

Status Report on Women Human Rights Defenders in India (2020-present)

- Henri Tiphagne

Introduction:

WHRDs are defined as “all women and girls working on any human rights issue, and anyone of any gender who promotes women’s rights and rights related to gender equality.” It includes lesbian, gay, transgender and intersex (LGBTI) activists, as issues related to sexual orientation and gender identity are part of achieving gender equality. WHRDs includes both, those who self identify as human rights defenders such as feminists, community organizers, indigenous leaders trade unionists, grassroots activists, politicians; and those who don’t necessarily, including, students, girls, teachers, journalists, artists, bloggers, judicial actors, civil servants, private sector actors, doctors, health service providers.¹

Globally, there is an increasing recognition that women human rights defenders face peculiar challenges on account of their gender, and that the social, cultural, economic and political contexts in which they work substantively influences or exacerbates their precarity. OHCHR recognizes their specific challenges as below:

- gender-based discrimination
- gender-specific threats
- gender-specific violence
- targeting of family members and loved ones
- hostility by the general population and authorities
- harmful anti-gender narratives and defamation campaigns
- exclusion, marginalization, under-recognition and underfunding
- barriers to accessing decision-making spaces and platforms
- stigmatization and ostracism by community leaders, faith-based groups, families and communities
- gender-specific challenges and violence online and in digital spaces²

Women human rights defenders’ individual and collective action has been significant in pushing for transformation across a wide range of rights, and in a wide spectrum of contexts, including in the context of prevention, peace and security and sustainable development. Women are often at heart of social justice movements that have and continue to benefit everyone, and present us with hope. Acknowledging both their special significance and their particular vulnerabilities, in its landmark resolution passed in 2018, the UN General Assembly noted with deep concern that “women human rights defenders, frequently face threats and harassment and suffer insecurity as a result of those activities, including through the curtailment of freedom of association or expression or the right to peaceful assembly or the abuse of civil or criminal proceedings” and among others, called upon states to ensure that they are not subjected to excessive or indiscriminate use of force, arbitrary arrest or detention, torture... or degrading punishment.. abuse of criminal or civil proceedings or threats of such acts.”³

The Indian Context:

In India, periodic reviews of the situation of WHRDs have not been undertaken so far, and therefore this report provides perhaps the first such comprehensive picture, albeit for the last three years (2020-present). Though this report focuses on individual cases, the larger picture that emerges is of structural oppression, of the larger institutional patterns and processes that inhibit the WHRDs from performing their human rights work, or worse still, that chip away at their fundamental rights precisely for their contribution to human rights defence.

¹ https://www.ohchr.org/sites/default/files/Supporting_WHRDs_UN_System.pdf

² <https://www.ohchr.org/en/women/women-human-rights-defenders>

³ Resolution (68/181). Retrieve at: <https://documents-dds>

[ny.un.org/doc/UNDOC/GEN/N13/450/31/PDF/N1345031.pdf?OpenElement](https://www.un.org/doc/UNDOC/GEN/N13/450/31/PDF/N1345031.pdf?OpenElement)

As we shall notice in the course of this report, there are several contexts in which WHRDs operate, but the most significant one that emerges in the case studies and analyses is the authoritarian and majoritarian turn of the Indian state. It ought to be mentioned that through the period of review — and six years preceding it — India has been ruled by the Bharatiya Janta Party (BJP), a Right wing political party, which its critics accuse of imposing an undeclared emergency (implying a creeping abridgement of rights and constitutional protections), of aggravating the faultlines and tensions between communities, and of casting the state and society in its vision of Hindutva or political Hinduism. All of these provide the landscape in which WHRDs work and operate. This was also the period which saw at least two powerful movements which attracted attention globally for the justness of their aims, and their perseverance. In both these, but especially in the first, women played pivotal roles.

The first emerged in mid-December 2019, when the Indian Parliament passed the Citizenship Amendment Act (henceforth CAA), which fundamentally altered the bases on which citizenship was granted by introducing religion as a criteria for citizenship, thus privileging Hindus as the authentic citizens of India. Protests against CAA erupted in Muslim dominated educational institutions which was followed by a swift and violent police crackdown on students. Reports by citizen's collective noted the brutalisation of students who suffered injuries in Jamia Millia University in New Delhi.⁴ Following this, women in the neighbourhood of Jamia decided to undertake a peaceful sit-in in what is now known across the world as the Shaheen Bagh protests.⁵ This sit in led by women - by elderly women - which saw public readings of the Constitution, was recognised as an inspirational movement, and Bilkis Dadi (or grandmother), one of its most prominent faces, entered the *Time* magazine's list of 100 most influential people in the 2020,⁶ as well as in BBC's list of 100 women.⁷ As the anti-CAA protests spread across different parts of the country so did their stigmatisation by the mainstream media, and their criminalization by the government, especially in those states which were run by the BJP. For example, Uttar Pradesh saw some of the most severe reprisals against women activists. In Delhi, where the police is directly under the control of the central Home Ministry, women activists and students were detained and arrested in multiple cases, including one under the draconian Unlawful Activities Prevention Act 1967(henceforth UAPA). This law has been criticised by jurists, activists and international organisations as inherently arbitrary, violative of fundamental rights such as the right to fair trial, and an easy instrument for the abuse of critics and dissenters. This report documents how women human rights defenders of this heroic movement have been targeted using the most potent legal weapon at the government's disposal.

The second movement was the protracted protest against three farm laws passed in the Indian Parliament in September 2020. Its opponents argued that the laws had been passed without any credible discussion in the Parliament, and that the laws were guaranteed to bolster the corporate entry into farming, and further impoverishing medium sized farmers by withdrawing from them the guarantee of minimum support price.⁸ The anti-farm laws protest became

⁴ See the report, *Night of the Broken Glass: Testimonies from Jamia Millia Islamia* (Campaign against Witch hunt of anti CAA Activists, 2020). Copy on record. <https://www.outlookindia.com/website/story/india-news-after-jamia-amu-students-protest-against-caa-cops-use-teargas-lathicharge-protesters/344184>

⁵ Anuj Kumar, "Women playing prominent role in anti-CAA, NRC protests", *The Hindu*, 9 February 2020: <https://www.thehindu.com/news/national/other-states/women-playing-prominent-role-in-anti-cao-nrc-protests/article30777618.ece>.

⁶ <https://time.com/collection/100-most-influential-people-2020/5888255/bilkis/>

⁷ <https://www.telegraphindia.com/india/bbc-includes-shaheen-bagh-protest-leader-bilkis-dadi-influential-women-list/cid/1798522>

⁸ See <https://www.brookings.edu/opinions/indias-farm-laws-are-a-global-problem/>.

another context for a crackdown on activists, including the charging of women human rights defenders with sedition.

In fact wherever women human rights defenders have challenged powerful vested economic and corporate interests, or stood up in defence of the marginalised, whether lawyers, journalists, or trade unionists in the metropolis or the mineral rich hinterland, they have been hounded, abused, and incarcerated under a range of laws. In these case studies detailed in the forthcoming pages, we see how the complex interweaving of different axes of power and hierarchies - that of caste, indigeneity, faith, class and gender — create especial challenges for women human rights defenders.

The case studies are divided into sections but it must be emphasised that there are overlaps. The first section looks specifically at the steady rise of online violence targeting WHRDs in the last few years.

Online Intimidation and Abuse:

The online sphere has emerged as a key site for shaming, intimidation and eventually silencing of women human rights defenders. Bullying, doxing, stalking, threats of physical and sexual violence, abusive language, sharing or manipulating sexually explicit images of women without their consent are rampant. In its study of 778 women journalists and politicians in the US and UK, Amnesty International confirmed that “Twitter is a place where racism, misogyny and homophobia are allowed to flourish basically unchecked.” Furthermore, its findings indicated that “women of color were much more likely to be impacted and black women are disproportionately targeted.” Amnesty also excoriated Twitter for failing to crack down on the problem, thus in effect contributing to the silencing of women who came from marginalized sections.⁹

Wilson Centre issued *Malign Creativity*, an indepth report on how sexualized and gendered misinformation on social media platforms impacts women in public life, reiterated the Amnesty findings, and called for recognizing the distinctive nature of targetted online abuse “that uses false or misleading gender and sex-based narratives against women, often with some degree of coordination, aimed at deterring women from participating in the public sphere.” The three defining characteristics of online disinformation were identified as “falsity, malign intent, and coordination.”

Identifying the challenges inherent in combating gendered abuse and disinformation, the report draws attention particularly to “the use of coded language; iterative, context-based visual and textual memes; and other tactics to avoid detection on social media platforms”. This it labels, *malign creativity*. Most platforms lack coherent policies or even a clear and precise definition of ‘targeted harassment,’ which allows abusers to carry on their activities with impunity. The report further highlights the paucity of intersectional expertise in content moderation. This has serious consequences as the specificity of abuse toward women, people of color (POC), and other marginalized communities is not acknowledged and addressed.¹⁰ The lack of clear guidelines and standards also means that the targets themselves have to report the abuse and become responsible for detection, reporting and follow up actions. These can be draining, both emotionally and otherwise.

⁹ <https://www.wired.com/story/amnesty-report-twitter-abuse-women/>. Full report can be accessed here: <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1-1/>

¹⁰ <https://www.wilsoncenter.org/publication/malign-creativity-how-gender-sex-and-lies-are-weaponized-against-women-online>

Amnesty India's study of online abuse faced by women politicians released in 2020 showed that female leaders routinely faced rape and death threats, while insinuations of sexual relationships were common. This study covered over one lakh tweets mentioning 95 prominent women in political leadership roles, and found that abuse cut across political affiliations. However, it also warned that being a Muslim woman on twitter was more dangerous, attracting a greater frequency and intensity of threat of violence. Female political leaders from marginalized groups faced caste abuse. As Hasiba Amin, Congress' National Convener (Social Media), said, "The online abuse that followed in 2014 for a young girl entering politics was traumatising. The trolling was sexist, misogynistic and (they) targeted me for being Muslim...Rape threats were routine, as were character assassinations, insinuations about my sexual relationships with older men. Now in 2019, I have considerably reduced my activity on twitter.¹¹

Amnesty's report supports anecdotal evidence and media reportage that suggest that for women in public life, especially those women espousing causes related to civil liberties and democratic rights of marginalized groups, and those belonging to these socio-religious groups may be especially vulnerable to harsh and hateful online abuse.

Targeted online hate against WHRDs from minority community:

But even in such a toxic online environment, two events stand out for their sheer malignancy. Twice, once in July 2021, and then again in January 2022, scores of Muslim women were posted for auctioning online. In 2021, an app called Sulli Deals purported to sell a "Sulli", a patently derogatory term, drawn from Mulli, itself a term of abuse by Hindu Right wingers to refer to Muslim women. Photos and information about the women were taken without their knowledge and consent, tampered with, and then posted on the app as "deal of the day".¹² While obviously the auction was mock, and no real transactions took place, the purpose of the app and its creators was to debase, commodify and degrade Muslim women. After numerous complaints and public outrage, the hosting platform GitHub took down the app and suspended its account. The auction however re-appeared as Bulli Bai, again on GitHub, in January 2022, containing morphed images and visuals from the social media pages of these women, again wholly Muslim.

It did not surprise anyone that the women whose names appeared on the list were prominent and powerful voices – journalists, activists, lawyers, social workers, and students, and this attempt to shame and humiliate them was to render them voiceless. As Nazia Erum, former spokesperson of Amnesty India, and someone who had overseen the Troll Patrol report, observed that Muslim women's presence on social media was marginal, and "this targeted and planned attack is an attempt to take away the mic from the educated Muslim women who express their opinion and speak out against Islamophobia. It's an attempt to silence them, to shame them, to take away the space they occupy."

