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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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]

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



India: Silencing human rights defenders and dissenting voices

Attacks against human rights defenders (HRDs) in India are on the rise. This submission refers to numerous well-documented instances of state-sponsored violence, torture, and arbitrary detention of human rights defenders and protesters, including during the Covid-19 pandemic in 2020.

Use of draconian laws against HRDs

The Unlawful Activities Prevention Act (UAPA) has been largely misused by investigative agencies against HRDs, including in the Bhima Koregaon case and against students and HRDs protesting the Citizenship Amendment Act (CAA) in Delhi, Assam and Uttar Pradesh. United Nations (UN) human rights experts, including the UN High Commissioner for Human Rights Ms. Michelle Bachelet, have repeatedly expressed their concern over UAPA's overly broad and vague provisions, calling for the release of all HRDs charged under the UAPA for simply exercising basic human rights that India is obligated to protect.

According to available data, half of the total UAPA cases between 2014-2018 resulted in acquittals. According to the Union Minister of State for Home Affairs Mr. G. Kishan Reddy 3,974 people were arrested under UAPA between 2016 and 2018. However, 75% of these cases have no charge-sheets according to data presented by the government in the Lok Sabha.

In 2020, university students Safoora Zargar, Devangana Kalita, Natasha Narwal, Gulfisha Fatima, Meeran Haider, Asif Iqbal, Umar Khalid and others were arrested for protesting the controversial Citizenship (Amendment) Act 2020 and charged under the UAPA.

HRDs Anand Teltumbde, Gautam Navlakha, Hany Babu, Stan Swamy, Jyoti Jagtap, Sagar Gorkhe and Ramesh Gaichor were arrested in connection with the Bhima Koregaon case, making the total number of arrests in this case 16. Their bails were denied multiple times despite many of them being especially vulnerable to Covid-19 due to their age or existing medical conditions. After two years, the trial is yet to commence.

In addition to the UAPA, preventive detention legislations such as the National Security Act (NSA), has been misused, applied incorrectly or on vague grounds. Kafeel Khan, a doctor, was arrested under the NSA and then later cleared almost after six months of any charges by the Allahabad High Court.

The Jammu and Kashmir Public Safety Act, 1978 (PSA) has led to arrests and detentions of HRDs and politicians after the abrogation of article 370 of the Indian constitution in 2019. Former chief ministers Farooq Abdullah, Omar Abdullah, Mehbooba Mufti and other prominent political leaders were only recently released after prolonged detention under the PSA. Human rights lawyer and President of the Jammu and Kashmir High Court Bar Association Miyan Abdul Qayoom was also detained in 2019 under this law. He was arrested in Srinagar but detained in the state of Uttar Pradesh amid deteriorating health conditions. He was eventually released in July 2020, almost a year after his detention.

Section 144 of the Criminal Procedure Code (CrPC) has also been misused to curb protests and gatherings. Concerns have been repeatedly raised over its overly broad scope and terminology, including by High Courts and the Supreme Court.

The Foreign Contribution Regulation Act (FCRA) has been used to target and jail government critics, as well as to prevent human rights defenders and organizations from accessing resources and continuing their work with dignity and in safety. Some human rights organizations, including Amnesty International India, have been forced to shut down. The FCRA was further amended in 2020, providing more power to state agencies and further restricting non-governmental organizations' operations.

Attacks against journalists

Journalists continue to be targeted. Prashant Bhushan, a senior advocate and HRD, was fined for contempt of court after the Supreme Court heard the matter for 24 days for publishing a tweet perceived as being critical of the government. Three journalists working with The Caravan — Mr. Shahid Tantray, Mr. Prabhjit Singh and a woman journalist — were beaten, subjected to communal slurs, threatened with murder, and sexually harassed, while reporting in northeast Delhi. Journalist Rakesh Singh was set on fire, leading to his eventual death. Journalist Shubham Mani Tripathi was shot by unidentified persons due to his investigation into the sand mafia. Journalist Isravel Moses was killed in Tamil Nadu for his reportage on local drug mafia. The Srinagar office of the Kashmir Times was sealed by Jammu and Kashmir officials and offices of the Greater Kashmir were raided by the National Investigation Agency in October 2020.

