



POLICY PAPER

Strengthening EU-India Relations: Advancing a Collaborative Approach on Human Rights

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EUROPE

*This Policy Paper was written by **Manuel Ballotta** | 23 November 2023

 Rue de la Science 14, 1040 Brussels

 office@vocaleurope.eu

 + 32 02 588 00 14

VOCAL EUROPE

RUE DE LA SCIENCE 14B, 1040 BRUSSELS

TEL: +32 02 588 00 14

VOCALEUROPE.EU



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Background

Since the 1990's, human rights have been an important aspect of European Union (EU)-India relations. In the early 90's, the human rights violations committed by both Indian security forces and militant groups during the insurgencies in Kashmir¹, Punjab², and Assam³, attracted great international attention and condemnation, including from the EU. In this context, human rights issues were brought up by EU officials during Troika meetings with Indian representatives. As a response to the international pressure, India underwent some human rights reforms, and it is also in this context, in which India finally agreed to the inclusion of an 'essential human rights clause' in the Cooperation Agreement signed with the EU in 1994.⁴

Article 1.1 states that "Respect for human rights and democratic principles is the basis for the cooperation between the Contracting Parties and for the provisions of this Agreement, and it constitutes an essential element of the Agreement." (Cooperation Agreement, 1994).⁵ The inclusion of this clause is particularly relevant, as it legitimized subsequent EU human rights promotion efforts. Despite this, it was intended by the commission as a tool to engage India in a constructive manner, and the EU never intended it to be used to legitimize more punitive measures, such as the suspension of the agreement.⁶

Following the 1994 Cooperation Agreement, human rights have thus featured regularly, if not prominently, in EU-India relations. Since 2000, the EU and India have held EU-India Summits, during which they engage in high-level diplomatic talks, and usually conclude with a joint communication where the EU and India, among other things, reaffirm their commitment to human rights and democracy. For example, in the declaration following the 2004 EU-India summit, where they announced their decision to raise their partnership to a strategic level, they emphasised that their partnership as the two world's largest democracies is based on shared fundamental values, such pluralism and the rule of law.⁷

In line with articles 2, 3 (5) and 21 TEU, where the EU committed to promote and uphold human rights in its external action⁸, the EU also attempted to insert a human rights clause during the negotiations for the Free Trade Agreement between 2007 and 2013. These, however, were suspended due to very different views on the content of the agreement.⁹

Another format designed specifically by the EU to engage its partners, including India, on human rights issues, are Human Rights Dialogues. Human Rights Dialogues are utilized by the EU to engage

¹ Human Rights Watch. (1999). *Behind the Kashmir Conflict. Abuses by Indian Security Forces and Militant Groups Continue*. <https://www.hrw.org/report/1999/07/01/behind-kashmir-conflict/abuses-indian-security-forces-and-militant-groups-continue>

² Amnesty International. (2021). *Human Rights Violations in Punjab: Use and Abuses of the Law*. <https://www.amnesty.org/ar/wp-content/uploads/sites/9/2021/06/asa200111991ar.pdf>

³ Human Rights Watch. *No End in Sight: Human Rights Violations in Assam*. <https://www.hrw.org/reports/pdfs/i/indonesia/indones2934.pdf>

⁴ Jain, R., K. (2017). India, the European Union and Human Rights. *India Quarterly* 73(4) 411–429. DOI: 10.1177/0974928417731640

⁵ Cooperation Agreement between the European Community and the Republic of India on partnership and development. (1994). EUR-Lex. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A21994A0827%2801%29>

⁶ Jain, India, the European Union and Human Rights.

⁷ Council of the European Union. (2004). *Fifth India-EU Summit, Joint Declaration*. https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/82635.pdf

⁸ Articles 2, 3 (5) and 21, Consolidated Text of the Treaty European Union. (2012). https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

⁹ Wouters J., et al. (2013). *Some critical issues in the EU-India Free Trade Agreement Negotiations*. Leuven Centre for Global Governance Studies. <https://lirias.kuleuven.be/retrieve/237297>

STRENGTHENING EU-INDIA RELATIONS: ADVANCING A COLLABORATIVE APPROACH ON HUMAN RIGHTS

with partner countries, express concerns about the human rights situation in the country in question, and to foster cooperation in order to achieve tangible reforms.¹⁰ India is also a beneficiary of the EU Standard Generalised System of Preferences (GSP). By granting GSP status, the EU grants a selective, unilateral liberalization of trade to low-income countries, to foster sustainable development, in exchange for a commitment to ratify and implement core human and labour rights conventions.¹¹ Despite the attempts by the EU to promote and uphold human rights and the rule of law, the situation in India is a very complex and difficult one.

