



PUNISHED FOR SPEAKING UP

THE ONGOING USE OF RESTRICTIVE
LAWS TO STIFLE DISSENT IN INDIA



An Indian Student protester wearing a mask takes part in a protest demonstration during an anti-government protest against new citizenship law and recent riots on March 03, 2020 in New Delhi, India. © Yawar Nazir/ Getty Images

CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. We strive to promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world. We believe that a healthy society is one where people have multiple opportunities to participate, come together, deliberate and act for the common good. We work for civil society, protecting and growing 'civic space' - the freedoms of expression, association and assembly - that allow citizens and organisations to speak out, organise and take action.

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EXECUTIVE SUMMARY

In May 2019, Prime Minister Narendra Modi's Hindu nationalist Bharatiya Janata Party (BJP) returned to power, registering a landslide victory in the Indian elections.¹ Since the BJP's initial elevation to power in May 2014, CIVICUS has documented how civil society organisations (CSOs), activists and journalists who have been critical of the authorities or exposed government abuses have been targeted. Many people have faced judicial harassment and attacks. Some have been killed.

Restrictive legislation has been used to suspend or withdraw CSO permits to operate, preventing them from accessing funding from external sources and freezing their bank accounts. Activists have been subjected to smear campaigns and accused of promoting anti-nationalist agendas or of being the agents of western powers.² These actions are in contravention of India's international human rights obligations under the International Covenant on Civil and Political Rights (ICCPR), which it ratified in 1979. The human rights violations not only affect the individuals concerned, but also have wider impacts, leading to a culture of fear and self-censorship.

These trends have continued in the BJP government's second term in power. Even during the COVID-19 pandemic, the Modi government has continued to use precious resources to sustain its persecution of human rights defenders and critics. In December 2019, the CIVICUS Monitor, an online platform that provides information and ratings on each country's civic space, downgraded India's ratings from 'obstructed' to 'repressed'.³ This change reflected the fact that democratic freedoms – including the freedoms of association, peaceful assembly and expression, and the operating environment for human rights defenders – have become significantly constrained.

What all cases have in common is that they are facilitated by a repressive legal framework, which comprises a range of laws that are being misused to restrict the rights to the freedoms of association, peaceful assembly and expression.

These actions to attack civil society, which has a rich and vibrant history of action and engagement in India, serve to weaken democracy and undermine India's potential global role.

This briefing provides a summary of research findings from the CIVICUS Monitor on violations of civic freedoms. It highlights cases of politically motivated arrests, prosecution and imprisonment in India. Each case represents people who, as individuals or in a group, have been targeted by the authorities simply for the peaceful exercise of their fundamental human rights. Those targeted include human rights defenders, journalists and students. Often, people have been charged when they tried to speak out against injustice or in support of others in advocating for their rights. What all cases have in common is that they are facilitated by a repressive legal framework, which comprises a range of laws that are being misused to restrict the rights to the freedoms of association, peaceful assembly and expression.

The cases highlighted in this briefing represent a small fraction of the arbitrary arrests, prosecutions and imprisonment taking place in India, providing a snapshot of the challenges facing the country's human rights defenders and activists.

THE ASSAULT ON DISSENT IN INDIA

JUDICIAL HARASSMENT AND ATTACKS ON HUMAN RIGHTS DEFENDERS

Human rights defenders have continued to face arbitrary arrests and judicial harassment for their activism. In many cases, the authorities have used national security and anti-terrorism laws to criminalise and detain human rights defenders and activists on baseless charges. Primary among these misused pieces of legislation are the Unlawful Activities (Prevention) Act (UAPA), which is India's primary counter-terrorism law; section 124A on 'sedition' of the Indian Penal Code, a colonial-era relic that is excessively vague and broad; and administrative detention laws such the National Security Act (NSA) and the Public Safety Act (PSA), which applies only in Indian-administered Jammu and Kashmir.⁴

As a result of these laws, some human rights defenders remain in jail at this time, exposing them to heightened risk of contracting COVID-19. Other activists may not be detained, but remain at risk in other ways.



Human rights defender Sudha Bharadwaj sent to police custody
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Women human rights defenders are often targeted with gender-specific threats, such as rape and sexual violence, both online and offline.⁵ Human rights defenders from excluded communities such as Adivasi and Dalit peoples encounter death threats, destruction of their property, fabricated charges and physical attacks.⁶ Right to Information (RTI) activists often face similar violence from non-state sources as well as judicial harassment.⁷

India does not have a special law to protect human rights defenders and it did not accept recommendations during India's third Universal Periodic Review (UPR) at the United Nations (UN) Human Rights Council, held in May 2017, concerning the protection of human rights defenders.⁸

THE TARGETING OF JOURNALISTS

Journalists in India continue to be targeted by the Modi government as well as by non-state groups and individuals for their reporting. At least 198 serious attacks were recorded against journalists between 2014 to 2019, with 40 journalists killed.⁹ Journalists have been harassed and detained for their reporting or for making critical comments on social media, and face increasing pressure to self-censor.¹⁰ India's ranking in the Reporters Without Borders (RSF) Press Freedom Index dropped from 140 to 142 out of 180 countries in 2020. According to RSF, there have been consistent media freedom violations, including police violence against journalists and reprisals instigated by criminal groups or corrupt local officials. Since the 2019 elections, pressure on the media to align with the government's line has increased.¹¹



University students at a protest rally against CAA law in Kolkata © Sumit Sanyal/Anadolu Agency via Getty Images

