁶ BBC, *Norada Gam massacre: India court acquits all accused in 2002 Gujara riots case*, 21 April 2023, <https://www.bbc.com/news/world-asia-india-65334381>.

¹⁷ BBC, *Babri mosque: India court acquits BJP leaders in demolition case*, 30 September 2020, <https://www.bbc.com/news/world-asia-india-54318515>.

Court in Murshidabad district of West Bengal and Dinhata Additional Chief Judicial Magistrate Court in Cooch Behar district of West Bengal). The concerned Magistrates cited section 197 of Criminal Procedure Code. Also the Dinhata Additional Chief Judicial Magistrate Court in Cooch Behar rejected three petitions because the accused were BSF personnel.

Recommendations:

- Ensure prompt, thorough and effective investigation of all allegations of torture and ill-treatment, prosecute, punish the perpetrators, if convicted, with penalties commensurate with the gravity of the offence and provide effective remedies for the victims, including rehabilitation;
- Take all measures necessary to prevent torture, including by strengthening the training of judges, prosecutors, the police and military and security forces.
- Ensure that victims and their families have access to effective remedies, including compensation and rehabilitation, for the harm suffered.
- Repeal or amendment of Section 197 of the Criminal Procedure Code to remove the blanket immunity granted to government officials and members of security forces and ensure that legal proceedings against public servants for human rights violations can proceed without prior government approval.
- Reform the Armed Forces Special Powers Act (AFSPA) to ensure that it complies with international human rights standards.
- Amend the Human Rights Protection Act to empower the National Human Rights Commission (NHRC) to independently investigate complaints of human rights violations by armed forces personnel, without solely relying on reports from the central government.

6. Gender-Based Violence and Trafficking (Articles 2, 7, 8, 17, 24, 26 ICCPR)

Women at the Indo-Bangladesh border suffer distinct forms of violence primarily inflicted by the BSF. The heavily militarized border areas with predominantly male BSF guards facilitates gender-specific violence where women, who are often at home during raids, become primary targets. A notable case involves Rahila Mondal, whose home was invaded by ten BSF personnel. The officers damaged her property, attempted to illegally detain her, and brutally beat her when she protested. Such actions were reportedly because her male relatives were suspected of smuggling. Rahila faced continuous threats, including another midnight raid, yet her complaint to the NHRC was dismissed without further action. Similarly, in South Dinajpur, the BSF forcibly entered Sanjit Hansda's home, assaulted his wife and daughter, and attempted to sexually abuse them.¹⁸ BSF raids and searches are typically conducted without female officers, violating India's Criminal Procedure Code, which mandates that searches on females be conducted by women with strict regard to decency. The enforcement of Section 144 of the Criminal Procedure Code, which restricts movement and association in border areas, disproportionately affects women. Pregnant women, for instance, have been denied essential medicines or access to medical facilities during labor, exacerbating their vulnerability.

¹⁸ Case on file with MASUM.

India, together with Bangladesh and Pakistan, has the highest number of human trafficking cases detected worldwide.¹⁹ West Bengal accounts for 55% of reported cases in India and is one of the most affected regions.²⁰ Many women from Bangladesh are trafficked to India for forced labor or are lured by the promise of better economic opportunities. These women, along with their children, are apprehended by BSF personnel and remanded to judicial custody. Many are further victimized and tortured. 20-year-old Reshmi from Bangladesh reported that she was caught by the BSF when crossing the border and kept in their camp for a night. She was raped and kicked in the stomach and fell unconscious and was consequently admitted to hospital. Two years later, Reshmi reported that some parts of her body still ache because of the violence inflicted on her.²¹

Many women continue to be in detention even after the completion of their sentences, in complete violation of Article 20 (1) of the Constitution of India.²² Moreover, women are separated from their children for indefinite periods during detention in violation of Rule 2 (2) of the Bangkok Rules.²³

The exact scope of forced migration and trafficking is unknown. According to a report by the US Department of State on trafficking in persons in India, West Bengal authorities allegedly ordered police to register trafficking cases as kidnappings or missing persons to reduce the number of trafficking instances in their official statistics.²⁴ The same report asserts that government data indicates court delays and a lack of prioritization of trafficking, which led to 93% of trafficking cases pending trial in West Bengal, meaning that fewer than 1% of suspects were charged with human trafficking between 2008 and 2018. The conviction rate for trials that had taken place was 54%.