According to a report by the U.S. Department of State, widespread impunity at all government levels in India are conducive to serious human rights violations. While the list is extremely long, few examples include, arbitrary arrests of political opponents and journalists, extrajudicial killings, torture and inhumane treatments of inmates, restrictions of freedom of expression, internet shutdowns, religious, ethnic, and gender-based violence, forced, bonded and child labour.¹²

Some of the human rights violations can be blamed on a lack of resources, shortage of trained police, and overburdened courts.¹³ However, certain draconian laws passed by the government throughout the years, such as the 2008 Unlawful Activities Prevention Amendment Act¹⁴, the 2010 Foreign Contributions Regulation Act¹⁵, and the 2019 Citizenship Amendment Act¹⁶, are being utilized to deliberately to crackdown on civil society organizations, freedom of speech, freedom of assembly, and to limit the rights of minorities, especially Muslims.

Despite the complexity of the situation, the EU and India have been recently strengthening their partnership, as demonstrated by the resumption of the negotiations for the free trade agreement in 2021.¹⁷ The main driver behind this can be found in the rise of China as a strategic competitor and security threat for both.^{18,19} As such, in this complex geopolitical context, this policy paper will look at: “How can the EU upgrade its human rights policy in order to prevent a further deterioration of human rights and the rule of law in India?”, at a time of closer geopolitical strategic alignment between the EU and India.

Current State of Play

To this day, the human rights situation in India remains very complex. According to the latest report by the U.S Department of State on human rights practices in India from 2022, the situation is very similar to the previous years, with human and labour rights violations remaining a structural issue in

¹⁰ Council of the European Union. (2021). *Revised EU Guidelines on Human Rights Dialogues with Partner/Third Countries*. <https://data.consilium.europa.eu/doc/document/ST-6279-2021-INIT/en/pdf>

¹¹ Zamfir, I. (2018). *Human rights in EU trade policy*.

[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2018\)621905](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)621905)

¹² U.S. Department of State. (2021). *2021 Country Reports on Human Rights Practices: India*.

<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/india/>

¹³ Ibid.

¹⁴ Ministry of Home Affairs. (December 31, 2008). *The Unlawful Activities Prevention Amendment Act*.

https://www.mha.gov.in/sites/default/files/UAPA-1967_0.pdf

¹⁵ Ministry of Law and Justice. (September 27, 2010). *The Foreign Contributions (Regulation) Act*.

https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

¹⁶ Ministry of Law and Justice. (December 12, 2019). *Citizenship (Amendment) Act, 2019*.

https://indiancitizenshiponline.nic.in/UserGuide/E-gazette_2019_20122019.pdf

¹⁷ European Commission. (2022). *EU and India kick-start ambitious trade agenda*.

https://policy.trade.ec.europa.eu/news/eu-and-india-kick-start-ambitious-trade-agenda-2022-06-17_en

¹⁸ Dempsey, J. (2023). *Europe's Dangerous Dependence on China*. Carnegie Europe.

<https://carnegieeurope.eu/strategieurope/89448>

¹⁹ Roland, G. (2021). *China's rise and its implications for International Relations and Northeast Asia*. Asia and the Global Economy, 1(2), 100016. <https://doi.org/10.1016/j.aglobe.2021.100016>

STRENGTHENING EU-INDIA RELATIONS: ADVANCING A COLLABORATIVE APPROACH ON HUMAN RIGHTS

India.²⁰ Labour rights infringements disproportionately affect vulnerable groups, such as Dalits, tribal minorities, and asylum seekers. Labour rights violations include bonded and child labour. While laws exist to protect the victims and punish the perpetrators, such as the Bonded Labour System (Abolition) Act²¹ and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act²², these were often not enforced effectively.²³

