

INDIA

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE
141ST SESSION (01 JULY 2024 – 02 AUGUST 2024)



REUTERS/Danish Ismail



INTRODUCTION

CIVICUS: World Alliance for Citizen Participation provides the following information with respect to the human rights situation in India to the United Nations (UN) Human Rights Committee (the Committee) in advance of its periodic review of India's obligations under the International Covenant on Civil and Political Rights (ICCPR) at the Committee's 141st session.

In this document, CIVICUS sets out its main concerns regarding the implementation of the ICCPR by India, focusing on civic space issues, and specifically, rights to freedoms of expression (Article 19), peaceful assembly (Article 21) and association (Article 22).

FREEDOM OF EXPRESSION (ARTICLE 19)

Article 19 of the ICCPR guarantees the right to freedoms of expression and opinion. Article 19 (1a) of the Constitution of India also guarantees the right to freedom of expression. It states that 'all citizens have the right to freedom of speech and expression'¹. Despite this, CIVICUS has documented the use of restrictive legislation against activists, journalists and others critical of the state, along with harassment and attacks. The government has also imposed online restrictions, censored reporting and enforced internet shutdowns.

USE OF SEDITION LAW AGAINST CRITICS

Section 124A of the Penal Code criminalises sedition. 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.



Climate activist Disha Ravi who was arrested for sedition (Photo Credit: Global Voices)

This provision is excessively vague and broad, giving the authorities scope to characterise speech 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.²

Under the government of Prime Minister Narendra Modi, sedition cases have increased by 28 per cent, with Indian authorities filing over 500 cases involving more than 7,000

people. According to reports, as of July 2022, 149 people had faced sedition charges simply for making remarks about Modi that were considered critical and derogatory. While the courts ultimately dismiss most sedition cases, the process itself can be a form of punishment.³

The government promised to review the law when the Supreme Court suspended its use in May 2022 after its constitutional validity was challenged by civil society groups.⁴ However, in May 2023, the Law Commission, which advises the Indian government on legal reforms, recommended retaining the law, expanding the definition of sedition and increasing the punishment for violating the law, citing the need for national security.⁵ A proposed new penal code contains clause 150 that closely resembles the sedition provision in section 124A in the current law.



HARASSMENT AND RESTRICTIONS AGAINST JOURNALISTS

While India's media is vigorous and diverse, and investigations and scrutiny of politicians occur, in policy and practice the Indian authorities continue to use restrictive legislation to prosecute journalists, including by harassing and intimidating them.

Journalists faced reprisals from the state in relation to protests against the discriminatory Citizenship (Amendment) Act (CAA) in 2019. In 2020, the Committee Against Assault on Journalists released a report, 'Republic In Peril', outlining cases of assaults on journalists in Delhi including physical attacks, arrests, detentions, threats and intimidation⁶. During riots in Delhi in February 2020, journalists reporting from affected areas were attacked, threatened by mobs and asked to prove their religious identity.⁷

During protests by farmers in 2021, journalists reporting on them encountered harassment and arrest.⁸ Several journalists faced criminal charges, including for sedition, for tweeting about the death of farmer Navreet Singh during a rally organised by farmers on 26 January 2021.⁹ A criminal case was also registered against journalists Ismat Ara and Siddharth Vardarajan for publishing a news article relating to Singh's death.¹⁰

Siddique Kappan, a journalist with a news channel in southern India, was arrested on 5 October 2020 in Uttar Pradesh state under the Unlawful Activities Prevention Act (UAPA), a draconian anti-terror law, and on sedition charges, while on his way to cover a case of alleged gang rape and murder of a Dalit girl.¹¹ He was accused of trying to instigate violence.¹² While Kappan was detained, the Enforcement Directorate (ED) initiated another case against him on money laundering charges. After a long legal battle and 28 months of imprisonment, he was released on bail in February 2023, but continues to face criminal charges.¹³



Members of the media protest after the police raided the office of a news portal and the homes of journalists October 2023 (Photo Credit: REUTERS Anushree/Fadnavis)

In April 2022, prominent journalist Rana Ayyub was barred from leaving India, based on a notice issued by the ED.¹⁴ Later, based on a court order, she was allowed to travel to the UK to attend events related to violence against women journalists.¹⁵ Ayyub, a journalist who is often critical of right-wing Hindu nationalist politicians, has been the target of tax evasion investigations and online harassment and threats in response to her reporting.¹⁶

In October 2022, officials from the Delhi police crime branch searched the Delhi office of The Wire news website and the homes of its journalists Siddharth Bhatia,

Jahnvi Sen, Siddharth Vardarajan and M K Venu, seizing their electronic devices.¹⁷ The searches were in relation to a police investigation into The Wire based on a complaint from Amit Malviya of the ruling Bharatiya Janata Party (BJP) about an article critical of him that was eventually withdrawn.

