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Report on Situation of Human Rights Defenders (HRDs) in India

Submitted by: Asian Forum for Human Rights and Development (FORUM-ASIA) and Human Rights Defenders' Alert-India (HRDA) with co-sponsorship of additional 2697 organisations and 1457 individuals (full list available in annex 1).

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About the submitting organisations:

- A.** The Asian Forum for Human Rights and Development (FORUM-ASIA) is a network of 85 member organisations across 23 countries, mainly in Asia. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity development and solidarity actions in Asia and beyond. It has consultative status with the United Nations Economic and Social Council and the ASEAN Intergovernmental Commission on Human Rights.
- B.** Human Rights Defenders Alert (HRDA) – India is a national platform of human rights defenders for human rights defenders in India. Founded in 2010, it has more than 3000 individuals and organisations as members. HRDA initiates urgent action for the protection of human rights defenders under threat and attack.
- C.** This report is submitted by FORUM-ASIA, HRDA and FORUM-ASIA’s member organisations in India.
- D.** This joint submission is endorsed by additional 2697 organisations and 1457 individuals, including 2219 organisations and 1032 individuals that have opted to stay anonymous for fear of reprisals (full list available in annex 1).

Report on the situation of Human Rights Defenders (HRDs) in India

1. Introduction

- 1.1. This report predominantly focuses on the situation of human rights defenders in India since its last Universal Periodic Review (UPR) in 2017. This report was prepared based on research from credible sources of information including the government, international organisations, media reports, academic publications drawn from the public domain. In addition, inputs from experts and human rights defenders from all over India were sought through an online national consultation that was jointly conducted by FORUM – ASIA and HRDA on October 11, 2021, held for the purpose of this submission. Around 110 participants, all HRDs and experts working substantially on the various thematic human rights, took part in the consultation and many inputs and remarks were consolidated during this process for drafting this report.
- 1.2. India had received recommendations to amend the Foreign Contribution (Regulation) Act, protect human rights defenders effectively against harassment and intimidation and also to enact a legislation to protect human rights defenders in the last UPR.¹ India noted these recommendations.²

2. Human Rights Defenders in India: Constitutional and Legal Framework

- 2.1. Any individual or organisation working for the protection and promotion of human rights in a peaceful manner could be termed as a human rights defender (HRD).³ India is bound by international law standards including the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the General Assembly in 1998.⁴
- 2.2. The Constitution of India guarantees to all its citizens fundamental rights including the right to life and equal protection of the law. It also guarantees fundamental freedoms including the right to freedom of expression, freedom of

assembly and association subject to reasonable restrictions. Indian law does not recognize HRDs as a specially protected category of persons or provide any specific guarantees or safeguards.

3. Status of HRDs in India: Overview

- 3.1. HRDs face harassment and threats from state actors and non-state actors in India. They are subjected to physical attacks, criminal prosecution, intimidation, judicia, harassment, surveillance, intimidation, threats, and other forms of harassment. The state uses its machinery including the police and other investigative/law enforcement agencies to criminalise, arbitrarily detain and harass HRDs by abusing the law or selectively applying it.⁵ Private corporations and other non-state actors, often outfits associated with the political party in power, have also targeted HRDs for their work pertaining to large development projects, protection of environment or empowerment of local communities.⁶ Most abuses have been perpetrated with impunity and the state has not been proactive in prosecuting these cases. Notable are the threats of gender-based violence faced by women HRDs; they are subjected to online harassment and trolling, threatened with sexual violence and acid attacks.⁷
- 3.2. The government has used criminal laws such as the Unlawful Activities (Prevention) Act 1967⁸, sedition (Section 124A of the Indian Penal Code)⁹, criminal defamation¹⁰ and other laws to retaliate against HRDs. These laws are applied selectively, less with the object of genuine prosecution, but to chill free speech, silence the HRDs and prevent them from carrying on their legitimate human rights work. The “process is the punishment” as the HRDs are constrained to defend themselves in numerous, often prolonged and delayed, judicial proceedings expending resources including time and money that they can ill-afford.
- 3.3. Whereas access to resources including funding from foreign sources is an important aspect of right to association, Foreign Contribution (Regulation) Act 2010 and the amendments made to the law in 2020, has been deployed in India

to restrict HRDs' functioning, by refusing registration to receive foreign funding. Despite significant pressure from civil society and international agencies, the government has refused to review the law or its enforcement.

