



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/UA/North/UP/02/02/2024

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To
Mr. Indrajeet Kumar,
National Focal Point - Human Rights Defenders & Assistant 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 – Lucknow: Illegal arrest of youtuber Mr. Achal Siddharth Yadav by officials of Lucknow police.

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 concern regarding the illegal arrest of HRD Mr. Achal Siddharth Yadav for his YouTube videos, in violation of his Right to Freedom of Expression.

Source of Information:

- Communication with the HRDA North Regional Coordinator
- Communication with HRD's family
- Media Reports

Date of Incident:

January 03, 2024

Place of Incident:

Lucknow, Uttar Pradesh

The Perpetrators:

Police personnel of Lucknow, Uttar Pradesh

About the Human Rights Defender:

Mr. Achal Siddharth Yadav (46) is a social and political activist and Bahujan thinker. He also runs a blog by the name of "Achal Siddharth Yadav "Bahujan Chintak" and a YouTube channel "Jaago Panch" which deals with social evils in society.

Details of the incident:

On January 03, 2024 at 12:39pm Mr. Achal Siddharth Yadav posted a post on his Facebook account in Hindi- "the police has picked me up."

Later in the day, at 4:00 pm an FIR (number 0047), was registered against Mr. Siddharth Yadav at Krishna Nagar police station, Lucknow. The FIR registered under section **295-A-** was to punish deliberate and malicious acts intended to outrage the religious feelings of any class by insulating its religion or the religious beliefs of Indian Penal Code. It was mentioned in the FIR that Mr. Siddharth Yadav has made indecent comments on Hindu Gods and Goddesses on social media YouTube.

The Hon'ble Supreme Court, in D.K.Basu Vs State of West Bengal, has laid down specific guidelines required to be followed while making arrests. Multiple violations of the **DK Basu Guidelines of arrest and detention** were done by the police during Mr. Yadav's arrest making the arrest illegal. No arrest memo was given to Mr. Yadav at the time of arrest, nor signed by a witness nor anyone informed of his arrest: *Violation of Guideline 2: (That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.)*. *Violation of Guideline 3 (A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place).* *Violation of Guideline 4 and 5 (The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.)* *Violation of Guideline 6 An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also*

disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.)

Same day, at 07:00 pm after a medical examination Mr. Achal Siddharth Yadav was sent to Lucknow Jail. On January 05, 2024, He got bail from the district court and was released from prison on January 06, 2024. HRDs of Lucknow have said that this case has been registered against Mr. Achal Siddharth Yadav as part of a political conspiracy so that he stops exposing the shortcomings of the government and the evils of the society.

We believe that this is a violation of the fundamental rights of freedom of speech and expression enshrined in the Indian Constitution article 19(a). According to Article 19 of the Universal Declaration of Human Rights (UDHR), everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

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. A free press and active civil society are essential to ensure the public's right to know, so that governments and institutions can be held accountable. The protection of journalists and ending impunity for attacks against them, is a priority for safeguarding freedom of expression.

In *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501, page 518:
“Freedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved and tyranny is erected on its ruins.” [Benjamin Franklin, On Freedom of Speech and the Press, from the Pennsylvania Gazette, November 1737.]

The Supreme Court in *Pooja Pal v. Union of India*, (2016) 3 SCC 135, page 178 held that:-**“95. Adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties,**

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:

The Hon'ble Commission should urgently:

- Direct the Director General of police of Uttar Pradesh to quash the FIR against Mr. Achal Siddharth Yadav and submit a report to the NHRC within four weeks.
- Direct the Director General of police of Uttar Pradesh to conduct a free fair and urgent investigation on the arrest of Mr. Yadav and submit the report to the Commission within four weeks.
- Take steps to conform to the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9,1998 which recognizes the legitimacy of the activities of human rights defenders, to carry out their activities without fear of reprisals.

Looking forward to your immediate action in this regard

Yours sincerely,



(Henri Tiphagne)

National Working Secretary