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People's Watch, India

32, Besant Road, Chokkikulam, Madurai – 625002

<https://www.peopleswatch.org/>

Henri Tiphagne, Executive Director, People's Watch, henri@pwtm.org

Asian Forum for Human Rights and Development (FORUM-ASIA)

S.P.D Building 3rd Floor, 79/2 Krungthonburi Road, Khlong Ton Sai, Khlong San, Bangkok, 10600 Thailand Tel: +66 (0)2 1082643-45 Fax: +66 (0)2 1082646

www.forum-asia.org

Ahmed Adam, UN Advocacy Programme Manager, una@forum-asia.org

Dr. Debendra Adhikari, South Asia Programme Manager, sasia@forum-asia.org

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Introduction

1. This report is a joint effort by the Asian Forum for Human Rights and Development (FORUM-ASIA) and People's Watch, India. FORUM-ASIA, founded in 1991, is a membership-based regional network comprising 85 human rights organisations across 23 Asian countries and consultative status with the UN Economic and Social Council. People's Watch, established in 1995, is dedicated to building a society free of discrimination and injustice while striving to create socio-economic conditions for the realization of human rights. People's Watch is a member of FORUM-ASIA and our collective mission is to protect and promote human rights for all and human rights defenders, foster civic space, and advocate for democracy in the region.
2. India, as a signatory to the ICCPR, has committed to upholding civil and political rights. However, recent developments raise serious concerns about the state of human rights in the country. This submission aims to highlight key issues relating to the use of repressive laws, shrinking civic space and the erosion of fundamental freedoms. This report draws upon a mix of primary and secondary research, followed by recommendations on issues addressed in this submission.

General Information on the national human rights situation in India since the adoption of LOIPR

3. Under the rule of the right-wing Bharatiya Janata Party (BJP), led by Prime Minister Narendra Modi since 2014, India has experienced significant democratic backsliding. Democracy watchdogs classify India as a 'hybrid regime,' teetering between democracy and autocracy, and increasingly leaning towards the latter.¹ According to Freedom House's Freedom in the World 2024 report, India is rated as partly free.² Similarly, the V-Dem Institute's Democracy Report 2024 identifies India as one of the most alarming cases of autocratization, having downgraded it to 'electoral autocracy' in 2018.³ The Economist Intelligence Unit (EIU) labeled India as a 'flawed democracy' in its 2020 Democracy Index, ranking it 53rd globally.⁴
4. Under the BJP government, the protection of civil liberties and checks on executive power have substantially deteriorated. Discriminatory policies, such as the Citizenship Amendment Act (CAA) of 2019,⁵ targeting religious minorities, particularly Muslims, have surged. Incidents of anti-Muslim violence, such as mob lynching and the demolition of Muslim-owned

¹ <https://www.journalofdemocracy.org/articles/why-indias-democracy-is-dying/>

² <https://freedomhouse.org/country/india/freedom-world/2024>

³ <https://www.thehindu.com/news/national/india-one-of-the-worst-autocratisers-v-dem-report-on-democracy/article67939573.ece>

⁴ <https://economictimes.indiatimes.com/news/politics-and-nation/india-falls-to-53rd-position-in-eius-democracy-index-dubbed-as-flawed-democracy/articleshow/80665859.cms?from=mdr>

⁵ <https://www.livemint.com/news/india/what-is-cao-the-law-which-led-to-massive-protests-in-2019-citizenship-amendment-act-all-you-need-to-know-11710172923021.html>

properties and places of worship (referred to as bulldozer justice), have become distressingly common.⁶ Furthermore, there has been a disturbing rise in hate speech and dehumanizing rhetoric against Muslims, including calls for genocide, by right-wing politicians and Hindu religious extremists.⁷

5. Freedom of the press is under severe strain, with journalists facing intimidation, trolling, legal threats, detention, and even physical violence. According to Reporters Without Borders (RSF), Indian media is in an "unofficial state of emergency,"⁸ with the country ranked 159th in its 2024 World Press Freedom Index.⁹ Freedom of association and assembly, both online and offline, has also faced setbacks. A 2021 report by the International Centre for Not-For-Profit Law (ICNL) highlighted India's punitive, security-focused approach and the trend of criminalizing public protests and demonizing protest organizers.¹⁰

Working of India's National Human Rights Commission

In response to Paragraph 5

6. Institutions established to promote and protect human rights have largely remained silent as civic space has been constricted in India. Of the 160 such institutions, the National Human Rights Commission of India (NHRCI) is a model for other national and state human rights bodies. However, the NHRCI has failed to comply with the Paris Principles. Consequently, the Sub Committee of Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) deferred the NHRCI's accreditation in March 2023.¹¹
7. The NHRCI, established under the Protection of Human Rights Act of 1993, is an independent statutory institution. In recent years, the Commission has struggled to effectively fulfil its mandates, particularly in responding to escalating human rights violations in India. It has also faced criticism for its lack of pluralism in the selection and appointments of its duty holders and insufficient cooperation with other human rights bodies. Despite recommendations from the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI-SCA) to align its processes and functions with the United Nations Principles relating to the Status of National Institutions (the Paris Principles), both the NHRCI and the

⁶ <https://www.amnesty.org/en/latest/news/2024/02/india-authorities-must-immediately-stop-unjust-targeted-demolition-of-muslim-properties/>

⁷ <https://www.aljazeera.com/news/2024/2/26/hamas-to-halal-how-anti-muslim-hate-speech-is-spreading-in-india>

⁸ <https://www.thehindu.com/news/national/india-press-freedom-score-falls-says-reporters-sans-frontieres/article68136062.ece>

⁹ <https://rsf.org/en/country/india>

¹⁰ <https://www.icnl.org/wp-content/uploads/India-freedom-of-assembly-report-2021-final.pdf>

¹¹ Available at [SCA Report 2023 | AINNI](#)

Indian government have yet to make the necessary improvements to enhance the Commission's functioning.¹²

8. Major concerns regarding the operations of the NHRCI include:¹³

- *Institutional Involvement of Police Officers:* The Commission's reliance on police officers for investigating cases and appointing them as Special Monitors raises significant issues of impartiality and potential conflict of interest.
- *Opaque Selection Process:* The process for selecting commissioners and staff lacks transparency and diminishes opposition voices, resulting in a lack of pluralism concerning gender, religion, caste, and other factors.
- *Long-standing Vacancies:* Persistent vacancies hinder the Commission's ability to function effectively.
- *Lack of Cooperation:* The NHRCI has failed to cooperate adequately with other human rights bodies and defenders.
- *Political Affiliations:* The Chairpersons of the seven national thematic commissions on women, minorities, child rights, Scheduled Castes, Scheduled Tribes, persons with disabilities, and backward classes are often connected to the ruling party or are Members of Parliament or government representatives.

9. Regarding human rights issues, especially in recent years, the NHRCI has been criticized for:¹⁴

- *Inaction on Human Rights Defenders:* The Commission has not addressed the detention of numerous human rights defenders under various draconian laws, including the Unlawful Activities (Prevention) Act (UAPA). Notable cases include the 16 human rights defenders linked to the Bhima Koregaon-Elgar Parishad case, with seven still detained after more than five years;¹⁵ Kashmiri human rights defender Khurram Parvez, detained since November 2021;¹⁶ and Muslim student activist Umar Khalid, whose bail appeals related to the February 2020 Delhi riots have been repeatedly denied since October 2020.¹⁷

¹² Available at [SCA-Report-First-Session-2023-EN.pdf \(ohchr.org\)](#)

¹³ [ANNI Report 2023 | AINNI](#)

¹⁴ Available at [2023 AiNNI – ANNI Joint Submission | AINNI](#)

¹⁵ <https://www.livelaw.in/articles/716-bhima-koregaon-accused-get-bail-courts-raise-prima-facie-doubts-about-evidence-258671>

¹⁶ <https://forum-asia.org/38858-2/>

¹⁷ <https://www.thehindu.com/news/national/delhi-riots-larger-conspiracy-case-umar-khalid-to-remain-in-jail-as-court-denies-bail/article68224601.ece>

- *Failure to Respond to Calls for Release:* Despite calls from various UN special rapporteurs for the release of these defenders, the NHRCI has not taken any concrete steps or intervened in a timely manner.
- *Rising Ethnic Violence:* The NHRCI failed to take timely and meaningful action regarding rising ethnic violence in Manipur starting in May 2023,¹⁸ intensified repression in Jammu & Kashmir following the abrogation of Article 370 in August 2019,¹⁹ communal violence in Haryana in August 2023,²⁰ and Uttarakhand in June 2023.²¹
- *Human Rights Violations during Protests:* The Commission has also not adequately addressed human rights violations during the February 2024 farmers' protests,²² the misuse of the Foreign Contribution (Regulation) Act to silence dissent,²³ and the implementation of the Citizenship Amendment Act on March 11, 2024.
- *Delays in Case Disposal:* Human rights defenders have consistently raised concerns about the NHRCI's inordinate delays in effectively disposing of cases.

Recommendations

Amend the Protection of Human Rights Act, 2019, to strengthen diversity requirements for NHRC composition, aligning with all GANHRI – SCA recommendations from 2011, 2016, 2017, and 2023.

- Ensure immediate filling of the three NHRCI member vacancies, prioritizing the vacancy for a woman.
- Encourage and support other thematic NHRIs in India to apply for GANHRI membership to enhance India's global standing and ensure compliance with the Paris Principles.²⁴

Special Security Laws applicable in areas declared as ‘disturbed’

In response to Paragraph 15, Armed Forces Special Powers Act of 1958

¹⁸ <https://www.bbc.com/news/world-asia-india-66260730>

¹⁹ <https://www.bbc.com/news/world-asia-india-49234708>

²⁰ <https://www.newsclick.in/communal-violence-nuh-rsss-new-hindutva-laboratory-faces-resistance-peasantry>

²¹ <https://www.thehindu.com/news/national/watch-uttarakhand-haldwani-violence-all-you-need-to-know/article67858491.ece>

²² <https://www.reuters.com/world/india/why-farmers-are-protesting-new-delhi-2024-03-14/>

²³ <https://frontline.thehindu.com/social-issues/fcra-status-scrapped-for-cpr-world-vision/article67800242.ece>

²⁴ Detailed analysis and recommendations for India's NHRI and the Government of India can be accessed here: https://forum-asia.org/wp-content/uploads/2023/10/Anni_report_2023-10-27-0100-1.pdf

10. The Armed Forces (Special Powers) Act (AFSPA) grants sweeping powers to armed forces in ‘designated areas’, with a lack of clarity on the duration of ‘disturbed’ status and administrative review.
11. Manipur Extrajudicial Killings: In 2016, The Supreme Court ordered an investigation into 1,528 alleged extrajudicial killings by security forces in Manipur. Despite this, the central government continues to deny prosecution permissions, reflecting impunity under AFSPA.²⁵
12. Pathribal Fake Encounter (2017): The CBI closed the case against Army personnel involved in the 2000 Pathribal fake encounter, despite the Supreme Court’s directive for prosecution, citing a lack of evidence, showcasing the difficulty in holding armed forces accountable.²⁶
13. Custodial Death of Rizwan Pandit (2018): Rizwan Pandit died in police custody in Jammu and Kashmir with evidence of severe torture. The police’s inconsistent statements further highlight the challenges in ensuring accountability under AFSPA.²⁷
14. Shopian Staged Encounter (2020): Three labourers were killed in a fake encounter by the Army, falsely labelled as militants. Despite initial arrests, the Armed Forces Tribunal later suspended the life term of the accused Army captain, granting him bail, indicating systemic issues with accountability.²⁸
15. Kangpokpi Shooting (2021): Mangboilal Lhouvum was shot dead by security forces under questionable circumstances. Despite claims of an anti-insurgency operation, local accounts contradicted the official narrative, showing the misuse of AFSPA powers.²⁹
16. Nagaland Miners’ Killing (2021): Soldiers killed six miners in Nagaland, mistaking them for militants, leading to further civilian deaths during ensuing protests. Although charges were filed, the government later denied permission to prosecute the soldiers involved, perpetuating impunity.³⁰
17. Extension of AFSPA in Manipur (2024): AFSPA was extended in Manipur following ethnic violence in 2023, marked by excessive force by security forces. The root causes of the conflict remain unaddressed, underscoring the inadequacy of AFSPA in ensuring peace and security.³¹

Recommendations

- Repeal AFSPA, particularly sections that grant broad immunity to security forces, and ensure accountability for human rights violations.