CRACKDOWN ON PROTESTS

An unprecedented crackdown on protests across India took place after India's Parliament passed a discriminatory citizenship law on 12 December 2019. The amended Citizenship (Amendment) Act (CAA) 2019, which came into force on 10 January 2020, provides a route to citizenship for irregular migrants, including members of Buddhist, Christian, Hindu, Jain, Parsi and Sikh communities facing persecution from Afghanistan, Bangladesh and Pakistan who entered the country on or before 31 December 2014, but does not include people from Muslim communities. The Office of the UN High Commissioner for Human Rights has described the controversial new law as "fundamentally discriminatory in nature" while human rights groups have called the law "unconstitutional and divisive."¹²

Protests against the CAA, which had taken place since 2018 when the amendment was first discussed in Parliament, escalated significantly after it was passed. In December 2019, protests stretched from Lucknow and Delhi in India's north to Bengaluru and Hyderabad in the south and attracted crowds as large as 200,000. At the forefront of these protests were women and youth, including students from across India's universities. In Shaheen Bagh, a neighbourhood of Delhi, a women-led sit-in protest became the epicentre of the movement for more than three months until the COVID-19 pandemic hit the country.¹³

The protests were largely peaceful, apart from minor incidents of destruction of property and stone pelting. But protesters were met with brutal and excessive force by the police. Dozens were reported killed, many allegedly due to bullet injuries from police use of firearms, while hundreds were injured. Hundreds of protesters were arrested and detained, including human rights defenders, and there have been allegations of torture and ill-treatment. In one incident, on 18 December 2019, several students of Aligarh Muslim University detained by police after protests say that they were beaten up in custody.¹⁴ The lack of accountability has strengthened an ongoing climate of impunity for law enforcement.

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In February 2019, a mob violently removed a group of protesters, mostly women, who were blocking a road in Chand Bagh and Jafrabad, Delhi, in protest against the CAA. According to reports it was instigated by a leader from the BJP.¹⁵ This prompted an escalation of violence which left dozens killed and hundreds injured. Witnesses saw mobs wielding sticks and stones walking down streets in parts of Delhi, and looting Muslim people's homes

which had been abandoned out of fear. The Supreme Court later criticised the Delhi police for not doing enough to check the violence.¹⁶

Indian authorities shut down the internet in several districts during the anti-CAA protests including in the states of Arunachal Pradesh, Assam, Meghalaya, Tripura, Uttar Pradesh and West Bengal, contending it was necessary to maintain law and order. The police also used Section 144 of the Criminal Procedure Code – a colonial-era law – against the protesters. The law prohibits, among other things, a gathering of more than four people if the authorities fear a possible violation of law and order. The authorities also put limits on public transportation to prevent the movement of protesters.¹⁷



Indian Protesters shout slogans at the protest site at Shaheen Bagh area on February 3, 2020 in New Delhi, India. © Sumit Sanyal/Anadolu Agency via Getty Images

VIOLATIONS IN INDIAN-ADMINISTERED JAMMU AND KASHMIR

Human rights violations in Indian-administered Jammu and Kashmir have been rampant over the past several decades, with reports of extrajudicial killings, enforced disappearances and torture and frequent arbitrary arrests and detentions under repressive laws such as the Public Safety Act (PSA). Human rights groups say the authorities are using PSA detentions as a ‘revolving door’ of preventative detention to keep in detention people they can’t or won’t convict through the legal system.¹⁸ The rights to the freedoms of opinion and expression are regularly curtailed by the government, including through censorship, surveillance, bans on social media and telecommunications shutdowns.

In early August 2019, the Indian Parliament revoked the special constitutional status of Indian-administered Jammu and Kashmir that had guaranteed specific rights to the state, including the right to its own constitution and autonomy to make laws on all matters, except defence, communications and foreign affairs.¹⁹ The special status was considered an essential provision to maintain the democratic relationship between India and Jammu and Kashmir.

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In the days leading up to the parliamentary announcement of the revocation, India’s federal government moved tens of thousands of troops into Jammu and Kashmir. On 4 August 2019, the internet, mobile phone networks and landlines in the region were cut off, a curfew was imposed and a ban on public meetings was introduced. Thousands of Kashmiris were detained without charge under the PSA, including former chief ministers, political leaders, opposition activists, lawyers and journalists.²⁰ Restrictions on movement were imposed in several parts of the region and prominent political leaders were placed under house arrest.

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Soldiers stands guard during a curfew in Kashmir © Yawar Nazir/Getty Images

Even though some restrictions have been lifted, at the time of writing hundreds remain in detention and mobile phone services and internet access are still limited. The government has blocked opposition politicians, foreign diplomats and international journalists from independent visits to Jammu and Kashmir.²¹ In a statement on 4 August 2020, UN experts said that “the human rights situation in Jammu and Kashmir has been in free fall” since India revoked the region’s special status.²²

FREEDOM OF ASSOCIATION AT RISK

The BJP government has used the draconian Foreign Contributions Regulation Act (FCRA) to stop foreign funding and investigate organisations that are critical of the government, as part of its ongoing hostility towards human rights CSOs. The FCRA regulates the acceptance and use of foreign assistance and prohibits it in relation to activities deemed ‘detrimental’ to the Indian national interest. Its broad and vague definitions lend themselves to applications that are disproportionate to its purported goal.