On 3 October 2023, police arrested Prabir Purkayastha, founder and editor of the NewsClick news portal, and Amit Chakravarty, its head of human resources.¹⁸ The police also raided the homes of almost 40 journalists, staff and contributors connected to the site, seizing electronic devices, including laptops and mobile phones, over allegations of illegal foreign funding, an accusation the outlet has categorically denied.¹⁹ Its office has since been sealed.²⁰ Chakravarty and Purkayastha were detained on charges of terrorism and criminal conspiracy under the UAPA.²¹ Since 2021, NewsClick has been targeted with raids, searches and seizures by various agencies of the Indian government, including the ED, the economic offences wing of the Delhi Police and the Income Tax Department.²²



JOURNALISTS IN INDIAN-ADMINISTERED KASHMIR AT RISK

In 2022, the Committee to Protect Journalists reported that Kashmir media was at ‘breaking point’ as detentions of journalists had increased.²³ Since August 2019, journalists who report on critical issues have been targeted and arrested. These incidents have created a chilling effect in the region.

Across two days in April 2020, three journalists faced criminal cases, including under the UAPA.²⁴ Photojournalist Masrat Zahrawas was booked under the UAPA on 19 April 2020 for uploading ‘anti-national posts’ on social media.²⁵ Journalist Peerzada Ashiq was also booked on 20 April 2020 for ‘publishing rumours against public tranquillity’. He was initially questioned by the police about his news story on the funeral of two militants.²⁶ A day later, he was charged under the Indian Penal Code. The authorities alleged that the details in his article were ‘factually incorrect and could cause fear or alarm in the minds of the public’. On 20 April 2020, journalist and author Gowhar Geelani was charged under the UAPA for ‘indulging in unlawful activities’ through social media. The police claimed he was ‘glorifying terrorism’ in the Kashmir Valley through his posts.²⁷

Kashmiri journalist Asif Sultan was initially arrested in August 2018 under the UAPA. It is believed his arrest was due to a story he wrote about insurgent leader Burhan Wani, whose death sparked protests in Kashmir.²⁸ Four years later in April 2022, when the Jammu and Kashmir High Court provided him bail, Asif was detained in another case under the draconian Public Safety Act, which allows for detention for up to two years without trial.²⁹ On 11 December 2023, a court in Srinagar in Kashmir quashed Sultan’s detention under the Public Safety Act and ordered his release. Even after this, Sultan remained in jail for 78 further days awaiting ‘clearance letters’ from Kashmir’s home department.³⁰

Fahad Shah, a journalist and the founding editor of Kashmir Walla, an online news portal, was arrested in February 2022 on charges under the UAPA and sedition charges. Police accused him of ‘uploading anti-national content, including photographs, videos and posts with criminal intention to create fear among public’.³¹ His arrest is related to a report carried on his news portal about an encounter between the Indian army and militants in Kashmir.³² While a court ordered his release on bail, he was consecutively rearrested in three different cases in March 2022 to keep him in detention. He was also charged under the Foreign Contribution Regulation Act (FCRA).³³ In August 2023, the Indian government blocked the website and social media accounts of the Kashmir Walla and its office was forced to shut down.³⁴



Arrested journalist Fahad Shah (Photo Credit: The Kashmir Walla/ Umer Asif)

In an attempt to curtail freedom of movement of Kashmiri journalists, the Indian authorities have suspended the passports of several journalists and imposed arbitrary travel bans.³⁵ It is reported that people have had their passports suspended based on ‘instructions from intelligence agencies’.³⁶ Authorities in New Delhi stopped Kashmiri photojournalist Sanna Irshad Mattoo travelling to the USA in 2022.³⁷ Earlier that year, when she was awarded the Pulitzer prize for her coverage of COVID-19, she was barred from travelling to attend the award ceremony and said to be on a no-fly list.³⁸



