



INDIA

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United Nations Human Rights Committee Consideration of the  
4<sup>th</sup> Periodic Report of India

**Joint Submission by Lawyers for Lawyers and the International Bar  
Association's Human Rights Institute**

Submitted on 3 June 2024

## **Lawyers for Lawyers**

Lawyers for Lawyers (L4L) is an independent, non-political and not-for-profit lawyers' organisation established in 1986. Our mission is to promote the independent functioning of lawyers and the legal profession across the world in accordance with internationally recognized norms and standards. Our work, supporting lawyers who are at risk as a result of discharging their professional duties, seeks to protect them from threats, risks and reprisals; strengthen their international recognition and protection in laws, policies and practices; and empower them to fulfil their role as essential agents of the administration of Justice. Lawyers for Lawyers was granted special consultative status with the UN Economic and Social Council in July 2013.

## **The International Bar Association's Human Rights Institute**

Established in 1995 under the honorary presidency of emblematic human rights defender, the late Nelson Mandela, the International Bar Association's Human Rights Institute (IBAHRI) works with the global legal community and partner civil society organisations to promote and protect human rights and the independence of the legal profession worldwide.

The IBAHRI is a substantively autonomous entity within the International Bar Association, the world's leading organisation of international legal practitioners, bar associations and law societies, with over 80,000 individual lawyers, and 190 bar associations and law societies across more than 160 countries. Under the IBAHRI's By-Laws, the Institute is governed by an independent Council and under the Directorship of Baroness Helena Kennedy LT KC.

## **I. Introduction**

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1. During its 141<sup>st</sup> session, from 1 July to 23 July 2024, the United Nations Human Rights Committee ('the Committee') will examine India's implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR or Covenant), in light of the State Party's fourth period report under article 40 of the Covenant.
2. In the context of this review, Lawyers for Lawyers (L4L) and the International Bar Association Human Rights Institute (IBAHRI) wish to bring to the Committee's attention some issues of concern pertaining to India's implementation of the ICCPR. This submission highlights a number of such concerns relating to the lack of independence of the legal profession in India, threats and harassment faced by Indian lawyers, and the consequences thereof for the protection of certain Covenant rights.
3. This report will provide information on issues and questions raised in the List of Issues, though not exclusively, that have an impact on the proper functioning of lawyers and the consequences thereof in India. The concerns shared in this submission are particularly relevant for the Committee's evaluation of India's implementation of the right to a fair trial under Article 14 ICCPR, as said right relates to the independence of the legal profession and how it is essential to the protection of other Covenant rights.

### *Methodology*

4. L4L and IBAHRI have been closely following rule of law and human rights developments in India in the context of the alarming democratic backsliding and rise of authoritarianism in the country. Public and private interventions and advocacy to date has had a particular focus on the situation of lawyers in the country and their ability to practice their profession free from intimidation, hindrance, harassment or improper interference (as found in the UN Basic Principles on the Role of Lawyers). The information contained within this submission has been collected through ongoing desk-research, namely the monitoring of threats and interferences with lawyers' activities based on publicly available information, semi-structured interviews with 18 Indian legal professionals, and engagement with and reports from Indian lawyers and other local and international stakeholder.
5. It must be noted that numerous lawyers declined to participate or wished to remain anonymous in this submission out of fear of reprisals and negative consequences for their ongoing cases as well as themselves and their families. As a result, some of the instances of harassment mentioned in this report lack detail so as to protect the safety and anonymity of these lawyers. L4L and IBAHRI obtained informed consent from all lawyers who were interviewed.

## **II. Executive summary and introductory remarks**

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6. The joint-submission outlines L4L and IBAHRI's key areas of concern regarding the failure of Indian authorities to comply with their international human rights commitments to the different impediments faced by lawyers in the exercise of their

functions and the ensuing failure of the Indian authorities to guarantee the respect of article 14 of the ICCPR. This submission stresses the different forms of harassment faced by lawyers whilst working on politically sensitive cases. Such harassment ranges from the use of violence or threats thereof, to judicial harassment and administrative hurdles and the impact these have had on lawyers' ability to carry out their functions. This submission further highlights the coercive nature of the existing legal landscape and the failure of institutions to provide adequate support and remedies for these violations.

7. Overall, lawyers interviewed expressed serious doubts about the extent to which those seeking legal aid are guaranteed the right to a fair trial.<sup>1</sup> This is predominantly related to concerns over lack of judicial independence and the use and misuse of stringent legal provisions. Lawyers recalled that clients from marginalised communities typically will not get relief in cases against more powerful members of society, such as police forces or the dominant religion or caste, ostensibly because of their identity. If relief is in fact provided, it will generally be on the basis of procedural flaws rather than merit, according to lawyers interviewed. In addition, lawyers reported that their clients are often threatened and forced to withdraw their complaints.