Some chose to self censor; others suffered nervous breakdowns. As another activist noted: "There were many women on the list from the Muslim community who were not politically vocal but had fought all forms of patriarchy and made a name for themselves with hard work and years of perseverance." that it worried her to see them there and the effect it may have on their social mobility due to fear and the security threat.¹³

¹¹ <https://www.deccanherald.com/national/twitter-turns-toxic-for-indian-women-politicians-with-rape-threats-abuse-study-797370.html>

¹² <https://www.bbc.com/news/world-asia-india-57764271>

¹³ <https://thewire.in/communalism/indian-muslim-woman-auction-bulli-bai>

Amidst the overall climate of rising violence against minorities, many expressed the fear that the harassers had "no fear because they know they will get away with it". Police inaction in the first case had emboldened the harassers to target the Muslim women activists yet again. It was alleged by those whose names appeared in the horrific list that these auctions were particularly pernicious example of what they faced on a regular basis in an increasingly polarised environment under the right-wing government.¹⁴

Indeed, despite two separate FIRs filed in the Sulli Deals case, the investigation dragged out and no arrest was made till the end of 2021.

Swift international and domestic outcry followed the second episode. Fernand de Varennes, the Special Rapporteur to the United Nations on the Rights of minorities, acknowledged the special vulnerability faced by vocal minority women. He said that trends like Sulli Bai and Bulli Bai "involve harassment and hate speech targeting minority women who speak out and need immediate and effective condemnation and action. As an independent expert for the United Nations, it is clear to me that what is at stake are our fundamental principles of equal dignity for all. Indian women, specially those from minority communities who continue to speak out for their rights and hence are targeted, are particularly vulnerable because of their identities. They should be unequivocally supported and any violence against them, online or offline, taken action against by concerned authorities immediately."¹⁵

Several groups including Editors Guild of India¹⁶, Delhi High Court Women Lawyers Forum¹⁷ and Women in Criminal Law Association¹⁸ called for strict action against the "gross violation of [the women's] constitutional right to dignity, privacy, and bodily autonomy". While the Delhi Police – which works directly under the federal government – continued to prevaricate, the Mumbai Cybercrime Police made rapid arrests¹⁹ -- all the accused were between 18-25 years of age, and had extreme Hindu Right wing sympathies.²⁰

However, on 29 March, the court granted bail to two men alleged of creating the apps, on humanitarian grounds adding that the accused was the "first-time offenders."²¹

Commentators have warned that we are in real danger of trivializing and normalizing violence. This act of offering these carefully chosen individuals for so-called sale: "women, from a minority community, active in the public sphere, shows how overlapping systems of oppression (intersectionality) converge in a deliberate and de-humanising act of symbolic violence."²²

14 <https://www.independent.co.uk/asia/india/bulli-bai-muslim-women-auction-b1985531.html>

15 <https://news.abplive.com/news/india/sulli-deals-un-special-rapporteur-condemns-social-media-attacks-on-muslim-women-calls-it-form-of-hate-speech-1505861>)

16 [^] *"Misogynistic, abusive": Editors' Guild demands SC probe into Tek Fog app". The News Minute. 11 January 2022. Archived from the original on 11 January 2022. Retrieved 11 January 2022.*

17 <https://enalsar.informaticsglobal.com:2086/top-stories/bulli-bai-app-delhi-high-court-women-lawyers-forum-letter-to-cji-189035?infinite-scroll=1>

18 <https://enalsar.informaticsglobal.com:2086/news-updates/attempt-to-sexualise-dehumanise-muslim-women-women-in-criminal-law-association-condemns-the-harassment-of-muslim-women-in-bulli-bai-app-188866>

19 <https://timesofindia.indiatimes.com/city/mumbai/bulli-bai-case-mumbai-police-arrest-mba-grad-from-odisha/articleshow/89028610.cms>

20 <https://www.dw.com/en/india-auction-of-muslim-women-on-apps-reveals-widespread-online-abuse/a-60379358>

21 [^] *"Delhi court grants bail to Bulli Bai, Sulli Deals creators". BBC News. 29 March 2022.*

22 Sumana Kasturi, <https://thewire.in/women/bulli-bai-app-creators-bail-women-violence-online>

This toxicity must not be seen in isolation from other kinds of persecution that continue apace, particularly the deployment of lawfare by government. For example, Safoora Zargar, the intrepid student leader from Jamia Millia University, who was arrested in early 2020, was brutally trolled on the social media for her pregnancy, with the most virulent insinuations about her sexuality circulated widely.²³ Similarly, journalist Rana Ayyub who is facing multiple ongoing enquiries related to tax and money laundering, has endured severe levels of online abuse, including having her head morphed onto a porn video. In fact, so malevolent and unrelenting has been this abuse and slander that that United Nations Special Rapporteurs have intervened three times in her case, with five of them issuing a warning in 2018 that her life was at “serious risk” as a result of the targeted harassment and abuse she had experienced.²⁴

All these women from the minority community break stereotypes about what it means to be a Muslim woman. The Right wing has projected them as perpetually suffering under the burden of Islamic patriarchy, and indeed the present Prime Minister likes to present himself and his government as their benefactors, dismantling patriarchal practices in Islam on their behalf. However, it appears that Muslim women are acceptable only as a trope of suffering who can then be rescued by the benevolent patriarchy of the government. All other independent, articulate women who espouse a secular politics and are vocal about it, need to be silenced.

II. Targeting Women Journalists

1. Neha Dixit: From online to offline violence

After battling threats and online intimidation, award-winning freelance journalist Neha Dixit reported on her social media handles that someone tried to break into her house in January 2021. Dixit, who has done several important stories such as the extent and pattern of extra-judicial killings, illegal detention etc, has been the target of stalking and threats over the phone. She revealed on her media post that multiple people had been physically stalking her even as she received menacing phone calls by anonymous callers from different numbers who identified her precise physical location and threatened her with rape, acid attack and death, and also warned her that her husband would be killed. They made it clear that she was being targeted for the journalistic stories she was writing. There was an attempt to break into her house on January 25, possibly by people who have been physically stalking and threatening her for several months.

“In continuation with the threats, day before, on Jan 25th [2021], at 9 pm, someone tried to break into my house and ran away when I shouted and opened the door”, Dixit wrote. Dixit filed a complaint with the police. She felt compelled to make the incident public since she believed that not enough attention was being paid to physical threats and possibilities of violence.²⁵

2. Curtailing the fundamental right to freedom of movement

Sanna Irshad Mattoo is an award-winning photojournalist from Kashmir. In 2021, she was awarded the Magnum Foundation Photography and Social Justice Fellowship for “challenging injustice, pursuing social equity, and advancing human rights through photography.”²⁶ A freelance journalist, Mattoo produced some of the most searing images of the Covid-19 period

²³ <https://www.vice.com/en/article/v7g43b/safoora-zargar-prison-trolls-pregnancy-sexism>

²⁴ https://www.icfj.org/sites/default/files/2023-02/Rana%20Ayyub_Case%20Study_ICFJ.pdf

²⁵ <https://thewire.in/media/journalist-neha-dixit-stalked-threats-break-in-freedom-media>

²⁶ <https://www.magnumfoundation.org/news/2021/4/1-announcing-the-2021-photography-and-social-justice-fellows>

for Reuters, winning along with four other colleagues, the Pulitzer Prize for Feature Photography in 2022.²⁷

Mattoo has been repeatedly prohibited from travelling abroad by the immigration authorities despite carrying all valid documentation. On 2 July 2022, when Mattoo was on her way to Paris to attend a book launch and photography exhibition as one of the ten award winners of the Serendipity Arles grant 2020, Mattoo was stopped at the Delhi airport. No reason was assigned to her.²⁸

Again, in October 2022, Mattoo was stopped from flying to the United States by immigration authorities at the Delhi airport when she was Enroute to attend the Pulitzer Prize ceremony. Mattoo tweeted that despite writing to several officials seeking a reason for this repeated debarment, she had failed to receive any response. The news agency, Press Trust of India, quoted Jammu and Kashmir police Mattoo's name was on a no-fly list without specifying the reason for it.²⁹

On 21 October 2022, the United States expressed its commitment to press freedom by closely monitoring this case. The chairman of the House Intelligence Committee, US Congressman Adam Schiff, stated his "disturbing" reaction on learning that Mattoo was unable to fly to accept the Pulitzer Prize and that "efforts to harass and silence the media" must stop.³⁰

The Committee to Protect Journalists termed the decision to bar Mattoo from travelling "arbitrary and excessive" and called upon the Indian authorities to "immediately cease all forms of harassment and intimidation against journalists covering the situation in Kashmir."³¹

3. Masrat Zahra: A Kashmiri photojournalist

Masrat Zahra is a photojournalist from the conflict torn zone of Kashmir valley who has made a name for herself despite resistance on account of her gender, negotiating between a hostile state and a debilitating patriarchy.³² Her work has appeared in various national and international news publications including Washington Post, TRT World, Al Jazeera, The New Humanitarian and The Caravan. Her photographs document the everyday life of Kashmiris with a special focus on women's shifting roles amid the conflict, and the terrible cost of violence on women's lives.

Masrat Zahra was named the winner of the 2020 Anja Niedringhaus Courage in Photojournalism Award. The jury praised her work for its sense of "dread and community."³³ The same year she also won the Peter Mackler Award for Courageous and Ethical Journalism.³⁴

27 (Scroll Staff (10 May 2022). "[Danish Siddiqui, three other Reuters photographers win Pulitzers for images of India's Covid crisis](#)". [scroll.in](#)

28 Masood, Bashaarat (3 July 2022). "[Pulitzer winner Kashmiri photojournalist stopped from flying out](#)". The Indian Express.)

29 (<https://www.livemint.com/news/india/pulitzerwinning-kashmiri-photojournalist-stopped-from-travelling-to-us-11666155299084.html>)

30 Jha, Prashant (21 October 2022). "[Closely tracking Pulitzer Prize winner Sanna Irshad Mattoo's case: United States](#)". Hindustan Times.

31 <https://cpj.org/2022/10/indian-authorities-prevent-pulitzer-winning-kashmiri-journalist-sanna-irshad-mattoo-from-flying-abroad/>

32 <https://caravanmagazine.in/conflict/a-woman-photojournalist-navigates-state-and-patriarchy-in-the-valley>

33 <https://www.iwmf.org/2020/06/kashmir-conflict-photographer-masrat-zahra-wins-top-photojournalism-award/>

34 <https://thekashmiriyat.co.uk/worried-about-their-safety-kashmiri-journalist-masrat-zehra-alleges-harassment-of-family-by-authorities/>

The Jammu and Kashmir police have booked a Kashmiri photojournalist under the stringent Unlawful Activities (Prevention) Act (UAPA) for posting what they have called “anti-national” content on social media.

In April 2020, Zahra found herself being named by the Jammu and Kashmir police in an FIR registered under Section 13 of UAPA and Section 505 of the Indian Penal Code, in the cyber police station, Srinagar. The police statement referred to her a ‘Facebook user’ rather than a journalist, and accused her of “uploading anti-national posts with criminal intention to induce the youth and to promote offences against public tranquillity.” She was “believed to be uploading photographs which can provoke the public to disturb law and order.” The same statement further read that her posts were tantamount to glorifying “the anti-national activities and dent the image of law enforcing agencies besides causing disaffection against the country.”³⁵

However, no specific post which could potentially cause disaffection was referred to by the police statement. It was only on being pressed by the media repeatedly that the head of the Cyber police in Kashmir, uploaded a screenshot of a two-year-old photograph Zahra had taken of mourners carrying a poster of the slain militant Burhan Wani during a Muharram procession.³⁶ A photograph from 2018 was thus used to file a case against Zahra in 2020!