Since 2019, Amnesty International has documented the cases of at least six Kashmiri journalists, human rights activists, academics and politicians – Bilal Bhat, Shah Faesal, Gowhar Geelani, Aakash Hassan, Sanna Mattoo and Zahid Rafiq – who have been barred from travelling outside India without any lawful justification.³⁹

Since August 2019, Kashmir has also experienced one of the longest internet shutdowns. Indian-administered Kashmir was subjected to more internet shutdowns and restrictions than any other region in 2022.⁴⁰ This has impacted on the work of journalists, leaving them unable to report news and get access to information or official responses.⁴¹

In May 2020, the Information Department of the Jammu and Kashmir government announced a new media policy with very arbitrary powers, including unbridled powers to take action against journalists and media houses over ‘fake reports’.⁴² The policy allows the government to examine content in all forms of media to identify ‘fake news, plagiarism and unethical or anti-national activities’. Opposition political parties described this policy as a ‘remnant of colonial-era censorship’.

ONLINE RESTRICTIONS AND CENSORSHIP

The Indian government has also restricted online space. Authorities have tried to take down critical content on social media platforms.⁴³ In February 2021, the government threatened to punish Twitter employees with fines and jail terms of up to seven years for restoring hundreds of accounts it had ordered the company to block.⁴⁴ Most accounts were critical of Modi. In March 2021, around the farmers’ protests, the Ministry of Electronics and Information Technology directed Twitter in several separate orders to shut down over 1,000 accounts under section 69A of the Information Technology Act. Twitter initially complied but then said that it would not take action on accounts belonging to news media entities, journalists, activists and politicians.⁴⁵

In January 2023, the Indian government banned a BBC documentary critical of Modi and his role and passivity during riots in Gujarat state in 2002, in what was one of the worst outbreaks of communal violence in India’s recent history, which took place when he was Gujarat’s Chief Minister.⁴⁶ The authorities used provisions under the 2021 Information Technology Rules to direct Twitter and YouTube to take down links to the documentary. In February 2023, around two dozen officials from the Income Tax Department raided the BBC’s India offices, located in Delhi and Mumbai, to start an ‘income tax survey’.⁴⁷

The Indian authorities have also sought to increase internet controls. In February 2021, the government announced new regulations under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, supposedly to curb social media abuse and targeting of internet intermediaries, including social media services, digital news services and curated video streaming sites. Human rights groups have raised concerns that the rules allow for greater governmental control over online content, threaten to weaken encryption and would seriously undermine the rights to privacy and freedom of expression online.⁴⁸ Media groups also fear the regulations could lead to censorship of content seen as critical of the government. In June 2021, three UN human rights experts said the rules did not conform with international human rights norms.⁴⁹

In April 2023, the Indian government introduced amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.⁵⁰ One of the most concerning provisions was the introduction of a ‘fact check unit’ by the government. This has raised concerns that it would lead to arbitrary censorship.⁵¹ Despite concerns, the government appointed a fact check unit under the Press Information Bureau, a government body, on 20 March 2024.⁵² A day later, India’s apex court stayed the appointment.⁵³



The website of Hindutva Watch, which tracks incidents of hate crimes and religiously motivated violence perpetrated by BJP supporters and Hindu vigilante groups, was blocked in India in January 2024.⁵⁴ Its social media account on X (formerly Twitter) was also blocked on the orders of the Ministry of Electronics and Information Technology.

INTERNET BLOCKADES

The authorities have used internet shutdowns to block the flow of information. The multiple shutdowns in Jammu and Kashmir have had significant consequences, negatively impacting on the economy, education, access to healthcare, press freedom, freedom of expression and the right to engage in political decision making.⁵⁵ UN human rights experts have described the communication shutdown as ‘collective punishment’.⁵⁶

Shutdowns were also used to disrupt the farmers’ protests. On 1 February 2021, internet access was blocked in at least 14 of 22 districts in Haryana state near Delhi.⁵⁷ On 7 September 2021, the Haryana government suspended mobile internet services in five districts ahead of a farmers’ protest in Karnal.⁵⁸

In 2023, the northeastern state of Manipur came under one of the longest internet blockades after violence broke out between the Kuki and Meitei communities.⁵⁹ The blockade severely restricted essential journalistic freedoms of media and news professionals, as well as freedom of expression of all Manipur residents.

