

**SUBMISSION TO THE SPECIAL RAPPORTEUR  
ON RIGHTS TO PEACEFUL ASSEMBLY AND OF ASSOCIATION**

In response to a call for [input](#) by the Special Rapporteur for the freedoms of peaceful assembly and of association (Special Rapporteur), [Mazeltov – Innovation and Justice](#) provides its observations on the protection of human rights in the context of peaceful protests following the passing and enactment of the Citizenship Amendment Bill and the Citizenship Amendment Act in India. This input broadly covers the aforementioned categories outlined in the Questionnaire provided in the call. We are responding under theme 10 of the Questionnaire.

**A. Introduction:**

Despite secularism being enshrined in the Indian Constitution<sup>1</sup>, the Citizenship Amendment Act 2019<sup>2</sup> (CAA) was passed on the 12<sup>th</sup> of December 2019. In a nutshell, the Act grants citizenship to non-Muslim ((Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) irregular immigrants from the neighbouring Muslim-majority countries of Afghanistan, Bangladesh, and Pakistan who arrived in India before December 31, 2014. By not including persons of the Islamic faith, the Act expressly excludes certain neighbouring nations and Muslim minorities, such as the Shia Muslims in Bangladesh or the Ahmediya Muslims in Pakistan. It is evident that the bill provides for de facto discriminatory treatment of illegal immigrants on the basis of four individual factors: their faith, their country of origin, their date of entry and finally, their place of residence in India<sup>3</sup>.

The passing of the Act led to protests all over India<sup>4</sup>. While the ruling party has repeatedly sought to portray the Act as inherently humane - asserting that it seeks to provide sanctuary to religious minorities fleeing persecution in neighbouring countries<sup>5</sup>, that claim collapses as a general principle of protection for members of religious minorities because the law excludes many minority groups that have sought refuge in India, including Tamils from Sri Lanka, Hazaras from Afghanistan, Shia and Ahmadiyya from Pakistan, and Chin and Rohingya minorities from Myanmar<sup>6</sup>.

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<sup>1</sup> Constitution of India, <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CFI-50th-HRC-session.aspx>, last accessed 22<sup>nd</sup> July 2021

<sup>2</sup> Citizenship Amendment Act 2019, <https://egazette.nic.in/WriteReadData/2019/214646.pdf>, last accessed 22<sup>nd</sup> July 2021

<sup>3</sup> A.S. Hassan, et al., 'On the Citizenship Amendment Act 2019 – And How it Began' [2000] <<https://oxfordpoliticalreview.com/2020/01/12/the-citizenship-amendment-act-2019-and-how-it-began/>> Accessed 31 March 2021

<sup>4</sup> Arun R Swamy, The protests over India's Citizenship Amendment Act, East Asia Forum, 9<sup>th</sup> April 2020, < <https://www.eastasiaforum.org/2020/04/09/the-protests-over-indias-citizenship-amendment-act/>> last accessed 22<sup>nd</sup> July 2021

<sup>5</sup> "Citizenship Amendment Bill: India's new 'anti-Muslim' law explained," BBC News Online, December 11, 2019, <https://www.bbc.com/news/world-asia-india-50670393> last accessed 22<sup>nd</sup> July 2021

<sup>6</sup> "Watch: What is CAA and how is it linked to NPR, NRC? Lawyer Gautam Bhatia explains," NEWS Minute, January 12, 2020, <https://www.thenewsminute.com/article/watch-what-cao-and-how-it-linked-npr-nrc-lawyer-gautam-bhatia-explains-115963> last accessed 22<sup>nd</sup> July 2021

Multiple legal challenges and petitions have since been filed, most of which argue against the Constitutional validity of the Act<sup>7</sup>. In particular, petitions argue that the Act violates Article(s) 14, 15, 21, and 25 of the Indian Constitution<sup>8</sup>.

## **B. Protests and Crackdowns:**

As protests sparked across many major cities in India, some took a violent turn as civilians on opposing sides of the Act clashed against one another. In particular, clashes in Delhi saw the deaths of 53 people with more than 200 left injured. Tensions only got worse as this was followed by leaders of the ruling party openly advocating violence against protesters, portraying them as anti-nationalists<sup>9</sup>.