The charges against Zahra came in the backdrop of increasing harassment of Kashmiri journalists by the police for fulfilling their professional duties. The Kashmir Press Club condemned the move by the police to book Zahra under the stringent UAPA for simply “honestly telling the stories of people”, and she also received support from her colleagues who reiterated that “journalism is not a crime”.³⁷ Nearly 450 gender rights activists, scholars, professionals and organisations in signed a statement condemned the invocation of the UAPA against her and demanded the quashing of the case.³⁸

Zahra however has also faced threats from militants. In 2016, she was labelled a police informer after she uploaded a photograph from an encounter site.³⁹ Again in early 2021, her photograph appeared on a poster of a militant outfit which had ostensibly issued her a “last warning”. Zahra moved to Germany at the invitation of the Hamburg Foundation in March 2021 for their year-long residency programme but found that her absence her family continued to be intimidated by the state police. According to Zahra’s twitter posts from early January 2022, her elderly parents faced harassment and even physical assault at the hands of the local police who were demanding Zahra’s Identity documents.⁴⁰

Zahra continues to live in exile today. Zahra’s case illustrates the precariousness and vulnerabilities of women journalists in conflict zones, facing both possible arrest and criminal charges, and coercion and elimination from militants.

4. Rana Ayyub: targeting a long time critic of the regime

35 <https://indianexpress.com/article/india/kashmir-photojournalist-uapa-anti-national-posts-6370631/>

36 <https://www.newslaundry.com/2022/10/10/2020/04/24/intimidation-is-in-the-air-how-the-indian-state-is-suffocating-kashmir-journalists>

37 <https://thewire.in/media/kashmiri-photojournalist-charged-under-uapa-for-unspecified-social-media-posts>

38 <https://thewire.in/rights/masrat-zahra-uapa-condemn-statement>

39 RAHIBA R. PARVEEN (16 May 2018). "Woman photojournalist who covered Kashmir encounter labelled as police informer". The Print

40 See full thread here: <https://twitter.com/Masratzahra/status/1477293545115598849>

A long time critic and award winning investigative journalist Rana Ayyub has been booked under the draconian money laundering charges by the Enforcement Directorate (ED). The agency has been labelled as a pliant instrument in the hands of the government to target opposition parties and dissidents and the law Prevention of Money Laundering Act (PMLA) as a law which departs from all settled principles of natural justice and criminal jurisprudence. Ayyub, whose writings consistently critique and excoriate the divisive policies of the Modi regime, has long faced online harassment, death threats, and criminal cases for her work as a journalist.⁴¹

An FIR has been filed against her in the then BJP-ruled southern state of Karnataka under hate speech laws for speaking out in support of young Muslim female students who wanted to wear head covering to college.⁴²

In 2021, Ayyub launched three crowdfunding campaigns to help Covid relief work. From June onwards, according to her, she began to receive multiple notices from the Income Tax Department. Though she provided all details and requested that donations not be taxed but allowed to be used for relief work, the monies were treated as her income, and she was taxed heavily for the same. The IT department also provisionally attached her father's and her bank account, as well as a Fixed Deposit of Rs 50 lakhs which had been earmarked for setting up of a field hospital for Covid patients. These were later unfrozen and made available for use.

In August 2021, the Mumbai zonal office of the ED initiated an enquiry against her under the Foreign Exchange Management Act, 1999 to examine the three crowd funding campaigns. She cooperated with the enquiry fully providing them all documents and financial details. In September 2021, a complaint was lodged in Ghaziabad, which also falls under BJP-ruled Uttar Pradesh for alleged offences under Sections 403, 406, 418 and 420 IPC read with Section 66D of the Information Technology (Amendment) Act, 2008 and Section 4 of the Black Money Act. This FIR was stated to be the basis on which the ED registered a complaint under Sections 45 and 44 of the Prevention of Money-laundering Act, 2002 in the Court of the Special Judge at Ghaziabad.⁴³

That the proceedings against Ayyub are vindictive can be clearly seen from the fact that the original complainant in the case is one Vikas Sankrityayan, the founder of an NGO called the 'Hindu IT Cell' who lodged the FIR with That such a complaint was taken cognisance of points to the partisan nature of the Enforcement Directorate itself.

The key charge against Ayyub is that she appropriated and utilised funds to the tune of Rs 2.69 crore for herself and also contravened the Foreign Contribution Regulation Act (FCRA). In its prosecution complaint filed against Ayyub before the special PMLA court, the ED alleged that "These funds were not used for the intended purpose and instead, used for the creation of assets for herself. Ayyub has tried to project these funds as untainted and thus has laundered the funds received from the general public." It further accused Ayyub of receiving these funds from foreign countries without any approval or registration from the government which is required under the Foreign Contribution Regulation Act, 2010."

In a public rebuttal to the ED's charges, Ayyub has claimed that she received no foreign funds and also provided a detailed break up of the funds received and spent. The ED on February 10 had attached over Rs 1.77 crores of bank deposits to Ayyub in connection with its probe.⁴⁴

41 <https://www.npr.org/2023/01/03/1146590204/rana-ayyub-india-online-harassment-threats>

42 <https://thewire.in/government/karnataka-fir-journalist-rana-ayyub-comments-hijab-protectors>

43 For details see, <https://indiankanoon.org/doc/170521569/>

44 <https://www.hindustantimes.com/india-news/ed-attaches-rs-1-77-cr-belonging-to-rana-ayyub-alleges-money-laundering-101644505963529.html>

In March 2022, Ayyub was stopped at Mumbai airport when she was about to board a flight to the UK to deliver a speech at the International Centre for Journalists on the basis of a look out circular issued by the ED just hours before she was to board the flight. She was allowed to travel a few days later after she won an appeal against the decision in the Delhi High Court and got permission.⁴⁵

Ayyub's challenge to the Ghaziabad's special court's powers to summon her in the case on grounds of jurisdiction was dismissed by the Supreme Court in February 2023. Ayyub has vowed to continue her work as a professional journalist despite the "smear campaign" against her.

III. Reprisals in Uttar Pradesh

1. Afreen Fatima: Lawless Bulldozer Law

Afreen Fatima is a prominent young Muslim activist, and secretary of the Fraternity Movement. She has been at the forefront of mobilizations against anti-Muslim policies of the government, including the discriminatory Citizenship Amendment Act (CAA) passed in 2019. Hailing from Prayagraj (formerly Allahabad) in the northern state of Uttar Pradesh, Fatima studied at the prestigious Jawaharlal Nehru University in Delhi, where she was elected a councillor in the Students Union on the plank of "Unity of the Oppressed" in 2019.⁴⁶ Prior to that, she was also elected President of the Women's College at Aligarh Muslim University.⁴⁷ In 2021, Fatima formed a study circle 'Muslimah Allahabad' with her younger sister Sumaiya Fatima, an undergrad from Allahabad University. The study circle has 70 girls as members at present. They have held sessions on various topics, including 'Braving hijab ban and state repression' and another forthcoming on 'Curating conversations: Moving forward' on faith, politics and identity." She also organised a protest against hijab ban with 300 women ⁴⁸

In June 2022, following the disparaging remarks against Islam made the spokespersons of the ruling BJP, protests erupted across the country. Swift diplomatic backlash from Muslim countries – also significant trading partners for India, led to the removal of the offending spokespersons from their position. However, coming in the wake of incessant hate rhetoric, and biased policies (such as hijab ban in the then BJP ruled southern state of Karnataka etc), the protests continued, with clashes with the police reported in many cities.⁴⁹

As the protests turned violent after Friday prayers on 10 June, the chief minister of Uttar Pradesh, notorious for encouraging extra judicial killings⁵⁰, and meting out summary justice through bulldozing houses belonging to offenders from minority backgrounds, exhorted the police to "take such action against those guilty that it sets an example so that no one commits a crime or takes law into their hands in future". He further ordered the police to invoke the National Security Law, 1980, and the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

45 <https://scroll.in/latest/1021082/journalist-rana-ayyub-allowed-to-travel-abroad-by-delhi-high-court>

46 <https://www.newslaundry.com/2019/09/13/tectonic-shift-bapsa-fraternity-alliance-in-the-jnu-elections>

47 <https://newsd.in/amusu-election-2018-womens-college-students-union-results-declared/>

48 <https://www.outlookindia.com/magazine/national/eye-of-the-falcon-shaheen-bagh-and-beyond-magazine-183668>

49 <https://www.aljazeera.com/gallery/2022/6/12/photos-muslims-in-india-stage-protests-over-prophet-comments>

50 https://indianexpress.com/article/express-exclusive/an-express-investigation-since-2017-when-yogi-took-charge-over-one-killed-every-fortnight-in-police-encounters-8627532/?utm_source=whatsapp&utm_medium=social&utm_campaign=WhatsappShare

While accusing Muslim activists of planning the violence in Prayagraj, the UP police have described a violent agitation in the Muslim neighbourhood of Atala in the two first information reports (FIRs) they have registered naming them. They said that a mob of thousands with children took to the streets, throwing stones, shooting pistols, and lobbing bombs, gravely injuring three security personnel and destroying police motorcycles. Residents disputed the police version of events, claiming the violence mainly was stone-throwing, not the “pistol-and-bomb” violence the police claimed.⁵¹

According to news reports, close to 300 people were arrested across the state, and in Prayagraj, several cases were filed in two police stations, Khuldabad and Kareli. One case has been registered against 36 identified and 1,000 unknown people. The so-called key conspirators named by the police – student activists, political workers belonging to opposition parties – included those who played a prominent role in the anti-CAA protests of 2019.⁵²

Among those named was the father of Afreen Fatima, Javed Mohammad, a businessman, a well known activist and leader of the Welfare Party of India. The same evening, at around 8.30 pm., the police arrived at their two-storey house and arbitrarily detained Mr. Mohammad. No arrest warrant was presented by the police, nor his location disclosed to the family. A few hours later, after midnight, police returned to their residence and again, absolutely arbitrarily, without producing a warrant and without disclosing the location, detained Fatima’s mother and younger sister. This was in clear breach of the procedure for arrest of women laid down in CrPC⁵³ as well as a catena of judgments of various high courts.⁵⁴ The Bombay High Court has held that any deviation from prescribed procedure for arrest of women would result in disciplinary proceedings for the officers who had made the arrests.”⁵⁵

Afreen’s mother and sister remained in illegal detention for two days. The police returned yet again at 1.30 am to Fatima’s house and attempted to detain her as well. However she managed to rebuff them citing the above quoted law on arrest of women. She promptly sent a complaint to the National Commission of Women, also under the present Union government, but it is not known if the NCW has responded to her midnight pleas for securing her safety and protection from illegal detention.