²⁵ <https://www.hrw.org/news/2017/07/15/india-top-court-orders-manipur-killings-inquiry>

²⁶ <https://thewire.in/rights/pathribal-supreme-court-army-encounter>

²⁷ <https://kashmirilife.net/rizwans-birthday-came-a-day-before-his-death-in-custody-205029/>

²⁸ <https://indianexpress.com/article/india/amshipora-fake-encounter-case-army-captain-life-sentence-suspended-conditional-bail-9025372/>

²⁹ <https://caravanmagazine.in/crime/assam-rifles-major-accused-of-killing-civilian-manipur-reopens-debate-afspa>

³⁰ <https://www.hrw.org/news/2023/04/18/indian-troops-wont-be-tried-nagaland-killings>

³¹ <https://www.thehindu.com/news/national/afspa-extended-in-manipur-for-6-months-from-october-1-barring-19-police-stations-of-valley/article67352570.ece>

- Implement stronger judicial oversight mechanisms to review actions taken under AFSPA.

Right to Privacy

In response to Paragraph 23, Data and Privacy Breaches Involving the Aadhar Biometric Identification Project

18. The Aadhaar project has faced numerous security lapses, making the system prone to data leaks. Unique Identification Authority of India (UIDAI) has frequently shut down fraudulent websites masquerading as official ones to phish for personal information. In 2018, around 200 government websites accidentally exposed personal Aadhaar data, allowing unauthorized access to thousands of government databases through simple online searches. To combat unauthorized access, the Indian government blocked about 5,000 officials.³²
19. In another incident, journalists from The Tribune bought Aadhaar details for Rs 500 (\$7.2) from a WhatsApp group, gaining access to a portal with extensive personal information. Before this vulnerability was addressed, over 100,000 people had accessed sensitive Aadhaar data illegally.³³
20. A Jharkhand state website inadvertently released data of 1.6 million pension beneficiaries, and the Centre for Internet and Society reported that about 130 million Aadhaar numbers were accidentally made public.³⁴
21. Despite these issues, the government aggressively promotes Aadhaar as India's primary photo identification document, though it was intended for biometric authentication. As a photo ID, it lacks traditional security features, making it susceptible to duplication and fraud.³⁵
22. In July 2023, the Ministry of Education introduced the 'One Nation, One Student ID' scheme, linking student records to Aadhaar numbers. Concerns have arisen about its implementation without clear legal backing, accountability, or transparency. The APAAR ID, similar to Aadhaar, follows a "voluntary-mandatory" model, raising privacy and legality concerns. The scheme's push for 100% implementation by the BJP in the 2024 elections could jeopardize student data privacy and dignity across India.³⁶ Global standards

³² <https://www.firstpost.com/tech/news-analysis/aadhaar-database-access-found-to-be-sold-on-whatsapp-for-rs-500-uidai-official-acknowledges-major-data-breach-4286427.html>

³³ <https://www.strategicfront.org/forums/threads/aadhaar-database-access-found-to-be-sold-on-whatsapp-for-rs-500-uidai-official-acknowledges-major-data-breach.684/>

³⁴ <https://www.firstpost.com/tech/news-analysis/aadhaar-details-of-about-1-6-million-residents-leak-in-jharkand-3701559.html>

³⁵ https://jsis.washington.edu/news/the-aadhaar-card-cybersecurity-issues-with-indias-biometric-experiment/#_ftn16

³⁶ <https://internetfreedom.in/student-id-zero-law-or-policy/>

require added security for children's records, which the current system lacks. Furthermore, India's Digital Personal Data Protection Act, 2023, is not yet in effect, leaving data collection, processing, and storage without comprehensive legal safeguards.

Recommendations

- Implement robust security protocols to protect personal data, including biometric information, and prevent unauthorized access and data breaches.
- Ensure transparency in the operations of the Unique Identification Authority of India (UIDAI) and other agencies handling Aadhaar data.
- Establish clear accountability mechanisms for data breaches, with stringent penalties for non-compliance and negligence.
- Reassess schemes like 'One Nation, One Student ID' to ensure they are backed by clear legal frameworks and do not compromise student data privacy.
- Provide clear information about the risks and safeguards associated with the use of Aadhaar as an identification document.

Digital Personal Data Protection Act of 2023

23. The Digital Personal Data Protection Act of 2023 significantly empowers the state, setting state imperatives above those of private entities. While this can be legitimate in situations like disasters, the law broadens these circumstances. For instance, Section 7(b) allows the government to bypass consent if a beneficiary has previously consented to any state benefit, facilitating access to personal data for government services but also enabling potential database aggregation. This would require exemptions from purpose limitations, which mandate data deletion after its use.³⁷

24. Section 17(1)(c) exempts notice and consent requirements for processing data related to crime prevention, detection, investigation, or prosecution. Section 17(2)(a) extends this by providing a blanket exemption to any government agency, citing reasons such as sovereignty, security, integrity, public order, and preventing incitement. This suggests Parliament's intent to exempt certain state agencies entirely from the data protection law.

25. The Data Protection Board's design is also problematic. It is an independent agency with a limited mandate, and the government controls the selection and appointment of its members. While qualifications are set, the law doesn't

³⁷ <https://carnegieendowment.org/research/2023/10/understanding-indias-new-data-protection-law?lang=en>

specify the number of members and requires only one to be a legal expert, despite the board's role in issuing penalties and compliance directions.

Recommendations

- Amend the Digital Personal Data Protection Act to uphold the principles of consent and purpose limitation. Restrict the use of Section 7(b) to genuine emergency situations, ensuring that beneficiaries' prior consent for state benefits cannot be used to bypass consent for non-emergency situations.
- Ensure that exemptions for state agencies are limited to specific and necessary circumstances, with robust oversight mechanisms to prevent abuse.
- Establish an independent Data Protection Board with clear guidelines on the number of members and their qualifications. Ensure a significant proportion of members, including the chairperson, have legal and data protection expertise. Furthermore, implement transparent selection and appointment processes for this board to ensure its independence from government influence.

Undue Restrictions on Freedom of Expression

In response to Paragraph 26

26. In 2017, *The Adivasi Will Not Dance*, a book of short stories by Hansda Sowvendra Shekhar, was banned by the Jharkhand government, citing that it was offensive to Santhal women and portrayed them in a bad light. The book is a work of fiction that portrays the struggles and realities of the Adivasis (tribal communities) in India.³⁸
27. In January 2023, The Indian government invoked emergency laws to block a BBC documentary, *India: The Modi Question*, examining the role of the prime minister, Narendra Modi, during riots in the western state of Gujarat in 2002.³⁹
28. In March 2024, the Indian government demanded YouTube censor CBC's *The Fifth Estate* documentary on the alleged contract killing of B.C. pro-Khalistan Sikh activist Hardeep Singh Nijjar.⁴⁰
29. In August 2023, Indian authorities blocked the website and social media accounts of *The Kashmir Walla (TKW)*, an independent Kashmiri news outlet, without prior notice, following an order from the Ministry of Electronics and

³⁸ <https://www.hindustantimes.com/opinion/what-the-ban-on-the-advansi-will-not-dance-tells-us-about-india-s-political-life/story-gPtXIRpKwDcwl0zTEgEdVN.html>

³⁹ <https://www.theguardian.com/world/2023/jan/23/india-emergency-laws-to-ban-bbc-narendra-modi-documentary>

⁴⁰ https://ca.news.yahoo.com/youtube-blocks-cbc-doc-india-120252987.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAFBYiMLVQc7nAa07J1lg1RV_isskX7WTMguptP8aD_tF_kzyYPD4o_EM_vhWtKE8GVJCpLpyp7lyOUysRWS3KMGp2WCumMpkTq-elrf71qS_Sz0ziYEvMsVb8xeDkRCbQafCkxKQP7NbDGg0ZJTvIX0c85D93o_8BY5HpZDKZt9

Information Technology. TKW also received an eviction notice for its Srinagar office on the same day.⁴¹ Founder Fahad Shah was released on bail after 600 days of detention,⁴² while trainee reporter Sajad Gul remains imprisoned since January 16, 2022.⁴³

Recommendations

- Establish clear, transparent, and fair procedures for any government actions that restrict access to media and publications. Ensure that affected parties are given prior notice and an opportunity to contest such actions.
- Cease actions that threaten or penalize journalists and news outlets for their reporting. This includes lifting blocks on websites and social media accounts of independent media such as The Kashmir Walla.
- Review and, if necessary, amend emergency laws and orders used to block media content to ensure they are not used arbitrarily or excessively.

Internet Shutdowns

30. As per a report by Access Now, over 500 shutdowns were recorded in India between 2019 and 2024. In the last 5 years, over 500 shutdowns were recorded with major reasons being: conflicts, protests, etc.⁴⁴

31. On August 4, 2019, an internet shutdown was imposed in Indian-administered Jammu and Kashmir, when Article 370 was repealed. Initially affecting all communications, the shutdown was partially lifted in Kargil in December 2019 but persisted in other areas. In January 2020, 2G services resumed for verified users with limited access. Full 4G services were restored on February 6, 2021, after 552 days.⁴⁵

32. Manipur has faced an internet shutdown since May 3, 2023, following earlier shutdowns in Churachandpur and Pherzawl starting April 28, 2023, due to communal violence. This has been the longest shutdown in Northeast India in 2023, lasting over 200 days. On July 7, 2023, the High Court of Manipur

⁴¹ <https://freepresskashmir.news/2023/08/21/kashmir-wallas-website-taken-down-social-media-blocked/>

⁴² <https://www.aljazeera.com/news/2023/11/23/kashmiri-journalist-fahad-shah-walks-out-of-jail-after-600-days>

⁴³ <https://maktoobmedia.com/india/weeks-after-psa-quashment-kashmir-journalist-sajad-gul-remains-in-jail/>

⁴⁴ <https://frontline.thehindu.com/the-nation/digital-darkness-india-leads-the-world-in-internet-shutdowns/article68232054.ece#:~:text=For%20the%20past%20six%20years,focusing%20on%20digital%20civil%20rights.>

⁴⁵ <https://www.reuters.com/article/idUSL8N2YZ245/>

ordered a limited restoration of services via broadband. As of December 3, 2023, shutdowns remain only in violence-affected areas.⁴⁶

33. During the 2024 farmers' protests, citing "public emergency" and "public safety," the central government, led by Narendra Modi, invoked the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, under the Indian Telegraph Act, 1885, to suspend internet services within the jurisdiction of 20 police stations in Patiala, SAS Nagar, Bathinda, Sri Mukhtsar Sahib, Mansa, Sangrur, and Fatehgarh Sahib.⁴⁷

Recommendations

- Internet shutdown should be a measure of last resort, only when absolutely necessary and proportionate to the intent. However, prolonged shutdowns should be ceased as they disproportionately affect freedom of expression and access to information.
- Introduce and enforce judicial oversight for any decisions to impose internet shutdowns. Clear and transparent criteria must be established for imposing internet shutdowns, including specific conditions in which it is justified.