As demonstrators protested, there developed stories and allegations of instances where the police did not intervene where Hindu mobs attacked Muslim communities and businesses<sup>10</sup>. In some instances, the police were even alleged of participating in such violence and aggravating matters<sup>11</sup>. Adding to the chaos, instances of excessive use of police force had also been reported as being the cause of at least 30 deaths<sup>12</sup>.

While peaceful protestors were actively assaulted and brutalised by the police and lynched by mobs, members and leaders of India's *Bharatiya Janata Party* (BJP), the party in power, continued to incite violence on multiple occasions against anti-CAA demonstrators without any repercussions<sup>13</sup>.

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<sup>7</sup> Anindita Sanyal, "Around 60 Petitions on Citizenship Law To Be Heard By Supreme Court Today," NDTV, December 18, 2019, <https://www.ndtv.com/india-news/caa-citizenship-amendment-act-around-60-petitions-on-citizenship-law-to-be-heard-by-supreme-court-to-2150459> last accessed 22<sup>nd</sup> July 2021

<sup>8</sup> Article(s) 14, 15, 21 and 25, Constitution of India, <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CFI-50th-HRC-session.aspx>, last accessed 22<sup>nd</sup> July 2021; Challenging Citizenship (Amendment) Act, 2019 (Read Petition)," Livelaw.in, December 13, 2019, <https://www.livelaw.in/top-stories/indian-ambassador-to-nepal-two-rtd-ias-officers-move-sc-citizenship-amendment-act-150783> last accessed 22<sup>nd</sup> July 2021

<sup>9</sup> Explainer: What do we know about the communal violence that left 53 dead in Delhi in February 2020?," Scroll.in, March 6, 2020, <https://scroll.in/article/955251/explainer-what-do-we-know-about-the-communal-violence-that-left-47-dead-in-delhi-in-february-2020> last accessed 22<sup>nd</sup> July 2021

<sup>10</sup> Explainer: What do we know about the communal violence that left 53 dead in Delhi in February 2020?," Scroll.in, March 6, 2020, <https://scroll.in/article/955251/explainer-what-do-we-know-about-the-communal-violence-that-left-47-dead-in-delhi-in-february-2020> last accessed 22<sup>nd</sup> July 2021

<sup>11</sup> Jeffrey Gettleman, Sameer Yasir, Suhasini Raj and Hari Kumar, "How Delhi's Police Turned Against Muslims," New York Times, March 12, 2020, <https://www.nytimes.com/2020/03/12/world/asia/india-police-muslims.html> last accessed 22<sup>nd</sup> July 2021

<sup>12</sup> Citizens Against Hate, "Everyone Has Been Silenced: Police Excesses Against Anti-CAA Protesters In Uttar Pradesh, and the Post-violence Reprisal," March 2, 2020, <http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf> last accessed 22<sup>nd</sup> July 2021

<sup>13</sup> BJP's Kapil Mishra Has Issued an 'Ultimatum' to the Delhi Police. But Who Is He?," The Wire, February 24, 2020, <https://thewire.in/communalism/kapil-mishra-delhi-bjp> last accessed 22<sup>nd</sup> July 2021; BJP's Kapil Mishra Has Issued an 'Ultimatum' to the Delhi Police. But Who Is He?," The Wire, February 24, 2020,

Mob-led violence followed suit as clashes ensued and Hindu nationalists armed with swords, sticks, metal pipes, and bottles filled with petrol, began chanting slogans and rampaged through several neighbourhoods in northeast Delhi, killing Muslims and burning their homes, shops, mosques, and property<sup>14</sup>. Situations even escalated to a point where individuals were being harassed by mobs demanding to see identification in an effort to single out Muslims. When the Muslims refused to show identification to non-uniformed individuals, they were forced to undress and reveal whether they had been circumcised<sup>15</sup>. Despite numerous complaints of instances, authorities did not intervene and instead partook in the alleged offences<sup>16</sup>.