- 3.4. The UN Special Rapporteur on the situation of HRDs has stated that India does not “properly protect human rights defenders”.¹¹ Between 2015 and 2019, OHCHR recorded 53 killings of HRDs in India.¹² Critics of government actions, particularly HRDs, are vilified with labels such as ‘anti-national’ and ‘urban naxal’ in public discourse and by partisan news media.
- 3.5. In June 2020, UN experts called upon the Indian government to immediately release human rights defenders arrested for protesting against amendments to the citizenship law, stating: “These defenders, many of them students, appear to have been arrested simply because they exercised their right to denounce and protest against the CAA (Citizenship Amendment Act), and their arrest seems clearly designed to send a chilling message to India’s vibrant civil society that criticism of government policies will not be tolerated”.¹³
- 3.6. In October 2020, UN High Commissioner for Human Rights Michelle Bachelet also raised concerns over deployment of FCRA and arrests of activists to “punish NGOs for human rights reporting and advocacy that the authorities perceive as critical in nature.”¹⁴
- 3.7. Several HRDs were arrested and imprisoned during the COVID-19 pandemic without any regard for their right to health. These including protesters who were protesting against the three farm laws which were amended and CAA, HRDs arrested in the Bhima Koregaon case and others. Despite solidarity statements and calls to release the HRDs, the government did not relent.¹⁵
- 3.8. Criminal cases are registered against HRDs and protesters for political reasons to silence them and stop their activism and functioning. Farmers’ groups have claimed that over fifty thousand cases were registered against farmers for their peaceful protests.¹⁶ The central government agreed to withdraw cases filed by them against the protesters; some state governments have also agreed to the same.¹⁷ This illustrates that criminal cases are registered by governments against

HRDs for short-term political gains: to halt critical movements and silence activism, in the absence of genuine law and order concerns.¹⁸

- 3.9. Arbitrary detentions¹⁹ and physical attacks are employed to stop HRDs from approaching authorities, participating in assemblies or otherwise exercising their freedom of expression.²⁰ Several instances of HRDs being arrested or physically restrained from participating in public hearings, especially those pertaining to environmental impact assessment, and passing of externment orders restricting HRDs' freedom of movement²¹, have been noted and reported to NHRC and other authorities with no remedies or protection.
- 3.10. Prolonged period of pre-trial detention is a serious cause for concern and violates human rights.²² Student activists Asif Iqbal Tanha, Natasha Narwal and Devangana Kalita were imprisoned for more than a year under UAPA for their alleged involvement in the Delhi riots case. Sudha Bharadwaj, lawyer and HRD, one of the accused in the Bhima Koregaon case, was detained for three years and released on bail in December 2021. Some of her co-accused HRDs continue to languish in prison. The Human Rights Committee and Working Group on Arbitrary Detentions have noted that “pretrial detention must be the exception and not the rule” and that it should be “ordered for as short a time as possible”.²³

4. Threats to HRDs: Attacks and Killings

4.1. General Trends

- 4.1.1. Global Witness Report ranked India as tenth in the world for the number of Environmental Human Rights Defenders (EHRDs) killed for their work in 2020. As per their annual reports, there were four documented killings of EHRDs²⁴ in the year 2020, six killings in the year 2019, 23 persons in the year 2018, 11 persons in the year 2017. In the latest 2021 report by CIVICUS, India has been ranked as ‘repressed’ in civic space issues.²⁵ FORUM-ASIA documented 363 cases of attacks against HRDs in India since October 2017 until February 2022. Out of these, there were 180 cases of judicial harassment, 144 cases of arrests

and detentions, 113 cases of physical attacks and 111 incidents of threats and intimidations against HRDs.²⁶