Indian Supreme Court

In March 2020, the Supreme Court ruled that the government cannot use the FCRA to restrict foreign funding for CSOs that are engaged in legitimate dissent

Since Prime Minister Modi came to power in 2014, several CSOs have been targeted under this law.²³ In June 2019, authorities filed a criminal case against Lawyers Collective – a group that provides legal aid and advocates for the rights of excluded groups – for violating the FCRA, in a move that seemed intended to intimidate and silence them.²⁴ In March 2020, the Supreme Court ruled that the government cannot use the FCRA to restrict foreign funding for CSOs that are engaged in legitimate dissent. The ruling came in a case involving Indian Social Action Forum, a CSO.²⁵

HARASSMENT OF CRITICS DURING THE PANDEMIC

Since the coronavirus (COVID-19) pandemic took hold, CIVICUS has documented the judicial harassment of activists for their criticism of the authorities' handling of the crisis. In one case, T Shadishkanta and his colleague Phajaton from the Youth's Forum for Protection of Human Rights, a human rights organisation based in the city of Imphal, were arrested for making a statement urging the state to move a COVID-19 quarantine centre. In another case, Pranab Doley and Soneshwar Narah from the Jeepal Krishak Sramik Sangha, a farmers' rights organisation, were arrested after they called for a probe into allegations regarding the siphoning of rice from a public distribution system during the COVID-19 lockdown.²⁶



India Impose Restrictions As Coronavirus Cases Continue To Spike
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Journalists have also been targeted for their critical reporting. In April 2020, the authorities in Uttar Pradesh state filed a criminal complaint against Siddharth Varadarajan, an editor and founder of news website The Wire, for its reporting on a government minister who violated the lockdown.²⁷ According to a report, as many as 55 journalists have been targeted for covering the pandemic in India between 25 March 2020, when the lockdown was first imposed, and 31 May 2020.²⁸

The authorities have also sustained its persecution of human rights defenders and activists during the pandemic, many of whom are at risk of contracting COVID-19 as they are being held in overcrowded prisons without adequate sanitation, hygiene and access to medical care.²⁹

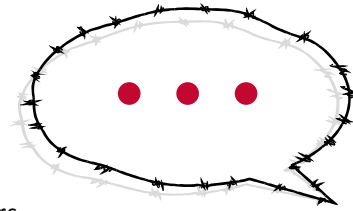
WEAKNESS OF THE HUMAN RIGHTS COMMISSION

The National Human Rights Commission of India (NHRCI) is tasked with investigating human rights violations and state failures to prevent these. Research undertaken by the Asian NGO Network on National Human Rights Institutions (ANNI) found that despite increasing reports of violations against human rights defenders and the overall worsening restriction of democratic spaces, the NHRCI has either "maintained a spectacular silence or initiated a token approach."³⁰ The NHRCI has been neither independent nor effective in investigating human rights, prompting human rights groups to call for its reform.



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A REPRESSIVE LEGAL FRAMEWORK



India's web of repressive laws are being used to silence protesters, journalists, human rights defenders and others who speak up against government policies. Often, laws – such as those that prohibit sedition, or purport to address terrorism – are vaguely worded, which means that they can be applied arbitrarily to those who speak up.

In some cases, entire provisions within laws are incompatible with India's international human rights obligations with regard to the protection of the freedoms of association, peaceful assembly and expression, as well as India's Constitution. They allow for administrative detention – that is, detention without trial – with few limitations.

In a number of cases, multiple charges under various laws have been brought against detained human rights defenders in succession to keep them in detention, with a new charge brought after a judge has ruled that there is not enough evidence supporting the initial charge to keep the individual detained. Not only are the laws themselves inherently flawed, but their implementation makes it clear that they are tools for judicial harassment, rather than for preventing or addressing criminality.

INDIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Under the ICCPR, which India ratified in 1979, India has an obligation to protect the freedoms of association (article 22), peaceful assembly (article 21) and expression (article 19). Article 19 of India's Constitution also guarantees these three rights.

Further, article 9(1) of the ICCPR states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Under international law, people who arrested and detained should be brought before a judge within a reasonable timeframe and provided with the reasons for their arrest and detention and any charges against them, and they should be granted access to a lawyer. The ICCPR allows for pre-trial detention to be used only as a last resort and when it is necessary, reasonable and proportionate to the objective sought by the prosecution.

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THE UNLAWFUL ACTIVITIES (PREVENTION) ACT 1967

As India's primary counter-terrorism law, the UAPA has been increasingly misused by the Modi government and has become the weapon of choice to detain human rights defenders, journalists and protesters under catch-all charges.³¹

Individuals detained under the UAPA can be held without charge for up to 180 days as opposed to the usual 60 to 90 days under Indian criminal law. This significantly exceeds international law and standards.³² The slow investigative processes and extremely stringent bail provisions under the UAPA ensure that those detained under the law are held in pre-trial detention for long periods.³³

The law contains a vague definition of a 'terrorist act',³⁴ which differs from the definition promoted by the UN Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.³⁵ It is extremely open to interpretation by the authorities and allows for the use of the law to restrict the freedoms of peaceful assembly and expression. Previously, only membership of unlawful associations and terrorist organisations was a crime under the UAPA. In 2019, the law was expanded, allowing the government to designate an individual as a 'terrorist'.³⁶

In May 2020, a number of UN Special Procedures mandate holders released a public communication outlining their concerns with the law and encouraging the government of India to amend the UAPA to ensure its compliance with India's international human rights obligations. Their concerns included the UAPA's transfer of broad powers to the executive, and the use of the legislation to conflate human rights and civil society activities and non-violent criticism of state policies or institutions with terrorist activities.³⁷



SEDITION (SECTION 124A OF THE INDIAN PENAL CODE)

Section 124A of the Penal Code criminalises sedition.³⁸ The provision, which is a colonial legacy, prohibits any words, spoken or written, or any signs or visible representation that can cause "hatred or contempt, or excites or attempts to excite disaffection" toward the government.