The case of Halima Begum shows well what trafficking victims face. On 14 July 2021, BSF, Frontier Head Quarter North Bengal, Siliguri released a press statement stating that their troops had apprehended a 35-year old Bangladeshi woman who had tried to cross the international border from India to Bangladesh through the unfenced area of Hili Border Outpost. In their press release, the BSF informed the public that the victim was trafficked 16 years prior to India by a trafficker who sold her to a man named Sarjit Singh for 10,000 Rs. (120 EUR). Sarjit Singh kept Halima Begum and exploited her for 11 years, during which she gave birth to a child. The victim managed to escape from her captivity and reached a bus stop where she met an unknown lady who handed her over to Tota Singh, who also exploited her.

¹⁹ Global Human Rights Defence, *Shedding light on the depths of human trafficking in Asia*, 2021, <https://ghrd.org/shedding-light-on-the-depths-of-human-trafficking-in-asia/>.

²⁰ The Daily Star, *Future impacts of Covid-19: Human trafficking on India-Bangladehs border*, July 9th, 2021, <https://www.thedailystar.net/views/opinion/news/future-impacts-covid-19-human-trafficking-india-bangladesh-border-2125521>.

²¹ Mehta, Rimple, *Mobility across borders and continuums of violence: experiences of Bangladeshi women in correctional homes in Kolkata*, Rapoport Center Human Rights, 2017, <https://law.utexas.edu/wp-content/uploads/sites/31/2017/07/Mobility-Across-Borders.pdf>.

²² Article 20 (1) of the Constitution of India provides that no person shall be subjected to a greater penalty than that which might have been inflicted under the law in force at the time of the commission of the offence

²³ United Nations Office on Drugs and Crime, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc. A/RES/65/229, March 16th, 2010, Rule 2, (2) states that “Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children”.

²⁴ US Department of State, *2020 Trafficking in Persons Report: India*, 2020, <https://www.state.gov/reports/2020-trafficking-in-persons-report/india/>.

The victim managed to escape again and reached Hili in West Bengal, where she intended to cross the international border to meet her family in Bangladesh. She was, however, apprehended by the BSF, who handed her to the Hili Police Station for legal action, claiming that she had illegally entered and stayed in India.

The BSF are ignoring a clear advisory by the Ministry of Home Affairs (Memorandum No. 14051/14/2011-F.VI), according to which foreign victims of human trafficking who are found without a valid passport or visa should not be prosecuted under the Foreigners Act and immediate action must be taken to repatriate the victim. It is clear from the BSF press release that the authorities consider Halima Begum a victim of trafficking. Based on MASUM's complaint, the NHRC had called for an Action Taken Report in the case from the Ministry of Home Affairs of India in September 2021. No further updates have been received for this case.²⁵

Recommendations:

- Adopt a victim-centered approach to combating human trafficking, prioritizing the protection and support of trafficking survivors;
- Ensure that victims have access to comprehensive services, including medical care, psychosocial support, legal assistance, and safe housing;
- Ensure that searches and arrests involving women are conducted in compliance with legal safeguards and respect for their dignity and privacy;
- Strengthen enforcement mechanisms to hold perpetrators of gender-based violence, including BSF personnel, accountable for their actions;
- Enhance efforts to investigate and prosecute human traffickers.
- Provide comprehensive training to Border Security Force (BSF) personnel on gender-based violence, human rights, and the rights of women and children;
- Implement the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

7. National Human Rights Commission (Article 2 ICCPR)

NHRC has been formed in India following the tenets of the Paris Principles which received broad support within the UN human rights system. They were endorsed by the Vienna World Conference on Human Rights and the UN General Assembly in 1993. Following this, the NHRC of India; an independent statutory body established for the protection of human rights. It was established under the Protection of Human Rights Act, 1993.

The NHRC and Indian government lack political will to address the worsening human rights situation in the country and fails to uphold transparency and accountability. The NHRC cannot be considered an independent body according to the Paris Principles.²⁶

Because of lack of diversity in staff and leadership, political interference in appointments, police officers' involvement in investigations of human rights violations, lack of cooperation with civil society and insufficient action to protect marginalised groups, the Global Alliance

²⁵ Case documented by MASUM.