- 4.1.2. According to the 'Hall of Shame' database maintained by Commonwealth Human Rights Initiative, since the implementation of the Right to Information (RTI) Act in 2005, at least 97 RTI activists have been killed, 179 cases of assault have been registered, 186 cases of harassment and threats, 7 deaths by suicide have been reported.²⁷
- 4.1.3. Committee to Protect Journalists (CPJ) reported that India has the highest number of journalists killed in retribution for their work. According to CPJ, four journalists in India were murdered in 2021 in "retaliation" for their work, whereas one more journalist died while on a "dangerous assignment".²⁸
- 4.1.4. Veteran journalist and HRD Shujaat Bukhari was assassinated in June 2018. He had survived attempts on his life on three previous occasions.²⁹ After his assassination, former BJP minister Chowdhry Lal Singh warned Kashmiri journalists to "mend their ways" and that if journalists do not draw a line in reporting facts and supporting terrorists, they would meet with the fate of Bukhari.³⁰
- 4.1.5. Gauri Lankesh, prominent journalist, HRD and critic of right-wing Hindutva extremism, was assassinated outside her residence in September 2017. According to the police, the plot to kill Lankesh was hatched by members of an extremist Hindutva outfit. Eighteen accused have been identified and 17 arrested therein. Prosecution has not been swift and the murder trial is still pending despite passing of more than four years.³¹
- 4.1.6. Bipin Agrawal, RTI activist, who had filed several applications to expose the issue land encroachment in Bihar, was shot in broad daylight on September 2021. He had faced death threats and had requested the police for protection after his house was attacked by unknown persons. The state failed to protect him leading to his death at the hands of criminals.³² News reports state that at least 20 RTI activists were killed in Bihar in the past 11 years.³³

- 4.1.7. Buddhinath Jha, HRD who exposed unlicensed private medical clinics in Bihar, through his RTI applications, was killed in November 2021.³⁴ His family reported him missing and the charred remains of his body was found after a few days. Medical ‘mafia’ is suspected to have killed him.
- 4.1.8. Fr Stan Swamy, HRD, died during prolonged pre-trial detention in relation to the Bhima Koregaon case. He was detained from October 9, 2020 till July 5, 2021 and subjected to harsh conditions in prison even during the pandemic. UN Special Rapporteurs and Working Group on Arbitrary Detentions have stated that Fr Swamy’s arbitrary detention and death in custody “will forever remain a stain on the human rights record of India”.³⁵ Fr Swamy was not informed of the reasons for his arrest and the charges or served with a copy of the arrest warrant, making the arrest “illegal”.³⁶ The investigation, arrest and detention was rife with procedural irregularities. There was no individualised determination of Fr Swamy’s circumstances. The National Investigation Agency (NIA) deployed intimidatory tactics and threats to effect his arrest. The Working Group has noted that the arrest, detention and death of Fr. Swamy who was a mentor to generations of HRDs in India can have a chilling effect on other HRDs who are exercising their freedom of opinion and expression.
- 4.1.9. In May 2018, thirteen HRDs were killed and over a hundred were injured in Thoothukudi, Tamil Nadu when police opened fire on persons engaging in peaceful protest against expansion of Sterlite copper smelter plant run by Vedanta Corporation.³⁷ Pursuant to the public furore over the brutal massacre of the protesters who had assembled peacefully, several authorities took cognizance of the incident. Whereas the Madras High Court has been monitoring the case and has directed the Central Bureau of Investigation to conduct investigation, state government has constituted a judicial commission of enquiry and the NHRC conducted its independent investigation, pursuant to the public furore over the brutal massacre of peaceful protesters.³⁸ Though it is nearly four years since the date of incident, perpetrators have not been punished and accountability

has not been fixed yet. Delayed investigation and prosecution is a cause for concern and is a mark of impunity.

4.1.10. On February 19, 2022, in Odisha, ahead of a hearing convened by a High Court-appointed committee to elicit public opinion on a steel project, the police organised a flag march in the village and threatened residents against speaking up about the project, police and the administration. Private henchmen hired by corporate interests captured entry points to the meeting venue and attacked those who gave statements against the project. HRDs were subjected to violent assault in the presence of senior police officials and the high-court appointed committee.³⁹

4.1.11. On February 7, 2022, in West Bengal, HRDs holding a peaceful rally protesting against police excesses, were arrested and subjected to custodial torture.⁴⁰

4.2. Threats faced by women HRDs

4.2.1. On April 10, 2020, Safoora Zargar, a research scholar from Jamia Millia Islamia University was arrested under UAPA for her role in anti-CAA protests and was accused of orchestrating the violence that broke out in Northeast Delhi in February 2020. She was 14 weeks pregnant at the time of her arrest and the social media was filled with sexist remarks degrading her character and dignity.⁴¹

4.2.2. Soni Sori, a tribal rights activist, was arrested by the Chhattisgarh police in 2011 and was booked for sedition, criminal conspiracy and other charges. Whilst lodged in Dantewada prison, she was tortured, subject to sexual assaulted and physical abuse. In 2013, she was acquitted in six out of eight cases against her. She was acquitted on March 15, 2022 in the sedition case after a decade-long legal battle.⁴²