Other significant issues include the situation in Jammu and Kashmir, which were deprived of their autonomous status in 2019, and from where there are credible reports of extrajudicial violence committed by security forces, internet shutdowns, denial of fair trial, and a crackdown on freedom of expression.²⁴ It is also evident that the government is actively attempting to turn India into a Hindu state.²⁵ The ethnic violence in Manipur which has taken already almost 200 lives in 2023 was fostered by divisive polices from the local Bharatiya Janata Party (BJP) government.²⁶ Moreover, at all levels of government, a strong anti-Muslim sentiment is being promoted together with a regime of impunity towards religious violence.²⁷

The crackdown on Civil Society continues, with the implementation of the Draconian laws which were discussed in the previous section. Since the election of the Narendra Modi government in 2014, these laws have been used to arrest human rights defenders, and impede the activity of International Non-Governmental Organizations (INGOs) such as Amnesty International.²⁸ Recent cases of human rights defenders being arrested on politically motivated charges include the case of Stan Swamy, an 83-year-old defender of rights of tribal communities.²⁹

Despite these issues, in the last few years the core of EU-India relations has been trade, and the future of trade relations between them. As I previously underlined, the rise of China, together with the awareness that trade diversification is necessary to strategic autonomy, has pushed the EU and India to strengthen their partnership in order to reach their strategic objectives.³⁰ In line with this strategic outlook, the EU and India announced that they restarted the negotiations for the free trade, investment,

²⁰ U.S. Department of State. (2022). *2022 Country Reports on Human Rights Practices: India*.

<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/india>

²¹ Ministry of Law and Justice. (1976). *The Bonded Labour System Abolition Act*.

<https://www.indiacode.nic.in/bitstream/123456789/1491/1/197619.pdf>

²² Ministry of Law and Justice. (1989). *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*.

<https://socialjustice.gov.in/writereaddata/UploadFile/The%20Scheduled%20Castes%20and%20Scheduled%20Tribes.pdf>

²³ U.S. Department of State. (2022). *2022 Country Reports on Human Rights Practices: India*.

<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/india>

²⁴ Human Rights Watch. (2022). *India: Repression Persists in Jammu and Kashmir*.

<https://www.hrw.org/news/2022/08/02/india-repression-persists-jammu-and-kashmir>

²⁵ Ganguly, M. (June 30, 2023). *Ethnic Violence Spirals in India's Northeastern Manipur State*. Human Rights Watch.

<https://www.hrw.org/news/2023/06/30/ethnic-violence-spirals-indias-northeastern-manipur-state>

²⁶ Hindustan Times. (September 15, 2023). *Manipur violence: Death toll touches 175 mark, few stolen weapons recovered, says police*. HindustanTimes.com <https://www.hindustantimes.com/india-news/manipur-toll-175-few-stolen-weapons-recovered-police-101694716778763.html>

²⁷ Faisal, M. (September 22, 2023). *Muslim MP called 'terrorist, pimp' by BJP member inside India's parliament*.

Aljazeera.com <https://www.aljazeera.com/news/2023/9/22/muslim-mp-called-terrorist-pimp-by-bjp-member-inside-indian-parliament>

²⁸ Amnesty International. (2020). *Protect our human rights work in India*. <https://www.amnesty.org/en/petition/protect-our-human-rights-work-in-india/>

²⁹ Human Rights Watch. (2021). *EU: Speak Out Against India's Rights Violations*.

<https://www.hrw.org/news/2021/01/11/eu-speak-out-against-indias-rights-violations>

³⁰ Hilpert H., G., et al. (2023). *Negotiations on a Free Trade Agreement between India and the EU*. German Institute for International and Security Affairs. <https://www.swp-berlin.org/10.18449/2023C11/>

STRENGTHENING EU-INDIA RELATIONS: ADVANCING A COLLABORATIVE APPROACH ON HUMAN RIGHTS

and geographical indicators agreements in 2021.³¹ Moreover, to work more closely on issues deemed of strategic importance, they also created the Trade and Technology Council.³²