²⁶ OMCT, *India: The National Human Rights Commission of India does not deserve an 'A' rating*, 22 March 2024, https://www.omct.org/site-resources/files/GANHRI_Open-Letter.pdf.

of National Human Right Commission (GANHRI) has deferred the accreditation of India's National Human Rights Commission (NHRC) in May 2024 for the second time.²⁷

From 2003 to till date, MASUM has made 3443 complaints to the National Human Rights Commission on incidents of human rights violation. In 1133 complaints, the NHRC pronounced their decision as 'concluded and no further actions required' but we are unaware of investigations and prosecution in these cases that, after all, include serious complaints of custodial torture, extra judicial killings and degrading and treatment. In 113 cases the NHRC has concluded the case without requiring further actions. 193 complaints have been dismissed in *limini* (meaning before the trial began). Additional information was requested in 16 cases while only 1 complaint has been sent to the Director General. 624 complaints were disposed with directions, but MASUM as the complainant has no information about the specific direction. In 189 cases, the NHRC transferred the complaints to the West Bengal Human Rights Commission for further proceedings. In 8 cases, the NHRC has not taken any actions yet; 2 of these pending cases are from year 2019.²⁸

As far collaboration with civil society organisations is concerned, the secretary of MASUM requested the NHRC on 13 December 2022 to conduct a meeting of Border Security Force Personnel and other stakeholders of bordering districts of West Bengal, but till date no such attempt has been made. MASUM's secretary made subsequent requests to the NHRC to discuss the grave situation at the India Bangladesh border without success. On 14th July 2022, the NHRC served a notice to MASUM in which they informed about problems in their office while handling our complaints. MASUM's applications under Right to Information (RTI) dated 16th March and 6th July 2020 to respective authorities of the NHRC were dealt with indifference. Our consecutive complaints, statements and write-ups on attacks upon human rights defenders, some associated with MASUM, have never been adequately handled and no justice was delivered.

The NHRC has unfortunately limited financial and institutional resources and no mechanism to investigate human rights violations. In the majority of cases, it thus asks the concerned Central and State Governments to investigate; the NHRC can only make recommendations, without the power to enforce decisions; investigations into human rights complaints can no longer be registered if the incident happened more than a year ago. It is further important to stress that the government often rejects recommendation of the NHRC or only partially complies with these recommendations.

Recommendations:

- Adopt all legislative, policy and institutional measures necessary to ensure that the NHRC is able to carry out its mandate fully and in an effective and independent manner, and in full conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).
- Strengthen the power of the NHRC and ensure that it is able to investigate all allegations of violations of rights recognized in the ICCPR committed by any official entity, including those allegedly committed by members of the intelligence agencies or armed forces.

²⁷ The Hindu, *UN-linked body defers NHRC – India accreditation for second year in a row*, 13 May 2024, <https://www.thehindu.com/news/national/un-linked-body-defers-nhrc-india-accreditation-for-second-year-in-a-row/article68171138.ece>.

²⁸ Cases on file with MASUM.

- Strengthen efforts to provide the Commission with sufficient financial and human resources to carry out activities throughout the territory of the State party.

8. Sitaiton of Human Rights Defenders (Articles 19, 22 ICCPR)

Civil society organizations (CSOs), human rights defenders (HRDs), and journalists in India continue to face harassment and intimidation. The draconian Foreign Contributions Regulation Act (FCRA) is frequently used to target CSOs by blocking foreign funding and investigating organizations critical of the government.²⁹ This has led to many CSOs being unable to receive funds from previous donors abroad, with amendments in 2020 adding intrusive oversight, additional regulations, and a ban on sub-granting. Some CSOs have also had their bank accounts frozen, including MASUM, whose application for a license has been rejected twice.

There have been numerous protests in India in recent years, particularly against discriminatory citizenship laws and farmer protests. Hundreds of protesters, including HRDs and journalists, were arrested and detained.³⁰ In several cases credible informaiton on torture was documented. In 2020, the homes and offices of several HRDs were raided by National Investigation Agency officials to investigate 'secessionist and separatist' activities.³¹

The Unlawful Activities (Prevention) Act (UAPA), a counterterrorism law allowing long pre-trial detention without bail, has been used to accuse activists, protest leaders, and journalists on trumped-up charges. Sedition charges, which are excessively vague and broad, have also been used against them.³² There have been numerous reports of HRDs being attacked and killed, particularly those working on the right to information (RTI) and exposing corruption.