### **III. Institutional Independence of the legal profession in India (Article 2, 14)**

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#### *Threats to the independence of the legal profession – the role of the Bar Councils and Bar Associations*

8. The independence of the legal profession enables lawyers to fulfil their professional functions by acting for the benefit, and in the legitimate interest of, their client and society as a whole, free from persecution, and improper influence of any kind. The existence of strong and independent Bar Councils and Associations is crucial for the independence of the legal profession, as their role is, inter alia, to offer a strong governing structure and leadership; promote the welfare of lawyers; facilitate the exchange on best practices within the profession including for the influence of laws and regulations through effective advocacy and lobbying, and serve as a mechanism for the promotion of, and access to, justice. Generally, a greater degree of independence is presumed where the professional body/association is self-governing and free from direct ties with the government or other external entities.
9. The Bar Council is a statutory body established under section 4 of the Advocates Act 1961 which regulates the legal practice and legal education in India. It is compulsory to enrol in a State Bar Council or Bar Council of India ('Bar Councils') to practice in that state or before the supreme court, whilst enrolment to a Bar Association is not a requirement to practice.
10. Many of the lawyers interviewed reported that the Bar Councils and Associations in India lacked independence due to executive influence. Bar Councils were viewed as highly politicised bodies, and their support was greatly dependent on the type of case

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<sup>1</sup> As defined in article 14 ICCPR and ensuing commentaries (GC 13 and 32).

and parties to it. Interviewees reported a growing concern among lawyers that the Bar Councils and Associations attempt to influence the judiciary in accordance with their political alignment. An example shared referred to the recent Electoral Bond Scheme case, where the President of the Supreme Court Bar Association sent a letter requesting the Chief Justice of India for the *suo moto* review of the case judgement, revealing the political alignment from the most distinguished Bar Association in the country.

11. Lawyers taking on civil liberties or human rights cases reported the greatest absence of support compared with lawyers practicing in other areas. In one instance, the President of a state Bar Council threatened a lawyer to withdraw from a case against the state. For some cases, including those concerning sexual assault, rape and terrorism and related charges, certain Bar Councils and Associations have restricted their members from representing the accused, implementing a boycott of sorts, and impeding on the right of every person to a legal representative of their choosing (as defined in article 14(3) ICCPR). Lawyers have been removed as members where the authorities have accused them of association with supposed terrorism organisations whilst some reported being suspended or disbarred, including in the states of Uttar Pradesh and Chhattisgarh, solely for representing clients charged under terrorism laws (see Chapter IV).

#### *National Human Rights Commission*

12. The National Human Rights Commission (NHRC) and its state chapters across twenty-seven states were established to hold governments accountable for their human rights obligations. Many lawyers rely on the NHRC to address violations of human rights in their cases, however, numerous interviewees said that it was now considered a pro-government institution. Lawyers reported a shift in the NHRC's independence and apolitical nature since 2019, heavily criticising the appointment of the NHRC and the state chapters Chair and Members, noting that political appointments undermined the purpose of the NHRC (for instance, some mentioned the appointment of retired officers from the state police department). Various Commissions, including the Child Rights Commission, Women's Rights Commission, Scheduled Tribe Commission and Scheduled Caste Commission have also been criticised for the political appointment of their Chairpersons.
13. This reported politicisation of the NHRC has further been criticised because it has led to the NHRC remaining silent on critical issues due to government pressure and the finding that when the institution does issue recommendations, those are insufficient. Lawyers interviewed in the submission have criticised it for failing as an institution to promote and protect human rights and have noted that hope and trust in the organisation have died down. Notably, lawyers interviewed found that the NHRC only had the ability to intervene in non-sensitive and clear-cut cases, which did not involve the government, thus, highlighting the limitation of its actual enforcement power and absence of solutions for those trying such cases. Furthermore, these lawyers noted that due to its politicisation, civil societies are reluctant to bring matters before the NHRC by fear of reprisals, preventing it from effectively reporting and recording a real

depiction of the current state of affairs. To remedy these limits of the NHRC, lawyers interviewed for this submission have stressed their turn to international human rights bodies, less influenced by the local government, thus, highlighting the need for further protection of human rights but the failure to do so nationally.

#### **IV. Interference with lawyers' activities (Articles 2, 7, 9, 14, 19, 22)**

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14. Lawyers in India face a range of threats in connection to their legitimate professional activities, including physical (sometimes fatal), legal, verbal, and digital threats. These come from both state and non-state actors. Lawyers interviewed have expressed feeling under increased pressure and becoming more selective when taking on cases, avoiding 'high-risk' cases in general, in an attempt to minimise these risks. Lawyers who take up politically sensitive cases, including but not limited to cases related to human rights, minority rights, refugee rights, environment, and social welfare issues, appear to be particularly in danger. In addition, the ethnic, religious, racial or gender identity of a lawyer may enhance the likelihood of them being targeted (see Chapter V below).

##### *Safety and security of lawyers*

15. The interviews conducted found that lawyers are subject to physical attacks and hindrance in connection to their professional activities, including violent raids of homes and offices, arbitrary arrest, as well as verbal and physical assault from both state and non-state actors. Lawyers have been arbitrarily arrested when documenting police violence or illegal conduct, such as taking bribes, or held at gun point when making requests for information at court or banks. In one case, a lawyer was arrested and briefly detained for posting about someone's acquittal on Facebook.
16. Lawyers working in tribal areas affected by conflict and inter-ethnic tensions are subjected to increased threats from both state and non-state agents. Lawyers who document human rights violations and take on cases related to extra-judicial killings and tribal rights in states such as Manipur, Kashmir, and Chhattisgarh, are at particular risk. A number of lawyers from Manipur report frequent threats from armed opposition or vigilante groups, pressuring them to drop public interest litigation complaints and accusing them of 'choosing sides' amid inter-ethnic violence. Lawyers' homes and offices have been raided and vandalised by unidentified armed groups, forcing them to leave the state for safety reasons. In response, little or no police action was taken to investigate and prosecute those responsible. In one case, investigations into the attacks stagnated after pressure was exerted by high-level public officials, according to the lawyer involved. In Kashmir, lawyers have reportedly been killed,<sup>2</sup> attacked,<sup>3</sup>

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<sup>2</sup> Bashaarat Masood, 'Kashmiri Lawyer Babar Qadri's Killing: ₹10 Lakh Reward Announced by Police' The Hindu (25 May 2024) <[www.thehindu.com/news/national/other-states/kashmiri-lawyer-babar-qadris-killing-10-lakh-reward-announced-by-police/article67289698.ece](http://www.thehindu.com/news/national/other-states/kashmiri-lawyer-babar-qadris-killing-10-lakh-reward-announced-by-police/article67289698.ece)> last accessed 3 June 2024.