4.2.3. Nodeep Kaur, a Dalit labour rights activist, while protesting with the farmers against the farm laws was arrested by the Haryana police from the Singhu border in January 2021. It is alleged that she was brutally beaten up and tortured by male police officers.⁴³

- 4.2.4. Neha Dixit, a freelance journalist, was targeted with rape threats and an attempted break-in at her house in January 2021, due to the nature of investigations and exposes she has carried out on extrajudicial killings and illegal detention of citizens using the colonial laws in Uttar Pradesh.⁴⁴
- 4.2.5. In July 2020, journalist Rana Ayyub received murder and rape threats on social media after her posts on the killing of Bashir Ahmad Khan, a 65-year-old resident in Srinagar, who was caught in the cross-firing between militants and security forces in Kashmir. In one of such screenshots that the journalist shared, she was threatened by a social media user to recall the incident of Gauri Lankesh.⁴⁵
- 4.2.6. Agnes Kharshiing, a WHRD from Meghalaya, active on environmental issues especially against extraction and transportation of coal, along with one of her associates, Anita Sangma, were assaulted by the coal mafia in 2018 at Tuber Sohshrieh in East Jaintia Hills district, Meghalaya's coal hub just minutes after Agnes had taken photographs of trucks ferrying illegally mined coal.⁴⁶ They suffered severe injuries and survived after intense, critical medical treatment. They have faced further threats and intimidation, last reported in October 2021, due to their continued activism and work.⁴⁷
- 4.2.7. Kavin Malar, a journalist and WHRD from Tamil Nadu faced trolling, abuse and personally attacks online after her posts about the Bharatiya Janata Party (BJP), the ruling political party. She was called a prostitute and started receiving obscene and abusive calls and messages on social media. This was a deliberate attempt to discredit and malign the WHRD.⁴⁸
- 4.2.8. Bindu Ammini, a HRD subjected to threat and attacks by right-wing Hindutva groups, for her activism and entry into Sabarimala temple, was granted police protection by the Supreme Court. The order was not complied with and she was attacked in a hit-and-run incident. The HRD has faced other attempts on her life.⁴⁹

5. Surveillance

- 5.1. The UN Special Rapporteur on the Situation of HRDs Mary Lawlor has acknowledged that highly sophisticated digital surveillance tools are used to monitor, intimidate and silence human rights defenders.⁵⁰ Such unlawful surveillance affects the right to privacy of HRDs and grossly impact human rights.
- 5.2. In July 2021, an international collaborative investigation revealed that spyware *Pegasus*, which is sold only to government agencies, was used to spy on and target at least 300 HRDs, journalists, lawyers, government officials, and opposition politicians. The Supreme Court is hearing petitions regarding deployment of Pegasus by the Indian government. It remarked that the government has provided only a “vague” denial and has not taken any clear stand regarding this issue and has constituted an Expert Committee to investigate into the allegations.⁵¹ Civil society groups have repeatedly reported that Pegasus is a tool used to unlawfully target HRDs.⁵² They have called for enactment of laws to establish “proper judicial and parliamentary oversight of government surveillance measures that fully comply with international standards on privacy and other civil liberties”.⁵³
- 5.3. Amnesty International and the Citizen Lab uncovered a coordinated spyware campaign targeting at least nine HRDs in India.⁵⁴ Eight of the nine HRDs have been calling for the release of activists imprisoned in the Bhima Koregaon case since 2018. It was found that, between January and October 2019, the HRDs were targeted with emails containing malicious links. These links, when clicked, installed a spyware application on the computers which compromised the devices and allowed monitoring of their actions and communications and to plant evidence against the HRDs. This is a violation of their rights to freedom of expression and privacy and against UN General Assembly’s resolution calling on States to refrain from using surveillance technologies to target HRDs.⁵⁵ At least three of the nine HRDs were also targeted with NSO Group’s Pegasus spyware in 2019.⁵⁶

5.4. In November 2021, the Third Committee adopted a resolution to provide a safe and enabling environment for human rights defenders and ensure their protection which, among other recommendations.

