



# General Assembly

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## Human Rights Council

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Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

## **Written statement\* submitted by World Organisation Against Torture, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2021]

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\* Issued as received, in the language(s) of submission only.



## **India: Freedoms of Expression, Association and Assembly**

The Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR), recognise the right to freedom of expression and association as a fundamental human right. Article 19 of the Indian Constitution also guarantees freedom of speech and expression through writing, printing, pictures, electronic broadcasting and media. It also guarantees to the citizens the right to assemble peacefully and without arms and the right to form associations and unions. However, freedom of expression, association and peaceful assembly is under attack in India as repressive laws are increasingly used by the government to restrict fundamental rights.

### **Extensive and arbitrary Internet shutdowns**

According to a report by Top10 VPN, a United Kingdom of Great Britain and Northern Ireland-based digital privacy and security research group, India led the world in Internet shutdowns (8,927 hours affecting 10.3 million people) with 75 instances in 2020. The report did not include short blackouts that were highly targeted, affecting groups of villages or individual city districts, which made up the majority of instance of shutdowns in the country. In Indian-administered Kashmir, which saw the longest internet shutdown in any democracy in 2019, the access was restored partially after 7 months, but only for 2G connections. The ban on 4G connection has crossed 500 days mark in December 2020.

During protests against the Citizenship (Amendment) Act (CAA), arbitrary internet shutdowns were imposed in the states of Uttar Pradesh (UP), West Bengal, and the North East to stop the protests. A recent analysis stated that 45% of all shutdowns occurred against a backdrop of state violence while 44% occurred on account of protests.

### **Extensive use of repressive laws**

2020 saw the section 124-A of the Indian Penal Code (IPC) for sedition, Unlawful Activities Prevention Act (UAPA) and the National Security Act (NSA) continued to be used against activists, lawyers and journalists for organizing or participating in peaceful protests and assemblies.

The UAPA has been one of the most draconian legislatures used by the Indian State to persecute defenders increasing from 35 cases in 2016 to 93 cases in 2019, further raising in 2020. Academicians Professor Anand Teltumbde and Professor Hany Babu, Dalit cultural artists Sagar Gorkhe and Ramesh Gaichor, and 83-year-old Jesuit priest and tribal activist Fr. Stan Swamy were arrested under UAPA in the Bhima Koregaon conspiracy case.

Various state governments have their own repressive laws to persecute human rights defenders. Some notable examples are the Goondas Act in states such as UP, Tamil Nadu, Rajasthan and Madhya Pradesh, Gujarat's Prevention of Anti-Social Activities (PASA) Act, the Uttar Pradesh Special Security Force Act enacted in 2020, and the Jammu and Kashmir Public Safety Act.

False cases were filed against the human rights defenders in India who led or initiated peaceful demonstrations. State police undertook chapter proceedings against activists participating in peaceful protests, after which they were banished from their regions or asked to sign surety bonds pledging amounts as high as Rs 50 Lakh (around 50,000 Euros) to ensure they did not take part in protests in future. In Gujarat, grassroots activist Lakhan Musafir was banished from five districts for six months and a similar action was initiated against Kaleem Siddiqui. In Mumbai, chapter proceedings were initiated against several prominent activists who took part in anti-CAA protests.

## **Denial of permission to peacefully protest**

Peaceful protests/demonstrations were routinely denied permission by state governments under the pretext of the pandemic. In some states like Gujarat and UP, police were stationed outside the residences of activists to disallow them from participating in the peaceful demonstrations. Since India has no specific laws for house arrest, there is no legal recourse in such instances.

## **Excessive use of force on peaceful protestors**

In 2020, India saw brutal repression of citizenship protests against the CAA Citizenship. Excessive force was used against peaceful protestors including water cannons, teargas, firing in crowds. Student activists like Umar Khalid, Ishrat Jahan, Gulfisha Fatima, Shifa ur Rehman, Natasha Narwal, Akhil Gogoi and Devangna Kalita were arrested under draconian charges including sedition, attempt to murder and rioting. Dr. Kafeel Khan, a doctor in UP, was detained for nearly six months under the NSA before the Allahabad High Court quashed his case. The UP Government started proceedings to attach the property of activists who had taken part in the anti CAA protests and put up their photographs and addresses on giant public billboards across the state capital to 'name and shame' them.