<sup>3</sup> 'Surinder Kaur, a Senior Advocate, was Assaulted Outside her Home' (Advocate, 2024) <<https://adv.com.bd/files/surinder-kaur-a-senior-advocate-was-assaulted-outside-her-home.html>> last accessed 3 June 2024.

and detained under the Kashmir Public Safety Act.<sup>4</sup> In Chhattisgarh, lawyers working for the Jagdalpur Legal Aid Group (JLAG) have been forcefully evicted from their premises.<sup>5</sup>

### *Threats and intimidation*

17. Numerous lawyers reported having received threatening emails and phone calls from police officers, bar association members, or unknown persons, pressuring them to drop certain cases. Moreover, lawyers have been threatened with arrest or even criminal prosecution when representing certain clients. In one case, investigative forces reportedly told a lawyer: 'I will see to it that you are always in jail, just like your client'. In other instances, lawyers have been told by police that their safety will not be guaranteed when visiting remote areas to provide access to legal aid, stating 'you are on your own', or in response to taking on sensitive case, 'we know where you live'. Lawyers representing the government have also been implicated in discouraging lawyers from taking on certain politically sensitive cases, stating that they are 'not good for the country'.
18. Furthermore, lawyers reported being discredited or demonised for speaking to media or international organisations, as this is perceived by some as 'anti-government'. In relation to this, some bar associations, notably in Chhattisgarh, Uttar Pradesh and Alabama, have issued orders initiating the revocation of lawyers' licences, decisions which then need to be challenged in court. Moreover, at least one lawyer has been found guilty of 'contempt of court' after expressing his views about the Chief Justices of India on Twitter. The disciplinary or legal actions taken in response to the exercise of the right to freedom of expression of lawyers, particularly when it pertains to matters of public interest or human rights, risks having a chilling effect on the protection of human rights.
19. Lawyers have also regularly experienced being labelled in the media as 'Maoist', 'naxalites', 'anti-government', or 'terrorist' when representing certain defendants or conducting fact-finding mission, to the extent that bar associations have publicly announced to boycott certain accused.<sup>6</sup> Similarly, lawyers face frequent harassment

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<sup>4</sup> 'Prove You 'Shunned Separatist Ideology': J&K HC Upholds Senior Lawyers' PSA Detention' (The Wire, 29 May 2020) < <https://thewire.in/law/jammu-kashmir-mian-abdul-qayoom-psa> > last accessed 3 June 2024.

<sup>5</sup> The Jagdalpur Legal Aid Group (JLAG) primarily represents tribals in the Bastar district of Chhattisgarh, central India. On 6 October 2015, the Bastar Bar Association passed a resolution prohibiting any lawyer who is not registered with the local Bar Council from practising in the Jagdalpur courts, preventing lawyers of JLAG registered with the Delhi State Bar Council from representing clients in Jagdalpur. Under Section 30 of the Advocates Act of India, a local bar association has no authority to prevent a lawyer from practising in any court in the country. As such, the lawyers transferred their registration to the State Bar Council of Chhattisgarh. In February 2016, however, the Bastar District Bar Association passed a resolution that any local lawyer who co-signed a memo of appearance with JagLAG would have to sever ties within ten days or be disbarred. Simultaneously, the JagLag lawyers were forced out of the state as their landlord was pressured by police to evict them. See, 'Chhattisgarh Police Intimidates Jagdalpur Legal Aid Group and Journalist Malini Subramaniam' (Caravan, 18 February 2016) < <https://caravanmagazine.in/vantage/chhattisgarh-police-intimidate-jagdalpur-legal-aid-group-malini-subramaniam> > last accessed on 3 June 2024.

<sup>6</sup> See, for instance, 'Criticism of Govt Is Not 'Anti-India, Say over 300 Lawyers in Letter Against Kiren Rijju's Remarks' (The Wire, 30 March 2023), < <https://thewire.in/law/criticism-of-govt-is-not-anti-india-say-over-300-lawyers-in-letter-against-kiren-rijjus-remarks> > last accessed 3 June 2024; 'The Updated List of India's 'Anti-

and hate speech online in relation to the clients they represent or causes they advocate for. As a result of this, many explained that they stopped speaking out on social media. In this regard, women lawyers face particularly violent hate speech, in addition to verbal assault as well as sexual harassment while conducting their professional activities.

20. Lawyers have expressed concerns for the safety and security of their spouse and/or families, indicating that they have been victims of indirect harassments, for instance by being followed and subjected to surveillance by police forces. In one case, a lawyer's spouse, a civil servant, has repeatedly been transferred to increasingly remote districts immediately following the lawyer's appeal in politically sensitive cases.

