



# General Assembly

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## Human Rights Council

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Agenda item 4

### Human rights situations that require the Council's attention

## **Written statement\* submitted by World Organisation Against Torture, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2021]

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\* Issued as received, in the language(s) of submission only.



## India: Deteriorating situation of Scheduled Caste and Scheduled Tribes

The World Organisation Against Torture wishes to draw the Human Rights Council's attention to the deteriorating situation for Scheduled Castes (SCs) and Scheduled Tribes (STs) in India, who occupy the lowest strata in the caste-based social order and together comprise more than one-fourth of the country's population<sup>1</sup>. While the debilitating impact of the pandemic on the lives and livelihoods of SCs and STs is still unfolding, official data also indicate a rising trend of atrocities against SC/STs and a sharp spike in the judicial harassment of Dalit leaders and human rights defenders (HRDs) through draconian laws.

### Atrocities committed against SCs and STs

Data released by the National Crime Records Bureau (NCRB) in 2020 showed that while the number of cases registered across the country under SCs and STs (Prevention Of Atrocities (PoA)) Act and the Protection of Civil Rights (PCR) Act rose from 49,321 in 2018 to 54,192 in 2019, the rate of conviction remained extremely low – at 32.1 percent for SCs and 26.4 percent for STs; trial in more than 90 percent cases was pending at the end of 2019, and violations against SCs and STs spanned grievous hurt, molestation, rape, murder and arson.

The Hathras gang rape and murder case of 2020<sup>2</sup> was particularly shocking not only for its brutality, but also for revealing how the police, the administration and the political leadership colluded with perpetrators. The police rejected the victim and her family's complaint initially and humiliated the family; a First Information Report (FIR) was lodged six days later, on 20 September, following media spotlight and widespread criticism. The victim's body was cremated by the police following her death at an undisclosed location against the wishes of her family, and the family was not provided adequate security despite repeated reminders. Police officials also claimed there was no rape, although the autopsy report clearly mentioned 'rape and strangulation' as possible causes of death.

A status report on the implementation of SCs and STs (PoA) Act 1989 and Rules 1995 titled 'Quest for Justice' published on 11 September 2020 drew attention to a number of glaring lapses and oversights in access to justice for SC/ST victims and their families. These included:

- Difficulties or inability to register FIRs, and (relevant sections of) the PoA Act not being invoked in others;
- One or more accused not named in FIRs and/ or arrested;
- Spot investigations were not undertaken by the designated authority as per Rule 7(1) of SCs and STs (PoA) Rules 1995;
- Compensation not paid in accordance with Rule 12(4) of SCs and STs (PoA) Rules 1995;
- Travel Allowance /Dearness Allowance for visits to the police station as per Rule 11 was routinely denied to victims;
- Victims and witnesses did not get any information or guidance from investigating officers and public prosecutors regarding the status of their case, date of hearings etc.

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<sup>1</sup> Scheduled Castes and Scheduled Tribes comprise about 16.6% and 8.6%, respectively, of India's population, according to the 2011 census.

<sup>2</sup> See <https://thewire.in/women/hathras-gang-rape-and-murder-case-a-timeline> and <https://thewire.in/women/hathras-gang-rape-and-murder-case-a-timeline>

## State repression and targeting of HRDs

2020 also saw a spike in the extensive and arbitrary use of Section 144 of the Code of Criminal Procedure and repressive laws like the Unlawful Activities Prevention Act (UAPA) to target emerging leadership among SCs and STs.

In Uttar Pradesh, Bhim Army chief Mr. Chandrashekhar Azad and 400 others were charged with violating Section 144 when they visited the kin of the Hathras gang rape. In Chhattisgarh, Jharkhand and Goa, numerous tribal leaders and villagers opposed to militarisation and mining were illegally detained, assaulted and arrested on fabricated charges. In Maharashtra, SC/ST activists who participated in anti-Citizenship (Amendment) Act protests and led relief activities during and after the lockdown were slapped with bail bonds amounting to Rs 50 lakh.

The state continued to arrest human rights activists in the Bhima Koregaon case, the latest being Mr. Sagar Gorkhe, Mr. Ramesh Gaichor and Ms. Jyoti Jagtap – Dalit cultural activists from Pune-based troupe Kabir Kala Manch, and the 83-year-old Jesuit priest Stan Swamy. In April 2020, renowned professor and writer Anand Teltumbde was arrested on trumped up charges of receiving funds from central committee of banned Communist Party of India (Maoist) and preparing a conspiracy to promote enmity between caste groups.

In September, Mr. Sagar Gorkhe, Mr. Ramesh Gaichor and Ms. Jyoti Jagtap – cultural activists from Pune-based troupe Kabir Kala Manch – were arrested in connection with the case, whereas in October, the 83-year-old Jesuit priest Stan Swamy based in Ranchi was arrested, taking the total number of writers, activists and intellectuals arrested in the case to 16. As with most of the preceding arrests in the case, the arrests in 2020 were marked by several procedural violations, including the absence of arrest warrants. In a video recorded a day prior to their arrest, Mr. Sagar Gorkhe and Mr. Ramesh Gaichor alleged that the National Investigation Agency (NIA) officials were pressuring them to confess to false charges during their interrogation in Mumbai if they wanted to escape arrest. Mr. Stan Swamy was also arbitrarily detained by NIA officials in Ranchi, and subjected to judicial harassment despite his age and advancing Parkinsons' disease. He, along with ailing poet and activist Varavara Rao and 90 percent handicapped professor G Saibaba, was denied healthcare.

## Recommendations

To the Human Rights Council:

- Adopt the United Nations Guidelines on Elimination of Discrimination based on Work and Descent and call on India to engage in substantive discussions and adopt the framework.

To the Government of India:

- Effectively implement recommendations by the Treaty Bodies and Special Rapporteurs with regard to Caste Based Discrimination with coordination of line ministries and National and State institutions, involving non-governmental organizations / civil society organizations;
- Robustly, enforce and implement the new provisions of the amended SCs and STs (PoA) Act 1989. Ensure the establishment of police stations and Special Courts under the PoA Act in every district, speed up trials, and encourage collaboration between Legal Service Authorities and SC/ST Commissions to promote access to legal services for SCs and STs;
- Unconditionally release all community leaders, journalists, activists, artists and intellectuals and who were detained, arrested, fined or externed for exercising their social, political and cultural rights, and drop all charges against them;
- Extend a standing invitation to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and allow unrestricted interaction with the civil society.