The last quarter of 2020 also saw national farmer protests in India against three farm laws that were passed in the Parliament on September 26, 2020. The laws are viewed by farmers as a threat to their livelihood, who marched to the national capital Delhi in protest in November 2020. Stopped on the border of the capital, they were subjected to freezing water cannons, tear gas and batons, while highways were barricaded and dug up in a bid to stop them. Citizens supporting the farmers were either house arrested, charged or detained by the police. Six union activists in UP were asked to pay Rs 50 lakh each (approximately 50,000 Euros) fine for inciting the farmers against farm laws. More than 60 protesting farmers have died at protest site on the borders of Delhi due to harsh weather conditions, some of them committing suicides.

## **Attacks on journalists**

According to the Rights and Risk Analysis group report, at least 55 journalists were arrested, summoned, given show cause notices or threatened for reporting on COVID-19 or exercising freedom of opinion and expression from March 25 to May 31 2020, when India was put under lockdown. In 2020, UP led the states where repressive action was taken against 15 journalists, followed by Jammu and Kashmir (9) and Gujarat (6).

Kerala-based journalist Siddique Kappan, who was on his way to cover a gang rape in UP was charged under UAPA and continues to be behind bars. Patricia Mukhim of Meghalaya was charged under UAPA for a post on Facebook. Manipur-based journalist Kishorechandra Wangkhem was arrested by the Manipur Police on charges of sedition.

Veteran journalist Vinod Dua was charged with sedition for allegedly criticising the government for its COVID preparedness in his online program "the Vinod Dua Show". While former Executive Director of Amnesty International in India Aakar Patel was arrested by Gujarat police for his tweets, Uttar Pradesh police arrested a dalit journalist, Prashant Kanojia, for his tweets, one of which allegedly insulted the Chief Minister of the state. He was tortured for more than 80 days for his tweets.

## **Amendment to the Foreign Contribution (Regulation) Act, 2010**

The Indian government further amended the Foreign Contribution (Regulation) Act (FCRA) in September 2020, receiving widespread critics. According to United Nations Human Rights Council's Resolution 22/6, "no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding". However, the amended FCRA restricts civil society organisations from disbursing FCRA funds to other non-governmental organizations (NGOs), giving the Ministry of Home Affairs (MHA) the

power to freeze FCRA account of an NGO on basis of a summary inquiry; to suspend its FCRA for nearly an year; put caps on administrative expenses from 50% to 20%; and ensure mandated submission of statement of expenses four times in one year, thus severely restricting the freedom of speech and expression in India.

On September 10, 2020, Amnesty International India ceased its operations in India as the Indian government completely froze its funds alleging violations of foreign funding regulations. Amnesty International India called it an “incessant witch-hunt of human rights organizations by the Government of India over unfounded and motivated allegations.”

## **Recommendations**

- Unconditionally release all human rights defenders (HRDs), activists, journalists and peaceful protestors who have been detained, arrested, fined or externed for exercising their fundamental right to freedom of expression and association and all charges dropped against them;
- Enact specific laws to protect journalists critical of government and conduct independent investigations into the arrest and killing of journalists;
- Repeal the new FCRA Amendment and in the interim allow sub-granting to continue until the completion of pending projects;
- Repeal or review draconian laws used against HRDs to curtail dissent like the National Security Act (NSA), Unlawful Activities (Prevention) Act (UAPA), and sedition in compliance with international human rights standards;
- Ensure unrestricted access to internet and online information;
- Ensure that security forces abide by the United Nations Basic Principles on the Use of Force and Firearms and that force is used in accordance with international human rights standards;
- Extend a standing invitation to the United Nations Special Rapporteurs on the rights to freedom of peaceful assembly and of association, on the promotion and protection of the right to freedom of opinion and expression, and on the situation of human rights defenders, and allow unrestricted interaction with civil society;
- Ensure that all HRDs, activists, journalists and peaceful protestors can carry out their activities without fear of state reprisal and in accordance with the Indian Constitution and international laws.