### *Judicial harassment*

21. Judicial independence ensures that lawyers are able to carry out their duties in a free and enabling environment, where they ensure access to justice and the respect of the principle of equality of arms. The relationship between judicial independence and the independence of lawyers is one of mutual reliance and co-dependence for the proper administration of justice.
22. L4L and IBAHRI have received first hand reports of prosecution of lawyers in India, notably of those working on politically sensitive cases and human rights violations. This harassment has manifested itself through arrests, falsified charges, denial of bails and prolonged proceedings amongst others. These interferences have been made possible through the abusive initiation of FIRs (First Information Report) against lawyers for supposed violations of the UAPA (Unlawful Activities Prevention Act), FCRA (Foreign Contribution Regulation Act) and misuses of the IPC (Indian Penal Code) (see Chapter VI for individual cases). These cases have often resulted in lawyers being forced to step down, delayed proceedings and clients intimidated into plea bargains, impeding on article 14(3)(d) ICCPR, according to which every person has the right to a legal representative of their choosing.
23. Furthermore, lawyers interviewed for this submission have stressed the use of falsified claims of witness tampering against lawyers working on politically sensitive cases to either discredit them or urge them to drop the case in fear of reprisals. Such practices are therefore a further impediment on one's right to a lawyer of their own choosing.<sup>7</sup>
24. There have also been several reports instances of courts threatening to fine lawyers significant sums for "wasting the time of the court", as a means to coerce lawyers into

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Nationals' (According to the Modi Government)'(The Wire, 19 February 2021) <<https://thewire.in/rights/india-modi-anti-national-protest-arrest-sedition-authoritarianism>> last accessed 3 June 2024; 'Anarchy in Chhattisgarh: What a new fact-finding report says about police atrocities in the state' (Scroll, 27 January 2017) <<https://scroll.in/article/827699/anarchy-in-chhattisgarh-what-a-new-fact-finding-report-says-about-police-atrocities-in-the-state>> last accessed 3 June 2024.

<sup>7</sup> For instance, see the case of advocate Mehmood Pracha: <sup>7</sup> 'Undue process' (The Indian Express, 31 December 2020) <<https://indianexpress.com/article/opinion/editorials/mehmood-pracha-delhi-riots-police-7126856/>> last accessed 3 June 2024.



dropping certain *pro bono* cases in fear of retaliation. Judicial pressure and harassment against lawyers prevent the latter from efficiently and effectively appearing in court and representing their clients. It is used to arbitrarily deprive lawyers of their liberties whilst violating their clients right to a fair, impartial, and expedited hearing, as guaranteed by article 14 ICCPR. Lawyers interviewed stressed the strain of such judicial pressure in their professional work, noting that now “the process in itself is punishment” in light of trials’ duration and the intimidations and threats they receive as a consequence of carrying out their professional functions.

25. Alleged misuse of the above laws has dramatically restricted the work of lawyers’ collectives and organisations working on human rights and public interest litigation, curtailing lawyers’ rights to freedom of assembly and association. Notable cases are that of the Human Rights Law Network (HRLN),<sup>8</sup> the Lawyers’ Collective,<sup>9</sup> the Lawyers Initiative for the Environment (LIFE),<sup>10</sup> and the Indian Association of People’s Lawyers (IAPL),<sup>11</sup> all of which work to provide access to justice for marginalised communities.<sup>12</sup> This further prevents lawyers from being able to conduct their work and represent their clients by limiting their sources of income, protection awarded by working in numbers and the ability of individuals to seek affordable representation, restricting access to legal aid. Reports from lawyers from India have highlighted that the targeting of lawyer collectives has had a chilling effect on the profession as lawyers now have to operate alone without the support, security and financial assistance which comes from these collectives. By fining and charging these lawyers and their organisations under the FCRA for taking on public interest cases, defending such cases are therefore accompanied by a consequential financial burden, greatly impacting lawyers’ ability and willingness to take them on, restricting individuals’ right to a fair trial and legal representation.

#### *Lack of protection and grievance mechanisms*

26. In relation to the above threats and intimidation, lawyers have indicated that investigative authorities are often reluctant to follow-up on complaints made and provide little to no protection against the harassment suffered from the police. Lawyers have reported to IBAHRI and L4L that despite their communication to the courts

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<sup>8</sup> Whilst the HRLN’s licence has not been cancelled in itself, its parent organisation; the Socio Legal Information Centre saw its FCRA licence cancelled in November 2022 under the FCRA, claiming that the organisation has violated the act by using funds from European churches.

<sup>9</sup> On 13<sup>th</sup> June 2016, the Union Ministry of Home Affairs suspended Lawyers Collective’s licence to receive foreign funding for 180 days under Section 13 of the FCRA, claiming that the organisation had violated numerous provisions of the act by using foreign funding for purposes other than that intended, notably, to influence political campaigns. Their licence was subsequently not renewed on 28 October 2016 and cancelled on 27 November 2016. The organisation challenged this decision but the case is still under consideration before the High Court of Bombay.

<sup>10</sup> On 13<sup>th</sup> March 2023, the NGO LIFE’s licence to receive foreign fundings was also suspended for 180 days under Section 13 of the FCRA for misuse of foreign contributions to stall coal projects. This led to a re-opening of its tax assessment and cancellation of the organisation’s license to receive foreign funding. This decision was however quashed by the court for procedural irregularities in the suspension process and their FCRA certificate reinstated.