THE HUMAN RIGHTS COMMITTEE SHOULD RECOMMEND THAT THE INDIAN GOVERNMENT:

- Review and amend criminal laws to conform to international law and standards as set out in the ICCPR, including sedition provisions in the Indian Penal Code.
- Guarantee freedom of expression and media freedom by ensuring that journalists and writers may work freely and without fear of reprisals for expressing critical opinions or covering topics that the government may deem sensitive.
- Immediately and unconditionally release all journalists detained solely for undertaking their legitimate work or exercising their right to freedom of expression.
- Revise the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, to ensure these conform with international human rights norms related to online freedom of expression, and ensure they are not used to censor content critical of the government.
- End the use of blanket or open-ended internet shutdowns and be more transparent in the issuance and extension of shutdown orders.
- Take steps to implement the recommendations made by the Office of the High Commissioner for Human Rights in its reports on the situation of human rights in Indian-administered Kashmir made in 2018 and 2019.
- End restrictions on the movement of journalists and arbitrary travels bans, particularly for Kashmiri journalists.



FREEDOM OF PEACEFUL ASSEMBLY (ARTICLE 21)

Article 21 of the ICCPR guarantees the right to freedom of peaceful assembly. Article 19(1)(b) of the Constitution of India also guarantees this right.⁶⁰ However, in practice there have been numerous cases where protests have been blocked or restricted, protesters have been arbitrarily arrested and prosecuted and police have used unnecessary or excessive force and firearms to disperse protests.

RESTRICTIONS IN LAW AND POLICY

The legal provision most frequently used to prohibit the holding of assemblies in public spaces is the issuance of orders under section 144 of the Code of Criminal Procedure. The provision allows a district magistrate to issue orders prohibiting any assembly of four or more people in a particular geographical area within the district. Other measures include the restriction or prohibition of movement or vehicular movement and, more recently, restriction or suspension of the internet.⁶¹ While the law is primarily meant to be applied in emergencies to maintain 'public tranquillity', authorities have used it widely and frequently to prevent protests, violating the right to peaceful assembly.⁶²

Police Standing Orders of various Indian states mandate that protests at the designated protest sites in each city or town can be held only after securing a police permit and a 'No Objection Certificate' from the police. This is inconsistent with international law, which only requires police notification.⁶³

PROTESTS AGAINST THE CITIZENSHIP LAW



University students at a protest rally against CAA law in Kolkata
(Photo Credit: Sumit Sanyal/Anadolu Agency)

In December 2019, tens of thousands of people across India, particularly students, protested against the passage of the discriminatory CAA. This was the strongest mobilisation of dissent against Modi and his party since they came to power in 2014. In Delhi, thousands of people gathered daily in the Shaheen Bagh area to take part in protests. In states ruled by the BJP and its allies, police used excessive force, mainly against students, as witnessed in educational institutions such as Aligarh Muslim University and Jamia Milia Islamia, where police brutally attacked students.⁶⁴

Indian authorities also shut down the internet in several states, contending it was necessary to maintain law and order, and used Section 144 of the Criminal Procedure

Code to prohibit gatherings.⁶⁵ Authorities also arrested student leaders who were involved in peaceful protests on fabricated charges of inciting violence under the UAPA following communal riots in northeastern Delhi in February 2020.⁶⁶



CRACKDOWN ON FARMER'S PROTESTS

In November 2020, tens of thousands of farmers organised protests in Delhi against three farm laws that came into force in September 2020.⁶⁷ The farmers feared these laws would dismantle regulated markets and stop the government buying their crops at a minimum guaranteed price.

The police used excessive force and prevented the farmers entering the city centre. In January 2021, farmers broke through police barricades around the centre and entered the grounds of Delhi's historic Red Fort during India's Republic Day celebrations.⁶⁸ Police hit protesters with batons and fired teargas to try to disperse them. Mobile internet services were also suspended in parts of Delhi.