This provision is excessively vague and broad, giving the authorities scope to characterise speech that is critical of government actions, including comments shared via social media, as sedition. It has been systematically used to crack down on peaceful critics. Sedition is a non-bailable offence. It carries penalties from three years in prison to life imprisonment, along with a fine.

Although the Supreme Court of India has ruled that incitement to violence is necessary for section 124A to be applied, this judgement is routinely disregarded by law enforcement. This means that only about a third of arrests for sedition have resulted in charges, and there have been only seven convictions since 2014.³⁹



‘PROMOTING ENMITY BETWEEN DIFFERENT GROUPS’ (SECTION 153A OF THE INDIAN PENAL CODE)

Section 153A of the Penal Code criminalises anyone who by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste, community, or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. The punishment, of up to three years of imprisonment, can extend to five years if the offence is committed in a place of worship.

Section 153A criminalises speech simply on the grounds that it promotes hatred or ill-will between communities, without any requirement that it incite the listeners to act upon that hatred. As a result, the law restricts speech far more broadly than can be justified under international law.⁴⁰

As with sedition, this is a non-bailable offence with a maximum prison sentence of three years and a fine. In some instances, charges under this section have been brought against detained human rights defenders seemingly to ensure that bail cannot be granted. In recent months, it has proven a particularly popular charge to bring against those protesting about the discriminatory CAA law.



THE NATIONAL SECURITY ACT 1980

Under the NSA, individuals can be held without charge or trial in administrative detention for up to 12 months on grounds of national security and maintenance of public order.⁴¹

The NSA stipulates that if any detention is made then it has to be referred to an advisory board within three weeks of the date of detention, and the board has to submit its report within seven weeks of the date of detention. However, the person detained does not have the right to be legally represented. Further, the board proceedings are private and reports are confidential.⁴²

This preventive detention violates various due process rights, including the presumption of innocence. Its vague definition means that it can be applied arbitrarily to target protesters and human rights defenders. A number of UN Special Rapporteurs, including the Special Rapporteur on the situation of Human Rights Defenders, have called for its repeal.⁴³



PUBLIC SAFETY ACT

The PSA of Jammu and Kashmir permits administrative detention without judicial intervention.⁴⁴ This law, which was introduced in 1978, allows detention for up to two years “in the case of persons acting in any manner prejudicial to the security of the State,” or for up to one year where “any person is acting in any manner prejudicial to the maintenance of public order.”

Detainees also cannot challenge the decision to detain them in any meaningful way: there is no provision for judicial review of detention in the PSA, and detainees are not permitted legal representation before the advisory board, the executive detaining authority that confirms detention orders. Further, regressive amendments to the Act in 2018 have led to detainees being held in prisons far from their homes, in violation of international human rights standards.⁴⁵

Human rights groups have documented how the PSA has a long history of being misused in Jammu and Kashmir. It has allowed the Indian government to circumvent the criminal justice system and undermine accountability, transparency and respect for human rights.⁴⁶



SECTION 144 OF THE CODE OF CRIMINAL PROCEDURE

A colonial-era law – Section 144 of the Code of Criminal Procedure – authorises officials to prohibit, among other things, a gathering of more than four people if they fear a possible violation of law and order. The law gives powers to state governments and the local police. The law is primarily meant to be applied in emergencies to maintain ‘public tranquillity’, but the authorities have used it widely and frequently to prevent protests, violating the right to peaceful assembly.

After the anti-CAA protests began, authorities in several states imposed the law to prevent protests in an broad and discriminatory manner. The Supreme Court has said that the law “cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.”⁴⁷



FOREIGN CONTRIBUTION REGULATION ACT

The FCRA was enacted in 2010, ostensibly to regulate foreign funding and “prohibit acceptance and utilization of foreign contribution... for any activities detrimental to the national interest.” In practice, it has been used to restrict foreign funding for CSOs that are critical of government policies or that protest against the government’s large development projects.

In an analysis of the FCRA in 2016, former UN special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, concluded that certain provisions of the FCRA were not in conformity with international human rights law and noted that “access to resources, including foreign funding, is a fundamental part of the right to freedom of association under international law, standards, and principles.”⁴⁸

In June 2016, Kiai, along with the UN Special Rapporteurs on Freedom of Expression and on the Situation of Human Rights Defenders, called on the government of India to repeal the FCRA, which they argued was being used to “silence organisations involved in advocating civil, political, economic, social, environmental or cultural priorities, which may differ from those backed by the Government.”⁴⁹



SAFOORA ZARGAR

Safoora Zargar, 27, is a research student from Jamia Millia University who joined peaceful anti-CAA protests in Delhi.⁵⁰ Safoora was initially arrested on 10 April 2020 for allegedly obstructing a road near the Jaffrabad metro station, and subsequently accused of being a 'key conspirator' to the February 2020 violence in Delhi that left dozens of people dead and hundreds injured (see above).

Three months pregnant when detained, Safoora was initially granted bail, partly owing to her pregnancy, and partly due to the directives issued by the Indian Supreme Court on decongestion of prisons during COVID-19.⁵¹ But she was immediately rearrested under the draconian UAPA.⁵²

These were baseless and politically motivated charges, which seem designed to punish Safoora and other activists for defending human rights and engaging in peaceful protest against a discriminatory law.