Harassment, intimidation, smear campaigns and violent attacks against human rights defenders, activists, and journalists and their family members; killings and travel bans to prevent engagement with United Nations and other international bodies and retaliation of such engagement

In response to Paragraph 27(a)

34. FORUM-ASIA documented 365 cases of attacks against HRDs in India from October 2017 until February 2022 on its Asian HRDs Portal.⁴⁸

Type of violation

Violation	Number of Cases
Judicial harassment	190

⁴⁶ <https://www.thehindu.com/sci-tech/technology/longest-internet-shutdown-2023-took-place-manipur-amidst-human-rights-violations-report/article67726259.ece>

⁴⁷ <https://thewire.in/agriculture/farmers-protest-modi-government-used-british-era-law-to-give-itself-powers-to-suspend-internet#:~:text=agriculture-,Farmers'%20Protest%3A%20Modi%20Government%20Used%20British%2DEra%20Law%20to,Mansa%2C%20Sangrur%20and%20Fatehgarh%20Sahib.>

⁴⁸ Asian Human Right Defenders Portal, Available at: <https://asianhrds.forum-asia.org/>

Arbitrary arrest and detention	145
Violence (physical)	115
Intimidation and threats	112
Vilification	36

Rights concerned

Violation	Number of Cases
Freedom of expression	189 (122 offline, 70 online)
Right to healthy and safe environment	148
Right to liberty and security	111
Freedom of assembly	76
Right to protest	55

Type of HRD

Violation	Number of Cases
Media worker	115
WHRD (incl. men or HRDs of other gender who are working on women's rights)	102
Community-based HRD	76

Minority rights defender	42
Student	30

Gender of HRD

Violation	Number of Cases
Man	218
Woman	106
Other (e.g., undefined, organization, community)	91
LGBTQ+/Non-binary	2

Perpetrators

Perpetrator		Number of Cases
State	Police	220
	Government	106
	Judiciary	23
	Suspected state	11
	Armed forces/military	4
Non-state	Non-state	48
	Suspected non-state	6

	Corporation	5
	Extremist group	4
	Unknown	26

35. Global Witness Report ranked India as tenth in the world for the number of Environmental Human Rights Defenders (EHRDs) killed for their work in 2020. As per their annual reports, there were four documented killings of EHRDs in the year 2020, six killings in the year 2019, 23 persons in the year 2018, and 11 persons in the year 2017.⁴⁹
36. Indian human rights defenders speaking up against state excesses are labelled as 'anti-national,' 'urban Naxals,' or accused of having links with banned organisations or foreign countries and are subsequently discredited. Smear campaigns and intimidation are conducted through the abuse of penal laws and processes by state authorities acting through law enforcement agencies.
37. According to the 'Hall of Shame' database maintained by the Commonwealth Human Rights Initiative, since the implementation of the Right to Information (RTI) Act in 2005, at least 97 RTI activists have been killed, 179 cases of assault have been registered, 186 cases of harassment and threats have been reported, and 7 deaths by suicide have been documented.⁵⁰
38. The Committee to Protect Journalists (CPJ) reported that India has the highest number of journalists killed in retribution for their work. According to CPJ, four journalists in India were murdered in 2021 in retaliation for their work, while another journalist died while on a dangerous assignment.⁵¹ Additionally, at least 14 journalists have been charged or investigated under the anti-terror law UAPA.⁵²
39. During the UPR review, India received several recommendations to protect its human rights defenders from harassment and release those detained. India

⁴⁹ Global Witness. (n.d.). Retrieved December 23, 2021, Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>

⁵⁰ Available at: <http://attacksonrtiusers.org/>

⁵¹ Bismee Taskin, "These 5 Journalists were killed in India in 2021. 4 'murdered', 1 died on dangerous assignment", The Print, December 11, 2021, Available at: <https://theprint.in/india/these-5-journalists-were-killed-in-india-in-2021-4-murdered-1-died-on-dangerous-assignment/779932/>

⁵² Committee to Protect Journalists, 'CPJ urges India to ensure freedom for 3 journalists granted bail in security cases', May 15, 2024, available at: <https://cpj.org/2024/05/cpj-urges-india-to-ensure-freedom-for-3-journalists-granted-bail-in-security-cases/>

‘noted’ these recommendations. The UN Special Rapporteur on the situation of HRDs has stated that India does not “properly protect human rights defenders.”⁵³ Between 2015 and 2019, OHCHR recorded 53 killings of HRDs in India.⁵⁴ Unfortunately, in most instances of violent attacks and harassment of HRDs, impunity has been the norm and accountability the exception. The police authorities have often failed to take note of threats against HRDs and grant protection.

- A. Veteran journalist and HRD Shujaat Bukhari was assassinated in June 2018. After his assassination, former BJP minister Chowdhary Lal Singh warned Kashmiri journalists to ‘mend their ways’ and that if journalists ‘do not draw a line’, they would meet with the fate of Bukhari.⁵⁵
- B. Gauri Lankesh, prominent journalist, HRD and critic of right-wing Hindutva extremism, was assassinated outside her residence in September 2017. According to the police, the plot to kill Lankesh was hatched by members of an extremist Hindutva outfit. Eighteen accused have been identified and 17 arrested therein. Prosecution has not been swift and the murder trial is still pending despite the passing of more than six years.⁵⁶
- C. News reports state that at least 20 RTI activists were killed in Bihar in the past 11 years.⁵⁷ These include activists Bipin Agrawal⁵⁸ and Buddinath Jha.⁵⁹

⁵³ “UN representative: India doesn’t properly protect human rights defenders”, The Indian Express, January 16, 2021, Available at: <https://indianexpress.com/article/india/stan-swamy-bhima-koregaon-stan-swamy-arrest-united-nations-human-rights-7148223/>

⁵⁴ “Final warning: death threats and killings of human rights defenders”, Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, A/HRC/46/35, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/355/11/PDF/G2035511.pdf?OpenElement>

⁵⁵ See, “Behave or face the fate of Shujaat Bukhari, J-K BJP leader Chaudhary Lal Singh warns scribes”, The New Indian Express, June 24th, 2018, available at: <https://www.newindianexpress.com/nation/2018/jun/24/behave-or-face-the-fate-of-shujaat-bukhari-j-k-bjp-leader-chaudhary-lal-singh-warns-scribes-1832785.html>

⁵⁶ Krishnadas Rajagopal, “Gauri Lankesh murder case | Organised crime charges valid, says Supreme Court”, The Hindu, October 21, 2021, Available at: <https://www.thehindu.com/news/national/gauri-lankesh-murder-sc-revives-organised-crime-charges-against-accused/article37112646.ece>

⁵⁷ Amarnath Tewary, “20 RTI activists killed in Bihar in past 11 years”, The Hindu, September 29, 2021, Available at: <https://www.thehindu.com/news/national/other-states/20-rti-activists-killed-in-bihar-in-past-11-years/article36717769.ece>

⁵⁸ Bipin Agrawal, RTI activist, who had filed several applications to expose the issue land encroachment in Bihar, was shot in broad daylight on September 2021. He had faced death threats and had requested the police for protection after his house was attacked by unknown persons. The state failed to protect him leading to his death at the hands of criminals. Umesh Kumar Ray, “RTI activist who exposed land grabbing by Bihar mafias shot dead in broad daylight”, The Wire, September 25, 2021, available at: <https://thewire.in/rights/bihar-rti-activist-vipin-agarwal-land-grabbing-mafia-shot-dead>

⁵⁹ Buddhinath Jha, HRD who exposed unlicensed private medical clinics in Bihar, through his RTI applications, was killed in November 2021. His family reported him missing and the charred remains of his body was found after a few days. Medical ‘mafia’ is suspected to have killed him. Umesh Kumar Ray,

- D. On May 30, 2019, journalist Pratap Patra from the Odisha daily Samaja faced a life-threatening attack because of his investigative article on illegal sand mining in the state.⁶⁰
- E. On November 25, 2019, in Botad, Gujarat, Amitbai Jerambhai Parmar, a Dalit HRD and RTI activist was reported to have been attacked by upper caste men and was left grievously injured for raising issues of untouchability and human rights violations.⁶¹ Other RTI activists, including Manji Solanki, Henry James Chacko were attacked in the Saurashtra region of Gujarat in 2019. At least 40% of 15 activists killed and 47% of 17 attacked since the RTI Act was promulgated have been Dalits, Adivasis and other marginalised communities, many of whom have alleged that the police offered limited or no protection.⁶²
- F. Dalit RTI activist Nanjibhai Sondarva was brutally killed by six persons in Rajkot district of Gujarat for demanding transparency and demanding details about funds spent on the construction of a village road. His home was attacked in 2016, and he requested police protection and even made a mass appeal on Facebook Live that his life was under threat. The police neglected to take action.⁶³ A year later, his 17-year-old son Rajesh, was killed. It is reported that he and his family members were being threatened not to pursue the murder case vigorously.⁶⁴ In both cases, perpetrators remained unpunished as both trials resulted in acquittal in 2022.⁶⁵

“Bihar: RTI activist and journalist who exposed illegal clinics murdered”, The Wire, November 14, 2021, Available at: <https://thewire.in/media/bihar-rti-activist-journalist-buddhinath-jha-illegal-clinics-murdered>

⁶⁰ “Odisha journalist allegedly attacked by sand mining mafia in Balasore”, Hindustan Times, May 31, 2019, available at: <https://www.hindustantimes.com/india-news/odisha-journalist-allegedly-attacked-by-sand-mining-mafia-in-balasore/story-9qfEVK6JnLkTjJaAIE8KJ.html>

⁶¹ Damyantee Dhar, “Dalit RTI activist thrashed by ‘Upper caste men’ in Botad, Gujarat”, Newsclick, November 27, 2019, available at: <https://www.newsclick.in/Dalit-RTI-Activist-Thrashed-Upper-Caste-Men-Botad-Gujarat>

⁶² Sabah Gurmat, “Why Seeking Accountability is deadly for Gujarati Dalits, Adivasis”, Article 14, April 6, 2021, available at: <https://www.article-14.com/post/why-seeking-public-accountability-is-deadly-for-gujarati-dalits-adivasis>

⁶³ *ibid*

⁶⁴ Gaurav Vivek Bhatnagar, “A Year After RTI Activist Was Killed in Gujarat, Assailants Hack His Son to Death”, The Wire, May 23, 2019, available at: <https://thewire.in/rights/rti-activist-son-gujarat-killed>

⁶⁵ “Gujarat: Six acquitted in murder case of Dalit RTI activist Nanji Sondarva”, The Indian Express, April 20, 2022, available at: <https://indianexpress.com/article/cities/rajkot/gujarat-six-acquitted-in-murder-case-of-dalit-rti-activist-nanji-sondarva-7877410/>; “Eight acquitted in the 2019 murder of Dalit youth in Rajkot”, The Indian Express, January 25, 2022, available at: <https://indianexpress.com/article/cities/rajkot/eight-acquitted-in-the-2019-murder-of-dalit-youth-in-rajkot-7741022/>

- G. On October 5, 2023, human rights defender Babloo Loitongbam's residence in Manipur, India was vandalized by 20-30 perpetrators affiliated with militant groups. The incident occurred hours after he received threats from militant groups Meitei Leepun and Arambai Tenggol who threatened him from speaking out and giving interviews on the inter-communal violence in Manipur. Babloo Loitongbam has been critical of the BJP-led state government in its role and response to the violence.⁶⁶
- H. Fr Stan Swamy died during prolonged pre-trial detention concerning the Bhima Koregaon case. He was detained from October 9, 2020, till his death on July 5, 2021, and subjected to harsh conditions in prison even during the pandemic. UN Special Rapporteurs and Working Group on Arbitrary Detentions have stated that Fr Swamy's arbitrary detention and death in custody 'will forever remain a stain on the human rights record of India'.⁶⁷

Attacks on Women Human Rights Defenders

40. Women HRDs and journalists are especially vulnerable and have faced physical attacks and threats on social media.⁶⁸

- A. On April 10, 2020, Safoora Zargar, a research scholar from Jamia Millia Islamia University was arrested under UAPA for her alleged role in anti-CAA protests and the violence that broke out in Northeast Delhi in February 2020. Though pregnant, she was denied bail initially and subjected to pre-trial detention for 2.5 months. She was subjected to a