<sup>11</sup> In October 2018, actions were initiated against the IAPL as a frontal organisation of the CPI, portraying the organisation as terrorist under section 20 of the 1967 Act and therefore a terrorist organisation, criminalising the organisation but also bringing forward charges against its members in the Bhima Koreagon case (for more information on this case see chapter VI on individual cases).

<sup>12</sup> Such mass cancellation of civil organisation’s licences under the FCRA was part of a broader campaign by the government where, in 2016 alone, they cancelled the FCRA licences of over 20,000 NGOs.

regarding the threats and intimidation they have received or the police and investigation officers' failure to provide them with adequate protection from reprisals in such cases or with sufficient access to case files, courts failed to take action against these complaints, forcing said-lawyers to drop these cases. Furthermore, IBAHRI and L4L have received reports that a judge's willingness to provide them with protection and follow-up on violations of their rights is greatly subjective and dependent on the judge's personal disposition, creating grave imbalances in defendants' access to justice.

27. In 2021, the Bar Council of India issued a press release<sup>13</sup> in which it noted an increase in the use of violence against lawyers. Since then, an "Advocates Protection Bill" was drafted by the special committee of the Bar Council, with the aim of enhancing lawyers' protection from assaults, intimidation, coercion, and threats. At state level, various 'Advocates Protection Bills' have now been proposed.<sup>14</sup> None of the lawyers interviewed, however, expect these bills to make a tangible difference in the protection of the legal profession and noted that no concrete action has been taken to implement the said Advocates Protection Bill. As a result, the absence of a standing mechanism for lawyers' complaints and grievances remains.
28. The right of lawyers to practice their profession free from unfair intervention is at the cornerstone of the right to fair trial. Indeed, when lawyers are faced with different forms of harassment, whether they be physical, verbal or judicial, and are forced to refrain from taking on certain cases or to be incrementally selective in the ones they decide to represent, individuals' right to a fair trial, to a lawyer of one's own choosing and to an adequate defence in court are violated. Such an interpretation of the right to fair trial has further been shared by the Committee in its General Comments. Therein, it finds that one's right to have legal assistance assigned to accused persons whenever the interests of justice so require, is violated if "the court or other relevant authorities" prevent lawyers from fulfilling their tasks effectively,<sup>15</sup> and that lawyers 'should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter'.<sup>16</sup> When lawyers function under fear of reprisals, with limited funds and restricted access to case files, one cannot find them to be able to fulfil their function effectively. Thus, ensuring that lawyers are able to exercise their functions free from unfair intervention is crucial in guaranteeing individual's right to fair trial under article 14 ICCPR.

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<sup>13</sup> Bar Council of India, 'Press Release dated 02.07.2021', 2 July 2021. Available at <[https://www.livelaw.in/pdf\\_upload/press-release-dated-02072020-regarding-advocate-protection-bill-english-395933.pdf](https://www.livelaw.in/pdf_upload/press-release-dated-02072020-regarding-advocate-protection-bill-english-395933.pdf)>.

<sup>14</sup> See, the Draft Maharashtra Advocate Protection Bill 2024 available at <[www.barcouncilmahgoa.org/login-user/website\\_admin/uploads/notifications/1708177487.pdf](http://www.barcouncilmahgoa.org/login-user/website_admin/uploads/notifications/1708177487.pdf)>; and the Rajasthan Advocates Protection Bill 2023, available at: <[www.livelaw.in/pdf\\_upload/rajasthan-state-assembly-advocate-protection-bill-463909.pdf](http://www.livelaw.in/pdf_upload/rajasthan-state-assembly-advocate-protection-bill-463909.pdf)>

<sup>15</sup> UN Human Rights Committee, *General Comment No. 13* (13 April 1984) para 38.

<sup>16</sup> UN Human Rights Committee, *General Comment No. 32* (UN Doc. CCPR/C/GC/32) 23) 23 August 2007, para 34.

## **V. Restrictions to the rights of the defence and lawyer-client confidentiality (articles 2, 12, 14, 17)**

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### *Access to clients and restrictions on movement*

29. Lawyers experience obstruction in preparing their clients' defence by police forces, in the form of restrictions to freedom of movement and lack of access to crime scenes or other areas subject to fact-finding missions. In other cases, lawyers reported that their movements are traced by police and their activities questioned, ostensibly for observation and intimidation purposes. Moreover, according to lawyers interviewed, investigative authorities have directly and deliberately prevented victims of police brutality from accessing legal aid. In one case in 2017, two women who had allegedly been abducted and raped by police officers in the state of Chhattisgarh, were forcefully taken away and imprisoned by police while giving a statement on the crime in their lawyer's office. The lawyer had to file a *habeas corpus*, seeking the release of their clients. This severely obstructed the judicial process and no perpetrators were ever convicted.

### *Access to case files and procedural delays*

30. Lawyers in India have also reported cases of administrative hurdles and sanctions, delaying their proceedings, restricting their capacity to prepare the defence, and draining their clients', as well as their own, resources. Such practices are in violation of article 14 ICCPR and the right to a fair, expedite trial and to equality of arms in such proceedings, notably, paragraph 33 of General Comment 32 which recalls that for there to be a right to fair trial, lawyers and their clients need to be able to have access to all evidence and documents pertaining to the case. The judicial harassment, which lawyers in India have reported to IBAHRI and L4L, includes withholding of information, as well as delaying of proceedings and interference and threats from police officials, thus, violating said article 14.