Farmers and police officers at the site of the protest at a border crossing between Punjab and Haryana states, India, February 2024. (Photo Credit: REUTERS/Francis Mascarenhas)

In February 2021, in addition to blocking internet access in several districts of Haryana state, the authorities used barbed wire, boulders, iron nails, makeshift walls and rods to barricade Delhi's borders against protesting farmers.⁶⁹ On 7 February 2021, it was reported that at least 125 protesters had been arrested in police stations across Delhi.⁷⁰

On 13 February 2021, Delhi police arrested 21-year-old climate activist Disha Ravi for allegedly editing a protest toolkit relating to the farmer's protest.⁷¹ The Delhi police charged her with sedition and alleged the toolkit Ravi edited was linked to a larger criminal conspiracy to 'wage economic, social, cultural and regional war against India'.⁷² She was detained for nine days before being released on bail.⁷³

On 3 October 2021, a car in a convoy of Union Minister Ajay Kumar Mishra ran over protesters, killing eight people, among them four farmers, in Lakhimpur Kheri district of Uttar Pradesh state.⁷⁴

In February 2024, farmers' organisations called for another round of protest, including a march towards Delhi, seeking a legal guarantee for a minimum price for all crops.⁷⁵ Most of the farmers came from Punjab state and were stopped in Haryana by barricades made of concrete blocks and iron nails.⁷⁶ Farmers who crossed these barricades faced excessive police force, including teargas sprayed by drones.⁷⁷ At least one farmer was killed: Shubh Karan Singh died during a protest on 21 February 2024 at the border of Punjab and Haryana due to a bullet wound to the head.⁷⁸

In June 2022, protests over comments by a BJP spokesperson against the Prophet Muhammad were met with curfews and an internet suspension in several parts of Uttar Pradesh state.⁷⁹ The authorities also used bulldozers to raze the houses of some protesters in the city of Prayagraj.⁸⁰ Among those whose houses were bulldozed was student activist Afreen Fatima. Her father, Javed Mohammad, was arrested by the police, who alleged that he was the 'mastermind' behind protests in the region.



THE HUMAN RIGHTS COMMITTEE SHOULD RECOMMEND THAT THE INDIAN GOVERNMENT:

- Adopt best practices on freedom of peaceful assembly, as put forward by the 2012 report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and review and amend laws and regulations, including section 144 of the Code of Criminal Procedure and Standing Orders issued by police and administrative authorities, in order to guarantee fully the right to freedom of peaceful assembly.
- Immediately and impartially investigate all instances of extrajudicial killings and excessive force committed by security forces in the context of protests.
- Unconditionally and immediately release all protesters detained for exercising their right to freedom of peaceful assembly and drop all existing charges against them or quash their convictions.
- Review and, if necessary, update existing human rights training for police and security forces, with the assistance of independent civil society organisations (CSOs), to foster the more consistent application of international human rights standards, including the Basic Principles on the Use of Force and Firearms.

FREEDOM OF ASSOCIATION (ARTICLE 22)

Article 22 of the ICCPR guarantees freedom of association. Article 19(c) of the Indian Constitution guarantees the right to form associations and unions.⁸¹

Despite this, CSOs have faced an increased crackdown through cancellation of their registrations, raids and investigations by law enforcement agencies. The authorities use repressive laws such as the FCRA to target and harass organisations that work on human rights and development issues.

MISUSE OF THE FOREIGN CONTRIBUTION REGULATION ACT

The Indian government has increasingly used the FCRA to restrict foreign funding for CSOs. The FCRA was enacted in 1976 to regulate foreign contributions to organisations in India. The law gives the government a wide range of powers to suspend, refuse or cancel an organisation's licence to receive and use foreign funding. Increasingly, these powers have been used arbitrarily by the government against organisations that criticise its human rights policies and practices.

According to a September 2023 Amnesty International report, in the last 10 years more than 20,600 CSOs have had their FCRA licences cancelled, with almost 6,000 cancellations occurring since the beginning of 2022.⁸²

A 2016 legal analysis undertaken by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association noted that the FCRA is in contravention of international law and standards.⁸³

The law was further amended in 2010 and 2020 to make it more difficult for CSOs to receive foreign funding, giving the government greater powers to monitor and regulate CSOs. The 2020 amendments prohibit the sub-granting of foreign funds, unless a grantee organisation is registered under the FCRA.⁸⁴ This has caused



difficulties in operations and programme implementation, as not all grassroots organisations meet the requirements to be registered under the FCRA.⁸⁵ The amended Act also reduces the cap on administrative expenditure from 50 per cent to 20 per cent, which has had an impact on all organisations that rely on foreign funds.