On the same intervening night of 10 and 11 June 2022, a notice issued by the Prayagraj Development Authority was pasted on their residence warning of the imminent demolition of their house which was termed as an “illegal structure”. The fact that barring Afreen, the other family members were in the patently illegal detention of the police, and that it was a weekend prevented them from taking any legal action to forestall this demolition. Furthermore, as family members later pointed out, the notice was issued in the name of Afreen’s father whereas it is her mother who is the owner of the property; secondly, the house tax and all water and electricity bills had been diligently paid, so there was no question of any illegality.⁵⁶ On June 12, 2022, in the morning, Meses. Parveen Fatima and Sumaiya Fatima were released without

51 <https://article-14.com/post/lack-of-evidence-in-cases-against-prayagraj-activists-for-june-violence-all-involved-in-anti-govt-dissent--62da0dfe8fa1b>

52 <https://thewire.in/rights/prayagraj-protests-anti-cao-uttar-pradesh-police>

53 S. 46(4), CrPC, inducted by the virtue of S. 6 of Criminal Amendment Act, 2005, provides for the basic procedures regarding the arrest of a woman. It reads as mentioned hereunder:

□ Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

54 *Roshan Beevi v. Joint Secretary, Government of Tamil Nadu*, 1984 G.L.J. 134.

55 *Kavita Manikar v. CBI*, 2018 SCC OnLine Bom 1095.

56 <https://indianexpress.com/article/cities/lucknow/prayagraj-demolition-records-show-activist-wife-is-owner-paid-water-bill-tax-7968099/>

charges and on condition that they would not return to their own house. Meanwhile, the Uttar Pradesh government's bulldozers arrived in full force and tore down the house that had stood for decades in the presence of the District Magistrate and Senior Superintendent of Police.⁵⁷ According to news reports, the family was not even allowed to take their personal belongings before the house was bulldozed.(ADD) The demolition was broadcast live by news media. Though no incriminating material was seen in the course of the demolition, the police later claimed that pistols and firearms had been recovered from the house, which has somehow miraculously escaped the media's attention. Later, Afreen's poster with the slogan, "when injustice becomes law, resistance becomes duty" as objectionable literature.⁵⁸

The demolition was widely assailed by opposition and civil liberties groups as an affront to Rule of Law and the Constitution.⁵⁹ Several of India's leading newspapers noted with concern the rampaging injustice of bulldozers unleashed in Uttar Pradesh and called upon to the courts to take suo moto notice.⁶⁰

On the same day of the demolition, the Prayagraj Senior Superintendent of Police stated in a media interview that the mastermind of the Friday protests, Javed Mohammad had been arrested. However, neither him nor Afreen Fatima, her mother, or sister took part in the Friday protests. Furthermore, on June 10, 2022, Javed Mohammad had issued a public appeal on social media praying for peace and advocating for dialogues with the government to resolve the issue. His whatsapp messages show him to be actively working to prevent violence, according to his lawyer.⁶¹

Javed Mohammad was initially arrested under First Information Report (FIR) No. 118 of Khuldabad police station of Prayagraj, registered on June 11, 2022, and his name was later added under FIR No. 176 of Kareli police station of Prayagraj, registered on the same day. Both FIRs, include sections of the Indian Penal Code pertaining to "unlawful assembly", "rioting", "disturbing peace and communal harmony", "attempt to murder", "detering public officials", "criminal intimidation" and "criminal conspiracy". The FIRs also cite alleged violations under provisions from: the Explosive Substances Act 1908; the Juvenile Justice (Care and Protection of Children) Act 2015; and Prevention of Damage to Public Property Act 1984. On July 16, he was also booked him under the draconian National Security Act, 1980, which allows the state to detain a person without charges for 12 months.⁶²

In the above-mentioned interview, the Prayagraj Senior Superintendent of Police further claimed that Afreen Fatima was involved in "notorious activities" and that the "father-daughter duo propagate propaganda" (sic).(ADD) Referring to Fatima, he said, "Javed's daughter who is a student in Delhi is also involved in such activities... If needed, we will contact Delhi Police and send our teams."

These are clearly acts of reprisals against Afreen Fatima and her family for speaking up and defending the rights of the minorities in Uttar Pradesh.

57 <https://indianexpress.com/article/cities/lucknow/up-bulldozers-prayagraj-violence-afreen-fatima-house-7965836/>

58 <https://theprint.in/india/will-fight-in-court-home-razed-defiant-afreen-fatima-says-dad-not-behind-prayagraj-violence/999657/>

59 <https://thewire.in/communalism/rule-of-law-lost-in-rubble-protests-disbelief-after-up-authorities-raze-afreen-fatimas-house>

60 For a collection of editorials, see here: <http://www.sacw.net/article14931.html>

61 <https://www.rediff.com/news/interview/kk-roy-in-up-the-police-is-executioner-and-judge/20220614.htm>

62 <https://article-14.com/post/lack-of-evidence-in-cases-against-prayagraj-activists-for-june-violence-all-involved-in-anti-govt-dissent--62da0dfe8fa1b>

2. Sadaf Jafar: A poet and actor behind bars

The poet-actor and activist Sadaf Jafar was arrested on 19 December 2020 in Lucknow on a slew of charges including rioting, arson and vandalism. She was participating in a protest against the new citizenship laws when violence broke out. Video footage of the protest posted by Jafar on her facebook Live showed Jafar urging the police to take action against stone pelters and hooligans for vandalism. Instead, she was arrested from the protest site. She was the only woman among the over 200 people arrested in Lucknow. Contrary to police claims that there was video footage of Jafar indulging in violent protest, her sister Nahid alleged after her arrest that Jafar “was unarmed and never raised any slogan against the government. She was all for upholding the Constitution that governs the law of the land.” The video clips posted by Jafar showed her urging the police to take action while she herself was being abused by male police before a police woman held her hand and took her into custody.⁶³

Jafar was released on bail only 19 days later. Upon her release, she shared the details of the horrific abuse she suffered in police custody. She alleged that she was beaten up by male cops in the police station. She was kicked in the stomach and taunted as a ‘Pakistani’ for belonging to the minority faith.

Recalling her nightmare, she said, “they kept abusing me and said that “I eat here, but loyalties are there.”. It was horrible. They always addressed me as ‘tum log’ [you people]. More than the thrashing, it was the word ‘tum log’ that pained me. I come from a family of freedom fighters. At the police station, one female constable pulled my hair, slapped me and scratched my face. None of the police officers, from constable to seniors, wore badges on their uniform.”

In contravention of rules about arrest and detention, especially of women arrestees⁶⁴, the police failed to inform her family despite her repeated requests.⁶⁵ When Jafar started to bleed in the night, the police denied her even sanitary napkins even as her trousers were blood soaked.⁶⁶ Jafar was taken to a civil hospital only when she requested for it after feeling uneasy following the physical mistreatment. Even so, the doctors present did not attend to her bleeding wounds, nor raised the alarm about her obvious mistreatment in police custody, as they are required to by law.

In early January 2020, the court of Additional Sessions granted bail to Jafar and other co-accused as the court held that the state police had singularly failed to furnish any proof of the involvement of the accused in vandalism and arson during the protest.⁶⁷

In fact it would appear that the only intention of the state agencies was to break the back of the movement by targeting the articulate, prominent faces such as Jafar’s. The police action was tantamount to deliberate and willful humiliation, hurt and demoralization of a woman human rights defender. The fact that it was not merely lower level constabulary that acted in

63 <https://www.hindustantimes.com/lucknow/sadaf-jafar-lone-woman-arrested-for-lucknow-anti-cao-protests/story-Pa8l1auvWTiCHTMn4d6GWL.html>

64 <https://www.legalserviceindia.com/legal/article-6019-arrest-of-women-in-india-procedure-and-rights.html>

65 <https://www.indiatoday.in/india/story/sadaf-jafar-release-from-jail-pakistani-anti-cao-1634624-2020-01-07>

66 <https://www.outlookindia.com/website/story/india-news-i-felt-like-a-jew-in-hitlers-germany-sadaf-jafar-on-police-detention/345729>

67 <https://www.news18.com/news/india/lucknow-court-grants-bail-to-congress-worker-sadaf-jafar-and-ex-ips-officer-sr-darapuri-2445661.html>

such a manner but senior police officers as well as the medical establishment indicates state involvement at the highest quarters.

IV. Repeated assaults on a Dalit Feminist for entering a forbidden temple

On September 28th 2018, a 4:1 majority held that the traditional prohibition of women of menstruating age at the Sabarimala Temple was unconstitutional.⁶⁸ Thereafter, on 22 December 2018, Bindu Ammini, a Dalit feminist, lawyer and academic from Kerala, and three other women attempted to enter Sabarimala Temple but were stopped by protesters. Ammini and the three women went on hunger strike to protest the alleged lack of police protection afforded to them despite the Supreme Court's order.

While, Ammini successfully entered the Sabarimala Temple in January 2019, her house was reportedly raided by people associated with Sabarimala Karma Samiti and other organisations, in retaliation, and she was forced to go into hiding.⁶⁹ On 18 January 2019, the Supreme Court ordered the authorities to grant full protection round the clock to Ms. Ammini, which was however withdrawn by the Kerala government when the Supreme Court agreed to a review of its own decision in November 2019.

When Ammini and other activists reportedly visited the Ernakulam City Commissioner's Office in late November 2019 to seek police protection to visit the shrine again, she was attacked by pepper spray outside of the Commissioner's Office, subsequent to which she was hospitalized.⁷⁰

Yet again, on 18 December 2021, Ammini was attacked in a hit-and-run incident by an autorickshaw at approximately 9:45PM in Kozhikode, and suffered severe injuries to her head, mouth and teeth.⁷¹ Her allegation that this was a planned attack on her by persons associated with right-wing political groups, was echoed by UN Special Rapporteur on Human Rights Defenders and other UN experts to the Government of India on 9 February 2022.⁷²

The communication was sent to the Government of India after the emergence of videos and images of brutal physical assault on Ammini on 5 January 2022. In the visuals, a man could be seen grabbing her and beating her. He was seen attempting to choke her and pushing her head to the ground while she tried to defend herself. ⁷³ The UN Experts made their communique public after receiving no reply from the Indian Government. In 2023, as a mark of protest against the sustained attacks on her, Ammini left Kerala to move to Delhi.⁷⁴

V. Teetsa Setlavad: Hounding and Persecution of one of the most prominent critics of the Prime Minister

Possibly India's most well known Human Rights defender, Teesta Setlavad is an activist, journalist, founder of the magazine *Communalism Combat*, and recipient of innumerable human rights awards. Teesta Setlavad was arrested on a slew of charges including forgery,

68 <https://www.cnn.com/2018/09/28/asia/india-temple-women-banned-intl/index.html>

69 <https://time.com/5513055/kanakadurga-sabarimala-hindu-temple-family-abandon/>

70 <https://indianexpress.com/article/india/sabarimala-protests-live-updates-bindu-ammini-trupti-desai-6137095/>

71 <https://www.thehindu.com/news/national/kerala/activist-injured-in-accident-alleges-murder-attempt/article37990997.ece>

72 <https://srdefenders.org/india-repeated-attacks-against-woman-human-rights-defender-ms-bindu-ammini-joint-communication/>

73 <https://www.thenewsminute.com/article/bindhu-ammini-who-entered-sabarimala-assaulted-public-its-not-first-time-159552>

74 <https://www.thenewsminute.com/article/ostracised-all-sectors-bindu-ammini-who-entered-sabarimala-leaves-kerala-176850>

criminal conspiracy and insulting criminal proceedings to cause injury on 25 June 2022. Her arrest triggered a wave of outrage, with journalists, activists and opposition politicians calling it the latest attempt by the government to stifle dissent. Global rights groups such as Human Rights Watch and Amnesty International also condemned her arrest.⁷⁵ Setalvad has long been in the cross hairs of the BJP ruled government, whether at the state or the central level, and innumerable attempts have been made to intimidate her with criminal cases in the past, as outlined below.