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The charge sheet rapidly grew with accusations of sedition (section 124A), promoting enmity between different groups (section 153A), rioting (section 148), murder (section 302) and attempt to murder (section 307) under the Penal Code.⁵³ These were baseless and politically motivated charges, which seem designed to punish Safoora and other activists for defending human rights and engaging in peaceful protest against a discriminatory law.⁵⁴

Safoora was detained in the overcrowded Tihar jail in Delhi, raising serious concerns about the risks to her health while pregnant and during the pandemic. During her detention, she was allowed to make just two five-minute calls each to her husband and her lawyer. She was denied visits and letters on account of COVID-19 restrictions. On 23 June 2020, after she had been held for more than 70 days in detention, the Delhi High Court finally granted Safoora bail on humanitarian grounds.⁵⁵ This came after at least three of her previous applications had been rejected by the courts.

Meeran Haider, a member of the Jamia Coordination Committee and Shifa-Ur-Rehman, president of the Jamia Millia Islamia Alumni Association, were accused alongside Safoora. Meeran remains detained in Tihar jail, and Shifa-Ur-Rehman in Guhawati Central Jail in Assam.⁵⁶

SHARJEEL IMAM

Activist Sharjeel Imam, aged 32, is a student of Jawaharlal Nehru University pursuing a PhD in Historical Studies and has been a vocal voice against Islamophobia.⁵⁷ He was arrested on 28 January 2020 in Bihar's Jehanabad district for protesting and making speeches against the CAA.

Sharjeel had helped to organise the peaceful Shaheen Bagh sit-in protest in New Delhi. In a video clip on social media, Sharjeel was purportedly heard telling protesters to block roads across India in protest against the CAA. On this evidence alone, he was accused of making inflammatory speeches against the CAA in Aligarh Muslim University and Jamia Millia Islamia University in December 2019 and subsequently charged with sedition (section 124A) and promoting enmity between different groups (section 153A) under the Penal Code.⁵⁸ Police in six states – Arunachal Pradesh, Assam, Bihar, Delhi, Manipur and Uttar Pradesh – filed charges against him.⁵⁹



Source Facebook

On 20 February 2020, he was transferred from remand in Bihar to Guwahati Central Jail. On 25 April 2020, the Delhi police also charged Sharjeel under section 13 (unlawful activities) of the UAPA. His lawyer said that the police “added UAPA provisions on the 88th day [of arrest] with the intention of keeping him jail for a longer time,” in what has become a common tactic for prolonging the detention of activists.⁶⁰

His lawyer said that the police “added UAPA provisions on the 88th day [of arrest] with the intention of keeping him jail for a longer time,” in what has become a common tactic for prolonging the detention of activists.

A Delhi court subsequently extended the maximum period of his detention from the statutory 90 to 180 days under the UAPA to give additional time to the authorities to complete the investigation into his case.⁶¹ His bail application has been rejected by the courts.⁶²

On 21 July 2020, Sharjeel tested positive for COVID-19.⁶³ By then, at least 435 inmates of Guwahati Central Jail had tested positive for the virus. On 28 August the judicial persecution of Sharjeel continued when was charged again by the Special Crimes Cell of the Delhi police for his alleged involvement in the Delhi riots in February 2020.⁶⁴

AKHIL GOGOI

Assam-based activist Akhil Gogoi was arrested in December 2019 for his involvement in protests against the CAA. He has since been accused of having Maoist links, delivering speeches against communal harmony and orchestrating the violence that broke out in Assam after the CAA was passed by Parliament. In total, Assam police have filed 12 cases against him.⁶⁵

Akhil is a human rights defender and president of Krishak Mukti Sangram Samity, an organisation working with Indigenous communities in Assam to protect and promote their land rights. An outspoken RTI activist, he has been very vocal against corruption in the public sphere, campaigning against the construction of mega-dams in the state of Assam and against so-called 'land mafias' – the nexus of political, business and bureaucratic interests who acquire, develop and sell land illegally for profit.⁶⁶ In 2017, the government of Assam arrested and charged Akhil under the NSA, but he was released four months later.⁶⁷

Since his latest arrest, Akhil has been charged under the Penal Code with sedition (section 124A), waging war against the nation (section 121), criminal conspiracy (section 120B), promoting enmity between different groups (section 153A) and rioting (section 153B). The National Intelligence Agency (NIA) added further charges of conspiracy (section 18) under the amended UAPA. Akhil dismissed the allegations, calling them “a ploy to suppress the people’s uprising.”⁶⁸



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Akhil dismissed the allegations, calling them “a ploy to suppress the people’s uprising.” He has been kept continuously in detention since December 2019 through a combination of various judicial procedures and the actions of different agencies.

He has been kept continuously in detention since December 2019 through a combination of various judicial procedures and the actions of different agencies. The NIA failed to produce a charge sheet after the stipulated 90 days of investigation, so the special NIA court granted him bail. But on 7 April 2020, the Guwahati High Court suspended the bail, keeping him in detention.⁶⁹ A NIA special court then rejected a further bail plea on 7 August 2020.

On 12 July 2020, Akhil, who is being detained in Guwahati Central Jail, tested positive for COVID-19.⁷⁰

DEVANGANA KALITA AND NATASHA NARWAL

Devangana Kalita and Natasha Narwal are both founding members of the Pinjra Tod, a collective of women students and university alumni from across Delhi who seek to lessen restrictions, such as curfews, placed on female students.⁷¹

Since the CAA was passed in December 2019, women human rights defenders have played a critical role in peacefully protesting and mobilising against the Act on the basis that it violates the fundamental principles and protections of the Constitution of India.

On 23 May 2020, the Special Crimes Cell of the Delhi police arrested Devangana Kalita and Natasha Narwal in connection with the anti-CAA protests and violence that took place in February 2020 in Delhi. Charges brought against them include those of obstructing a public servant in discharge of public functions, wrongful restraint and assault or criminal force to deter a public servant from discharge of his duty.