Prior to the amendment, the government could freeze an organisation's funds only when it was proved guilty of contravening the FCRA's provisions. But the amendment states that an organisation's account can be suspended based on 'any information or report' and after a 'preliminary inquiry', provisions that can be used arbitrarily against civil society.⁸⁶

The law and its amendments have been used to target and harass civil society and human rights defenders (HRDs), who very often express criticism and dissent towards the government.

Civil society groups impacted on by the FCRA include prominent national organisations such as Citizens for Justice and Peace, Lawyers Collective and People's Watch, and international organisations such as Amnesty International India and Greenpeace India.⁸⁷

TARGETING OF CSOS AND ACTIVISTS BY LAW ENFORCEMENT AGENCIES

The Indian government has also brazenly used its federal law enforcement agencies such as the Central Bureau of Investigation (CBI), ED and Income Tax Department to harass CSOs and HRDs and criminalise them for their human rights work and for speaking out on human rights issues.

Lawyers Collective is a human rights organisation that works mainly on women's rights and sexual and reproductive rights and is headed by HRDs and lawyers Anand Grover and Indira Jaising. Its registration under the FCRA was initially suspended in May 2016 and cancelled in November 2016.⁸⁸ In July 2019, the CBI raided homes and offices based on a case registered against Lawyers Collective under the FCRA for alleged discrepancies in the utilisation of foreign aid received by the group.⁸⁹



Then Central Bureau of Investigations headquarters in Delhi (Photo Credit: Mint)

In September 2021, the office of Centre for Equity Studies (CES), a human rights organisation, was raided by the ED in connection with money-laundering allegations. This was seen as an attempt to silence CES's founder and activist Harsh Mander, whose home was also raided by the ED. He has been a vocal critic of the government, particularly over its actions and policies that discriminate against and target religious minorities.⁹⁰ In June 2023, CES's FCRA registration was cancelled by the Ministry of Home Affairs (MHA). The reason cited was that Mander regularly writes articles in media publications that violated FCRA provisions.⁹¹

In January 2022, the CBI conducted raids on the office of People's Watch, a human rights organisation in Tamil Nadu state.⁹² The CBI had registered a case against People's Watch on charges of violations of the FCRA.

In the same month, the government refused to renew Oxfam India's FCRA licence. In September 2022, the Income Tax Department conducted an 'income tax survey' of Oxfam India, during which its staff were not al-



lowed to leave the premises and denied access to communication devices, with the internet shut down by the authorities.⁹³ Officials also copied all data by cloning Oxfam India's server and the private mobile phones of the senior leadership team and finance lead.⁹⁴ In April 2023, the CBI registered a case against Oxfam India, allegedly for violating the conditions of its foreign funding licence and in relation to accusations of attempts to pressure the central government to renew the licence by using foreign governments and institutions.⁹⁵

In April 2022, immigration authorities prevented Aakar Patel, the chair of Amnesty International India, boarding a flight to the USA, based on a notice issued by the CBI.⁹⁶ The notice was issued in relation to a case faced by Amnesty International India. Later a court ordered the CBI to issue an apology to Patel and withdraw the notice that prevented him travelling abroad.⁹⁷ Despite this, he was stopped again later that day at the airport as the CBI notice had not been withdrawn.⁹⁸

In September 2022, the Income Tax Department raided the offices of the Centre for Policy Research, a think tank in Delhi, as part of a probe related to alleged violations of the FCRA related to funds it had received.⁹⁹ In March 2023, the MHA suspended its FCRA registration and in January 2024 revoked it, citing FCRA violations.¹⁰⁰

CRIMINALISATION OF HUMAN RIGHTS DEFENDERS

CIVICUS has documented the ongoing criminalisation of HRDs in reaction to their work in India. Since 2019, HRDs critical of the government have been implicated and imprisoned in politically motivated cases under the UAPA, including in relation to riots in Bhima Koregaon and Delhi. Under the UAPA's draconian provisions, activists remain in detention for long periods and are often denied bail on health grounds.