While building stronger trade relations with India has a high strategic value for the EU, this should not come at the expense of human rights. Currently, The EU's external strategy on human rights and democracy is explained in the EU Action Plan on Human Rights and Democracy 2020-24. To fulfil this plan, it is stated that the EU will use the full range of instruments at its disposal, which are very context dependent.³³

As briefly explained previously, one of the main EU instruments is the Human Rights Dialogue. The last EU-India Human Rights Dialogue was held in 2022. In line with the EU's constructive approach, it was an opportunity for them to share concerns and discuss progress and issues since the previous Human Rights Dialogue held in 2021, and to reaffirm their commitment to values of democracy, human rights, and rule of law. Among the concerns which the EU specifically brought up, there was capital punishment, and several other issues were discussed, such as minority rights and freedom and the independence of civil society. However, the wording used in the press release is very interesting as it demonstrates that the EU was not admonishing India for its negative records in these fields, but simply exchanging views and perspectives. Finally, they committed to deepen their future collaboration in business and human rights. Despite a expressing an interest to meet again in 2023, this did not happen.³⁴

At the cross-section between trade and human and labour rights, the GSP still remains an important component of EU-India relations in the absence of a free trade agreement. According to the latest data available, India is the world's largest beneficiary of the standard GSP, with exports amounting to 11.5 billion euros, or 41% of Indian exports to the EU, eligible for reduced tariffs.³⁵ Countries benefiting from the standard GSP "must be deemed to respect the basic human and labour rights principles outlined in the 15 core conventions." (GSP HUB India, 2023). While India has not ratified three core labour rights conventions concerning freedom of association and the right to organise, by current regulation the Standard GSP does not legally require beneficiary states to ratify the conventions.³⁶ The Commission can choose to apply negative conditionality and withdraw GSP status to a country found committing serious human rights violations, but this has rarely happened. Until this day, the Commission, like in the case of human rights clauses, has preferred maintaining a constructive approach. In fact, India is still benefitting from GSP status.³⁷

For the EU, reaching an agreement on the free trade, investment, and geographical indicators agreements with India will have many benefits in the current international geopolitical context, and would thus be a positive development.³⁸ Despite this, the current human rights situation in India remains concerning. However, the danger human rights will be put aside in order to build a stronger

³¹ European Commission. (2022). *EU and India kick-start ambitious trade agenda*.

https://policy.trade.ec.europa.eu/news/eu-and-india-kick-start-ambitious-trade-agenda-2022-06-17_en

³² European Commission. (April 25, 2022). *EU-India: Joint press release on launching the Trade and Technology Council*. https://ec.europa.eu/commission/presscorner/detail/en/speech_23_2063

³³ European External Action Service. (2020). *EU Action Plan on Human Rights and Democracy 2020-24*.

https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf

³⁴ European External Action Service. (July 15, 2022). *10th EU-India Human Rights Dialogue*.

https://www.eeas.europa.eu/delegations/india/10th-eu-india-human-rights-dialogue_en

³⁵ GSP HUB. (2023). *India*. <https://gsphub.eu/country-info/India>

³⁶ *ibid*.

³⁷ Zamfir, I. (2018). *Human rights in EU trade policy. Unilateral measures applied by the EU*. EPRS.

[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2018\)621905](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)621905)

³⁸ Poitiers N., et al. (2021). *EU-India trade relations: assessment and perspectives*. Directorate General for External Policies, Policy Department, European Parliament.

https://www.researchgate.net/publication/371603839_EUIndia_Trade_Relations_Assessment_and_Perspectives

STRENGTHENING EU-INDIA RELATIONS: ADVANCING A COLLABORATIVE APPROACH ON HUMAN RIGHTS

economic partnership remains a concrete possibility.³⁹ Thus, the purpose of this policy paper is to offer some recommendations to the EU to strengthen the human rights dimension of its engagement with India, to ensure that deeper economic and trade relations will not adversely affect the human rights situation in India, and to reinforce the EU's commitment to the values expressed in articles 2, 3 (5) and 21 TEU.⁴⁰

Policy Recommendations

#Improving the transparency of the standard GSP and using the negative conditionality more assertively

The current GSP regulation was set to expire at the end of 2023. The commission proposed a new regulation in 2021, however, the Council and the EP failed to find an agreement, and the current regulation was extended to 2027 without any changes.⁴¹ The current EU GSP is divided in three levels: standard GSP, GSP+ and the Everything but Arms Arrangement (EBA).