31. Lawyers have reported prolonged delays in access to information and case files as well as the provision of incomplete case files, which have greatly hampered the effective defence and representation of clients. Investigative officers at times selectively provide information to the judge on the case, risking creating an information bias. Some lawyers have experienced ostensibly deliberate delays of proceedings so as to exhaust the defendants' resources and discourage them and their lawyers from taking action against the state. Amongst such practices, lawyers highlighted the high turnover of judges, absence of judges during the hearings which required their rescheduling, and the trumping up of charges throughout trial proceedings. Some of these instances pertain to political cases dating back to 2018, which have yet to be decided on.

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### *Interferences with lawyer-client confidentiality*

33. All lawyers interviewed expressed concern over (digital) surveillance by the government of India. Due to the lack of technical recourses and expertise, lawyers experience difficulties in identifying these threats and feel forced to work under the assumption that their devices and communications are being monitored, which may include the recording of privileged communications with clients, violating the principle of lawyer-client confidentiality, central to the right to a fair trial.
34. Reports published by Citizen Lab and Amnesty International in 2018, reveal that NSO Group's Pegasus spyware software was used to target a number of Indian human rights defenders.<sup>17</sup> This included lawyers who were involved in the legal defence of minorities and activists in arrested in politically sensitive cases, such as Shalini Gera,<sup>18</sup> and Nihalsing Rathod.<sup>19</sup> A technical committee was appointed by the Indian Supreme Court in October 2021<sup>20</sup> to examine these allegations but failed to confirm the use of Pegasus spyware due to the Indian government's refusal to cooperate.<sup>21</sup> The committee's report has not been made public.<sup>22</sup>
35. Lawyers have also reported the interception of their privileged communications with clients by police forces through wiretapping and the unlawful seizure of case-related documents. This ranges from confidential case-details surfacing in the media, the seizure of case-related documents during office raids, the disclosure of client and witness safehouses, and courts trying to obtain access to email communications. In one instance, the recording of a privileged phone call was played to the lawyer's client during interrogation by the police. In another case, the accused's lawyer was arrested

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<sup>17</sup> Amnesty International, 'India: Human Rights Defenders Targeted by a Coordinated Spyware Operation', (15 June 2020) <[www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/](https://www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/)> last accessed 3 June 2024; 'Pegasus: Malware found in five phones, Government 'refused to cooperate' with probe, says CJI', (The Wire, 25 August 2022) <<https://thewire.in/law/supreme-court-pegasus-technical-committee>> last accessed 3 June 2024.

<sup>18</sup> Lawyers for Lawyers, *Lawyer-Client Confidentiality in a Digitalised Society* (2023) p. 16, available at: <<https://lawyersforlawyers.org/wp-content/uploads/2023/05/Lawyers-for-Lawyers-Digital-Lawyer-Client-Confidentiality.pdf>>.

<sup>19</sup> 'Indian Activists, Lawyers Were "Targeted" Using Israeli Spyware Pegasus' (The Wire, 31 October 2019) <<https://thewire.in/tech/pegasus-spyware-bhima-koregaon-activists-warning-whatsapp>>.

<sup>20</sup> Supreme Court of India, Written Petition (CRL.) No. 314 of 2021, available at <[https://main.sci.gov.in/pdf/LU/27102021\\_082008.pdf](https://main.sci.gov.in/pdf/LU/27102021_082008.pdf)>.

<sup>21</sup> Instead, the Union of India's responded with a limited affidavit which completely denied all allegations and claims these petitions were merely based on unsubstantiated media reports, without engaging substantively. The limited affidavit is available at: <[www.scobserver.in/wp-content/uploads/2021/09/Limited-Affidavit\\_dated\\_16.08.2021.pdf](https://www.scobserver.in/wp-content/uploads/2021/09/Limited-Affidavit_dated_16.08.2021.pdf)>.

<sup>22</sup> 'Pegasus Spyware Probe, Manohar Lal Sharma v Union of India, WP (CrL) 314/2021' (Supreme Court Observer, last updated 1 June 2023), available at <[www.scobserver.in/cases/manohar-lal-sharma-prime-minister-pegasus-spyware-probe-case-background/](https://www.scobserver.in/cases/manohar-lal-sharma-prime-minister-pegasus-spyware-probe-case-background/)>.

based on privileged communications concerning the request for legal assistance, implying that the lawyer conspired with his client (see Chapter VI). The interception of such communications has far-reaching implications for the accused's right to an effective defence. In response to these threats, lawyers are restricted in their ability to securely communicate with their clients and are sometimes forced to move their communications offline, if possible, despite the additional burden this might place on them in terms of time and resources.

36. This practice is contrary to Indian law, which safeguards lawyer-client confidentiality under the Indian Evidence Act 1872, the Advocates Act 1961, and the Bar Council of India Rules. In addition, it impedes on the right to confidential meetings between accused and their counsel as enshrined in Article 14.3(b) of the ICCPR and Principle 8 of the UN Basic Principles on the Role of Lawyers.<sup>23</sup>

## VI. Individual cases of lawyers prosecuted or imprisoned

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37. Lawyers have reported the use of falsified FIRs through which they have been charged for instigating the crimes of their clients or committing terrorist acts. Amongst such cases, the following are worth mentioning:

### **Surendra Gadling, Sudha Bharadwaj, Arun Ferreira, Vernan Gonsalves**

In 2016, following a public meeting in Pune regarding Dalit rights, the police arrested 16 individuals in the Bhima Koregaon case. Amongst these 16 individuals, 4 lawyers and members of the Indian Association of People's Lawyers (IAPL) were arrested: Surendra Gadling, Sudha Bharadwaj (absent from said meeting), Arun Ferrera and Vernan Gonsalves. The investigation officer claimed that the IAPL constituted a terrorist and Maoist organisation, banned under the UAPA. These lawyers were therefore tried under the UAPA for similar charges of conspiracy to commit a terrorist crime and membership or aiding a terrorist organisation, alleging that their legal activities constituted a terrorist front. Such arrests rested on the finding of letters on the defendants' computers, allegedly implicating them in terrorist activities, but whose authenticity has been called into question by international and national actors.