⁶⁶ See, Forum-Asia, "India: Protect Manipur Human Rights Defender Babloo Loitongbam", October 12, 2023, available at: <https://forum-asia.org/statement-india-protect-manipur-human-rights-defender-babloo-loitongbam/>. See further, "Human Rights Defender Babloo Loitongbam's house vandalized In Manipur", Front Line Defenders, October 9, 2023, available at: <https://www.frontlinedefenders.org/en/case/human-rights-defender-babloo-loitongbam%E2%80%99s-house-vandalized-manipur>

⁶⁷ Fr Swamy was not informed of the reasons for his arrest and the charges or served with a copy of the arrest warrant, making the arrest 'illegal'. The investigation, arrest and detention was rife with procedural irregularities. There was no individualised determination of Fr Swamy's circumstances. The National Investigation Agency (NIA) deployed intimidatory tactics and threats to effect his arrest. The Working Group has noted that the arrest, detention and death of Fr. Swamy who was a mentor to generations of HRDs in India can have a chilling effect on other HRDs who are exercising their freedom of opinion and expression. See, Human Rights Council Working Group on Arbitrary Detention, Opinion No.57/2021 concerning Stan Swamy (India), A/HRC/WGAD/2021/57, February 14, 2022, available at: <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>

⁶⁸ "Stalking and attempts to intimidate journalist Neha Dixit must stop": NWMI', January 27, 2021, available at: <https://nwmindia.org/statements/stalking-and-attempts-to-intimidate-journalist-neha-dixit-must-stop-nwmi/>

vile social media campaign targeting her personal life and religious faith.⁶⁹

- B. Soni Sori, a tribal rights activist was arrested by the Chhattisgarh police in 2011 and was booked for sedition, criminal conspiracy and other charges. Whilst lodged in Dantewada prison, she was brutally tortured and sexually abused.⁷⁰ In 2013, she was acquitted in six out of eight cases against her. She was acquitted on March 15, 2022, in the sedition case after a decade-long legal battle.⁷¹
- C. Nodeep Kaur, a Dalit labour rights activist, while protesting against the farm laws, was arrested by the Haryana police in January 2021. She was allegedly brutally beaten up and tortured by male police officers.⁷²
- D. Neha Dixit, a freelance journalist, was stalked and threatened with rape, acid attack and death. There was an attempted break-in to her house in January 2021 and her partner was also threatened. She has been facing these threats and attacks due to her work as an investigative journalist.⁷³
- E. In July 2020, journalist Rana Ayyub received murder and rape threats on social media after her posts on the killing of a Srinagar resident who was caught in the cross-firing between militants and security forces in Kashmir. She was threatened on social media to recall what had happened with Gauri Lankesh.⁷⁴
- F. Agnes Kharshiing, a WHRD from Meghalaya, active on environmental issues especially against extraction and transportation of coal, along with one of her associates, Anita Sangma, were assaulted by the coal mafia in 2018 at Tuber Sohshrieh in East Jaintia Hills district, Meghalaya's coal hub just minutes after Agnes had taken photographs of trucks ferrying illegally mined coal. They suffered severe injuries and survived after intense, critical medical treatment. They have faced further threats and

⁶⁹“Give her a condom’: Sexist trolls target pregnant Jamia student arrested under UAPA”, News18, May 5, 2020, Available at: <https://www.news18.com/news/buzz/give-her-a-condom-sexist-trolls-target-pregnant-jamia-student-arrested-under-uapa-2606669.html>

⁷⁰ Divya Arya, ‘Soni Sori: India’s fearless tribal activist’, BBC, May 22, 2016, available at: <https://www.bbc.com/news/world-asia-india-35811608>

⁷¹ Available at: <https://www.outlookindia.com/national/why-advansi-women-activists-are-stuck-in-cycle-of-rape-and-persecution-in-maoist-hit-areas-news-187129>

⁷² “Family of fierce women: Meet Dalit Labour activist held at Singhu”, The Quint, February 3, 2021, Available at: <https://www.thequint.com/news/india/nodeep-kaur-farmers-protest-dalit-labour-rights-activist-arrested-from-singhu#read-more>.

⁷³ “Attempted break-in at Neha Dixit's home, journalist reveals she is being stalked”, The Wire, January 27, 2021, Available at: <https://thewire.in/media/journalist-neha-dixit-stalked-threats-break-in-freedom-media>

⁷⁴ Bismee Taskin, “Remember Gauri Lankesh’: Rana Ayyub receives death & rape threats after posts on Kashmir”, The Print, July 3, 2020, Available at: <https://theprint.in/india/remember-gauri-lankesh-rana-ayyub-receives-death-rape-threats-after-posts-on-kashmir/453884/>.

intimidation, last reported in October 2021, due to their continued activism and work.⁷⁵

G. Kavin Malar, a journalist and WHRD from Tamil Nadu faced trolling, abuse and personal attacks online after her posts about the BJP. She was called a prostitute and started receiving obscene and abusive calls and messages on social media targeting her.⁷⁶

H. Bindu Ammini, an HRD subjected to threats and attacks by right-wing Hindutva groups, for her activism and entry into Sabarimala temple, was granted police protection by the Supreme Court. The order was not complied with and she was attacked in a hit-and-run incident. The HRD has faced several attempts on her life.⁷⁷

Travel Bans on HRDs

41. In the wake of the revocation of the special status of Jammu & Kashmir and its reorganisation into union territories, over 450 people including journalists, lawyers, politicians, human rights activists, and businessmen were placed on a “No Fly List” without any judicial order to ensure that no ‘influencer’ from Kashmir can travel abroad.

42. In April 2022, Aakar Patel, chair of Amnesty International India was stopped from travelling to the United States of America from Bengaluru airport after his name was added to a ‘look out circular’ by the Central Bureau of Investigation.⁷⁸

43. Journalist Rana Ayyub was stopped from travelling to London from Mumbai airport based on a ban imposed by the Enforcement Directorate for alleged connection in a money laundering case. She was travelling to attend events and speak about the intimidation of journalists in India the UK and Europe.⁷⁹

⁷⁵ Available at: <https://www.newindianexpress.com/nation/2021/oct/19/meghalaya-activists-who-survived-attack-from-coal-mafia-receive-alleged-threat-calls-2373195.html>

⁷⁶ “Lack of Police Action Emboldens harassers: Journalist Kavin Malar speaks on online abuse”, The News Minute, August 20, 2020, Available at: <https://www.thenewsminute.com/article/lack-police-action-emboldens-harassers-journalist-kavin-malar-speaks-online-abuse-131118>. See also, <https://nwmindia.org/statements/against-sexual-harassment/nwmi-demands-action-against-online-abuse-of-journalist-kavin-malar/>

⁷⁷ Available at: <https://hrdaindia.org/attack-on-whrd-due-to-inaction-of-kerala-police-despite-supreme-court-order-for-protection>. See also, <https://thefederal.com/states/south/kerala/activist-bindu-ammini-attacked-in-kozhikode-third-assault-since-sabarimala-entry/>

⁷⁸ Amnesty India chair Aakar Patel says he was not allowed to leave country from Bengaluru airport”, Scroll.in, April 6, 2022, available at: <https://scroll.in/latest/1021199/amnesty-india-chair-aakar-patel-says-he-was-not-allowed-to-leave-for-us-from-bengaluru-airport>

⁷⁹ Aakash Hassan, “Rana Ayyub, journalist and Modi critic, barred from leaving India”, Al Jazeera, March 30, 2022, available at: <https://www.aljazeera.com/news/2022/3/30/rana-ayyub-india-journalist-stopped-from-boarding-london-flight>

44. Several Kashmiri journalists and human rights defenders, including Pulitzer-winning Sanna Irshad Mattoo,⁸⁰ Aakash Hassan,⁸¹ Gowhar Geelani,⁸² Bilal Ahmed Bhat,⁸³ and Zahid Rafiq⁸⁴ have been barred from travelling outside India utilizing look-out circulars issued against them. They have not been provided details about the basis of such travel ban which makes it difficult for them to challenge the same in courts.
45. News reports state that the Indian government has suspended the passports of some journalists and activists in Kashmir claiming that they are “security threats to India”.⁸⁵ In August 2023, at least people, including Kashmiri academics, students and journalists, in Kashmir and abroad, had received notices about passport revocations. 70-90 more people were expected to lose their passports if not more.⁸⁶

⁸⁰ In October 2022, Kashmiri journalist Sanna Irshad Mattoo was barred from travelling to the United States of America to attend the award ceremony of the prestigious Pulitzer Prize for her coverage of the COVID-19 pandemic. She was previously barred from travelling to France where she was to attend a book launch and photography exhibition displaying her photos from Kashmir. See, Aakash Hassan, “India criticised over arbitrary travel bans after photojournalist blocked from Pulitzer trip”, The Guardian, October 20, 2022, available at: <https://www.theguardian.com/global-development/2022/oct/20/india-criticised-over-arbitrary-travel-bans-after-photojournalist-blocked-from-pulitzer-trip>

⁸¹ Kashmiri journalist Aakash Hassan was stopped from travelling to Sri Lanka and was interrogated for 5 hours. He was informed that there was a look-out circular (issued by law enforcement agencies to stop an absconding or wanted individual from leaving the country) against him but was not told which authority had issued the same. See, “Outrage as another Kashmiri journalist stopped from flying abroad”, Al Jazeera, August 1, 2022, available at: <https://www.aljazeera.com/news/2022/8/1/outrage-as-another-kashmiri-journalist-stopped-from-flying-abroad#:~:text=Independent%20journalist%20Aakash%20Hassan%2C%2025,year%20to%20face%20the%20action.>

⁸² Committee to Protect Journalists, “Kashmiri journalist Gowhar Geelani barred from leaving India”, September 4, 2019, available at: <https://cpj.org/2019/09/kashmiri-journalist-gowhar-geelani-barred-from-lea/#:~:text=Officials%20told%20G>

⁸³ Srinagar-based journalist and activist Bilal Ahmad Bhat states that he was stopped twice from traveling abroad, once at the New Delhi airport in October 2019 while heading to Malaysia for a conference, and again two years later, when he was prevented from boarding a plane to Lebanon. He was not told why he was barred from travel. See, Qadri Inzamam, ‘Censored at home and barred from travel, Kashmiri journalists persist’, The Christian Science Monitor, August 18, 2022, available at: <https://www.csmonitor.com/World/Asia-South-Central/2022/0818/Censored-at-home-and-barred-from-travel-Kashmiri-journalists-persist>

⁸⁴ Rafiq has stated that he had given up journalism to pursue a career in creative writing. He was barred from travelling to the USA to begin a teaching fellowship in Cornell University and was detained and taken to Srinagar. He was released after questioning. See, ‘Report and Recommendations on the State of the Media in Jammu and Kashmir’, March 8, 2022, available at: <https://kashmirilife.net/kashmir-media-a-press-council-of-india-report-288369/>

⁸⁵ Jehangir Ali, “Security Threat to India’: Passports of 2 J&K Journalists – with no criminal cases – suspended”, The Wire, August 1, 2023, available at: <https://thewire.in/media/passport-kashmir-journalists-suspended-security-threat>

⁸⁶ <https://www.middleeasteye.net/news/indian-government-strips-passports-kashmiri-dissent-modi>