The Modi-government's antipathy towards Setalvad can be traced to her long and tireless campaign for justice for the victims of communal violence which rocked the western Indian state of Gujarat in 2002. This was the worst carnage witnessed in independent India, in which official estimates of those killed over three days of raging violence, were pegged at above 1000. The bulk of those dead were minority Muslims. Unofficial sources though reckoned much higher casualties. The then chief minister of Gujarat, and now the Prime Minister of India, was accused widely of condoning, if not actively encouraging the brutal violence unleashed against the minorities in the state. In fact, in 2004, the Supreme Court declared him a modern day Nero, who looked away while Muslims were being butchered under his watch.

Setalvad, along with other prominent activists, founded the Centre for Justice and Peace immediately in the aftermath of the violence,⁷⁶ and under its auspices, The Concerned Citizens Tribunal –Gujarat 2002 was initiated. The Tribunal was headed by the late Justice V.R. Krishna Iyer, Justice PB Sawant and Justice Hosbet Suresh, who carried out a detailed investigation into the Gujarat violence, collecting and examining 2,094 oral and written testimonies, both individual and collective, from victim-survivors and also independent human rights groups, women's groups, NGOs and academics. The Tribunal released a three volume report in November 2002. It concluded in no uncertain terms:

“The post-Godhra carnage in Gujarat was an organised crime perpetrated by the state's chief minister and his government. The state's complicity is evident from the various acts of commission and omission of the government and its officials.”

CJP began to litigate in various courts against the alleged complicity of the Chief Minister and government of Gujarat state in the riots that had broken out shortly before. They were successful in persuading the Supreme Court of India to transfer the "Best Bakery case" to the neighbouring state of Maharashtra in 2004.⁷⁷ Since its inception, the organization managed to secure 120 convictions in 68 cases involving nine major riot incidents - a record for convictions for any religious riot in India

The Background

From the start, Setalvad has battled allegations of witness tutoring (although the Supreme Court absolved her of any wrongdoing and instead charged her accuser with perjury);⁷⁸ misappropriation of funds, allegations which she and CJP maintained were motivated with a view to harassing her persistent efforts for justice⁷⁹ and in which the Supreme Court granted her protection from arrest;⁸⁰ and further extended it in 2018.⁸¹ Setalvad's and her husband's

⁷⁵ <https://www.bbc.com/news/world-asia-india-62722597>

⁷⁶ <https://web.archive.org/web/20130825025907/http://cjp-online.org/about-us.htm>

⁷⁷ *Teesta Setalvad & Anr vs State Of Gujarat & Ors* on 12 April, 2004. 10 SCC 88.

⁷⁸ <https://www.rediff.com/news/2005/aug/29best.htm>);

⁷⁹ https://web.archive.org/web/20140112214145/http://articles.timesofindia.indiatimes.com/2014-01-11/india/46089318_1_interim-bail-funds-case-leesla-setalvad)

⁸⁰ <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-gives-protection-from-arrest-to-teesta-setalvad-till-february-19/articleshow/46231561.cms?from=mdr>

⁸¹ <https://www.hindustanimes.com/india-news/supreme-court-gives-leesla-setalvad-protection-from-arrest-till-may-31/story-ztPg2lw83jXQJPgQDy1d8N.html>

personal accounts were frozen by the state agencies, and the Supreme Court turned down her petition to de-freeze them.⁸²

In 2015, one year after Modi assumed prime ministership following his Party, the Right-wing BJP's sweep of the national polls, she was also accused of violations under FERA, for accepting funds from the Ford Foundation without permission from the Home Ministry. The CBI raided her offices, despite her active cooperation with the agency.⁸³ It filed the chargesheet in 2017.⁸⁴

The civil society in India condemned the allegations against her, and the clamour for her 'custodial interrogation' as misuse of the legal process and government agencies in order to punish her for directly naming and calling for the prosecution of Narendra Modi.⁸⁵

The Protest petition and her Arrest:

One of the ways in which Setalvad has sought accountability from Modi for the 2002 carnage has been through her unstinted her support to Zakia Jafri, the widow of former Member of Parliament, Ehsan Jafri who was killed in the bloody carnage at Gulberg Society. In June 2006, Mrs. Jafri filed a police complaint against the then Gujarat Chief Minister, the high ranking officers of his civil and police establishment, as well as Right wing political leaders, accusing them of deliberate and willful dereliction of duty, bureaucratic inaction, police complicity, and hate speech, in a well orchestrated conspiracy of unleashing violence.

Following police's inaction, she moved the Gujarat High Court urging the court that her complaint be treated as an FIR, and a wider investigation into the larger conspiracy behind the 2002 violence be launched. On being dismissed by the High Court, Ms. Jafri took the same prayer to the Supreme Court, which had instituted a Special Investigation Team (SIT) headed by R.K. Raghavan, former director of CBI by then, and handed over Ms. Jafri's petition to the SIT for investigation.⁸⁶

The SIT filed two reports, one in 2010 before the Supreme Court, and a Closure Report before the Magistrate in 2012. Both reports concluded that while several allegations made by Ms. Jafri in the original complaint filed in 2006 were true and credible, the evidence was not prosecutable. This was taken by the media and the BJP to be imply a 'clean chit' to the then Chief Minister and his government. Besides, the Supreme Court-appointed amicus Curiae Raju Ramachandran's Report to the apex court unambiguously called for Modi's prosecution for offences under Section 153(a), 153(b) and 166 of the Indian Penal Code.⁸⁷

82 <https://timesofindia.indiatimes.com/india/sc-dismisses-teesta-setalvads-petition-to-unfreeze-her-bank-accounts/articleshow/62079470.cms>

83 <https://www.thehindu.com/news/national/CBI-raids-Teesta's-Setalvad's-premises-in-Mumbai/article60326638.ece>

84 <https://indianexpress.com/article/india/cbi-files-chargesheet-against-teesta-setalvad-over-alleged-fcra-violation/>

85 <https://timesofindia.indiatimes.com/blogs/toi-edit-page/hounding-of-teesta-setalvad-attempts-to-arrest-her-and-subject-her-to-custodial-interrogation-are-uncalled-for/>; also see <https://scroll.in/article/658902/the-real-story-behind-the-corruption-charges-against-activist-teesta-setalvad>

86 <https://www.thehindu.com/todays-paper/Court-to-SIT-probe-plea-against-Modi/article16625027.ece>

87 Note by Amicus Curiae, in the Supreme Court, SLP (CRL) No. 1088 of 2008, in the Matter of Jakia Nasim Ahasan and Anr vs. State of Gujarat, dated 20.10.2011. See also, <https://www.thehindu.com/news/national/Proceed-against-Modi-for-Gujarat-riots-amicus/article12828442.ece>

Following the SIT report, the trial court observed that SIT had not found any evidence for the prosecution of Modi or any of the top bureaucrats or police officials and had recommended that the investigation be closed.⁸⁸ Thereafter, Ms. Jafri filed a protest petition against the SIT report and the conclusions drawn by the magistrate court based on that.⁸⁹

The SIT opposing the protest petition accused Setalvad of making false complaints against the Chief Minister.⁹⁰ Ultimately, Ms. Jafri and CJP filed a Special Leave Petition before the Supreme Court in 2018 challenging the Magistrate's dismissal of her Protest Petition, and the Gujarat High Court's 2017 conclusion that the Magistrate had dealt with Jafri's protest petition on substantial merits. Further, the petition reiterated its plea for investigation into the 2002 conspiracy. In its judgment – anonymous with no author –, the Supreme Court not only upheld the clean chit given by the magistrate and the SIT to the Gujarat government, but also, in a departure from established norms and practices, came down heavily on Teesta Setalvad accusing her of exploiting a widow's sentiments.

Further, the SC derided the dogged pursuit of justice by Setalvad and Ms. Jafri as such:
... At the end of the day, it appears to us that a coalesced effort of the disgruntled officials of the State of Gujarat along with others was to create sensation by making revelations which were false to their own knowledge. The falsity of their claims had been fully exposed by the SIT after a thorough investigation. Intriguingly, the present proceedings have been pursued for last 16 years (from submission of complaint dated 8.6.2006 running into 67 pages and then by filing protest petition dated 15.4.2013 running into 514 pages) including with the audacity to question the integrity of every functionary involved in the process of exposing the devious stratagem adopted (to borrow the submission of learned counsel for the SIT), to keep the pot boiling, obviously, for ulterior design. As a matter of fact, all those involved in such abuse of process, need to be in the dock and proceeded with in accordance with law.”

That the court was borrowing the words from the SIT's lawyer was openly acknowledged. This summary dismissal of the possibility of conspiracy was a far cry from the Supreme Court's earlier characterization of Modi as a modern day Nero.

Immediately after the shocking indictment from the SC, fresh cases of forgery, criminal conspiracy and insulting criminal proceedings to cause injury, were filed against her and former DGP Gujarat, R.B. Sree Kumar and ex police officer Sanjeev Bhatt.⁹¹ Hours after the country's Home Minister Amit Shah openly proclaimed that she had falsified information, Setalvad was detained in Mumbai, and then taken to Ahmedabad by the Gujarat ATS (Anti Terrorist Squad) of the state. Setalvad questioned the ATS's role in investigating a forgery complaint and alleged that she was being intimidated and was roughed up by the ATS.

Former judges, lawyers and other eminent citizens wrote to the CJI urging him to clarify that the SC's comments in its judgment were not meant to have adverse consequences. They expressed their agony that the police had used the judgment as a pretext to deny Setalvad her liberty. They also pointed the procedural irregularities inherent in her arrest:

It is settled law, that any adverse action against a person can be commenced only after giving due notice. The court has neither issued notice of perjury nor contempt, to

⁸⁸ <https://www.thehindu.com/news/national/sit-finds-no-proof-against-modi-says-court/article3300175.ece>

⁸⁹ <https://www.thehindubusinessline.com/news/national/zakia-files-protest-petition-against-sit-clean-chit-to-modi/article23104497.ece>

⁹⁰ <https://www.hindustantimes.com/india/modi-did-not-incite-riots-sit/story-Wwavg3Ri5spfsWToFTK6eL.html>

⁹¹ <https://www.livemint.com/news/india/gujarat-2002-riots-what-led-to-activist-teesta-setalvad-s-arrest-now-read-here-11656255380737.html>

anyone in these proceedings. In fact, the court has issued no specific notice whatsoever, warning of any adverse consequences.”⁹²

One senior Supreme Court lawyer called the judgment unconstitutional and immoral, and a “crossing of all lines”⁹³, another ruled that it would shake the confidence of the people in the institution itself.⁹⁴

It is to be noted that Setalvad was denied bail by the trial court while the High Court refused to grant her interim bail, posting the matter in September. It was only in early September that a three judge special bench of the Supreme Court granted her relief on consideration of the fact that she “is a woman” who had already undergone seven days of custodial interrogation. (the Hindu 3 sept 2022) The filing of chargesheet by the Gujarat SIT within days of Setalvad being released on interim bail illustrates that the state intends to pursue its vendetta against all those who seek accountability and justice.

VI. Weaponizing draconian laws against WHRDs:

1. The Bhima Koregaon Case:

Professor Shoma Sen and Sudha Bharadwaj were arrested within months of each other in mid 2018, and are part of the Bhima-Koregaon-16 (or BK 16) — trade unionists, intellectuals, lawyers, poets — who were arrested in the aftermath of the caste violence in Bhima Koregaon in Maharashtra, and charged under various sections of the Indian Penal Code, 1860, and the Unlawful Activities Prevention Act, 1967.