Devangana Kalita © Zee News



Natasha Narwal © Zee News

Since the CAA was passed in December 2019, women human rights defenders have played a critical role in peacefully protesting and mobilising against the Act on the basis that it violates the fundamental principles and protections of the Constitution of India.

On 24 May 2020, both were granted bail by a Delhi court, only to be immediately rearrested by a Special Investigation Team of the Crime Branch of the police and remanded in Tihar jail.

The new charges include serious offences of murder (section 302), attempted murder (section 307), criminal conspiracy (section 120B) and promoting enmity between different groups' (section 153A) under the Penal Code; offences under the Arms Act (sections 25 and 27); and offences under the Prevention of Destruction of Public Property Act (sections 3 and 4).⁷² They were also subsequently charged under the UAPA.⁷³

As in the cases of other activists, the additional charges seem to have been brought with the sole intention of holding the two human rights defenders in prison. On 13 August 2020, their detention was extended by the courts until 17 September 2020.⁷⁴



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SHAHEEN BAGH PROTESTERS

The sit-in protest in Shaheen Bagh, a neighbourhood in south Delhi, was seen as the epicentre of the nationwide anti-CAA protests, inspiring many similar protests across India. Without any formal organisation, women in the area began the protest on 15 December 2019 when they occupied a stretch of road and subsequently erected a tent at the site.⁷⁵

The protests hosted poetry, music and speeches, and were supported by more than a hundred volunteers, including students from Delhi.⁷⁶ Numbers ranged from around a thousand protesters during the daytime to 15,000 to 20,000 in the late evenings.⁷⁷

The Shaheen Bagh protesters were vilified and demonised by government officials, who called them “anti-national” and “paid protesters.”⁷⁸ Some political leaders made statements inciting hatred and violence against them. A union minister was reported to have encourage crowds to “shoot the traitors.”⁷⁹ A BJP member of Parliament claimed that the protesters from Shaheen Bagh would enter citizens’ homes and “rape your sisters and daughters and kill them.”⁸⁰ Prime Minister Modi weighed in, calling the protests a “political conspiracy” threatening the unity of the country.⁸¹

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Other efforts were made to shut down protests. On 17 January 2020, the Delhi Lieutenant Governor Anil Baijal directed the Commissioner of Police, Delhi, to exercise the powers of a ‘detaining authority’ under the draconian NSA for three months.⁸²

Despite harassment and threats, the protest continued for over a hundred days, until 24 March, when the authorities broke up the protest site, citing COVID-19 concerns. Hundreds of police in riot gear surrounded the protesters and told them to leave. Some resisted the police, and at least nine people were detained, six of them women. The police bulldozed the physical remnants of the protest: posters were torn, sculptures and tents removed and graffiti and slogans painted over.⁸³

BHIMA KOREGAON CASE

The Bhima Koregaon case is about a group of human rights defenders best known for their work defending the rights of some of India's poorest and most excluded communities, including the Adivasi and Dalit peoples. All are currently detained under the UAPA.



(L-R) Shoma Sen, Vernon Gonsalves, Suresh Gadling, Gautam Navlakha, Rona Wilson, Sudha Bharadwaj, Sudhir Dawale, Anand Teltumbde, Arun Ferreira, Varavara Rao and Hany Babu

Sudha Bharadwaj, Sudhir Dhawale, Arun Ferreira, Surendra Gadling, Vernon Gonsalves, Gautam Navlakha, Varavara Rao, Mahesh Raut, Shoma Sen, Anand Teltumbde and Rona Wilson were charged in June and August 2018.⁸⁴ Their bail applications have been systematically rejected since then.

Initially, they were arrested for inciting caste violence in Bhima Koregaon village in the Pune district of Maharashtra state in January 2018.⁸⁵ Police subsequently claimed that the human rights defenders had links with 'unlawful organisations', although no evidence has been produced for these charges, which appear to have been fabricated as part of government efforts to clamp down on human rights defenders.⁸⁶ Their cases were subsequently handed over to the NIA. All 11 have been subjected to a smear campaign by the state and the media accusing them of being 'anti-nationals' working against the country.

In October 2018, UN human rights experts expressed concerns about the terrorism charges laid against the 11. They have also raised concerns about the UAPA's vague definitions of 'unlawful activities' and 'membership of terrorist organisations', which have been routinely used by the government to stifle dissent.⁸⁷

Of the 11, five are older persons, which puts them at heightened risk of contracting COVID-19 and experiencing dangerous symptoms. Their repeated requests for bail on medical grounds have been rejected by the courts. On 28 July 2020, a twelfth human rights defender, Hany Babu was arrested by the National Investigation Agency (NIA) in Mumbai in relation to this case.

Varavara Rao, 79, has been shifted back and forth between detention in Taloja jail in Mumbai and various hospitals in Mumbai as his health has deteriorated.⁸⁸ On 16 July 2020, during his last hospital stay, he tested positive for COVID-19, which he had contracted in jail. A day earlier, his family had been permitted to visit him in hospital to find him incoherent and lying in inhumane conditions in a pool of urine in the transit ward of the hospital, with no treatment offered to him.⁸⁹ Varavara has since been moved back to Taloja jail.