Digital Surveillance and Use of Spyware

46. The UN Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor, has acknowledged that highly sophisticated digital surveillance tools are used to monitor, intimidate, and silence human rights defenders.⁸⁷ In July 2021, an international collaborative investigation revealed that Pegasus, a spyware sold only to government agencies, was used to spy on and target at least 300 human rights defenders, journalists, lawyers, government officials, and opposition politicians. The Supreme Court is hearing petitions regarding the deployment of Pegasus by the Indian government. The Court constituted an Expert Committee⁸⁸ and noted that the Union Government did not cooperate with the committee.⁸⁹ Civil society groups have repeatedly reported that Pegasus is a tool used to unlawfully target human rights defenders.⁹⁰ They have called for the enactment of laws to establish "proper judicial and parliamentary oversight of government surveillance measures that fully comply with international standards on privacy and other civil liberties."⁹¹
47. Amnesty International and the Citizen Lab uncovered a coordinated spyware campaign targeting at least nine human rights defenders in India.⁹² Eight of the nine defenders have been calling for the release of activists imprisoned in the Bhima Koregaon case since 2018. It was found that, between January and October 2019, the defenders were targeted with emails containing malicious links. When clicked, these links installed spyware on the computers, compromising the devices and allowing monitoring of their actions and communications, as well as planting evidence against them. This is a violation of their rights to freedom of expression and privacy and goes against the UN General Assembly resolution calling on states to refrain from using surveillance

⁸⁷ Sukanya Shantha, "India must stop criminalizing the defence of human rights: UN Special Rapporteur", The Wire, August 21, 2021, Available at: <https://thewire.in/rights/interview-un-special-rapporteur-mary-lawlor-human-rights-elgar-parishad-stan-swamy>

⁸⁸ Manohar Lal Sharma v. Union of India (Order of the Supreme Court dated October 27, 2021), Available at: https://main.sci.gov.in/pdf/LU/27102021_082008.pdf

⁸⁹ The Wire Staff, 'Pegasus: 'No Effective Hearings Since Last August,' CJI Promises Early Date for Status Update', The Wire, May 11, 2023, available at: <https://thewire.in/law/pegasus-supreme-court>

⁹⁰ Available at: <https://www.amnesty.org/en/petition/targeted-surveillance-human-rights-defenders/>

⁹¹ Available at: <https://www.hrw.org/news/2021/08/26/india-spyware-use-violates-supreme-court-privacy-ruling>

⁹² The HRDs are: Nihalsing B Rathod, Isha Khandelwal, Shalini Gera, Degree Prasad Chouhan, Partho Sarothi Ray, Yug Mohit Chaudhry, Ragini Ahuja, PK Vijayan, and a journalist who wished to remain anonymous. See, "India: Human Rights Defenders Targeted by a Coordinated Spyware Operation", Amnesty International, June 15, 2020, Available at: <https://www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/>

technologies to target human rights defenders.⁹³ At least three of the nine defenders were also targeted with NSO Group's Pegasus spyware in 2019.⁹⁴

Recommendations

- Enact a comprehensive legislation recognising and protecting human rights defenders in compliance with UN declaration on human rights defenders and other international standards
- Enable a peaceful working environment for HRDs without fear of reprisals and ensure protection of human rights defenders from all forms of attacks including harassment, surveillance, criminalisation, judicial harassment, etc.
- Strengthen co-operation with the UN Special Procedures, including the communications procedure in cases of attacks against HRDs.

Law of Seditio

In response to Paragraph 27(b)

48. Section 124-A of the Indian Penal Code criminalising sedition is under judicial review. The Supreme Court of India has directed that pending trials and proceedings concerning cases framed under this provision be kept in abeyance during the pendency of the constitutional challenge.⁹⁵ However, most human rights defenders charged under sedition did not receive any relief and continue languishing in jails since they were charged under UAPA and other criminal offences as well.

49. India has enacted the Bharatiya Nyaya Sanhita, 2023 replacing the Indian Penal Code which whilst removing 'sedition' has introduced Section 152 titled 'Act endangering the sovereignty, unity and integrity of India'. This provision has retained aspects of sedition and criminalises acts that excite 'subversive activities', 'encourages feelings of separatist activities', or 'endangers sovereignty or unity and integrity of India'. 'Subversive activities' are not defined, and the provision is overbroad, raising apprehension that it may be invoked similarly to Section 124A and is prone to abuse.⁹⁶ The BNS will come into effect on July 1, 2024.⁹⁷

50. In addition to the BNS, replacing the Indian Penal Code, India has passed Bharatiya Nagrik Suraksha Sanhita (BNSS) replacing the Code of Criminal

⁹³ Available at: <https://www.frontlinedefenders.org/en/statement-report/action-needed-address-targeted-surveillance-human-rights-defenders>

⁹⁴ Shalini Gera (from JagLAG), Nihal Singh Rathod, and Degree Prasad Chouhan were targeted using NSO spyware.

⁹⁵ S.G.Vombatkere vs. Union of India, W.P.(C)No. 682 of 2021, Order dated May 11, 2022, available at: <https://www.scobserver.in/wp-content/uploads/2021/07/Sedition-order.pdf>

⁹⁶ See Mrinal Satish, Preeti Pratishruti Dash and Anushka Pandey, 'Bharatiya Nyay Sanhita: Decolonising or Reinforcing Colonial Ideas?', The Wire, January 30, 2024, available at: <https://thewire.in/law/bharatiya-nyay-sanhita-decolonising-or-reinforcing-colonial-ideas>

⁹⁷ Notification of the Ministry of Home Affairs dated February 23, 2024.

Procedure and the Bharatiya Sakshya Adhiniyam (BSA) replacing the Evidence Act. These laws were passed with minimal pre-legislative consultation. Demands by the Opposition for a larger public debate on the Bills were not met.⁹⁸ Several Opposition Members of the Parliament were suspended and the Bills were passed without meaningful debate.⁹⁹

51. Section 124A of the IPC, and its successor Section 152 of BNS, reflect colonial tendencies and do not have a place in a democracy. They suffer from overbroad definitions and are prone to abuse as has been historically observed.

Criminal Defamation

52. Law on criminal defamation continues to be used to suppress dissent, political opposition and the media. Index Monitoring Cell set up by the Information and Broadcast Ministry to improve India's poor ranking on global press freedom indices recommended decriminalisation of defamation.¹⁰⁰ The Law Commission of India has recommended retaining the offence of criminal defamation.¹⁰¹ BNS replacing the IPC has retained criminal defamation in section 356 and prescribes punishment of up to two years imprisonment and/or community service.

53. Leader of the Congress party Rahul Gandhi was convicted and sentenced to a maximum sentence of 2 years imprisonment in a criminal defamation case for remarks he made about the 'Modi' surname in a political rally.¹⁰² He was subsequently disqualified as a Member of the Parliament on March 24, 2023,¹⁰³ and could not attend the Parliament until August 7, 2023,¹⁰⁴ when he was

⁹⁸ Saurav Das, 'How consultative was the framing of the Three Criminal Law Bills, Really', The Wire, August 24, 2023, available at: <https://thewire.in/government/how-consultative-was-the-framing-of-the-three-criminal-law-bills-really>

⁹⁹ 'Petition filed in Supreme Court against new criminal laws passed by Parliament', The Times of India, January 1, 2024, available at: http://timesofindia.indiatimes.com/articleshow/106456095.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹⁰⁰ Sukanya Shantha, 'Official Panel Sees 'Western Bias' in India's Low Press Freedom Rank But Wants Defamation Decriminalised', The Wire, March 14, 2021, available at: <https://thewire.in/media/official-panel-western-bias-india-poor-ranking-world-press-freedom-index>

¹⁰¹ Law Commission of India, Report No. 285, The Law of Criminal Defamation, January 2024, available at: <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2024/02/202402021139959703.pdf>

¹⁰² Sandeep Phukan, 'Rahul Gandhi disqualified as MP; Congress calls it 'black day' for democracy', The Hindu, March 30, 2023, available at: <https://www.thehindu.com/news/national/rahul-gandhi-disqualified-as-member-of-lok-sabha/article66656681.ece>

¹⁰³ Krishnadas Rajagopal, 'Supreme Court stays Rahul Gandhi's conviction in 'Modi surname' remark criminal defamation case', The Hindu, August 4, 2023, available at: <https://www.thehindu.com/news/national/sc-stays-rahul-gandhis-conviction-in-modi-surname-remark-criminal-defamation-case/article67157567.ece#:~:text=The%20Supreme%20Court%20on%20August,Gandhi%20to%20return%20to%20Parliament.>

¹⁰⁴ 'Rahul Gandhi returns to India's parliament as MP', BBC, August 7, 2023, available at: <https://www.bbc.com/news/world-asia-india-66425569>

reinstated subsequent to his conviction being suspended by the Supreme Court. This incident has shed light on the arbitrary application of the law for political ends, and how the ‘process is the punishment’ ultimately chilling free speech and diminishing democracy.¹⁰⁵

54. Recently, the Delhi High Court held that re-tweeting a defamatory post can attract criminal liability observing that persons with a large online following and political background can influence the opinions of the broader audience and that they should be ‘responsible’.¹⁰⁶ This has the potential to significantly chill free speech in social media.
55. The law on criminal defamation should be re-considered by the State to ensure that it is not used to stifle political opposition or speech and expression by minorities and marginalised peoples.

Unlawful Activities (Prevention) Act of 1967

56. The BNS introduces ‘terrorist act’ as an offence in Section 113 which mirrors the UAPA. This duplication has raised concerns since the State (through a police officer not below the rank of a Superintendent of Police) would have potentially arbitrary discretion to apply between the dual regime of UAPA or BNS.¹⁰⁷
57. The Committee to Protect Journalists (CPJ) has reported that seven journalists are incarcerated in India, out of which five have been charged under UAPA.¹⁰⁸
58. Prabir Purakayasta, a 74-year-old journalist and founder of NewsClick, an online portal, was charged under the UAPA and arrested for allegedly receiving Chinese funds to promote “anti-national” propaganda. He was arrested on October 4, 2023, and released on bail on May 15, 2024, after being incarcerated for over 7 months. The Delhi High Court held that the arrest and remand were illegal since the authorities did not provide him the grounds for arrest.¹⁰⁹
59. Sixteen human rights defenders were charged under the UAPA for allegedly instigating violence at Bhima Koregaon in 2018. The accused HRDs were arrested and faced a long period of pre-trial detention. They were denied basic

¹⁰⁵ N. Ram, ‘Criminal defamation: A noxious colonial law and its subversive effects’, *Frontline*, April 5, 2023, available at: <https://frontline.thehindu.com/politics/criminal-defamation-a-noxious-colonial-law-and-its-subversive-effects/article66687373.ece>

¹⁰⁶ *Arvind Kejriwal vs. State*, Order dated February 5, 2024, 2024 SCC OnLine Del 719.

¹⁰⁷ Sanjoy Ghose and Prakhar Bajpai, ‘Terrorist Acts in the UAPA and Bharatiya Nyaya Sanhita: Duplication or Duplicity?’, *The Wire*, February 8, 2024, available at: [https://thewire.in/law/duplication-or-duplicity#:~:text=Section%20113%20of%20the%20BNS,Prevention%20Act\)%20\(UAPA\).](https://thewire.in/law/duplication-or-duplicity#:~:text=Section%20113%20of%20the%20BNS,Prevention%20Act)%20(UAPA).)

¹⁰⁸ The incarcerated journalists are Aasif Sultan of *Kashmir Narrator* (since 2018); Sajad Gul of *The Kashmir Walla* (since January 2022); independent journalist Rupesh Kumar Singh (since July 2022); independent journalist Gautam Navlakha, (from April 2020 till May 2024); Prabir Purkayastha of *NewsClick*, (from October 2023 till May 2024); independent journalists Majid Hyderi (since September 2023) and Irfan Mehraj (since March 2023).