They stand accused of provoking caste-based riots in Bhima Koregaon in January 2018, where Dalit groups had gathered to commemorate the 200th anniversary of the battle of Bhima Koregaon in which the Dalit soldiers emerged victorious. When violent clashes broke out a day after the Elgar Parishad event, the police refused to arrest the Right wing leaders who had openly threatened Dalit participants, but filed another FIR against the organizers of the Elgar Parishad under different sections of the IPC. Between June and August 2018, the Pune police conducted multiple raids across different states and arrested eventually 16 human rights activists and lawyers. This was condemned as a “massive crackdown on government critics”.⁹⁵

None of those arrested had been named in the FIR filed by the Pune Police earlier that year, nor were they present at the Elgar Parishad event. The police claimed that those arrested were “Left wing extremists” or Urban Naxals, who had links with the banned Communist Party of India (Maoist). In a vicious media blitz that accompanied the arrests, news channels also stated that the accused were conspiring to kill Prime Minister Narendra Modi.

When a new state government was installed in Maharashtra in November 2019, it promised to completely review the case, with the Deputy Chief Minister even raising suspicion over the quality of evidence.⁹⁶ In 24 January 2020, the BJP led central government arbitrarily

⁹² [2086/news-updates/letter-chief-justice-of-india-suo-moto-clarify-zakia-jafri-judgment-adverse-consequences-202646](https://www.enalsar.informaticsglobal.com/2086/news-updates/letter-chief-justice-of-india-suo-moto-clarify-zakia-jafri-judgment-adverse-consequences-202646))

⁹³ <https://enalsar.informaticsglobal.com/2086/videos/supreme-court-crossed-all-lines-dushyant-dave-on-action-against-teesta-setalvad-upholding-pmla-video-interview-206136>

⁹⁴ <https://enalsar.informaticsglobal.com/2086/top-stories/no-hope-left-in-supreme-court-senior-advocate-kapil-sibal-205953>

⁹⁵ <https://www.aljazeera.com/news/2018/8/28/india-outrage-after-activists-arrested-over-alleged-maoist-links>

⁹⁶ *Bhima Koregaon: Deputy CM raises doubts in case against 10 activists, seeks proof in 15 days*, SCROLL.IN (Jan 24, 2020), <https://scroll.in/latest/950929/bhima-koregaon-deputy-cm-raises-doubts-in-case-against-10-activists-seeks-proof-in-15-days>.

transferred the case from the Pune Police to the central agency, NIA, purportedly to retain control over the investigation and prosecution.

Shoma Sen:

Professor, and Head of the Department of English at the Rashtrasant Tukadoji Maharaj Nagpur University, Shoma Sen was arrested on 6 June 2018. A respected intellectual, she has been active in the fields of post-colonialism and women's studies for several decades. In an essay titled 'The Village and the City: Dalit Feminisms in the Autobiographies of Baby Kamble and Urmila Pawar', she looked at the ways in which mainstream feminism has tended to ignore the problems of caste, resulting in a distinct Dalit feminism that acknowledges patriarchal oppression from outside and within communities. Prof. Sen was often called upon to deliver lectures and talks, and was a familiar figure at women studies conferences.⁹⁷

Prof. Sen was an engaged academic in the best sense of the term, even opening up her own home to women struggling to survive and make ends meet. She was an active member of the national collective, Women Against Sexual Violence and State Repression (WSS), and an early member of the Nagpur-based Stree Chetna. She later founded the Committee against Violence on Women (CAVOW) and edited its magazine, Stree Garjana. The organisation took part in fact finding visits to examine the implementation of the Armed Forces Special Powers Act (AFSPA) in Manipur after Thangjam Manorama's brutal killing in 2004 and the allegations of sexual violence by the Salwa Judum in South Bastar in Chhattisgarh. CAVOW also played a role in organising legal aid for many women political prisoners during the early 2000s.

Prof Sen was due to retire on August 1st 2018, her 60th birthday, with the release of a festschrift in her honour, an edited volume of writings by several friends and colleagues. Instead, she was suspended by her university following her arrest.

Sen and several other accused continue to remain behind bars as the trial in the case is yet to start, even after five years from the time of arrest. Meanwhile, bail continues to be denied to her despite repeated applications, on grounds of failing health,⁹⁸ merit and default bail which she should have secured automatically when the investigating agency failed to file the chargesheet within 90 days as mandated by law.⁹⁹ In August 2022, even though the Supreme Court directed the NIA court to frame the charges and begin the trial forthwith¹⁰⁰, it is yet to commence. Meanwhile, the NIA continues to blame the accused for the delay.¹⁰¹

In 2021, The Washington Post reported that devices of at least two defendants in the case had been compromised by hackers who deposited dozens of incriminating documents in the devices. This malware campaign targeted individuals beyond those facing charges in the case. Separately, the Pegasus Project investigation by The Post and 16 other news organizations revealed that some of the defendants were included on a list of surveillance targets for spyware supplied by the Israeli firm NSO Group to governments or their agencies. The Indian government has neither confirmed nor denied that it is an NSO client. In June,

⁹⁷ For a personal profile see, https://www.huffpost.com/archive/in/entry/bhima-koregaon-as-modi-hails-teachers-on-twitter-professor-shoma-sen-languishes-in-jail_in_5c11fdade4b0508b21370c54

⁹⁸ <https://www.livelaw.in/news-updates/shoma-sens-interim-medical-bail-rejected-bhima-koregaon-violence-nia-court-182140>

⁹⁹ <https://timesofindia.indiatimes.com/city/nagpur/3-years-after-plea-bombay-hc-sends-shoma-sens-bail-case-to-nia-court/articleshow/97068409.cms>

¹⁰⁰ <https://www.hindustantimes.com/india-news/segregate-trial-against-15-arrested-in-bhima-koregaon-case-supreme-court-to-nia-101660830700661.html>

¹⁰¹ <https://www.livelaw.in/top-stories/bhima-koregaon-case-delay-in-starting-trial-not-due-to-us-nia-tells-supreme-court-222838>

Wired reported links between the hacking campaign and Indian police, who did not respond to the report.¹⁰²

We must remember that this is a case in which the prosecution is relying largely on electronic communication allegedly found in the electronic devices of the accused.

When Sen and Rona Wilson, another accused moved the Bombay High court for a stay on the proceedings, their release and an investigation by a specially constituted team to look into the the hacking reports by Arsenal Consulting, the state counsel argued that these charges should be raised at the stage of trial.

Sen and her fellow accused are caught in a circular trap: their bail pleas are rejected, the trial is stalled, evidence of wrongdoing corroborated by multiple forensic labs ignored for any relief. It appears that Shoma Sen, 64 years now, ailing and in pain, is condemned to prison, with no possibility of release in sight.

Sudha Bhardwaj:

Sudha Bhardwaj was arrested on 28 August 2018. She has spent the last three decades of her life in public service. She is a human rights lawyer - known fondly as the peoples' lawyer — with a special focus on protecting the rights of the indigenous people in the state of Chattisgarh. Bhardwaj has represented families of victims of extra judicial killings and represented adivasis and activists before the National Human Rights Commission. She serves as the general secretary of Chattisgarh Peoples' Union for Civil Liberties (PUCL), and member of Women against Sexual Violence and State Repression (WSS) as well as the founding member of the Indian Association of People's Lawyers (which is affiliated with the International Association of People's Lawyers).¹⁰³

Three years after her arrest, Bhardwaj was granted default bail on technical grounds in December 2021.¹⁰⁴ Bhardwaj's lawyers argued that the Sessions Court was not competent to extend the detention by 90 days when the agency failed to file the chargesheet as it was not notified as a special court under the National Investigation Agency (NIA) Act.¹⁰⁵

While accepting this argument, however, the NIA court expressly prevented the other accused from benefitting from the same logic, and simultaneously imposed stringent bail conditions on her.¹⁰⁶ She is prohibited from travelling out of Mumbai, or speaking about her case to the press (even while the investigating agency continues to have free access to a pliant media). This means that she cannot return to her work as a professor of law at a leading university in the national capital, Delhi, or go home to Faridabad on the outskirts. She is also unable to visit her daughter who's studying psychology in Bhilai, more than 1,000km (620 miles) away. No gathering except for near relatives is allowed for. For someone who has lived a life of public service, this condition is akin to exile. In a media interview immediately after her release, she

¹⁰² _____ . Read Arsenal's full report here: https://docs-cdn-prod.news-engineering.aws.wapo.pub/publish_document/1a7aac27-b627-47ae-9ec4-160f5d9174d0/published/1a7aac27-b627-47ae-9ec4-160f5d9174d0.pdf

¹⁰³ _____

¹⁰⁴ <https://www.aljazeera.com/news/2021/12/8/india-activist-sudha-bharadwaj-bail-bhima-koregaon-uapa-dalits>

¹⁰⁵ <https://www.livelaw.in/top-stories/supreme-court-sudha-bharadwaj-default-bail-bhima-koregaon-nia-bombay-high-court-187093?infinite-scroll=1>

¹⁰⁶ <https://indianexpress.com/article/cities/mumbai/sudha-bhardwaj-mumbai-byculla-jail-bail-conditions-7663810/>

rued that "from a smaller jail I am now living in a bigger jail, which is Mumbai." She has to find work and a place she can afford.¹⁰⁷

2. Hidme Makram: An Adivasi fighter against sexual violence

Hidme Markam is an Adivasi indigenous woman from Chhattisgarh. Belonging to the Gond tribe, she was born and raised in the Dantewada village of Burgum, which has been at the centre of the State-Maoist armed conflict. Growing up in abject poverty, Hidme has witnessed personally the marginalisation and persecution that her community suffers from. Hidme worked as a cook in a public school before resigning to dedicate herself to full time activist work. An unlettered woman, Hidme was trusted by the villagers as their own, and in time emerged as a notable activist and voice for the rights of tribal groups in the region.¹⁰⁸

She has spoken out against both state and Maoist excesses in equal measure.¹⁰⁹ Even so, the Chhattisgarh Police accuses her of affiliation to Maoist groups – as indeed they charge every voice opposed to the state. Her sister refuted the allegations stating that her sister "didn't even want to get married as she worked for the rights of women and Adivasis. She is a social-worker and wasn't doing anything else! I am also involved with Swasthya Vibhag. We are merely doing social work for people's welfare."¹¹⁰

Hidme has been at the forefront of several campaigns and has doggedly pursued evidence of wrong doing in order to mount legal challenges to wrongful incarcerations, repression – especially sexual repression – by security forces, and expropriation of tribal lands and resources through coercion. Her colleagues in the civil liberties movement have emphasised the significance of Markam's fight against the mining behemoth Adani. In 2019, Markam organised a week-long protest where thousands congregated against Adani's mining work in the state's iron-rich Bailadila Hill region as part of the Nandraj Pahad (mountains) movement. Locals regard the mountains as sacred territory and have battled corporate efforts to remove the region's forests.¹¹¹

Markam along with Soni Sori – herself a WHRD who has faced prolonged incarceration in the past – and Sujit Karma set up the Jail Bandi Rihai Manch (JBRM) to campaign for the release of Adivasis held in long pre-trial detentions in jails on spurious charges. Within a short time, the movement reached the remotest corners of the state, drawing an unprecedented response from villagers who would walk for kilometres to participate in the Manch's rallies or meetings, according to Soni Sori. Their tireless efforts resulted in the institution of the seven-member Justice Patnaik Committee by the newly incumbent Congress government in the state on 8th March 2019.¹¹² The mandate of the Committee was to review the cases against tribals, which ranged from the state excise law, to National Security Act and UAPA, for alleged involvement