Relying on the UAPA's abusive clauses concerning the granting of bail, bail was denied for advocate Sudha Bharadwaj for 2.5 years,<sup>24</sup> and advocates Arun Ferrera and Vernan Gonsalves for 4.5 years.<sup>25</sup> They are now still awaiting trial. Bail requests have been known to be lengthy processes, often denied or appealed till they reach the Supreme Court for a final decision.

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<sup>23</sup> See, UN Human Rights Committee, *General Comment No. 13* (13 April 1984) para 9, which states that 'subparagraph 3(b) [...] requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications'.

<sup>24</sup> 'Women Rights Defender Sudha Bhardwaj released on bail' (Frontline Defenders, 8 December 2022) <<https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-sudha-bharadwaj-released-bail>> last accessed 3 June 2024.

<sup>25</sup> 'Bhima Koregaon: Vernon Gonsalves, Arun Ferreira granted bail by Supreme Court' (BBC, 28 July 2023) <[www.bbc.com/news/world-asia-india-66333896](http://www.bbc.com/news/world-asia-india-66333896)> last accessed 3 June 2024.

On the other hand, advocate Surendra Gadling has remained in pre-trial detention for the past 6 years awaiting a positive decision on his bail request. Discrepancies in the allocation of bail to Mr. Gadling compared to the other accused have been viewed in light of Mr. Gadling's prominent role in defence of poor tribal individuals accused of being Maoists.<sup>26</sup>

### **Jokuymar Wahengbam**

Advocate and Human Rights Defender Jokuymar Wahengbam represented Ayekpam Keshorjit for the 24.01.23 alleged murder of Laishram Rameshwar, convener of the BJP party in Manipur. Following the alleged murder, Mr. Keshorjit proceeded to call Mr. Wahengbam as well as another lawyer to represent him. Mr. Wahengbam presented himself as Mr. Keshorjit's lawyer on the 25 January. On 28 January 2023, Mr. Wahengbam was arrested under the IPC and charged with colluding with Mr. Keshorjit to commit said-murder. These charges rested on Mr. Keshorjit having called Mr. Wahengbam after the commission of the crime and followed his advice to surrender, however, the other lawyer contacted faced no such charges. On 25 February 2023, whilst in pre-trial detention, Mr. Wahengbam was severely physically assaulted, leaving his right leg paralysed for three months. Following over two years in pre-trial detention, Mr. Wahengbam was granted bail on 19 March 2024, after the issuance of the judgement being postponed for 4.5 months. He has since neither been able to continue his work as a lawyer nor re-occupy his position as Mr. Keshorjit's lawyer.

38. Lawyers have further reported their targeting under the FCRA through the criminalisation of their lawyer collectives and their individual prosecution for misuses of foreign funds and Maoism.

Amongst such organisations, is that of **Advocate Anand Grover**, Human Rights' Lawyers Collective, and **Advocate Ritwick Dutta**, LIFE initiative.<sup>27</sup> Both organisations which provide affordable, if not *pro bono* legal services to those most vulnerable within society and which often challenge the government's claims and harassment of such communities, and were targeted under the FCRA, respectively in May 2019 and April 2023. Mr. Dutta and Mr. Grover were further targeted in relation to these charges, having their offices raided, personal income taxes re-assessed and their organisation's licence to receive foreign fundings suspended. Through the abusive provisions of the

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<sup>26</sup> Lawyers for Lawyers, 'Interview Nihalsing Rathod: 'Even in prison, Gadling does good things' (4 July 2023) <<https://lawyersforlawyers.org/en/interview-nihalsing-rathod-even-in-prison-gadling-does-good-things/>> last accessed 3 June 2024; 'Court Issues Notice in Surendra Gadling's Contempt Plea Against Prison Officials' (The Wire, 17 January 2023) <<https://thewire.in/law/surendra-gadling-health-elgar-parishad-contempt#:~:text=law-,%20Court%20Issues%20Notice%20in%20Surendra%20Gadling%27s%20Contempt%20Plea%20Against%20Prison,worsening%20his%20health%20condition%20further>> last accessed 3 June 2024.

<sup>27</sup> These organisations are not the only ones who have been targeted under the FCRA. See: 'Ahead of FATF meeting, report says India weaponizing terror financing, money laundering laws against NGOs' (The Wire, 31 October 2023) <<https://thewire.in/rights/ahead-of-fatf-meeting-report-says-india-weaponising-terror-financing-money-laundering-laws-against-ngos>> last accessed 3 June 2024.

FCRA, these lawyers' ability to carry out their work free from unjust intervention and assuring a right to fair trial for their clients have been greatly impacted.