¹⁰⁹ <https://www.thehindu.com/news/national/prabir-purkayastha-newsclick-founder/article68216090.ece>

facilities and rights including medical bail,¹¹⁰ denial of straw and sipper to Late Fr. Stan Swamy who suffered from Parkinson's disease¹¹¹ and spectacles to Gautam Navlakha.¹¹² Significant international pressure and voices of domestic civil society calling for the State to release the HRDs was ignored by the government.¹¹³ Even during the peak COVID-19 crisis, when the government was directed by the Supreme Court to reduce overcrowding in prisons to handle the pandemic¹¹⁴ the HRDs were not released on humanitarian grounds. The American Bar Association Centre for Human Rights, upon a preliminary analysis of the case in 2019, has opined that there are serious concerns about procedural irregularities and violations affecting the s right of the accused to a fair trial.¹¹⁵ Whilst Sudha Bharadwaj, Anand Teltumbde, Vernon Gonsalves, Arun Ferreira, Varavara Rao and Shoma Sen and Gautam Navlakha have been released on bail, other accused HRDs Jyoti Jagtap, Sagar Gorkhe, Ramesh Gaichor, Hany Babu, Sudhir Dawale, Mahesh Raut, Surendra Gadling, Rona Wilson are still languishing in jail.¹¹⁶ The Supreme Court has noted that a trial may take “years and years for its completion”.¹¹⁷ The Bhima Koregaon case

¹¹⁰ Vakasha Sachdev, ‘When can an accused in jail get medical bail? is it possible in UAPA cases?’, The Quint, October 13, 2021, available at: <https://www.thequint.com/news/law/when-can-an-accused-get-medical-bail-from-courts-uapa-bhima-koregaon>

¹¹¹ Fr. Stan Swamy was arrested in October 2020 when he was 83 years old. His health was reportedly fragile and he was not able to take care of his daily, basic needs. He was denied bail on multiple occasions; the NIA denied him the use of a sipper and straw for more than a month despite his application before a court. Despite numerous complaints that he was at risk for COVID-19 in light of his advanced age, health conditions, and that he was not vaccinated, he was denied bail. Fr Swamy tested positive for COVID-19 and was transferred to a hospital only after the intervention of the Bombay High Court. His application for bail for medical reasons was pending before the Bombay High Court while he succumbed to illness and died on July 5, 2021. The NHRC issued notice to the State “to ensure every possible medical treatment” on July 4, 2021, a day before his death. A petition on his custodial death is still pending at the NHRC with no response from the state authorities.

¹¹² Geeta Pandey, “Why is India denying prisoners spectacles and straws?”, BBC, December 27, 2020, available at:

<https://www.bbc.com/news/world-asia-india-55410715>

¹¹³ Available at: <https://thewire.in/rights/bhima-koregaon-arrested-activists-letter>

¹¹⁴ Available at: <https://www.thehindu.com/opinion/editorial/protecting-prisoners-the-hindu-editorial-on-overcrowding-of-prisons/article34545382.ece?homepage=true>

¹¹⁵ These include trial by media, efforts by the police to prejudice the accused through press conferences and selective leaking of documents, fabricated evidence, materials purportedly recovered by the arrested persons not seized in accordance with law, arrested persons not being informed of the grounds of their arrest. See, American Bar Association Centre for Human Rights, “Preliminary Report: Arrest of Indian Attorneys and Activists in Apparent Retaliation for Human Rights Work” October 2019, Available at: https://www.americanbar.org/content/dam/aba/administrative/human_rights/JD/Asia/preliminary-report-india-bhima-koregaon.pdf

¹¹⁶ Saumya Kalia, ‘The cases and charges against the Bhima Koregaon 16 | Explained’, The Hindu, May 18, 2024, available at: <https://www.thehindu.com/news/national/elgar-parishad-bhima-koregaon-16-human-rights-defenders-cases-and-charges/article68177476.ece>

¹¹⁷ ‘Gautam Navlakha granted bail by Supreme Court in Bhima Koregaon case; orders him to pay 20 lakhs for the expenses incurred during his house arrest’, CJP, May 14, 2024, available at: <https://cjp.org.in/gautam-navlakha-granted-bail-by-supreme-court-in-bhima-koregaon-case-orders-him-to-pay-20-lakhs-for-the-expenses-incurred-during-his-house-arrest/#:~:text=Justice%20and%20Peace->

demonstrates that the process is the punishment for prosecution of HRDs under anti-terror legislation.

60. A prolonged period of pre-trial detention is a serious cause for concern and violates human rights.¹¹⁸ Student activists Asif Iqbal Tanha, Natasha Narwal and Devangana Kalita were imprisoned for more than a year under UAPA for their alleged involvement in the Delhi riots case. The Human Rights Committee and Working Group on Arbitrary Detentions have noted that ‘pretrial detention must be the exception and not the rule’ and that it should be ‘ordered for as short a time as possible’.¹¹⁹

Preventive Detention Laws

61. The Central government and the State governments have invoked preventive detention laws such as the National Security Act, Public Safety Act and Goondas Act to detain journalists and human rights defenders for extended periods of time. These laws are intended to be used in cases of emergency where ‘public order’ or ‘security of state’ is in peril. Rampant misuse of these laws has been observed, as they have been weaponised by the State to detain persons for up to 1 or 2 years. In the case of preventive detention which is regarded as ‘administrative’, regular protections in criminal jurisprudence such as bail, the right to be represented by a legal practitioner, and trial, are not available and are replaced by limited review by an Advisory Board constituted by the government.¹²⁰
62. Preventive detention laws are used to ensure the continued detention of persons who are arrested under ordinary criminal law and may be released on bail. Further, fresh detention orders are passed when an existing order expires or is quashed by courts as illegal resulting in ‘revolving-door’ detentions.¹²¹
63. Detenus are constrained to file habeas corpus petitions through their family members to challenge the legality of detention orders. Whilst a very large percentage of detentions get quashed by various High Courts and the Supreme Court due to procedural reasons or on substantive review of the grounds of detention, the process is delayed and takes several months.¹²²

[Gautam%20Navlakha%20granted%20bail%20by%20Supreme%20Court%20in%20Bhima%20Koregaon%20the%20stay%20on%20Navlakha's%20bail](#)

¹¹⁸ Article 9(3), International Covenant on Civil and Political Rights 1966.

¹¹⁹ <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>

¹²⁰ Article 22(3) and (4), Constitution of India 1950.

¹²¹ Amnesty International, ‘A “Lawless Law” Detentions under the Jammu and Kashmir Public Safety Act’, 2011, available at: <https://www.amnesty.org/en/documents/asa20/001/2011/en/>

¹²² See, Freny Manecksha, ‘The Public Safety Act Is a Political Weapon For the Government in Kashmir’, The Wire, December 28, 2016, available at: <https://thewire.in/government/public-safety-act-kashmir>; Shrutanjay Bharadwaj, ‘Preventive Detention, Habeas Corpus and Delay at the Apex Court: An Empirical Study’, 13 NUJS L. Rev. 1 (2020) available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3570749; Taha Bin Tasneem, Afif Khan, kaif Siddiqui, ‘New Study Reveals How The National Security Act Denies Justice & Fairness To Detenus In

64. Amnesty International has reported that at least 10,000 to 20,000 people have been detained under the Jammu & Kashmir Public Safety Act since it was enacted. Hundreds of prominent political leaders, journalists and activists were detained under this Act when Article 370 was abrogated.¹²³ The Ministry of Law and Justice has revealed that 2165 habeas corpus petitions from the UT of Jammu and Kashmir were filed between August 2019 and June 30, 2023, before the High Courts and the Supreme Court challenging detention under the Public Safety Act.¹²⁴ The judiciary was subjected to criticism that it did not deal with the habeas corpus petitions filed from Jammu and Kashmir expeditiously.¹²⁵
65. In Tamil Nadu, preventive detention laws have been used to punish persons engaged in peaceful protests exercising their right to peaceful assembly. A student activist Valarmathi was arrested on 19th July 2017 for distributing pamphlets warning about the potential damage of oil pipelines to cultivable lands and participating in a peaceful assembly in Kathiramangalam and thereafter detained under the Tamil Nadu Goondas Act, a preventive detention law whose object is to prevent public order issues. She was released after 1.5 months of detention pursuant to the High Court of Madras quashing her detention as illegal.¹²⁶ In December 2023, seven farmers engaged in a peaceful sit-in protest at a public space demanding that agricultural lands should not be acquired for setting up of industrial sites were detained under the Goondas Act in the State of Tamil Nadu. Whilst preventive detention of six farmers was withdrawn within a few days, the detention of activist Arul Arumugam was confirmed by the Government. He was jailed for 68 days and his detention was withdrawn by the government after a habeas corpus petition was filed challenging the legality of the government order, and the High Court indicated its opinion that the detention seemed motivated.¹²⁷ In 2022, the Madras High Court warned against excessive and arbitrary usage of preventive detention laws by the State.¹²⁸

Uttar Pradesh', July 5, 2023, available at: <https://article-14.com/post/new-study-reveals-how-the-national-security-act-denies-justice-fairness-to-detenus-in-uttar-pradesh-64a46e730c007>

¹²³ Ananya Bharadwaj, '389 people detained in J&K under Public Safety Act since Article 370 was scrapped: Govt', The Print, February 5, 2020, available at: <https://theprint.in/india/389-people-detained-in-jk-under-public-safety-act-since-article-370-was-scrapped-govt/360243/>

¹²⁴ https://www.livelaw.in/pdf_upload/habeas-corpus-in-kashmir-484768.pdf

¹²⁵ A.G.Noorani, 'Habeas corpus law: A sorry decline', The Frontline, October 11, 2019, available at: <https://frontline.thehindu.com/cover-story/a-sorry-decline/article29604480.ece>; Shreyas Narla, Shruti Rajagopalan, 'The Judicial Abrogation of Rights & Liberties In Kashmir', Article 14, September 25, 2020, available at: <https://www.article-14.com/post/the-judicial-abrogation-of-rights-liberties-in-kashmir>

¹²⁶ "HC quashes detention of Valarmathi under Goondas Act", *The Times of India*, accessed on 24.01.2022

¹²⁷ "TN govt drops Goondas Act charges against techie-turned-farmer Arul Arumugam", The News Minute, January 5, 2024, <https://www.thenewsminute.com/tamil-nadu/tn-govt-drops-goondas-act-charges-against-techie-turned-farmer-arul-arumugam/>

¹²⁸ Sunitha v. State, 2022 SCC Online Mad 5278 (Order dated November 14, 2022).

Recommendations

- End the use of anti-terrorism, national security legislations and preventive detention legislation against HRDs to deter them from carrying out legitimate and peaceful human rights work.
- Drop all charges against all human rights defenders in all cases where they have been charged under the UAPA and Section 124A of the Indian Penal Code.
- Repeal UAPA and undertake a review of the recently enacted criminal laws to ensure that HRDs are not persecuted for their work.
- Ensure that all HRDs subjected to prolonged pre-trial detention are released forthwith.

Restrictions on Freedom of Assembly

66. Intended to be used only in exceptional and proximate situations that give rise to an apprehension of danger or major unrest, Section 144 has been used to prevent peaceful assemblies and effect internet shutdowns to impede mass protests.¹²⁹
67. In *Anuradha Bhasin*,¹³⁰ the Supreme Court reiterated that repetitive orders under section 144 CrP.C. constitutes an abuse of power and is invalid and warned that Section 144 should not become another instrument at the hands of the party in power to quell democratic voices of dissent.¹³¹ Yet, in some areas, these orders are ‘perpetually re-issued’.¹³²
68. The Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules framed in 2017¹³³ under the Indian Telegraph Act, 1885 were enacted to govern the temporary suspension of telecom services in case of ‘public emergency’ or ‘public safety’.¹³⁴ Despite these Rules, internet suspension is still carried out by the district authorities by invoking Section 144 since the latter process is subject to lesser scrutiny and review.¹³⁵

¹²⁹ ‘Mobile internet shutdowns in Lucknow, Ghaziabad, Mangalore amid anti-CAA protests’, The Indian Express, December 20, 2019; available at: <https://indianexpress.com/article/technology/tech-news-technology/anti-citizenship-act-protests-mobile-internet-shutdown-in-parts-of-delhi-confirm-airtel-and-vodafone>.

¹³⁰ *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637.

¹³¹ *Acharya Jagdishwaranand Avadhuta v. Commissioner of Police, Calcutta*, (1983) 4 SCC 522 reiterated in *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637.