The main differences between the standard GSP and the GSP+, is that countries which are given GSP+ status are also subject to positive conditionality, meaning that they must ratify and implement 27 core conventions, and comply with reporting duties on the state of their ratification and implementation. In exchange, they are granted 0% tariffs on the same tariffs lines granted to standard GSP countries (66% of all tariffs lines). This status is reserved for countries with very low levels of trade diversification.⁴²

With the Standard GSP (of which India is a part of), the Commission's only tool to compel a state to respect the principles of the 15 core conventions, is negative conditionality (withdrawing preferences). However, the Commission has not activated the withdrawal procedure in a regular and coherent manner until this day⁴³ and, contrary to GSP+, for which the commission releases a country specific biannual report, the standard GSP lacks any form of formal monitoring and reporting mechanisms.⁴⁴ As such, the standard GSP is fundamentally toothless, and it lacks transparency.

To increase the transparency of the standard GSP, the EU commission should consider allowing non-EU civil society organizations to lodge formal complaints through the Single Entry Point (SEP) platform (a platform which allows EU stakeholders to make a complaint in cases of breaches of sustainability rules concerning the GSP).⁴⁵ As it currently stands, non-EU civil society can submit complaints only through informal means.⁴⁶ Formalizing their right to send complaints directly to the European Commission's Trade Department would mean that they can deliver their concerns more

³⁹ Foundation the London Story. (2023). *Background Dossier for Exchange of Views on India in the European Parliament's Human Rights Subcommittee*. https://thelondonstory.org/wp-content/uploads/Background_dossier_India_DROI_EoV_19_September_2023.pdf

⁴⁰ Articles 2, 3 (5) and 21, Consolidated Text of the Treaty European Union. (2012).

⁴¹ European Parliament. (October 5, 2023). *Position of the European Parliament*.

https://www.europarl.europa.eu/doceo/document/TC1-COD-2023-0252_EN.pdf

⁴² Zamfir I., et al. (2022). *New EU scheme of generalised preferences*. EPRS Briefing.

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698857/EPRS_BRI\(2022\)698857_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698857/EPRS_BRI(2022)698857_EN.pdf)

⁴³ Zamfir, Human rights in EU trade policy.

⁴⁴ GSP Hub. (nd.) *GSP Reports*. <https://gsphub.eu/about-gsp/gsp-reports>

⁴⁵ GSP Hub. (nd.). *Single Entry Point*. <https://trade.ec.europa.eu/access-to-markets/en/content/single-entry-point0#:~:text=The%20Single%20Entry%20Point%20is%20the%20first%20point%20of%20contact,the%20Generalised%20Scheme%20of%20Preferences>.

⁴⁶ Van Der Loo, G. (2022). *The Commission proposal on reforming the Generalised Scheme of Tariff Preferences: analysis of human rights incentives and conditionalities*. European Parliament, Directorate-General for External Policies. [https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/653661/EXPO_IDA\(2022\)653661_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/653661/EXPO_IDA(2022)653661_EN.pdf)

STRENGTHENING EU-INDIA RELATIONS: ADVANCING A COLLABORATIVE APPROACH ON HUMAN RIGHTS

quickly and transparently, allowing them to have stronger voice in influencing decisions which impact them directly.

Moreover, the EU Commission should develop some kind of reporting mechanism which could keep other stakeholders, such as the European Parliament and Civil Society, more engaged in the decisions concerning human and labour rights in GSP countries. It could do so by preparing a country specific biannual report, like it already does for GSP+ countries, or by creating a specific section dedicated to human and labour rights in the GSP Hub page for each country. While this could create a financial burden on the EU Commission, this could be avoided by a greater involvement of Civil Society Organizations in providing proof of human rights violations and by making use of the reports of other International Multilateral Organizations, such as the International Labour Organization (ILO).