Breaking down of institutions in India

The extensive architecture of justice institutions in India – here limited to the Supreme Court and the National Human Rights Commission (NHRC) – largely failed to protect both the right to peaceful protest or adequately shield peaceful protestors from excessive force and brutality by the police, in the course of protests across India against the Citizenship (Amendment) Act 2019. Justice institutions have also shown extreme lethargy in responding to petitions challenging the legal validity of CAA itself.

With a few notable exceptions, neither the higher courts nor the NHRC intervened on their own to cease excessive force, ensure protests could continue unimpeded, nor held police personnel accountable. When pushed to intervene, the responses have not been based in upholding fundamental rights and holding state authorities to account. This extreme lethargy by justice institutions has acted as a shield of impunity for state governments and police, encouraging them to brazenly target students, HRDs, and scores of people engaged in peaceful community-led protests.

On December 17, 2019, two days after the Delhi Police entered the campus of Jamia Millia Islamia and the Uttar Pradesh Police entered Aligarh Muslim University (AMU), a group of petitioners moved the Supreme Court, pleading for an order that would immediately stop the coercive forceful actions against the protesting students under the aegis of Article 21 (right to life and personal liberty). The petitions also sought the Court to form an independent committee to investigate the police violence and alleged excesses, for both Jamia and AMU. A bench led by Chief Justice of India (CJI) SA Bobde, Justice BR Gavai, and Justice Surya Kant refused to entertain the petitions and asked the petitioners to move the respective High Courts for “appropriate orders”. While the petitions were seeking protection of constitutional rights, CJI Bobde commented that the Supreme Court was “not a trial court to examine the facts”. When lawyers for the petitioners pointed to arbitrary arrests by the police, the Court refused to pass an order restraining police actions, leaving it to the High Courts concerned.

The Supreme Court continues to delay hearing the hundreds of petitions pending before it, challenging the constitutionality of the CAA. While the delay is costing the lives and liberty of scores of people in India, especially Muslims, the Court has barred state High Courts from hearing challenges to the CAA and also refused to stay the law’s operation. To date, more than 150 individual petitions have been filed in the Supreme Court against the CAA - arguing that it violates some of the core principles of the Constitution, including Article 14 (equality before law), Article 21 (right to life and personal liberty), and Article 25 (right to freedom of religion), besides it being violative of the basic structure of the Constitution and its secular core specifically. Several states have also challenged the CAA. The petitions sought a stay on the CAA’s coming into force, until the Supreme Court decides on the constitutionality challenges.

Faced with COVID-19 pandemic, on March 23, 2020, the Supreme Court suspended all physical hearings and the same are yet to resume. However, the court continued to hear

urgent matter, but the CAA matter was not considered urgent and hence not been effectively heard since January 2020.

The NHRC also failed to act on a petition signed by close to 14,000 citizens seeking review of the CAA. The Protection of Human Rights Act, 1993 (PHRA) mandates the NHRC to review legislations and its impacts on human rights. In cases of HRDs arrested under UAPA and other draconian legislations, the NHRC refrained from exercising any of its powers and intervene.

Recommendations

We urge the Human Rights Council to call on the Government of India to:

- Immediately put an end to all acts of harassment against HRDs and dissenting voices;
 - Release all arbitrarily detained HRDs as well as all individuals detained solely for expressing critical or dissenting views;
 - Establish a court-monitored probe in the aforementioned cases of incarceration of HRDs;
 - Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights instruments ratified by India;
 - Ensure accountability for those alleged to have instigated violence or used excessive force in relation to the nationwide protests against the CAA;
 - Review and amend the UAPA, NSA and CAA in accordance with international standards.
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