¹⁰⁷ <https://www.bbc.com/news/world-asia-india-59933451>

¹⁰⁸ <https://article-14.com/post/why-hidme-markam-a-voice-for-adivasis-is-in-prison>

¹⁰⁹ <https://thewire.in/rights/hidme-markam-chhattisgarh-arrest-adivasi-rights>

¹¹⁰ Sabah Gurmat, *An Adivasi Activist Against Corporate Greed and State Violence: A Profile of Hidme Markam*, Polis Project, <https://www.thepolisproject.com/read/an-adivasi-activist-against-corporate-greed-and-state-violence-a-profile-of-hidme-markam-2/>

¹¹¹ <https://www.thehindu.com/news/national/other-states/call-to-free-hidme-markam/article34380693.ece>

¹¹² <https://www.hindustantimes.com/india-news/chhattisgarh-releases-terms-of-reference-for-review-of-1200-cases-against-tribals/story-Lmc27k2KA9vqGAoA9JLGPJ.html>

in Maoist-related insurgency. Markam's and her comrades' stand was vindicated when the Patnaik Committee recommended the withdrawal of 627 cases.¹¹³

It is a tragedy however that Makaram was arrested the day after the formation of the Patnaik Committee was announced, when she was participating in a two-day long programme to celebrate and mark international women's day in Sameli, Dantewada. The programme centered on the custodial sexual violence and deaths of two Adivasi women, Pande Kowasi and Nande. The police claimed that Kowasi, arrested on charges of being a Maoist, had died by suicide, a claim which was forcefully refuted by her family. Sameli had been witness to another brutal rape and suicide previously: a young Adivasi woman named Nande who was discovered comatose beside a canal committed suicide after her calls for justice went unheeded. Her family claimed that she had been raped by security forces, but all attempts at a proper investigation were thwarted by the police. According to activists, Markam oversaw the creation of a mural honoring Nande. The mural was later demolished by the police in order to prevent residents from remembering her struggle and story.¹¹⁴

This programme was disrupted when the Paramilitary force personnel, aided by the local district police and District Reserve Guard (DRG), suddenly appeared and took Markam away in an SUV. Sujit Karma who was also present at the time of the arrest, stated that it was intended to "send a message to the locals, instil fear, and have a chilling effect on them."

This arrest was made in connection to an armed attack on a police team in 2016, under the Indian Penal Code (Sections 302 and 307 – Murder and Attempt to Murder), Arms Act and Explosives Act. A press statement issued by the police soon after the arrest stated that she was also "wanted" in five other cases since 2016, including one filed under the stringent UAPA, being investigated by the central agency, National Investigating Agency (NIA). The police claimed that she carried a reward of Rs 1 Lakh, and labelled her a "dreaded Naxalite".¹¹⁵

Despite persistent harassment and threats from government and Maoist insurgents, Hidme had continued to advocate for indigenous peoples' and marginalised groups' rights. Her comrades say that Markam knew that her arrest was inevitable, as every tribal activist confronting the state has met with the same fate.¹¹⁶

The Cases Fall apart:

For two years, Markam remained lodged in the women's wing of Jagdalpur Central Jail until one by one all the cases crumbled for want of evidence. Four of the five cases were being investigated and prosecuted by the state police, and the fifth by the NIA. Markam has been acquitted in four – including the one filed by NIA under UAPA – and granted bail in the last. In each of these cases, the courts found that there was no evidence which indicated Markam's involvement in murder or "terrorist attack"¹¹⁷

Markam was finally released on 5 January 2023, having spent 22 months in prison. Her prolonged incarceration weakened the campaign for release of indigenous prisoners from jails, as Markam was pivotal in evidence gathering and documentation. Besides, her arrest itself cast a pall of criminalization over the movement.

¹¹³ <https://timesofindia.indiatimes.com/india/chhattisgarh-drops-594-cases-against-tribals-in-maoist-hit-areas/articleshow/83251202.cms>

¹¹⁴ <https://scroll.in/article/990264/four-deaths-and-an-arrest-mark-advansi-womens-struggles-with-bastar-police>

¹¹⁵ <https://iprights.org/index.php/en/all-news/india-arrest-and-detention-of-hidme-markam-an-advansi-human-rights-activist-from-the-gond-tribe-in-chhattisgarh>

¹¹⁶ <https://thewire.in/rights/hidme-markam-chhattisgarh-arrest-advansi-rights>

¹¹⁷ <https://thewire.in/rights/hidme-markam-activist-acquit-jail>

3. Anti-CAA Protestors in Delhi:

As the women-led protest against CAA in Shaheen Bagh grew, it also gave rise to similar sit ins in different parts of the country as well as the capital city of Delhi. In response to a call for a nationwide protest, anti-CAA women protesters in North East Delhi blocked the road outside the Jaffrabad Metro Station on the night of February 22, 2020. From the morning of February 23, Right wing leaders, many of them affiliated to the ruling party BJP, gave open calls for mobilization and direct action against this group. Shortly after speeches to incite violence against the protestors were given, stone pelting broke out between pro-CAA and anti-CAA groups in the area.

Very quickly, it panned out into full-blown communal violence between Hindus and Muslims. According to reports, while mobs clashed and caused damage to each other, Muslim identity, ranging from individuals to homes, businesses, and places of worship, was targeted very specifically, resulting in the death of 40 Muslims and 13 Hindus. Several Muslim places of worship were also targeted and destroyed.

The Delhi Police has registered a total of 758 First Information Reports (FIRs) pertaining to the violence. Early in the investigations, in March 2020, the Delhi Police Special Cell registered a First Information Report, FIR No. 59/2020 (FIR 59), claiming that there was a pre-planned conspiracy to instigate the violence which involved terrorist acts, and invoked the UAPA. The key node of this conspiracy, according to the police, were the anti-CAA movement and its protagonists.

Subsequently, on April 19, 2020, Section 13 (punishment for unlawful activities), Section 16 (punishment for terrorist act), Section 17 (punishment for raising fund for terrorist act) and Section 18 (punishment for conspiracy) of the UAPA were added to FIR 59.

A total of 21 persons were arrested and 18 persons have been charged under this FIR. These are largely students, activists, political leaders belonging to the minority group, who were active in the anti-CAA protests. For the first time perhaps, such a large number of women human rights defenders have been charged under the anti-terror law in a single FIR. These include: Ishrat Jahan, Gulfisha Fatima, Safoora Zargar, Devangana Kalita, and Natasha Narwal. These arrests were made at the peak of the first wave of COVID 19 pandemic, even as the Supreme Court was ordering the decongestion of prisons.

Ishrat Jahan is a lawyer registered with the Bar Council of India, and a former municipal councillor affiliated to the opposition political party, Indian National Congress.¹¹⁸ She secured bail in the UAPA case after spending more than two years in prison.¹¹⁹ She was granted interim bail briefly for her marriage in January 2021.¹²⁰

Safoora Zargar, was a research scholar at Jamia Milia Islamia University, and the head of the media cell of the Jamia Coordination Committee, the joint body of all students groups active in the anti-CAA movement. Zargar was pregnant at the time of her arrest.

¹¹⁸ Iyer, A. S. (24 July 2021). ["'Driven, tolerant and Warm': Who Is Ishrat Jahan, beyond being a UAPA Accused?'](#). *The Quint*.

¹¹⁹ Mohan J., Anand (14 March 2022). ["'Northeast Delhi riots: Ex-Congress councillor Ishrat Jahan granted bail in UAPA case'](#). *Indian Express*.

¹²⁰ Iyer, Aishwarya S (17 June 2020). ["'Want to Live in the Moment': Inside UAPA Accused Ishrat's Wedding'](#). *The Quint*.

Gulfisha Fatima is a Business Management graduate, a student activist, and a history enthusiast. Her family shared with the media that she wanted to pursue a doctorate in history.¹²¹

Devangana Kalita is a student and gender rights activist, an alumna of London School of Economics, who was pursuing a PH.D. at the Centre for Women's Studies, Jawaharlal Nehru University. Along with her co-accused Natashar Narwal, she had founded Pinjar Tod (Break the Cage), a movement to challenge discriminatory rules and regulations for girl students in hostels and paying guest accommodation.¹²²

Natasha Narwal is an Indian student activist, human rights defender. She is also affiliated to a Pinjra Tod Collective.¹²³

A pattern clearly emerges:

Firstly, charges under UAPA were filed only after the accused activists began to secure bails in IPC related offences as courts found that there was no material to substantiate the charge of rioting or assault against them. For example, Ishrat Jahan was granted bail in FIR No. 44/2020 (Jagatpuri Police Station) on 21 March 2020, and was rearrested the same day under FIR 59. Gulfisha was arrested on 11 April 2020, and Safoora Zargar on 13 April 2020. Safoora had been granted bail in a matter on 13 April after two days of police custody.¹²⁴ Arrested on 23 May 2020, Davangana Kalita was released on bail.

Secondly, the FIR 59 and chargesheets filed under it do not inspire confidence.

A. While FIR 59 focuses on the over-arching "larger conspiracy" to cause riots, it refers to many instances of violence that also feature in IPC FIRs, and there are overlaps in the allegations and the material canvassed in both sets of FIRs. According to a citizen's enquiry committee headed by retired judges of the Indian Supreme Court and High courts, which undertook a comparative exercise, significant contradictions and inconsistencies can be found between the two.

B. The chargesheet filed in FIR 59 shows that identical disclosure statements have been filed by different accused, leading one to doubt their veracity

C. The evidence of a so-called conspiracy is sought to be supported by witness statements which were filed very belatedly., sometime much after they had first deposed without mentioning any conspiracy. These belated statements, often by protected witnesses, led the afore mentioned Citizen's Committee to cast aspersions on the authenticity of these witness statements.

D. There is lack of particularised charges against the accused; the attempt is simply to criminalise the activists and human rights defenders. This has been noted in the court orders granting bail to some of the accused. For example, the Delhi High Court in its judgment dated June 15, 2021 passed in *Natasha Narwal v. State*, observed:

"Allegations relating to inflammatory speeches, organising of chakka jaam, instigating women to protest and to stock-pile various articles and other similar allegations, in our view, at worst, are evidence that the appellant participated in organising protests, but we can discern no specific or particularised allegation, much less any material to bear out the allegation, that the appellant incited violence, what to talk of committing a terrorist act or a conspiracy or act preparatory to the commission of a terrorist act as understood in the UAPA."

¹²¹ <https://thewire.in/law/delhi-riots-new-charges-multiple-bail-rejections-keep-gulfisha-fatima-lodged-in-jail-for-3-years>

¹²² <https://www.frontlinedefenders.org/en/profile/devangana-kalita>

¹²³ <https://www.uscirf.gov/religious-prisoners-conscience/forb-victims-database/natasha-narwal>

¹²⁴ See *Uncertain Justice: A Citizens' Committee Report on Northeast Delhi Violence 2020*, October 2022, Delhi, p. 126. Copy on record.