Finally, the Commission should be more assertive and coherent with the use of negative conditionality. The possibility of removing preferential access only partially, to specific sectors where the most serious human and labour rights violations are taking place is a powerful tool. However, if the Commission is worried of possible negative impacts to the livelihood of the people affected by the removal of tariffs preferences,⁴⁷ it could use targeted sanctions under the new EU global human rights sanctions regime to target specific economic actors.⁴⁸ By doing so, the Commission could compel Standard GSP countries to protect human and labour rights without damaging to the livelihood of the people which are not directly involved in committing human and labour rights violations.⁴⁹

#Be bolder in the use of the Human Rights Dialogue as a strategic platform to promote human rights

According to the 2021 Revised Guidelines on Human Rights Dialogues with Partner/Third Countries, human rights dialogues are an important component of the EU human rights strategy, especially at a time when human rights are under attack globally, and for this reason they should be reinvigorated in order to be more effective.⁵⁰ This is a very welcome, however, as the 2022 EU-India Human Rights Dialogue and the state of human rights in India demonstrate, it remains unclear whether the new guidelines have been followed, since at least for now, the Human Rights Dialogue has not been very effective in India.

In the Objectives section, it is stated that “EU engagement on human rights aims to enhance cooperation and pursue strategic goals as set out in the new EU Action Plan on Human Rights and Democracy and not only to have an exchange of different views.”⁵¹ Arguably, this is extremely important, and contrary to what the 2022 EU-India Human Rights Dialogue, the EU should effectively pursue this objective in the future dialogues with India, instead of mostly exchanging views.

The section on the Engagement with Civil Society also brings forward some interesting guidelines. It argues that seminars with civil society, funded by the EU, should be held before the dialogue takes

⁴⁷ Ibid.

⁴⁸ European External Action Services. (2020). *EU global human rights sanctions regime*.

https://www.eeas.europa.eu/eeas/eu-has-new-powerful-tool-protect-human-rights-eu-global-human-rights-sanctions-regime-0_en

⁴⁹ Van Der Loo, The Commission proposal on reforming the Generalised Scheme of Tariff Preferences: analysis of human rights incentives and conditionalities.

⁵⁰ General Secretariat of the Council. (2021). *Revised EU Guidelines on Human Rights Dialogues with Partner/Third Countries*. <https://data.consilium.europa.eu/doc/document/ST-6279-2021-INIT/en/pdf>

⁵¹ Ibid.

place in order to allow civil society organizations' concerns to feature in the dialogue. It also states that a debriefing session for civil society should be held after the dialogue. While these would indeed be positive developments, as engaging more deeply with Civil Society in the context of the Human Rights Dialogue would surely increase its transparency and overall improve the quality of the dialogue, it remains unclear whether these were held in the context of the 2022 EU-India Human Rights Dialogue. As such, the EU should make sure to engage civil society organizations when the next EU-India dialogue will be held in the formats which are indicated in the 2021 Guidelines.⁵²

As civil society remains heavily impaired in India, and as human rights violations persist, it is also of utmost importance that the EU speaks openly against these violations and the laws that allow them to foster. This should happen, in line with the EU Action Plan on Human Rights and Democracy, where it is stated that the EU will speak up for human rights and democracy and condemn human rights violations and abuses.⁵³

As the European Parliament (EP) did in condemning the situation in Manipur⁵⁴, all the EU stakeholders involved in the EU-India Human Rights Dialogue should use the Dialogue as a platform to openly and publicly condemn human rights violations committed by the Indian government, as well as the Draconian laws which it is using to restrict freedom of expression.

If the EU Commission/EEAS were to follow this proposal, the Human Rights Dialogue would become more transparent and arguably compelling. However, certain challenges would remain. We can expect resistance by the Indian government, and as such it is important that the EU keeps on engaging India diplomatically through other formats, such as the UN Human Rights Council. Moreover, as the 2023 EU-India Human Rights Dialogue has not taken place, it is crucial for it to be held as soon as possible.