The government has blocked access to social media content, imposed internet shutdowns, and used excessive force against protesters. In 2021, efforts to control online content increased with the Intermediary Guidelines and Digital Media Ethics Code Rules, allowing greater governmental control, weakened encryption, and undermined privacy rights. Twitter was ordered to shut down 1,000 accounts during the farmers' protest, and Facebook temporarily blocked posts with the hashtag #ResignModi.³³

MASUM and its staff have faced persistent reprisals, including harassment, threats, false complaints, and physical attacks. On February 2, 2019, Chapra police registered a criminal case against Kirity Roy, Secretary of MASUM, along with members Ramen Moitra, Subhrangshu Bhaduri, Sujoy Singh Roy, and driver Ganesh Sarkar. The charges, including obstructing public servants and criminal intimidation, were filed after they met with villagers reporting daily acts of torture by BSF. After the meeting, BSF officers refused to open the border gate for villagers and tried to confiscate the MASUM members phones. Subsequently, BSF commanders accused the MASUM members of inciting violence. After the meeting,

²⁹ See e.g. OMCT, *India: Judicial harassment against the Centre for Promotion of Social Concerns*, 14 January 2022, <https://www.omct.org/en/resources/urgent-interventions/india-judicial-harassment-against-the-centre-for-promotion-of-social-concerns>.

³⁰ See e.g. Human Rights Watch, *India: Journalists Covering Farmer Protests Charged*, 2 February 2018, <https://www.hrw.org/news/2021/02/02/india-journalists-covering-farmer-protests-charged>.

³¹ OMCT, *Simultaneous NIA raids on human rights defenders' home, NGOs and newspaper's office*, 28 October 2020, <https://www.omct.org/en/resources/urgent-interventions/simultaneous-nia-raids-on-human-rights-defenders-home-ngos-and-newspapers-offices>.

³² OMCT, *India: Arrests and raids target critics of government*, 13 October 2023, <https://www.omct.org/en/resources/statements/india-arrests-and-raids-target-critics-of-government>.

³³ The New York Times, *Twitter Blocks Accounts in India as Modi Pressures Social Media*, 10 February 2021, <https://www.nytimes.com/2021/02/10/technology/india-twitter.html>.

BSF officers refused to open the border gate for villagers and tried to confiscate the activists' phones. Subsequently, BSF commanders accused the MASUM members of inciting violence, leading to the police case.³⁴

Recommendations:

- Amend the Foreign Contributions Regulation Act; the Unlawful Activities (Prevention) Act; sedition provisions in the Indian Penal Code; the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) to bring it in line with international human rights law;
- Urgently foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit freedom of association;
- Lift sanctions against civil society organisations accused of violating provisions of the FCRA, including of MASUM;
- Immediately and unconditionally release all HRDs, including student activists, journalists, academics and others detained for exercising their fundamental freedoms and prevent further harassment
- Drop all politically motivated criminal charges against HRDS, activists, journalists and academics including against staff of MASUM;
- Ensure that journalists can work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive;
- Adopt a framework for the protection of journalists from persecution, intimidation and harassment;
- Review and amend existing laws and regulations including section 144 of the Code of Criminal Procedure in order to guarantee fully the right to the freedom of peaceful assembly;
- Adopt legislation on the protection of HRDs in accordance with the UN Human Rights Council resolution 27.31.

³⁴ Front Line Defenders, *Attacks Against Kirty Roy and Human Rights Defenders from MASUM*, <https://www.frontlinedefenders.org/en/case/attacks-against-kirty-roy-and-human-rights-defenders-masum>.

About the Authors

Banglar Manabadhikar Suraksha Mancha (MASUM) is a human rights organization committed to the strengthening of the state and judicial mechanisms for the benefit of ordinary citizens. Since our inception in 1997, our primary work revolves ensuring civil and political liberties by addressing torture, extrajudicial executions, problems in the criminal justice system, sexual violence against women, and attack on Human Rights Defenders. Since civil and political liberties are intricately tied to economic, social and cultural rights, we also focus on issues such as the socio-economic marginalization of the erstwhile enclave dwellers, restrictions on the livelihood and socio-economic deprivation of citizens living near the Indo-Bangladesh border and erosion-affected areas, forced eviction.

Contact: 40/A Barabagan Lane, Balaji Appartment (4th Floor), Serampore, Hoogly, West Bengal, India. PIN – 712203, masumindia@gmail.com

The **World Organisation against Torture** (OMCT) works with more than 200 member organisations to end torture and ill-treatment, assist victims, and protect human rights defenders at risk wherever they are. Together, we make up the largest global group actively standing up to torture in over 90 countries. We work to protect the most vulnerable members of our societies, including women, children, indigenous peoples, migrants and other marginalized communities. To achieve this, we advocate with governments to change or implement their laws and policies, we help victims seek justice and strive to hold perpetrators to account. Because torture can never be tolerated, and human dignity is not negotiable.

Contact: Rue du Vieux-Billard, 1205 Genève; nb@omct.org