6. Criminalisation of HRDs

6.1. General Trends

6.1.1. In her oral update on India, UN Human Rights Commissioner Michele Bachelet remarked that the framing of sedition charges against journalists and human rights defenders for reporting or commenting on protests are “disturbing departures from essential human rights principles”.⁵⁷

6.1.2. Erendro Leichombam, activist from Manipur was charged with sedition after he shared a post on Facebook commenting on a photograph of a Member of Parliament of BJP and Home Minister Amit Shah.⁵⁸

6.1.3. In February 2019, three HRDs Anthony Debbarma of the Borok Peoples’ Human Rights Organization (BPHRO), along with two other human rights defenders, Jagadish Debbarma and Aghore Debbarma, were charged with sedition in Tripura for organising a public rally to oppose the CAA and an incident of police violence against protesters.⁵⁹

6.1.4. Pathalgadi movement⁶⁰, a non-violent tribal movement by the indigenous community resisting specific policies of the government, especially changes in the land laws, has been subjected to repression and criminal action by the Jharkhand government. A fact-finding team found that around 100-150 HRDs and 14,000 unnamed people were charged by the police under abetment, obstruction to public servants while discharging their duty, creation of public nuisance, criminal intimidation and even sedition for standing in solidarity with the Pathalgadi movement and raising their voice against the attacks on Adivasi rights by the government policies;⁶¹ 10,000 persons were charged with sedition.⁶²

6.1.5. Members of the Delhi Protest Support Group (DPSG), an online group on WhatsApp, which coordinated anti-CAA protests in 24 sites in Delhi were

targeted and falsely accused of criminal conspiracy for leading to the Delhi riots.⁶³

6.1.6. The Delhi police registered cases and arrested 34 persons in the year 2020 under the UAPA. Whereas the government refused to disclose further details, media reports find that these cases were registered against persons for their role in protests against the CAA.⁶⁴ Several persons arrested in relation to these cases continue to languish in jail despite passing of two years.⁶⁵

6.1.7. Hidme Markam, an indigenous rights defender and environmental activist was arrested on March 9, 2021 when she and hundreds of other villagers in Dantewada at Sameli village had gathered to mark the International Women's Day.⁶⁶ She has been charged under UAPA and other criminal laws. She was arrested in light of agitations against "agitations against false and prolonged incarceration and forceful acquisition of tribal land by corporate giants have been at an all-time high in the state." She has been branded a "Naxal" when she has been vocal against brutalities of police and naxals.⁶⁷

6.1.8. Pawan Jaiswal, a journalist exposed corruption and gross governance issues in the state of Uttar Pradesh after he shot a video showing just bread and salt being served to students of a primary school as mid-day meals.⁶⁸ After the video gained popularity, the police filed a criminal case against him for engaging in criminal conspiracy to malign and defame the government.⁶⁹ The case was closed after more than three months after considerable outrage⁷⁰ over the false case registered against the HRD journalist.⁷¹

6.1.9. Disha Ravi, a climate change activist, was arrested in February 2021 for sharing a 'toolkit' on Twitter for mobilisation over farmers' protests.⁷² At a time when the protests against the farm laws was gaining momentum and international attention, the arrest of Disha Ravi was seen as a crackdown on dissent and an attempt to change the public discourse narrative that these protests were conspired to malign image of the country.⁷³

6.1.10. In Odisha, indigenous rights activists and Dalit farmers have been fighting against Hindalco bauxite mining project at their sacred shrine Mali Parbat for

more than two decades in the interests of protecting their culture and environmental concerns.⁷⁴ Many of these activists in their fight against the mining in Mali Parbat, like Abhi Sadepelli, have received death threats. In 2019, the Odisha government renewed the mine lease to 50 years. Ahead of a crucial public hearing for environmental clearance, the police imprisoned 28 villagers including a class-eight Adivasi school student and deployed security personnel across the area to illegally block villagers from attending the hearing.⁷⁵

6.1.11. In November 2020, HRDs Bhujanga Rao and Athram Suguna belonging to indigenous community have been arrested and booked under UAPA and other charges in Telangana. Both HRDs have been fighting for the upliftment of the indigenous communities. Another HRD Kanaka Venkatesh has also been charged in this case and they are accused of having close association with the banned Communist Party of India (Maoist).⁷⁶

6.1.12. Kishorechandra Wangkhem and Erendro Leichombam, HRDs in Manipur, face fabricated charges under the National Security Act and were imprisoned for more than two months for criticising the government's unscientific approach in responding to COVID-19 pandemic.⁷⁷