#Putting human rights at the core of the future EU-India Free Trade Agreement

Human rights are a core component of EU-India relations since they were enshrined in the 1994 Cooperation Agreement, where Article 1 is a so called 'essential human rights clause'.⁵⁵ However, contrary to more recent partnership agreements between the EU and third parties⁵⁶, the 1994 Cooperation agreement only refers to human rights and democracy in vague and general terms, without referring to other instruments and norms of international law to which both parties are bound to. Moreover, the 1994 Cooperation Agreement also lacks positive obligations and non-fulfilment clauses.

The combined effect of having such a weak and general reference to human rights and the lack of positive obligations and non-fulfilment clauses, is to fundamentally make it very legally hard for either party to suspend the agreement in case of a fundamental breach of human rights. This is because it is not clear on which grounds one of the parties can suspend the agreement, and even if it were, how they can do it also remains unclear.⁵⁷

⁵² Ibid.

⁵³ European External Action Service. (2020). *EU Action Plan on Human Rights and Democracy 2020-24*.

https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf

⁵⁴ European Parliament. (July 13, 2023). *European Parliament resolution of 13 July 2023 on India, the situation in Manipur*, P9_TA(2023)0289. https://www.europarl.europa.eu/doceo/document/TA-9-2023-0289_EN.html

⁵⁵ Cooperation Agreement between the European Community and the Republic of India on partnership and development. (1994).

⁵⁶ Bartels, L. (2023). *Assessment of the implementation of the human rights clause in international and sectoral agreements*. European Parliament, Directorate-General for External Policies.

[https://www.europarl.europa.eu/thinktank/en/document/EXPO_IDA\(2023\)702586](https://www.europarl.europa.eu/thinktank/en/document/EXPO_IDA(2023)702586)

⁵⁷ Ibid.

STRENGTHENING EU-INDIA RELATIONS: ADVANCING A COLLABORATIVE APPROACH ON HUMAN RIGHTS

As the EU negotiates a free trade agreement with India, it has a golden opportunity to fill this legal gap. It is reasonable to not expect the EU to advance this talk at the current stage of the negotiations, since it would most probably encounter great resistance from India and make the negotiations fall before they reached any meaningful result. However, later on, the EU should negotiate with India the inclusion of an essential human rights clause with a broader and better specified legal coverage when compared to the 1994 Cooperation agreement. Moreover, it should also include positive obligations and non-fulfilment clauses which would define the measures to be undertaken to protect human rights, and the rights of the parties in case of a serious human rights violation.

For the wording of the human rights clause, the EU could take inspiration from the EU-Singapore Partnership and Cooperation Agreement, where the essential human rights clause refers to the respect for human rights in compliance of any human rights treaty or equivalent legal instrument of which they are contracting parties.⁵⁸ This way, it would cover both treaties and instruments which the two parties have already signed and those which they will sign in the future.

Independently from the wording that will be chosen, it is crucial that the EU avoids including a linkage clause⁵⁹ to the 1994 Cooperation Agreement, as it would be too weak, for the reasons that we have already discussed. Moreover, while the Trade and Sustainability Clauses proposed by the EU are a welcome development, it remains crucial to include an essential human rights clause with a broader legal coverage.⁶⁰

Considering that it has traditionally been against the blending of human rights and trade, we can expect great resistance to these clauses from India.⁶¹ However, the current geopolitical landscape has driven the EU and India much more strategically aligned when compared to when negotiations were held before. As such, the EU arguably never had as much leverage on India as it currently has. Despite this, the EU will necessarily need to consider India's legitimate concerns, and thus find a middle ground. In any case, any improvement when compared to the 1994 Cooperation Agreement, would already be a considerable success.

⁵⁸ Article 1, Partnership and Cooperation Agreement between the European Union and the Republic of Singapore. (2014). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014PC0070>

⁵⁹ Zamfir, I. (2019). *Human rights in EU trade agreements. The human rights clause and its application*. EPRS. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI\(2019\)637975_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI(2019)637975_EN.pdf)

⁶⁰ European Commission. (2022). *EU Proposal. EU-India TSD chapter*. file:///C:/Users/ballo/Downloads/x.21%20TSD%20EU%20Proposal.pdf

⁶¹ Jain, India, the European Union and Human Rights.

VOCAL EUROPE

RUE DE LA SCIENCE 14B, 1040 BRUSSELS

TEL: +32 02 588 00 14

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