¹³² Vrinda Bhandari et al., “The Use and Misuse of Section 144 CrPC,” SSRN Scholarly Paper (Rochester, NY, March 15, 2023), <https://doi.org/10.2139/ssrn.4389147>.

¹³³ <https://dot.gov.in/sites/default/files/Suspension%20Rules.pdf>

¹³⁴ Suspension of telecom services, including temporary internet shutdowns, can be ordered only by the Home Secretary of the State or Central governments and are subject to review by a ‘Review Committee’ consisting of senior bureaucrats within 5 days of the suspension order being passed.

¹³⁵ Diksha Munjal, “In India, Are Internet Shutdowns in Accordance with Law? Not Always,” NewsLaundry, October 29, 2021, <https://www.newslaundry.com/2021/10/29/in-india-are-internet-shutdowns-in-accordance-with-law-not-always>.

69. During the mass protests that erupted throughout the country against the Citizenship Amendment Act, sweeping prohibitory orders under Section 144 were issued in several parts of the country, including entire states,¹³⁶ to deny peaceful protests.¹³⁷ Internet and mobile networks were also shut down to restrict these assemblies and protests. Protesters were subjected to criminal prosecution for ‘violating’ these prohibitory orders and participating in public protests and rallies which were labelled as ‘unlawful assemblies’.¹³⁸
70. Ahead of the farmers’ unions call to march to the Parliament House in Delhi to present their demands concerning Minimum Support Prices for agricultural produce etc, Delhi authorities passed prohibitory orders under Section 144 CrPC banning all assemblies, processions, demonstrations for a period of 1 month. The Haryana government passed prohibitory orders under Section 144 CrPC as well and suspended mobile internet services and bulk SMS services in seven districts to impede farmers from mobilising themselves.¹³⁹
71. On May 19, 2024, the Delhi police detained members of the Aam Aadmi Party (AAP) as they marched towards headquarters of the BJP alleging that their party was being targeted by law enforcement authorities for political reasons. Authorities passed prohibitory orders under Section 144 CrPC and placed barricades to stop the assembly.¹⁴⁰

¹³⁶ BJP ruled states of Uttar Pradesh and Karnataka issued state-wide prohibitory orders under Section 144 CrPC banning assembly of five or more people in the entire state to avert protests against enactment of the Citizenship Amendment Act. See, Sruthisagar Yamunan, ‘Citizenship Act protests: Why sweeping bans on public meetings in entire states are illegal’, Scroll.in, December 19, 2019, available at: [https://scroll.in/article/947275/citizenship-act-protests-imposing-ban-on-large-gatherings-on-entire-states-is-illegal-](https://scroll.in/article/947275/citizenship-act-protests-imposing-ban-on-large-gatherings-on-entire-states-is-illegal-arbitrary#:~:text=Section%20144%20is%20a%20serious,of%20threats%20to%20public%20order)

[arbitrary#:~:text=Section%20144%20is%20a%20serious,of%20threats%20to%20public%20order](https://scroll.in/article/947275/citizenship-act-protests-imposing-ban-on-large-gatherings-on-entire-states-is-illegal-arbitrary#:~:text=Section%20144%20is%20a%20serious,of%20threats%20to%20public%20order)

¹³⁷ See, ‘Slapping Section 144 during CAA protests ‘illegal’: Karnataka High Court’, The Hindu, February 14, 2020, available at: <https://www.thehindu.com/news/national/slapping-section-144-during-caa-protests-illegal-karnataka-high-court/article30814253.ece>; Omar Rashid, ‘Section 144 enforced in all of U.P. ahead of CAA protest’, The Hindu, December 20, 2019, available at: <https://www.thehindu.com/news/national/other-states/section-144-enforced-in-all-of-up-ahead-of-cao-protest/article30343108.ece>;

¹³⁸ State governments later withdrew criminal cases slapped against peaceful protesters proving that filing of criminal cases by the government was merely a political weapon to quell dissent. See, Sadaf Modak, ‘Why Mumbai Police has withdrawn its case against protestors of CAA and JNU violence in Jan. 2020’, The Indian Express, February 3, 2023, available at: <https://indianexpress.com/article/explained/explained-law/why-has-mumbai-police-withdrawn-its-case-cao-8417251/>; ‘Tamil Nadu Govt Withdraws 5,570 Cases Against Journalists, Protestors’, The Wire, September 17, 2021, available at: <https://thewire.in/rights/tamil-nadu-govt-withdraws-5570-cases-against-journalists-protestors>

¹³⁹ In addition, authorities in Haryana and Delhi fortified their borders with neighbouring states by putting up concrete blocks, road spike barriers, and barbed wires to prevent the entry of vehicles and deploying thousands of police personnel. See Nandini Singh, ‘Farmers’ protest: Section 144 imposed in Delhi, large gatherings banned’, Business Standard, February 12, 2024, available at: https://www.business-standard.com/india-news/farmers-protest-section-144-imposed-in-delhi-large-gatherings-banned-124021200411_1.html

¹⁴⁰ ‘Delhi Police detain AAP workers marching towards BJP headquarters; Section 144 imposed’, The New Indian Express, May 19, 2024, available at:

72. Blanket orders under Section 144 were imposed in various parts of the country ahead of the Parliamentary elections ostensibly to ensure a peaceful election process.¹⁴¹ Such sweeping orders without any imminent public order concerns disproportionately restrict the right to expression and peaceful assembly and hamper the political opposition and civil society from mobilising and participating in the democratic process.¹⁴²
73. Section 144 CrPC thus is an oft-abused provision of law which is weaponised to silence dissent and chill free speech, expression and assembly. The State should ensure that it is not invoked arbitrarily and fix accountability in instances where it has been used to infringe upon peoples' freedoms.

Recommendations

- Amend provisions in the Criminal Procedure Code and other criminal laws that restrict freedom of assembly, in compliance with international standards.
- Refrain from using prohibitory orders under Section 144 CrPC to restrict and ban peaceful assemblies.

Frequent Disruption of demonstrations and excessive use of force against protestors

In response to Paragraph 27(d)

74. India has seen a significant shrinking of public spaces where its people can peacefully assemble.¹⁴³ Excessive force, including lathi charges, tear gas, water cannons are frequently used by police authorities to restrict peaceful

<https://www.newindianexpress.com/nation/2024/May/19/delhi-police-detain-aap-workers-marching-towards-bjp-headquarters-section-144-imposed>

¹⁴¹ PTI, 'Noida Police invokes Sec 144 till Apr 26 ahead of LS polls, festivals', Business Standard, April 4, 2024, available at: https://www.business-standard.com/elections/lok-sabha-election/noida-police-invokes-sec-144-till-apr-26-ahead-of-ls-polls-festivals-124040400184_1.html

Kanu Sarada, 'Supreme Court's big order on voter awareness rallies amid prohibitory orders', India Today, April 19, 2019, available at: <https://www.indiatoday.in/law/supreme-court/story/supreme-court-order-voter-awareness-rallies-prohibitory-orders-section-144-plea-ban-2529195-2024-04-19>

¹⁴² On a petition filed by activist Aruna Roy challenging blanket prohibitory orders passed ahead of the polls prohibiting yatras to uphold democratic and electoral values, dharnas and public meetings, the Supreme Court passed interim order directing Magistrates to decide applications for such yatras within 3 days. See Krishnadas Rajagopal, 'SC asks how Executive Magistrates can pass prohibitory orders on public gatherings, yatras during elections', The Hindu, April 19, 2024, available at:

<https://www.thehindu.com/elections/lok-sabha/sc-orders-dms-to-decide-on-permissions-for-democracy-yatra-within-three-days/article68083126.ece>

¹⁴³ Indian Courts are increasingly endorsing the position that assemblies can only be organized in 'designated' zones. Authorities deem prior permission for assembly as necessary and tend to grant permissions in an arbitrary and discriminatory manner. As a result, peaceful assemblies are deemed 'unlawful' where prior permission is not granted by the state authorities. Vrinda Grover, 'Assessing India's legal framework on the right to peaceful assembly', December 2021, available at: <https://www.icnl.org/wp-content/uploads/India-freedom-of-assembly-report-2021-final.pdf>

assemblies. Brutal force is used to repress mass protests raising environmental issues, expressing dissent over political decisions or issues and demands for reform. Minorities and marginalised peoples engaging in protests¹⁴⁴ are more likely to be victims of excessive use of force at the hands of the police.¹⁴⁵ In most instances, the police evade accountability by alleging that the protesters turned ‘unruly’ or violent

75. Police used severe force against the protesters to clamp down on the anti-CAA protests held in different parts of the country. In Uttar Pradesh, at least 23 persons were admittedly killed and 83 injured in police action.¹⁴⁶ Police shot and killed five protesters and injured several persons in Assam in December 2019.¹⁴⁷ Students at Aligarh Muslim University,¹⁴⁸ Jamia Millia Islamia

¹⁴⁴ Tribal and Adivasi protesters have faced lathi charge for participating in protest assemblies. See generally, Aparna Pallavi, ‘Tribals arrested, lathi-charged for demanding rehabilitation’, Down to Earth, May 28, 2013, available at: <https://www.downtoearth.org.in/news/tribals-arrested-lathicharged-for-demanding-rehabilitation-41176>; ‘Police lathi-charge tribals’, The Hindu, October 7, 2016, available at: <https://www.thehindu.com/news/national/telangana/Police-lathi-charge-tribals/article15427327.ece>; ‘In Chhattisgarh, cops lathicharge tribals opposing mining, 25 hurt’, The Indian Express, April 2, 2022, available at: <https://indianexpress.com/article/cities/in-chhattisgarh-cops-lathicharge-tribals-opposing-mining-25-hurt-7848805/>; ‘Manipur: Thirty tribal students injured in police brutality in Imphal’, East Mojo, August 6, 2022, available at: https://www.eastmojo.com/manipur/2022/08/06/manipur-thirty-tribal-students-injured-in-police-brutality-in-imphal/?fbclid=IwZXh0bgNhZW0CMTAAR3koEyOyScCO8K5GDUx3rewgxd_Injys5FmawQPg9vFJOoYQtmWWZDecQs_aem_AUpy_1Ix5PhrcEqGphXDRXPjHOG6F5XPe1Rg33s3MAu6Hty30kLrnV_5JGDiY4qsYEQSHNNZal4uUW3SLgsIPhfE

¹⁴⁵ See Amnesty International Press Release, ‘India: Excessive use of force, arbitrary detention and punitive measures against protesters must end immediately’, June 14, 2022, available at: <https://www.amnesty.org/en/latest/news/2022/06/india-excessive-use-of-force-arbitrary-detention-and-punitive-measures-against-protesters-must-end-immediately/>

¹⁴⁶ Citizens Against Hate, “Everyone has been silenced: Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-violence Reprisal”, March 2020, available at: <https://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>

¹⁴⁷ See, Anupam Chakravarty, “How Five People in Assam were killed during Anti-Citizenship Amendment Protests”, The Wire, December 16, 2019, available at: <https://thewire.in/rights/assam-anti-citizenship-amendment-act-protest-deaths>

¹⁴⁸ Students of Aligarh Muslim University were tortured after they commenced peaceful protests against CAA. Armed security forces entered the University campus, launched lathi charge, fired tear gas, used stun grenades on students. See, Harsh Mander, ‘In Aligarh, police used stun grenades against students – and university officials justified this’, Scroll.in, December 20, 2019, available at: <https://scroll.in/article/947335/in-aligarh-police-used-stun-grenades-against-students-and-university-officials-justified-this>

University¹⁴⁹ and students holding solidarity protests in Srinagar¹⁵⁰ were assaulted by the police to clamp down on the protests.