MIAN QAYOOM

Mian Abdul Qayoom, a senior human rights lawyer and president of the Jammu and Kashmir High Court Bar Association, was detained on 4 August 2019, the day before the government of India revoked the special status of Indian-administered Jammu and Kashmir.⁹⁰

On 7 August 2019, Mian was booked under the PSA and detained under its preventive detention provisions. The next day, and without any prior notice, he was taken to Central Jail, Agra, Uttar Pradesh, and put into solitary confinement.⁹¹ His health deteriorated: aged 70, Mian has diabetes, double vessel heart disease and kidney problems. He was transferred to Tihar jail in New Delhi in January 2020.⁹²

Human rights groups have documented the PSA's long history of being misused in Jammu and Kashmir. It has allowed the Indian government to circumvent the criminal justice system, undermine accountability, transparency and respect for human rights. The Jammu and Kashmir High Court Bar Association plays an important role in challenging a large number of PSA detention orders in the courts, undertaking jail visits and more generally taking up cases of human rights violations.⁹³

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Source: Facebook

The authorities justified his detention on the basis that Mian “propagated secessionist ideologies in the past” and that there were criminal cases registered against him and his associates for violating various laws.⁹⁴ However, his lawyers had argued that the grounds of his detention were “wholly vague” and that the allegations levelled, which dated back to 2008 and 2010, were outdated.⁹⁵

On 29 July 2020, the central government informed the Supreme Court that Mian's detention would not be extended, provided that he stayed in Delhi until 7 August 2020 at the earliest. He was also banned from issuing any statements as a condition of his release.⁹⁶ On 1 August 2020 he was released after spending 360 days detention.

MASRAT ZAHRA

Masrat Zahra, a 26-year-old photojournalist, has used her photos over the last four years to tell stories of women and children in conflict areas, and her work has appeared in several publications including Al Jazeera, The New Humanitarian and The Washington Post. Masrat says that her work is driven by a desire to document the conflict in Kashmir through a woman's perspective – both her own and those of the women around her.⁹⁷



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On 18 April 2020, police in Indian-administered Jammu and Kashmir charged Masrat, who is from the region's main city of Srinagar, under section 13 of the UAPA for 'unlawful activities'.⁹⁸ The police accused her of "uploading anti-national posts [on Facebook] with criminal intentions to induce the youth."

The Kashmir Press Club noted that "while the government has every right to rebut a story of a journalist and allow a journalist to respond, cases against journalists for their stories and work are unwarranted and outrightly illegal and draconian".

Police also said that she had uploaded photos "which can provoke the public to disturb law and order" and that are "tantamount to glorify the anti-national activities and dent the image of law enforcing agencies".⁹⁹ They did not specify which post of hers merited these charges.

Masrat has previously faced online harassment and threats after a photograph of her, captioned 'mukhbir', meaning 'spy' or 'army informer', was circulated on social media in 2018.¹⁰⁰

Journalists in Jammu and Kashmir have come out in support of Zahra and demanded the First Information Report (FIR) filed against her be revoked. The Kashmir Press Club noted that "while the government has every right to rebut a story of a journalist and allow a journalist to respond, cases against journalists for their stories and work are unwarranted and outrightly illegal and draconian".¹⁰¹

On 11 June 2020, Masrat was honoured with the Anja Niedringhaus Courage in Photojournalism Award by the International Women's Media Foundation.¹⁰²

KISHORECHANDRA WANGKHEM

Kishorechandra Wangkhem, a journalist and an outspoken government critic, worked with the Information Service Television Network in the state of Manipur.

On 21 November 2018, Kishorechandra was arrested by the Manipur police on charges of sedition. He had recently uploaded a video on Facebook criticising the state government, led by the BJP, for celebrating a Hindu festival during National Integration Week, which is observed across India in November, with the aim of fostering and reinforcing the strength of public harmony and national integration.¹⁰³ He was initially released on 27 November 2018 after the chief judicial magistrate found that the video he uploaded “did not seem to be an attempt to disturb peace.”¹⁰⁴



Source: Outlook India @ facebook

Kishorechandra Wangkhem's wife reported a smear campaign against him while he was detained. The family faced harassment and threats from the state government. He also lost his job

The next day, police told him to come to the police station. As he was preparing to leave for the station, a group of police officials in civilian clothing arrived at his residence. At the station he was arrested under section (3)(2) of the NSA, enabling his preventive detention.¹⁰⁵ On 13 December 2018, the advisory board set up under the NSA to look into the charges approved his detention for 12 months. Kishorechandra was detained at the Sajiwa Central Jail on the outskirts of Imphal. In January 2019, the UN Working Group on Arbitrary Detention and UN Special Rapporteur on Freedom of Expression expressed serious concerns around his criminalisation under the NSA.¹⁰⁶

Kishorechandra Wangkhem's wife reported a smear campaign against him while he was detained. The family faced harassment and threats from the state government.¹⁰⁷ He also lost his job. After four months in detention, on 8 April 2019, the Manipur High Court ordered the release of Kishorechandra following a legal challenge.¹⁰⁸ He had spent 132 days in detention.

LAWYERS COLLECTIVE

Lawyers Collective is a human rights organisation founded by Indian human rights defenders and lawyers Indira Jaising and Anand Grover. Jaising was an Additional Solicitor General of India between 2009 and 2014 and was also a member of the UN Committee on Elimination of Discrimination against Women between 2009 and 2012. Grover held the mandate of UN Special Rapporteur on the Right to Health between 2008 and 2014. Through Lawyers Collective, they have advocated for advancing the rights of the most vulnerable and excluded sections of Indian society.¹⁰⁹

Lawyers Collective's registration was suspended and its bank accounts frozen in May 2016 under the FCRA. The FCRA license was subsequently not renewed in October 2016, and then was cancelled entirely in November 2016. Lawyers Collective petitioned the Mumbai High Court to challenge the FCRA cancellation and non-renewal in January 2017 and March 2017, respectively. In January 2017, its domestic accounts were unfrozen. Lawyers Collective's challenge to the FCRA cancellation and non-renewal are currently pending before the High Court.¹¹⁰



Source: Kaumudi online

The FCRA has been time and again criticised by human rights defenders and CSOs within and outside India for its regressive and unfair interference in the functioning of organisations. It has been used to quash dissent and smear individuals and groups.