Zargar, who was pregnant at the time of her arrest, spent close to three months lodged in the over-crowded prison, while the pandemic raged. The jail authorities held her in solitary confinement – a practice outlawed by India’s Supreme Court if inflicted without the accompaniment of fair procedure¹²⁵– purportedly to protect her and her unborn child from COVID 19. The authorities insisted that this did not constitute solitary confinement as she was allowed to speak to her family at least once!¹²⁶

Zargar’s bail application was rejected multiple times, because according to the courts, there was “prima facie” evidence of Zargar’s involvement in a “conspiracy”.¹²⁷ These orders denying her bail were widely criticized by constitutional and legal scholars for stretching facts and substituting metaphors for actual law.¹²⁸

In the Delhi High Court, where Zargar’s lawyers challenged the denial of bail partly on grounds of her pregnancy, the Delhi Police argued that her pregnancy and medical condition did not warrant any exception, and even went so far as to claim that “In fact, more care and caution are being practised in jail so far as social distancing norms are concerned that would be available to her outside the jail premises”¹²⁹ However, as domestic and international clamour grew for Zargar’s release, the Solicitor General of India, who has appeared to argue on behalf of the Delhi Police – pointing to the significance of this conspiracy trial -- agreed to Zargar’s bail on humanitarian grounds.¹³⁰ Zargar was finally released on bail in the UAPA case on 24 June 2020.

According to the American BAR Association, Zargar’s pretrial detention does not meet the pretrial detention requirements under International law, including treaties to which India is a State party. Interpreting the ICCPR, the UN Human Rights Council has clarified that “detention pending trial must be based on an individual determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence, or the recurrence of the crime.” Zargar’s detention in her state of pregnancy and high blood pressure condition, as well as the lack of particularized charges of participation in any acts of violence rendered her detention unnecessary as well as afool of international laws.¹³¹

The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (also known as the Bangkok Rules) also advocates non-custodial measures for pregnant women in the pretrial stage.¹³²

4. Disha Ravi: Climate Change Activist under fire

¹²⁵ Sunil Batra v. Delhi Administration (1978) 4 SCC 409.

¹²⁶ <https://theprint.in/india/as-arrested-and-pregnant-jamia-student-is-slandered-online-husband-keeps-faith-in-judiciary/414238/>

¹²⁷ Pasha, Seemi (4 June 2020), "[Safoora Zargar Denied Bail as Judge Finds Prima Facie Evidence of 'Conspiracy'](#)", *The Wire (India)*, retrieved 5 June 2020

¹²⁸ Bhatia, Gautam (5 June 2020), "[In Denying Bail to Safoora Zargar Delhi Court Stretches Facts and Uses Metaphors in Place of Law](#)", *The Scroll (India)*, retrieved 13 June 2020

¹²⁹ Banka, Richa (22 June 2020), "[Safoora Zargar was one of main conspirators, pregnancy no ground for bail: Delhi Police tells court](#)", *Hindustan Times*,

¹³⁰ Gunasekar, Arvind (23 June 2020). Ghosh, Deepshikha (ed.). "[Pregnant Jamia Student Safoora Zargar Gets Bail In Delhi Riots Case](#)". *NDTV*.

¹³¹ https://www.americanbar.org/content/dam/aba/administrative/human_rights/safoora-zargar-preliminary-report.pdf

¹³² https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

Disha Ravi, founding member of the Fridays For Future India Organisation and the face of climate change activism in India, was arrested from her home in southern city of Bengaluru in February 2021 by the Delhi Police, at the height of farmers' protest.¹³³ She was twenty two at the time. Mumbai-based young woman lawyer Nikita Jacob and engineer Shantanu Muluk were also arrested along with Ravi as co-accused in the conspiracy. They were charged with editing and sharing a "toolkit" on social media related to the farmers' protest. The toolkit called for global action and physical action on 26th January which India celebrates as its Republic Day.¹³⁴ Ravi was accused by the Delhi Police of preparing a "toolkit" along with Poetic Justice Foundation, which according to the police is a secessionist Khalistani organisation (advocating a separate Sikh State), and of circulating it as a Google doc. The government and parts of media sought to delegitimise the anti farm law agitation as a global conspiracy to defame India, and create unrest in the country. The police claimed that the violent clashes between protesting farmers and police on 26th January were a direct fallout of the dissemination of the tool kit.

The so-called toolkit was also shared by Swedish climate change activist Greta Thunberg on her social media accounts, where she expressed her solidarity and support for the farmers' movement.

When Ravi was produced before the court, she was first denied the opportunity to be represented by a lawyer of her choice. Taking cognisance of media reports, the Delhi Commission for Women (which does not fall under the Central government) issued a notice to the Delhi Police to explain the circumstances of Ravi arrest, as well as to explain why she was not provided a lawyer of her choice.¹³⁵

Opposing Ravi's bail plea, additional solicitor general (ASG) S.V. Raju, appearing for the Delhi Police, alleged, "This was not just a toolkit. The real plan was to defame India and create unrest here. Through her lawyer, Ravi responded that "if solidarity is a crime, I am better off in jail".¹³⁶

A Delhi court granted Ravi bail ten days after her arrest, terming the evidence produced by police as scanty and sketchy, the court said the police had failed to produce any evidence of a direct link between Ravi and pro-Khalistan activists of 'Poetic Justice Foundation' (PJF), not even an iota of evidence connecting her to the perpetrators of the violence on January 26. It also observed that there nothing on record suggests that the activist subscribed to any secessionist idea.¹³⁷

According to media reports, the probe against Ravi would be dropped as neither Google nor Zoom had responded to the queries of the Delhi Police cyber cell. No chargesheet was ever filed against Ravi and her co-accused.¹³⁸

¹³³ <https://www.thehindu.com/news/national/22-year-old-activist-disha-ravi-arrested-for-sharing-farmers-protests-toolkit-with-greta-thunberg/article61751508.ece>

¹³⁴ <https://www.livemint.com/news/india/explainer-why-indian-police-arrested-disha-ravi-a-22-yr-old-climate-activist-11613468790546.html>

¹³⁵ <https://timesofindia.indiatimes.com/city/delhi/toolkit-case-delhi-commission-for-women-sends-notice-to-delhi-police-seeks-detailed-report-on-disha-ravis-arrest/articleshow/80986264.cms>

¹³⁶ Read here for exchange in court: _____

¹³⁷ Read full order of grant of bail here: _____

¹³⁸ <https://indianexpress.com/article/cities/delhi/disha-ravi-toolkit-case-with-probe-making-no-headway-closure-report-may-be-an-option-7590653/>

5. **Nodeep Kaur**, a Dalit (formerly untouchable caste) trade unionist affiliated to the Mazdoor Adhikar Sangathan (MAS), works predominantly with industrial workers. Kaur was a factory worker herself in the industrial belt of Kundli Haryana, who had been actively campaigning for the implementation of minimum wages, payment of overtime to workers and equal pay for equal work for women workers.

Kaur became the face of the worker-farmer solidarity in the course of the farmers agitation against the three farm laws, when she rallied industrial labour in support of the agitation. In December, Kaur was reportedly fired from her factory without being paid wages, for participating in the farmers' protest.¹³⁹ On 12 January 2021, when Kaur and her comrades went to the factory to demand their due payments, they were allegedly attacked by the bouncers employed by the factory. The police however claim that it was Kaur who beat up the police. Kaur was arrested the same day, and a number of FIRs filed against her on a wide range of sections including unlawful assembly, assault and criminal force, trespass, extortion, snatching, criminal intimidation, and attempt to murder. These are serious charges, and if convicted Kaur could be sentenced upto 14 years in prison. The basis of these FIRs are statements made by an inspector of police, and the accountant of the company that refused to pay workers their dues, leading them to protest.

Her lawyers and family have claimed that Kaur was subjected to assault, including sexual assault in police custody, and that her medical report showed wounds in her genitals¹⁴⁰

Kaur spent 46 days in jail after the Sonipat Court, Haryana, denied bail to Kaur on 2 February 2021 in one of three FIR's on the grounds that the allegations are serious in nature, but got bail in other two FIR's after that.^[7] Subsequently she was released upon securing bail in the third case also. Upon her release, Kaur reiterated charges of torture, and also added that the police had used caste slurs, referring to her Dalit status.

Speaking to media, Kaur said:

"When I was arrested, they first took me to a deserted road in the Kundli area where they beat me. Then they took me to the Kundli thana (police station) and beat me there as well and then finally they took me to Karnal Jail. I was beaten up by male police personnel, there was no female constable around. They beat me up on my private parts. My medical report is testimony to the fact that I was beaten up brutally," she claimed.

Further, the Kundli Station House Officer Ravi Kumar reportedly said to her that "Dalits can't rise so high in society that they become the voice of the people. Who gave you the right to speak for everyone?"¹⁴¹

Kaur's arrest and treatment in custody shows in sharp relief the perils of being a woman HRD belonging to the lowest caste strata in society.

¹³⁹ <https://www.bbc.com/news/world-asia-india-56071706>

¹⁴⁰ <https://www.hindustantimes.com/india-news/nodeep-kaur-all-you-need-to-know-about-jailed-dalit-activist-101612689302379.html>

¹⁴¹ <https://theprint.in/india/out-on-bail-dalit-activist-nodeep-kaur-accuses-police-of-using-caste-slurs-torture/613133/>

Conclusion:

1. The years under review (2020 to present) have seen intensification in repression on women human rights defenders, with increasingly draconian laws such as UAPA, being deployed to silence them.
2. Arbitrary detention and arrests under these special laws render bail very difficult, keeping these activists behind bars for years. In many cases such as the Bhima Koregaon case, or the Delhi violence case, despite arrests being made as far back as in 2018 and 2020 respectively, trials are yet to commence. The stalled and protracted nature of trials, and the impossibility of bail during the pretrial period imply that process is indeed the punishment.
3. It was also noted that women HRDs who come from marginalized sections, especially those belonging to minority or indigenous groups were particularly vulnerable to state action.
4. From the sample studied in this report. It is also becoming evident that these WHRDs are subject to toxic, brutal and crushing online abuse, forcing many of them to withdraw from public online spaces.
5. Further, this online abuse is tolerated by the state agencies, and no or minimal action is taken against the abusers. However, as seen in the past – most starkly in the case of the brazen assassination of journalist Gauri Lankesh, a well known critic of Right wing majoritarian politics, by radicalized Hindutva activists¹⁴² – the shift from online to real, physical violence can be swift. This is especially true if there is impunity for the former.
6. Bodies such as National Human Rights Commission, National Commission for Women, National Minorities Commission have at best been mute spectators, making no effort to come to the aid of these WHRDs, even when appeals were made to them directly, as in the case of Afreen Fatima analysed in this report.
7. The targeting, harassment, torture, violence, detention, arrest and other punitive action is designed to not only punish these women human rights defenders, but also serves to dissuade and intimidate others.
8. All of the above actions militate against fundamental rights and freedoms guaranteed under the Indian Constitution. More specifically , these actions against WHRDs directly contravene their freedom to assembly, association and expression, right to freedom of movement, and right to life and liberty.

Overall,

9. The rise in attacks on WHRDs are part of the larger legal (UAPA, PMLA, CAA) and non legal armature (online abuse, vigilantism) being put in place by a progressively authoritarian state, and its many non-state ideological affiliates.
10. The attack on intrepid journalists such as Rana Ayyub, or the young photo journalists from Kashmir, should be seen in the context of the sliding scale of press freedom in India, with the country now being ranked a lowly 161st in the World Press Freedom Index 2023.
11. The abuse, detention and arrests of WHRDs enfeebles democracy, and will have a long term chilling effect on free political speech and right to dissent and protest, which is the cornerstone of a vibrant democracy
12. The rampant use of stringent laws to arrest and silence critics runs afoul of India's stated commitment and international obligations under the International Covenants on Human Rights and other relevant instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, and Bangkok Rules.
13. The Indian Government has singularly failed to uphold the Resolution (68/181) of the UN General Assembly, and in fact, its actions demonstrate precisely the patterns of violations that the UN urged the WHRDs be protected from.

142 https://www.cjr.org/special_report/gauri-lankesh-killing.php