



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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September 21, 2022

To,
Mr. Indrajeet Kumar,
Focal Point - Human Rights Defenders & Deputy Registrar,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi – 110 023
Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – Bihar: Fabricated charges against social and political activist Mr. Torab Niyazi.

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a forum of Human Rights Defenders for human rights defenders. It endeavours to initiate actions on behalf of human rights defenders under threat or with security concerns.

We are writing to express our grave concern regarding the allegations framed by the Bihar Police against Mr. Torab Niyazi.

Source of Information:

- Communication with the HRDA North Regional Coordinator
- Communication with local HRDs
- Media Reports

Date of Incident:

August 22, 2022

Place of Incident:

Rohtas, Bihar

The Perpetrators:

- Police Personnel of Rohtas Police Station, Rohtas, Bihar
- Mr. Subodh Kumar, SHO Rohtas Police Station

About the Human Rights Defenders:

Mr. Torab Niyazi is a social and political activist. He has been intervening in issues

concerning social justice in Rohtas, Bihar for a long time. He is also associated with Jan Adhikar Party and currently serves as its youth president.

Background of the Incident:

On August 18, 2022, Mr. Torab Niyazi received a notice issued in his name by the Rohtas Police Station under Section 107 (Security for keeping the peace in other case) of the CrPC. In this notice, he was asked to furnish a surety bond of Rs 50,000 or some property worth the same amount in order to maintain peace.

Mr. Niyazi asked Mr. Pradeep, the constable who had delivered the notice, whether anyone else had been served the same notice. Mr. Pradeep showed him a list of 44 people from the village, who had been served with such a notice.

Mr. Torab Niyazi started a Facebook Live,¹ where he read out the list of 44 people. He asked Mr. Pradeep to take the notice back with him and tell the station in-charge, Rohtas Police Station, that he refused to take it. He added that those named in the notices would visit the police station the following day and court arrest and that notices under Section 107 CrPC without any basis would not be tolerated.

On the same day Mr. Torab also wrote a post on Facebook²

“Cr.PC 107 नोटिस के खिलाफ कल 3 बजे रोहतास थाना पहुंच कर हम अपनी गिरफ्तारी देंगे और सवाल करेंगे की आखिर हमारे गांव के लोगों का कसूर क्या है जो हर बार हर पर्व से पहले और उसके बाद एक नोटिस थमा दिया जाता है।”

(We will submit ourselves to be arrested at Rohtas police station at 3 pm tomorrow against the CrPC 107 notice and we will raise the question ‘what is the fault of the people of our village, who are given notice every time before and after every festival?’)

Details of the Incident:

On August 19, 2022, Mr. Torab Niyazi and some others named in CrPC 107 notices visited Rohtas police station. Mr. Niyazi demanded that their names be removed from the list and had a debate and discussion with the station in-charge about this.³

On August 22, 2022, FIR No. **348/22** was registered against Mr. Torab Niyazi at Rohtas police station for his posts on Facebook. The FIR was registered under sections of Indian Penal Code **341**-Punishment for wrongful restraint, **173**-Preventing service of summons or other proceeding, or preventing publication thereof, **174**-Non-attendance in obedience to an order from public servant, **179**-Refusing to answer public servant authorised to question, **186**-Obstructing public servant in discharge of public functions, **187**-Omission to assist public servant when bound by law to give assistance, **188**-Disobedience to order duly promulgated by public servant, **189**-Threat of injury to public servant, **504**-Intentional insult with intent to provoke breach of the peace, **505(b)**- with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to

¹ <https://www.facebook.com/100002624216859/videos/499113592023274/>

² <https://www.facebook.com/khan.m.torab/posts/pfbid02HAUB65UJ1hwgAeBk1CoY9QdDMfwJfqDAj1tRo5mYJsQc4V6rpp1HfoNDnZsVFsbUl>

³ <https://www.facebook.com/100002624216859/videos/370413488444124/>

commit an offence against the State or against the public tranquility **385**-Putting person in fear of injury in order to commit extortion, **387**-Putting person in fear of death or of grievous hurt, in order to commit extortion, **379**-Punishment for theft, and **353**-Assault or criminal force to deter public servant from discharge of his duty.