The situation only worsened as multiple members of the BJP actively threatened protestors and made divisive remarks – in some instances, even suggesting that protestors ought to be shot<sup>17</sup>. To make matters worse, in the instance where the Delhi High Court tried to hold the authorities accountable, the concerned judge was transferred, removing him from power to preside over pending petitions pertaining to the matter<sup>18</sup>. Even the supreme court of India was alleged to be overly-reliant on the ruling party's narrative of the situation<sup>19</sup>.

Peaceful protests against were met with colonial era laws<sup>20</sup> against public gatherings, network shutdowns, and obstruction of public transport<sup>21</sup>. However, these laws were not applied to the

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<https://thewire.in/communalism/kapil-mishra-delhi-bjp> last accessed 22<sup>nd</sup> July 2021; Aishwarya Paliwal, "EC orders BJP to remove Anurag Thakur, Parvesh Sahib from star campaigners list for Delhi poll," India Today, January 29, 2020, <https://www.indiatoday.in/elections/delhi-assembly-polls-2020/story/election-commission-bjp-remove-anurag-thakur-parvesh-sahib-list-star-campaigners-delhi-polls-1641190-2020-01-29> last accessed 22<sup>nd</sup> July 2021

<sup>14</sup> Hannah Ellis-Peterson, "Inside Delhi: beaten, lynched and burnt alive," Guardian, March 1, 2020, <https://www.theguardian.com/world/2020/mar/01/india-delhi-after-hindu-mob-riot-religious-hatred-nationalists> last accessed 22<sup>nd</sup> July 2021

<sup>15</sup> Committee to Protect Journalists, "Journalists harassed, attacked while covering Delhi riots," March 6, 2020, <https://cpj.org/2020/03/at-least-12-journalists-harassed-attacked-amid-del.php> last accessed 24<sup>th</sup> July 2021

<sup>16</sup> Jeffrey Gettleman, Sameer Yasir, Suhasini Raj and Hari Kumar, "How Delhi's Police Turned Against Muslims," New York Times, March 12, 2020, <<https://www.nytimes.com/2020/03/12/world/asia/india-police-muslims.html>> last accessed 24<sup>th</sup> July 2021

<sup>17</sup> Aishwarya Paliwal, "EC orders BJP to remove Anurag Thakur, Parvesh Sahib from star campaigners list for Delhi poll," India Today, January 29, 2020, <https://www.indiatoday.in/elections/delhi-assembly-polls-2020/story/election-commission-bjp-remove-anurag-thakur-parvesh-sahib-list-star-campaigners-delhi-polls-1641190-2020-01-29> last accessed 24<sup>th</sup> July 2021

<sup>18</sup> Critics found the timing of the judge's transfer "disturbing." "Delhi riots: Anger as judge critical of violence removed," BBC News Online, February 27, 2020, <https://www.bbc.com/news/world-asia-india-51644861> last accessed 25<sup>th</sup> July 2021

<sup>19</sup> Samanwaya Rautray, "SC refuses to hear speech transcripts from Harsh Mander," Economic Times, March 6, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/sc-refuses-to-hear-speech-transcripts-from-harsh- mander/articleshow/74503842.cms>. last accessed 25<sup>th</sup> July 2021

<sup>20</sup> For example: s.144, Penal Code of India, 1872

<sup>21</sup> "India: Deadly Force Used Against Protesters," Human Rights Watch news release, December 23, 2019, <https://www.hrw.org/news/2019/12/23/india-deadly-force-used-against-protesters> last accessed 27<sup>th</sup> July 2021

mobs obstructing the protests. On numerous occasions, police arbitrarily arrested critics of the government and some were even charged with crimes like sedition<sup>22</sup>.

Effectively, not only were ordinary citizens being denied the right to protest the CAA, they were actively threatened by mobs and members of the ruling government party. They were denied access to redress as well, with police and courts being allegedly compromised.