Activists implicated in the Bhima Koregaon case and detained under the UAPA (Photo Credit: The Leaflet)

In 2018, the police registered a case against activists following violence that broke out during an annual rally by Dalit people in Bhima Koregaon village in Maharashtra on 1 January 2018.¹⁰¹ The police claimed that speeches at a meeting on 31 December 2017 led to the violence.¹⁰² In June 2018, the police arrested prominent Dalit activist Sudhir Dhawale, academic Professor Shoma Sen and activists Surendra Gadling, Mahesh Raut and Rona Wilson on charges of inciting violence at Bhima Koregaon under various provisions of the UAPA and alleged they were linked to a banned Maoist organisation. In August 2018, they also arrested activists Sudha Bharadwaj, Arun Ferreira, Vernon Gonsalves, Gautam Navlakha and Varavara Rao in this case. In 2020, after the investigation had been taken over by the National Investigation Agency (NIA), folksingers Ramesh Gaichor, Sagar Gorkhe and Jyoti Jagtap were also arrested, along with Professor Hany Babu, Father Stan Swamy and Anand Teltumbde.

All remained in pretrial detention in overcrowded prisons, even during the COVID-19 pandemic. Their bail applications were continuously rejected, including on medical grounds and despite deteriorating health conditions. Of those arrested, only Bharadwaj, Rao and Teltumbde are currently out on bail, while Navlakha remains under house arrest.¹⁰³ Father Swamy died in prison on 5 July 2021, after having multiple bail applications rejected, even when he tested positive for COVID-19.¹⁰⁴



In May 2020, UN experts expressed concerns over the non-conformity of various UAPA provisions with international human rights law and standards. In October 2023, they reiterated their concerns, stating that the law's pretrial detention period of 180 days – which can subsequently be increased – is beyond reasonable.¹⁰⁵

A report by People's Union of Civil Liberties shed light on the fact that between 2015 and 2020, less than three per cent of arrests under the UAPA led to conviction: out of 8,371 people arrested under the law, only 235 were convicted over five-year period.¹⁰⁶ The report also noted that once arrested under the UAPA, it usually takes a long time for a person to get bail. The implication is that the UAPA is being used as tool to harass and detain activists and critics.

The National Security Act (NSA) 1980 has also been used against activists. Manipur activist Erendro Leichombam was arrested under the law in May 2021 for a critical Facebook post.¹⁰⁷ Under the NSA, people can be held without charge or trial in administrative detention for up to a year on grounds of national security and maintenance of public order.¹⁰⁸ Leichombam was released on bail by the Supreme Court in July 2021.¹⁰⁹

USE OF SPYWARE AGAINST ACTIVISTS

In June 2020, Amnesty International and the Citizen Lab uncovered a coordinated spyware campaign targeting eight of the activists arrested in the Bhima Koregaon case.¹¹⁰ In June 2021, Arsenal Consulting, a US-based digital forensic firm that examined electronic copies of the computers and email accounts belonging to Surendra Gadling and Rona Wilson, stated that their devices have been hacked to plant evidence.¹¹¹ Father Stan Swamy's device was also hacked to plant similar evidence. It was further found that phones of several of the activists arrested in the Bhima Koregaon case were targeted with Pegasus spyware sold by Israel's NSO Group.¹¹²

ARRESTS OF STUDENT ACTIVISTS

Student activists have also faced repression for their activism. In September 2020, Delhi police arrested Umar Khalid, a student activist who led peaceful protests opposing the CAA.¹¹³ He was accused of inciting communal violence through speeches in February 2020 under various provisions of the UAPA and Indian Penal Code, including charges of rioting, murder and acts of terrorism. Although Khalid was initially granted bail in one of the cases in April 2021, he has now been held in pretrial detention for over three years.

In April 2020, police arrested Gulfisha Fatima, a student activist who also took part in peaceful protests against the CAA, in a case related to the riots in Delhi.¹¹⁴ She was accused of instigating communal violence that occurred in Delhi in February 2022 and charged under multiple sections of the Indian Penal Code. A Delhi court granted Fatima bail in the first case in May 2020, but police later included her in another case to ensure her continued detention. In the second case, police charged Fatima under various provisions of the UAPA for her alleged involvement with other activists in an alleged 'pre-planned conspiracy' that led to the Delhi riots.¹¹⁵

International human rights groups have raised concerns abo the arrests of these activists for their participation in peaceful protests under the UAPA and have called for their release.¹¹⁶