## **VII. Conclusion and Recommendations**

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39. All in all, lawyers interviewed for this submission overwhelming felt that, due to the strains put on lawyers' ability to practice their profession free from unjust interference, the right to a fair trial of their clients, as provided under article 14 ICCPR is not guaranteed. The lawyers stressed how the undue delays and costs of proceedings, largely due to judicial interference, prevented their clients from having an expedite trial and rendered justice only accessible to those with means, others were left without a mechanism for action. Furthermore, the biases present in courts against those more vulnerable and seen as against the current government has seeped into the Court's judgments and manifested in both the acquittal of the offenders, part of the upper caste, or denial of bail and prolonged proceedings for those belonging to the lower castes.
40. In light of such limits to the right to fair trial as guaranteed under the ICCPR, the Human Rights Committee should recommend the government of India to:

### **A. Recommendations on the safety and security of lawyers**

- **Take immediate measures to ensure sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activities, both in their capacity as lawyers (Principle 16 of the UN Basic Principles on the Role of Lawyers) as well as human rights defenders (Article 2 of the UN Declaration on Human Rights Defenders).**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in. This also includes ceasing the prosecution of lawyers for the crimes of their clients and to provide compensation and relief when such violation occurs (Principle 18 of the UN Basic Principles on the Role of Lawyers).**
- **Immediately take measures necessary to ensure that crimes, harassment, and other violations against lawyers are effectively investigated and publicly condemned at all levels, and that the perpetrators of such acts are prosecuted. It is within the mandate of the NHRC to take proper enforcement action in cases where human rights violations are present. The Human Rights Committee should strongly recommend reform so the NHRC can act, without influence from the state, and serve its intended purpose to support lawyers, legal community and civil society more broadly via its national chapters.**

- Take immediate measures to guarantee the effective protection of the rights to freedom of expression, association, and assembly of lawyers as set out in articles 19, 21, and 22 ICCPR / Principle 23 of the Basic Principles on the Role of Lawyers, in particular if partaking in public discussions on matters concerning the law and when forming or joining organisations which aim to promote and protect human rights, without suffering professional restrictions by reason of their lawful action.
- In regard to the individual cases listed above (Chapter VI), the Human Rights Committee should recommend that India review these cases with the aim of ensuring that lawyers who were prosecuted in connection to their work in defence of their clients – be such grounds formal or informal – are released and remedies are provided to them for the violation of their human rights as a result of the proceedings against them.

#### **B. Recommendations on policy and legal reform**

- Take immediate measures to cease the misuse of the Unlawful Activities (Prevention) Act (UAPA), the Armed Forces Special Powers Act (AFSPA), and the Indian Penal Code (IPC) to prosecute lawyers under falsified claims and to amend said laws so as to ensure the respect of individuals' right to bail.
- Take immediate measures to cease the misuse of the Foreign Contribution (Regulation) Act (FCRA) to prevent lawyers and associations of lawyers from carrying out their functions.
- Take immediate measures to ensure full confidentiality of communications between lawyers and their clients, regardless of the types of charges against individuals detained, as protected under article 14 ICCPR and Principle 22 of the Basic Principles on the Role of Lawyers. In addition, the Human Rights Committee should recommend India to refrain from deploying surveillance methods which arbitrarily impede on lawyer-client confidentiality, the right to privacy, or amount to intimidation and restrictions on freedom of movement, including spyware, wire-tapping, and physical surveillance methods.
- Take prompt measures to install an independent judiciary oversight mechanism to investigate any complaints received about alleged surveillance or unlawful interceptions of communications, and offer adequate redress where violations are found by effectively engaging with the relevant institutions.

#### **C. Recommendations on professional bodies and associations**

- Cease the exercise of political pressure on, or interference with, the proper functioning of Bar Councils and Bar Associations of India and ensure



consistent and meaningful representation of all lawyers' interests and adequate protections for their integrity and independence.

- Support Bar Councils to set up specific grievance redressal mechanism for both lawyers and their clients.<sup>28</sup>

**D. Recommendations on the administration of justice**

- Take all necessary measures to ensure that the defence and prosecution both have equal and timely access to information pertaining to the case at hand, ensuring the equality of arms, and to cease all actions which delay such access, ensuring the respect of individuals' right to a fair and expeditious trial.
- Reaffirm that judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial, the government of India must ensure respect for the separation of powers, free from executive influence or pressure. In accordance with fair trial guarantees (Principles 1-6, UN Basic Principles on the Independence of the Judiciary). Cases must be heard by an independent and impartial judge. The authorities must end their judicial harassment of lawyers and individuals exercising their human rights and foster an enabling environment, so lawyers are able to perform their professional duties and freely express themselves without any intimidation, harassment or fear of reprisals.
- Take effective measures to protect against discrimination, including on the basis of religion, caste, political affiliation, social status or gender, and take steps to implement mechanisms which enable the effective and equal access of lawyers, in accordance with Principles 2, 10 and 11 of the UN Basic Principles on the Role of Lawyers and article 15 of the Constitution of India.
- Recognise that an effective justice system relies upon properly supported lawyers, ensure and promote a comprehensive legal aid system that is accessible, effective and sustainable and supports the proper functions of legal aid lawyers and services (UN Principles and Guidelines on Access to Legal Aid).

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<sup>28</sup> Recommended amendment to Advocates Act 1961 to be incorporated in Section 9B by the 266th Report of the Indian Law Commission, page 107, available at: <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081654.pdf>> last accessed 3 June 2024.