## Horrors in University Halls:

Amidst all the horrors following the enactment of the CAA, some of the worst atrocities were inflicted on students across the country, and in some cases, their teachers. Charges were levied against teachers and students alike, whenever anyone attempted to protest<sup>23</sup>. Students as young as 9-12 years old were subjected to detention in a jail cell for almost two weeks<sup>24</sup>. Mobs attacked student-protesters, injuring many and subjected some to gunfire<sup>25</sup>. In some instances, police even entered university campus to attack protesters. Video evidence of police violence against peaceful student protesters inside university and college campuses, particularly, sexual violence against female protesters, were circulated<sup>26</sup>. The harrowing reality of the stark contrast between police intervention to stop protesters and that of police intervention to prevent protesters being brutalised by mobs tell a tale of a level of acquiescence of the horrors inflicted on anyone protesting the CAA<sup>27</sup>. To make matters worse, when local medical support appeared on scene to help the injured, an ambulance was attacked by the mob to prevent them from tending to injured protesters<sup>28</sup>.

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<sup>22</sup> Human Rights Watch, "Shoot the Traitors", Discrimination Against Muslims under India's New Citizenship Policy, April 2020, ISBN: 978-1-62313-8202

<sup>23</sup> Sukanya Shantha, "'Sedition' for School Play on CAA: Student's Dialogue 'Insult to PM'; Parent, Official Arrested," The Wire, January 30, 2020, <https://thewire.in/government/bidar-karnataka-anti-caa-play-school-sedition> last accessed 27<sup>th</sup> July 2021

<sup>24</sup> Amy Kazmin, "Sedition accusations in India take a dramatic turn," Financial Times, February 10, 2020, <https://www.ft.com/content/65cbfb9a-498a-11ea-ae2-9ddbdc86190d> last accessed 27<sup>th</sup> July 2021.

<sup>25</sup> "Jamia student shot at during anti-CAA peace march, accused detained," Indian Express, January 30, 2020, <https://indianexpress.com/article/cities/delhi/jamia-firing-caa-protests-live-updates-6242634/> last accessed 27<sup>th</sup> July 2021

<sup>26</sup> Watch: This group of women courageously defended a man from being attacked by the Delhi Police," video report, Scroll.in, December 16, 2019, <https://scroll.in/video/946938/watch-this-group-of-women-courageously-defended-a-man-from-being-attacked-by-the-delhi-police> last accessed 27<sup>th</sup> July 2021; "Barkha Dutt meets Jamia's 'Viral' Women who've become the face of protests against Citizenship Law," December 16, 2019, YouTube, <https://www.youtube.com/watch?v=julJIXbRmFA> last accessed 27<sup>th</sup> July 2021.

<sup>27</sup> From Lucknow to Hyderabad, protests across campuses against police crackdown in Jamia," Outlook Magazine, December 16, 2019, <https://www.outlookindia.com/newscroll/from-lucknow-to-hyderabad-protests-across-campus-against-police-crackdown-in-jamia/1686509> last accessed 27<sup>th</sup> July 2021

<sup>28</sup> Shivam Patel and Sukrita Baruah, "JNU violence: Delhi Police watch as ambulances smashed, leaders heckled," Indian Express, January 6, 2020, <https://indianexpress.com/article/india/jnu-violence-police-watch-as-ambulances-smashed-leaders-heckled-6201469/> last accessed 27<sup>th</sup> July 2021

Muslim protesters suffered the brunt of the crackdowns. Even those who did not partake in protests have been subjected to arbitrary police brutality. Muslims have been targeted by mobs, killed, injured, and hundreds have been subjected to arrest without due procedure or cause<sup>29</sup>.

### The Curious Case of Uttar Pradesh:

Despite having the largest Muslim population, States in Uttar Pradesh suffered the largest number of active violence inflicted on Muslim civilians. The Chief Minister, Yogi Adityanath, has a record of hateful commentary against Muslims, often inciting violence against the Muslim population, and endorsing extra-judicial killings and violence against Muslims at the hands of a youth Hindu militia that he founded, and in some cases, the police themselves<sup>30</sup>. Although Adityanath was previously charged for his offences, the charges were withdrawn by the government once he took office as Chief Minister<sup>31</sup>. A pattern unravels as evidence suggests that the most significant instances of violence against protesters and government inaction to protect civilians took place in BJP-governed states like Uttar Pradesh, Assam and Karnataka<sup>32</sup>.