76. In 2020, protests by farmers against the controversial Farm laws were cracked down by the police using severe force including water cannons, batons and tear gas.¹⁵¹ They were denied permission to enter Delhi,¹⁵² and borders were fortified with metal barricades, cement walls and iron nails to block vehicles from entering Delhi. In February 2024, police used disproportionate force and tear gas against farmers who were engaged in a peaceful march and attempted to push past barricades.¹⁵³
77. Five years after the police massacre that killed 13 protesters in Thoothukudi, perpetrators have not been punished and accountability has not been fixed yet.¹⁵⁴ Whereas compensation to the tune of INR 25 lakhs has been paid to the

¹⁴⁹ In Jamia Millia Islamia University, police entered the campus and cracked down on students peacefully protesting against CAA. The police used tear gas, lathi charge and brutally attacked students after forcibly entering the campus. National Human Rights Commission of India (NHRCI) recommended administrative action against police officers involved in “damaging CCTV cameras, unnecessarily caning” and using tear gas shells inside the library but no criminal prosecution. See, Nikita Khaitan, ‘One Year On, No Accountability for Delhi Police's Terrifying Impunity at Jamia’, The Wire, December 15, 2020, available at: <https://thewire.in/rights/jamia-millia-islamia-violence-delhi-police>

¹⁵⁰ Students in Srinagar assembled in solidarity protesting against the violence at Jamia Millia Islamia students were attacked by police using batons and teargas shells. It is reported that journalists attempting to cover the incident were also beaten up and their cameras and phones were snatched away. See ‘Anti-CAA protests: Police use force after students protest in Srinagar’, The Hindu, December 17, 2019, Available at: <https://www.thehindu.com/news/national/anti-kaa-protests-police-use-force-after-students-protest-in-srinagar/article30332392.ece>

¹⁵¹ ‘Protesting farmers brave water cannons, tear gas shells: Key points’, Times of India, November 26, 2020, available at: http://timesofindia.indiatimes.com/articleshow/79430745.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹⁵² A number of borders were closed by erecting metal barricades and cement walls to stop farmers from entering Delhi. Barbed fences and roads studded with nails were put up to stop protesters entering Delhi by foot. In protest, farmers blocked some of the highways and continued peaceful sit-in assembly. See, “Protest sites turn fortresses: Barricades strengthened, roads studded with nails”, Times of India, February 1, 2021, available at: http://timesofindia.indiatimes.com/articleshow/80636363.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹⁵³ Amnesty International, ‘India: The price of protest must not be death’, February 22, 2024, available at: <https://www.amnesty.org/en/latest/news/2024/02/india-the-price-of-protest-must-not-be-death/>

¹⁵⁴ The State government appointed a judicial commission which submitted its report in October 2022 holding 17 police personnel responsible for the firing. It also recommended payment of Rs.50 lakhs as compensation to the kin of the deceased. The Central Bureau of Investigation filed a final report charging only 1 police officer for the firing. This report has been rejected by the Chief Judicial Magistrate who has directed further investigation. The Tamil Nadu government, in a related case before the Madras High Court, has submitted a status report that disciplinary action has been initiated against some of the personnel.

kin of the deceased, delayed investigation and prosecution are a mark of impunity and cause concern.¹⁵⁵

78. In addition to its use in Kashmir,¹⁵⁶ pellet guns have been used against school students in Manipur who took out a peaceful march demanding action to be taken against the disappearance of 17-year-old students. Security forces reportedly used rubber bullets, mock bullets, tear gas and pellet guns to disperse the students, resulting in 50 students being injured. Eight students suffered injuries from pellet guns, all of whom were minors.¹⁵⁷
79. Three farmers have reportedly lost their vision, and several others were injured,¹⁵⁸ as a result of pellets being used against them by Haryana police attempting to stop them from entering Delhi to participate in mass protest.¹⁵⁹
80. Restricting assemblies and the right to protest by denying permissions, passing blanket prohibitory orders under section 144 of the Code of Criminal Procedure, using excessive force including weapons (both lethal and non-lethal) and subjecting protesters to criminal prosecution, India is in flagrant violation of its commitments under Article 21 of the ICCPR as interpreted in the General Comment No. 37.

Recommendations

- Ensure that law enforcement officials and security forces are provided necessary training to deal with mass assemblies, and abide by the United Nations Basic Principles on the Use of force and firearms and in accordance with other international standards.
- Ban the use of pellet guns by police and security forces.

¹⁵⁵ 'T.N. CM orders payment of additional ₹5 lakh compensation to kin of Thoothukudi police firing victims', The Hindu, November 16, 2022, available at: <https://www.thehindu.com/news/national/tamil-nadu/tn-cm-orders-payment-of-additional-5-lakh-compensation-to-kin-of-thoothukudi-police-firing-victims/article66143615.ece>

¹⁵⁶ Ravi Nair, 'Pellet Guns in Kashmir: The Lethal Use of "Non-Lethal" Weapons', The Wire, July 21, 2016, available at: <https://thewire.in/rights/kashmir-lethal-pellet-guna>

¹⁵⁷¹⁵⁷ 'Manipur: Security Forces 'Using Pellet Guns', Say Protestors After Serious Injuries', The Wire, September 29, 2023, available at: <https://thewire.in/rights/foreign-particles-found-in-manipur-protestors-injuries-after-excessive-force-by-security-forces>; Prateek Goyal, 'There were 90 pellets in his shoulder': In Manipur, central forces accused of targeting school students', Newslaundry, October 3, 2023, available at: <https://www.newslaundry.com/2023/10/03/manipur-imphal-students-protest-pellet-guns-central-forces>

¹⁵⁸ Vibhu Grover, '“10 pellets hit my face and one went deep inside my left eye...”: Farmers targeted with pellet guns', Maktoobmedia.com, February 22, 2024, available at: <https://maktoobmedia.com/india/10-pellets-hit-my-face-and-one-went-deep-inside-my-left-eye-farmers-targeted-with-pellet-guns/>

¹⁵⁹ Vijaita Singh, 'Haryana DGP denies using pellet guns against protesting farmers', The Hindu, February 18, 2024, available at: <https://www.thehindu.com/news/national/haryana-dgp-denies-using-pellet-guns-against-protesting-farmers/article67860605.ece>;

- Ensure *accountability, through appropriate criminal prosecution and disciplinary action against delinquent officials engaging in excessive use of force, and compensation for the pain and suffering caused to the protesters.*

Misuse of the Foreign Contribution (Regulation) Act

In response to Paragraph 28

81. The Indian government continues to use the Foreign Contribution (Regulation) Act, 2010 as a tool of repression to curtail the freedom of association of the voluntary sector.¹⁶⁰ Between 2016-2020, 8,353 FCRA licenses were not renewed.¹⁶¹ Between 2017-2021, licenses of 6,678 NGOs were cancelled.¹⁶² In 2014-2015, India had more than 40,000 NGOs with valid FCRA license. News reports state that as on July 17, 2023, there were 16,301 NGOs with valid FCRA license and that the Centre has cancelled the FCRA licences of more than 6,600 NGOs in the last five years for ‘violation’ of the law. Overall, FCRA licences of 20,693 NGOs have been cancelled in the last decade.¹⁶³ The numbers are alarming and demonstrate that the State is attempting to control civil society organisations by weaponizing the FCRA.
82. Analyses by former UN Special Rapporteur on freedom of assembly and association, Mr. Maina Kiai,¹⁶⁴ International Commission of Jurists,¹⁶⁵ and International Center for Non-Profit Law¹⁶⁶ have concluded that FCRA 2010 and the 2020 amendments are not consistent with international law and hinder the exercise of the right to association.
83. Denying NGOs access to funding has been disastrous for the social sector. Whilst most organisations have approached appropriate Courts for relief, these challenges to government actions under FCRA are not treated as a priority by the courts and they continue to be pending for over five years. Several organisations have been constrained to scale down their operations or close down altogether. Scores of grassroots workers and staff of these organisations have lost their livelihoods and crucial projects that would have benefited the public have been suspended.

¹⁶⁰ Gaurav Vivek Bhatnagar, ‘Home Ministry Cancels FCRA Licences of 20,000 NGOs’, The Wire, December 27, 2016, available at: <https://thewire.in/government/home-ministry-cancels-fcra-licences-20000-ngos>

¹⁶¹ <http://164.100.24.220/loksabhaquestions/annex/175/AU1260.pdf>

¹⁶² <http://164.100.24.220/loksabhaquestions/annex/175/AU1278.pdf>,

<http://164.100.24.220/loksabhaquestions/annex/173/AU3748.pdf> and

<http://164.100.24.220/loksabhaquestions/annex/178/AU1054.pdf>

¹⁶³ PTI, ‘FCRA registration of five NGOs cancelled by MHA for ‘violation’ of laws’, The Hindu, April 3, 2024, available at: <https://www.thehindu.com/news/national/fcra-registration-of-five-ngos-cancelled-by-mha-for-violation-of-laws/article68024012.ece>

¹⁶⁴ <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>

¹⁶⁵ <https://www.icj.org/wp-content/uploads/2020/12/India-FCRA-Briefing-Paper-2020-ENG.pdf>

¹⁶⁶ <https://www.icnl.org/wp-content/uploads/FCRA-Amendments-Briefer-7-7-21.pdf>

84. Investigating agencies including the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), and National Investigating Agency (NIA), are being used against human rights defenders and civil society organisations, and opposition political parties, especially during elections¹⁶⁷ to intimidate them.¹⁶⁸ Prominent HRDs associated with CSOs such as Harsh Mander,¹⁶⁹ Khurram Parvez,¹⁷⁰ and others involved with protests against farm laws and CAA have been subjected to raids and other harassment from law enforcement authorities.¹⁷¹

Recommendations

- a. Repeal the Foreign Contribution (Regulation) Act to ensure the right to freedom of association, which includes the right to access resources for civil society organizations including foreign funding.
- b. In acknowledgement of the vital role played by civil society organisations in a constitutional democracy, facilitate their functioning and ensure that they are not harassed by law enforcement authorities.

¹⁶⁷ The Print, 'CBI, Ed, IT probes against opposition politicians - on at election time, off after that', April 16, 2021, available at: <https://theprint.in/india/cbi-ed-it-probes-against-opposition-politicians-on-at-election-time-off-after-that/640596/>.

¹⁶⁸ In the 2020 amendments, an additional provision on summary inquiry prior to renewal has been added. Misuse of this provision being played out is already witnessed and experienced, as majority of the NGOs with FCRA license were due for renewal in October 2021. NGOs, often those who are critical of the State actions, witnessed such inquiries conducted by local officials of the Intelligence Bureau (IB) and other officials associated with the MHA. These inquiries are not limited to financial audits but used as means to investigate work and beneficiaries of the NGOs, specifically to record work with religious minorities and contemporary issues witnessing public opposition.

¹⁶⁹ The Enforcement Directorate conducted raids at the home and office of Harsh Mander, Director of Centre for Equity Studies (CES) and associated with the Kawan-e-Mohabbat (Caravan of Love), which were carried out in September 2021 in connection with an alleged money laundering probe. Available at: <https://www.hindustantimes.com/cities/delhi-news/edraids-office-home-of-activist-harsh-mander-in-money-laundering-probe-101631781847302.html>

¹⁷⁰ The NIA conducted raids at the house of Khurram Parvez and office of Jammu and Kashmir Coalition of Civil Society in October 2020 and November 2021, and subsequently arrested Khurram Parvez, in an alleged terror funding case in November 2021. Shakir Mir, 'Why J&K Activist Khurram Parvez is in NIA crosshairs again', The Quint, November 23, 2021, available at: <https://www.thequint.com/news/india/why-jk-activist-khurram-parvez-has-long-been-a-target-for-govt>

¹⁷¹ 'After Bank Seeks Details of Foreign Donations, Farmers' Union Accuses Govt of 'Intimidation', The Wire, December 21, 2020, available at: <https://thewire.in/rights/bharatiya-kisan-union-ekta-ugrahan-farmers-protest-foreign-donationsafter-bank-seeks-details-of-foreign-donations-farmers-union-accuses-govt-of-intimidation>