SILENCING OF ACTIVISTS IN KASHMIR

Human rights work in Kashmir has almost come to a complete standstill due to arrests of activists and continuous harassment of CSOs and activists through raids and interrogations. This trend has increased rapidly since August 2019, when the central government abrogated Article 370 of the Indian Constitution, which recognised Kashmir's special autonomous status.¹¹⁷

At the same time that it arbitrarily revoked its special status, the Indian government divided the state of Jammu and Kashmir into two federally administered territories: Jammu and Kashmir and Ladakh. No provincial-level elections have been held in the two regions since 2019 and they are directly governed by the Indian government. In December 2023, India's apex court, while upholding the decision to revoke the special status, ordered the government to conduct elections before 30 September 2024.¹¹⁸



*Kashmiri human right defenders Khurram Parvez and Irfan Mehraj
(Photo Credit: Twitter/CIVICUSalliance)*

Khurram Parvez is the Programme Coordinator of the Jammu Kashmir Coalition of Civil Society, Chairperson of the Asian Federation Against Involuntary Disappearances and Deputy Secretary-General of the International Federation for Human Rights.¹¹⁹ He has faced systematic harassment for advocating against human rights violations in Indian-administered Jammu and Kashmir. The NIA arrested him in November 2021, accusing him of being in contact with people linked to a Pakistani militant group. He faces politically motivated charges under the Indian Penal Code and the UAPA related to conspiracy, terrorism and sedition.¹²⁰

On 22 March 2023, Parvez was arrested in a second case after two days of interrogation by the NIA, implicating him in another case of financing terrorism under the UAPA, along with Kashmiri journalist and HRD Irfan Mehraj.¹²¹ In June 2023, the UN Working Group on Arbitrary Detention found his detention to be arbitrary, among other concerns, and called on the Indian authorities to release him.¹²²

On 20 March 2023, the NIA arrested Irfan Mehraj in connection with a case relating to alleged terror funding.¹²³ Mehraj has produced reporting critical of the impact of Indian government policies in Kashmir, including reports on extrajudicial killings, and has been associated with the Jammu Kashmir Coalition of Civil Society.¹²⁴ He was charged under several sections of the Indian Penal Code and the UAPA.¹²⁵ In June 2023, UN experts expressed serious concerns regarding the charges against and arrest of Mehraj and Parvez, stating that their continued detention is 'designed to delegitimize their human rights work and obstruct monitoring of the human rights situation in Indian-administered Jammu and Kashmir'.¹²⁶

The Public Safety Act (PSA) of Jammu and Kashmir permits administrative detention. Detainees cannot challenge the decision to detain them in any meaningful way: there is no provision for judicial review of detention in the PSA. Detainees are also not permitted legal representation before the advisory board, the executive detaining authority that confirms detention orders.¹²⁷

In 2019, the UN Office of the High Commissioner for Human Rights released a report on the situation of human rights in both Indian and Pakistan-administered Kashmir.¹²⁸ The report highlighted that there has not been a single prosecution of army officers involved in human rights violations. The report recommended the formation of a commission of inquiry to conduct a 'comprehensive, independent, international investigation' into allegations of human rights violations in Kashmir.¹²⁹



THE HUMAN RIGHTS COMMITTEE SHOULD RECOMMEND THAT THE INDIAN GOVERNMENT:

- Repeal or amend the FCRA so that it does not violate India's obligations to protect freedom of association, which includes the ability of CSOs to access foreign funding, and ensure its not misused to prevent the legitimate activities of CSOs.
- Remove all undue restrictions on the ability of CSOs to receive international funding, in line with best practices articulated by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit freedom of association.
- Review and amend criminal laws to conform with international law and standards as set out in the ICCPR and 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 Unlawful Activities (Prevention) Act, Public Safety Act, National Security Act and sedition provisions in the Indian Penal Code.
- Immediately and unconditionally release all HRDs, including Khurram Parvez, HRDs detained in the Bhima Koregaon case, student activists Umar Khalid and Gulfisha Fatima, journalists including Irfan Mehraj , academics and others detained for exercising their fundamental freedoms, and review their cases to prevent further harassment.
- Take steps to ensure that all HRDs in India are able to carry out their legitimate activities without any hindrance or fear of reprisals in all circumstances, including HRDs from excluded groups, with an understanding of additional barriers they face, and conform to the provisions of the UN Declaration on Human Rights Defenders.



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