On 15 May 2019, the Ministry of Home Affairs (MHA) wrote to the Central Bureau of Investigation (CBI) asking for 'further investigation as per law'. On 13 June 2019, the CBI, solely relying on the MHA report, registered a criminal case against Lawyers Collective relating to charges of criminal conspiracy,

criminal breach of trust, cheating, false statement made in declaration and various sections under the FCRA and Prevention of Corruption Act 1988. Human rights groups believe the filing of criminal charges was a blatant act of reprisal against Lawyers Collective and its representatives.

In July 2019, the Mumbai High Court ruled against the CBI taking any coercive action against Lawyers Collective and its founders.¹¹¹ A challenge against the ruling by the CBI was subsequently rejected.¹¹²

The FCRA has been time and again criticised by human rights defenders and CSOs within and outside India for its regressive and unfair interference in the functioning of organisations. It has been used to quash dissent and smear individuals and groups. In his analysis of the FCRA in 2016, Maina Kiai, former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, concluded that certain provisions of the FCRA were not in conformity with international human rights law.¹¹³

CONCLUSION AND RECOMMENDATIONS

More than a year into Prime Minister Modi's second term, human rights defenders and activists continue to be harassed, intimidated, arrested, prosecuted and imprisoned for peacefully exercising their human rights. Those profiled in this briefing represent a small fraction of those targeted under the current administration.

Vaguely worded and overly broad laws, set in a wider repressive legal framework, have enabled the police and other authorities to target critics solely for the peaceful exercise of their rights. This web of laws, which violate India's international human rights obligations, are used in combination to escalate charges in succession, preventing bail and keeping human rights activists and human rights defenders in ongoing detention.

India's slide towards authoritarianism has led to the conflation of dissent with anti-nationalism, often with disastrous results for human rights defenders and activists who have been subjected to damaging smear campaigns. Instead of prioritising response to a pandemic that has taken tens of thousands of lives in India, state resources are being wasted in keeping human rights defenders behind bars.

In India, civil society has played a crucial role in India's socio-political evolution before independence and in the post-independence era. On the international stage, India's vibrant civil society has often been characterised as a barometer of the country's democratic health and an important source of its soft power. As India's political and economic influence increases globally, developments in the country are being closely followed by the international community. India's quest to play a critical role on the international stage would be better served by committing to upholding democratic values and recognising the validity of people's struggles.

The benefits of a vibrant civil society, and of human rights defenders who are free to do their work, are tangible. The rights to the freedoms of association, peaceful assembly and expression are the freedoms to organise and mobilise for a fairer, more just world. Nowhere has this been more evident than in civil society's crucial response to the COVID-19 pandemic in 2020, in providing vital help to communities in need, defending rights and holding governments accountable.

Therefore, we call on the government of India to use this opportunity to stop politically motivated arrests and imprisonment and ensure that civic freedoms are fully and effectively respected, protected, promoted, and fulfilled.

TO THIS END, CIVICUS MAKES THE FOLLOWING RECOMMENDATIONS TO THE INDIAN AUTHORITIES:

- Drop all investigations and dismiss all charges against human rights defenders, activists and people who organised or participated in peaceful protests and release those detained immediately and unconditionally;
- Ensure all those detained for exercising their fundamental freedoms are treated in line with international human rights law and standards;
- Review and amend India's criminal laws to conform to international standards for the protection of fundamental freedoms, as set out in the ICCPR and as expounded on by the UN Human Rights Committee and UN mechanisms such as the UN Special Rapporteur on the promotion of the right to freedom of opinion and expression. This includes the UAPA, NSA, PSA and sedition provisions in Indian Penal Code;
- Immediately denounce state-sponsored violence against peaceful protesters and ensure that state security forces comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Take the necessary measures to establish a fully independent investigation into reports of excessive use of force by law enforcement agencies towards protesters, make the findings public and prosecute the perpetrators of such acts without undue delay;
- Ensure that elected political leaders and public officials who have incited violence and promoted hatred between communities are held accountable;
- Amend the FCRA so that it does not violate India's obligations to protect the freedom of association, which includes the ability of CSOs to access foreign funding, and cannot be misused to prevent the protected activities of CSOs;
- Take steps to ensure that all human rights defenders in India are able to carry out their legitimate activities without any hindrance or fear of reprisals in all circumstances, including human rights defenders from excluded groups with understanding of additional barriers that they face, and conform to the provisions of the UN Declaration on Human Rights Defenders;
- End the use of blanket or open-ended internet shutdowns and be more transparent in the issuance and extension of shutdown orders.
- Extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association.

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TO THE INTERNATIONAL COMMUNITY:

- Call on the Indian government to protect the rights to the freedoms of association, peaceful assembly and expression, and release all those arbitrarily detained for their peaceful activism;
- Speak out publicly and privately about any concerns over government harassment or prosecution of human rights defenders and individuals criticising the government for their actions;
- Take steps through embassies and representations to react to harassment, arbitrary arrests and prosecution of human rights defenders and activists, including by voicing concerns with the authorities, attending trials, issuing statements and visiting activists in detention;
- Make public statements, including at the UN Human Rights Council, raising the concerns outlined above, and initiate more formal Council action if required.



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