On August 27, 2022, Mr. Torab Niyazi wrote a letter to Director General of Police, Bihar stating that an FIR had been registered by Mr. Subodh Kumar, station in-charge, Rohtas police station, by misinterpreting his Facebook post. He demanded a fair investigation and accused Mr. Subodh Kumar of threatening him. On August 29, 2022, a delegation of Jan Adhikar Party met Superintendent of Police, Rohtas and demanded a fair investigation into the matter.

We believe that this FIR is completely arbitrary, illegal, and is in serious violation of constitutionally guaranteed rights to free assembly and expression as it has been done to gag democratic dissent against the police and administration.

The FIR has been registered on the basis of a Facebook post against another draconian police actions - the notices served under 107 CrPC. Such notices have been routinely used by police across the country to stifle dissent.

The Indian Constitution gives its citizens the right to peaceful protest. It's a breach of Article 19 (1) (a) and (b) of the Indian Constitution which guarantees to all its citizens the right to freedom of speech, assembly and expression.

Freedom to expression is crucial to the work of HRDs. The right to freedom of opinion and expression encompasses three different aspects: 1) the right to hold opinions without interference; 2) the right of access to information; and 3) the right to impart information and ideas of all kind. On the aforesaid it is stated that Declaration on Human Rights Defenders seeks to protect the monitoring and advocacy functions of defenders by recognizing their right to obtain and disseminate information relevant to the enjoyment of human rights.

The Supreme Court in *Shreya Singhal v. State* (2015) had observed that there are three concepts which are fundamental in understanding the reach of this most basic of human rights which are discussion, advocacy and incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. Article 21 of the Constitution ensures to all its citizen right to life – a life to live without fear, intimidation, harassment or mental torture. Article 19 (1) (b) of the Constitution guarantees the right to peacefully assemble and it is evident that the acts of police by criminalising a peaceful protest by the HRDs is violative of this fundamental right.

Article 19 of the Universal Declaration of Human Rights (UDHR) also proclaims the right to freedom of expression, which includes freedom “to seek, receive and impart information and idea through any medium regardless of frontiers”. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) sets forth the right to freedom of opinion, expression and information.

The Declaration on Human Rights Defenders, adopted in 1998 by the UN General

Assembly states that governments are duty bound to “take all necessary measures to ensure the protection of human rights defenders by the competent authorities against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary actions as a consequence of their efforts to promote human rights.”

Article 9 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms states that “the State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.”


Therefore, the Indian government is bound by its international legal obligations to ensure that all activists and human rights defenders are provided with security against harassment or intimidation so that they may enjoy their constitutional right to due process, life and liberty under Article 21, and the right to freedom of speech and expression and peacefully assemble under Articles 19(1)(a) and (b) of the Constitution of India.

Appeal:

We appeal to the Hon’ble Commission to urgently take action and:

- Direct the Director General of Police of Bihar to initiate an immediate, independent, thorough, transparent, and impartial investigation into the above-mentioned incident and submit a report within four weeks.
- Depending on the result of the inquiry, direct the Director General of Police of Bihar to take stringent action against police personnel who have been responsible for fabricating charges on Mr. Niyazi.
- Direct the Director General of Police of Bihar to ensure that the HRDs are not subject to any harassment and intimidation by the police.
- Recommend that the FIR against the HRDs as well as the notices served under the 107 CrPC are immediately withdrawn.
- Direct the Director General of Police of Bihar to initiate steps towards quashing of fabricated charges against the HRD.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Henri Tiphagne', with a horizontal line drawn underneath it.

Henri Tiphagne
National Working Secretary