### COVID-19:

The peaceful protest that lasted more than 100 days at Shaheen Bagh ended with the Prime Minister declaring a nationwide lockdown amid the spread of the COVID-19<sup>33</sup>. The protestors were apprehensive about evacuating, as they believed it would be difficult for them to reclaim the space later<sup>34</sup>. Many were also of the opinion that the government will use the protest as a

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<sup>29</sup> "India: Deadly Force Used Against Protesters," Human Rights Watch news release, December 23, 2019, <https://www.hrw.org/news/2019/12/23/india-deadly-force-used-against-protesters>. Last accessed 27<sup>th</sup> July 2021

<sup>30</sup> Vijayta Lalwani, "Ram, biryani, Rahul Gandhi: What BJP's star campaigner Adityanath spoke about on the campaign trail," Scroll.in, December 10, 2018, <https://scroll.in/article/905191/ram-biryani-rahul-gandhi-what-bjps-star-campaigner-adityanath-spoke-about-on-the-campaign-trail> last accessed 27<sup>th</sup> July 2021

<sup>31</sup> Rohan Venkataramakrishnan, "How does Adityanath withdrawing criminal case against himself not count as 'jungle raj'?", Scroll.in, December 27, 2017, <https://scroll.in/article/862892/how-does-adityanath-withdrawing-criminal-case-against-himself-not-count-as-jungle-raj> last accessed 27<sup>th</sup> July 2021

<sup>32</sup> Abdul Alim Jafri, "Who Were 23 People Killed in UP During Anti-CAA-NRC Protests?," Newsclick, January 18, 2020, <https://www.newsclick.in/who-were-23-people-killed-during-anti-cao-nrc-protests> last accessed 27<sup>th</sup> July 2021; Anupam Chakravarty, "How Five People in Assam Were Killed During Anti-Citizenship Amendment Protests," The Wire, December 16, 2019, <https://thewire.in/rights/assam-anti-citizenship-amendment-act-protest-deaths> last accessed 27<sup>th</sup> July 2021; Nolan Pinto, "Anti-CAA protests: 2 protesters killed in police firing in Mangaluru," India Today, December 19, 2019, <https://www.indiatoday.in/india/story/anti-cao-protests-deaths-mangaluru-police-firing-1629836-2019-12-19> last accessed 27<sup>th</sup> July 2021

<sup>33</sup> Shaheen Bagh's 101-day protest: Timeline of sit-in against CAA, The Indian Express, March 24<sup>th</sup> 2020, <https://indianexpress.com/article/cities/delhi/shaheen-bagh-protests-cleared-timeline-cao-delhi-coronavirus-6328911/> last accessed 27<sup>th</sup> July 2021

<sup>34</sup> Vasudha Venugopal, Delhi lockdown: Anti-CAA protesters removed from Shaheen Bagh, other places, The Economic Times, <<https://economictimes.indiatimes.com/news/politics-and-nation/coronavirus->



reason for the spread of the virus and accuse Muslims as they previously did when the Tablighi Jamaat held a congregation in March 2020<sup>35</sup>. The government also used the COVID-19 emergency to impose draconian laws to make arbitrary arrests and detentions against journalists<sup>36</sup>. Moreover, the judiciary kept a close eye on the government's measure and delayed the hearing process of the detained and arrested due to COVID-19 exacerbating the denial of rights to people under the Indian Constitution.

As a result of the pandemic the protests have been significantly strained, with fewer people taking to the streets and the government being able to use the state of emergency as a means of ensuring that crowds are unable to gather. However, this has not impeded the authorities from cracking down on identified demonstrators or protesters of the CAA, or, from harassing Muslim civilians, suspected of supporting such protests<sup>37</sup>.

Although the lack of gathering means that violence on the streets have been reduced, there is still fear that the violence is likely to emerge once the lockdown measures are lifted and the pandemic's impacts diminish. This is particularly true, as many organisations are gearing up to begin protesting the CAA anew<sup>38</sup>.

### **C. The Right to Assembly and Other Legal Obligations:**

India enumerates the "Right to assemble" in Article 19(1)(b) of the Constitution<sup>39</sup> in Part III, Fundamental Rights. However, this right is subject to reasonable restrictions<sup>40</sup>. It has been a long-standing practice of the Indian Supreme Court to weigh each case on its merits to assess which competing freedoms would have to be restricted and the use of a "reasonable" test was laid down in order to make the assessment<sup>41</sup>. Considering that these "reasonable restrictions" have typically been considered on a case-by-case basis, it is arguable that there is often little consistency in the Courts' decisions on such matters.

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[lockdown-delhi-police-vacate-protesters-at-shaheen bagh/articleshow/74785253.cms](https://www.aljazeera.com/opinions/2020/4/18/how-the-coronavirus-outbreak-in-india-was-blamed-on-muslims)> last accessed 27<sup>th</sup> July 2021

<sup>35</sup> Apoorvanand, How the coronavirus outbreak in India was blamed on Muslims, Aljazeera, 18 April 2020, <https://www.aljazeera.com/opinions/2020/4/18/how-the-coronavirus-outbreak-in-india-was-blamed-on-muslims> last accessed 28th July 2021

<sup>36</sup> Amnesty International, INTERNATIONAL REPORT 2020/21, India, <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/> last accessed 28<sup>th</sup> July 2021

<sup>37</sup> Dharvi Vaid, One year of India's Citizenship Amendment Act, Deutsche Welle, 11.12.2020, <https://www.dw.com/en/one-year-of-indias-citizenship-amendment-act/a-55909013> last accessed 27th July 2021

<sup>38</sup> *Ibid*

<sup>39</sup> Article 19(1)(b), Part III, Constitution of India

<sup>40</sup> Article 19(3), Part III, Constitution of India

<sup>41</sup> *Madras v V.G.Row* (1952) S.C.R. 597, 607 ('52) A.S.C. 196

However, the stark difference in responses of the authorities to the protestors and the Hindu nationalist mobs depict a direct affront to Article 14 of the Constitution of India<sup>42</sup>, which prescribes “*Equality before the law for all...*”. The unconstitutional and arbitrary responses are in themselves violative of the constitutional rights of the protestors under Article 19(1)(b) as well as being violative of the Indian government’s obligation to ensure the “*Equality clause*” under Article 14.

India has ratified both the International Covenant on Civil and Political Rights (ICCPR)<sup>43</sup>. However, these obligations only exist in the Indian legal framework as persuasive arguments as opposed to binding obligations. Therefore, the suggestion that there are strict violations of international obligations is not well grounded<sup>44</sup>. Having acknowledged that caveat, it is important still to recognize that the ICCPR in Article 21 recognises the right to assembly in the same way that the Constitution of India does. Hence, it is arguable that this obligation does exist under international law as much as domestic law. To that effect, the same can be said of Article(s) 14 and 26 of the ICCPR in relation to Article 14 of the Indian Constitution.

The several instances of violence and difference in treatment depicted above demonstrate the failure of India’s adherence to its legal obligations to its citizens. While many arguments can be made on either side, the fact of the matter is that these violations are a gross affront to the concepts of equality and democracy.

#### **D. Recommendations:**

Without delving into the legality of the Citizenship Amendment Act itself, the Right to assemble peacefully and the right of all citizens to be treated equally before the law is a core constitutional feature of the Indian legal structure. The following recommendations are made with a view to ensure that citizens are allowed to move forward and exercise their right to freedom of assembly and other associated rights:

- The Indian government must ensure that allegations of violence and attacks on peaceful protestors are thoroughly investigated and brought to legal attention and scrutiny.
- The BJP and its leaders who have incited violence and effectively portrayed citizens of the nation, in exercise of their constitutional rights, as “traitors” or “enemies of state”, must be brought to justice and their cases must be tried fairly, publicly, and with haste, in a Court of law.
- The Courts must not be subjected to threat or political pressure of any kind. Impartiality of the judiciary must be maintained.
- The restrictions imposed on protests against the CAA must be reassessed. The Crackdowns must stop immediately and all individuals subjected to unlawful detention or arrests must be immediately released.
- Adequate protection should be provided to future protests. Protestors should feel that they are able to safely voice their concern.

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<sup>42</sup> Article 14, Constitution of India

<sup>43</sup> <https://indicators.ohchr.org/>

<sup>44</sup> A'MAL GANGULL, *Interface Between International Law and Municipal Law: Role of the Indian Judiciary*, in *INDIA AND INT'L L.*, supra note 41, at 12 (2005)