6.1.13. Investigating agencies including the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), National Investigation Agency (NIA) being used against human rights defenders and civil society organisations, opposition political parties especially during elections⁷⁸ to intimidate them.⁷⁹ Prominent HRDs associated with CSOs such as Harsh Mander⁸⁰ and others involved with protests against farm laws and CAA have been subjected to raids and other harassment from law enforcement authorities.⁸¹

6.1.14. In Kashmir, the NIA conducted simultaneous raids at the offices and residences of several HRDs, NGOs and media outlets in October 2020.⁸² The NIA reportedly stated that the raids were conducted in connection with an investigation into the fundraising of "so-called NGOs and trusts" in India and abroad to carry out "secessionist and terrorist activities" in Jammu and Kashmir.⁸³

6.1.15. In November 2021, the NIA conducted raids at the house of prominent HRD Khurram Parvez and office of Jammu and Kashmir Coalition of Civil Society (JKCCS) and subsequently arrested him in an alleged terror funding case.⁸⁴ Repeated harassment vide raids, arrests and detentions of HRDs in Kashmir has attracted international attention; civil society and experts have asked the state to release the HRDs with no avail. UN Office of the High Commissioner for Human Rights noted that Khurram's arrest is a "new incident of retaliation for his legitimate activities as a human rights defender".⁸⁵ The OHCHR also noted the context of reprisals: Khurram was previously stopped from travelling to Geneva for attending UNHRC session, detained under the Public Safety Act for more than two months.⁸⁶ The Indian government was dismissive of the concerns of the OHCHR, asking the body instead to focus on the "negative impact of terrorism on human rights".⁸⁷

6.2. *Criminalisation of HRDs in the Bhima Koregaon Case*

6.2.1. To mark the 200th year of commemoration of historic Bhima Koregaon battle where Dalit regiment defeated an army headed by upper castes, there was a mass mobilization and seminar organized under the banner of 'Elgar Parishad' in Maharashtra. Violence erupted as there was a counter rally and mobilization organized by Hindutva right-wing groups. A criminal case was registered against Hindutva leaders Milind Ekbote and Sambhaji Bhide for inciting violence against Dalits.⁸⁸ Milind Ekbote was arrested but was later released on bail and Sambhaji Bhide was never arrested.

6.2.2. On 8th January 2021, a week after the incident, a criminal case was registered stating that the organizers of Elgar Parishad had incited the violence through provocative speeches.⁸⁹ Around 250 Dalit organizations had participated in the same. Sixteen reputed HRDs have been charged with offences under UAPA and the Indian Penal Code (IPC): academics Anand Teltumbde, Shoma Sen and Hany Babu; indigenous rights activists Stan Swamy and Mahesh Raut; poets Varavara Rao and Sudhir Dhawale; lawyers Surendra Gadling and Sudha

Bharadwaj; writer-researcher Gautam Navlakha, activists Rona Wilson, Arun Ferreira and Vernon Gonsalves, and members of the cultural group, Kabir Kala Manch: Sagar Gorkhe, Ramesh Ghaichor and Jyoti Jagtap.⁹⁰ Police claimed that the accused have links with banned Maoist organisations and that the event was a conspiracy to destabilize and throw the democratically elected Central government and to orchestrate a plot to assassinate Prime Minister Modi.⁹¹

6.2.3. Police resorted to press conferences where prejudicial, baseless allegations against the HRDs accused in the case were made. Unverified documents were presented to the media as if they were authored or received by the accused leading to ‘media trial’ and creation of a popular narrative that the accused were ‘anti-national’.⁹² The judiciary has not been responsive or sensitive to the issues at hand. The Supreme Court, by a majority of 2:1, dismissed a petition seeking independent probe into the criminal charges and arrests of the accused HRDs.⁹³ In his dissenting opinion, Justice Chandrachud observed that the manner in which police had selectively disclosed details of investigation to the media cast aspersions on the impartiality of the investigative process and that a Special Investigating Team should have been constituted.⁹⁴

6.2.4. In 2020, investigation of the case was taken over by central National Investigation Agency (NIA) from the state police after there was a change in regime from BJP to a coalition led by Shiv Sena in Maharashtra state. Flimsy evidence was used to book the HRDs including alleged documents that were recovered from the hard disks of the computers used by some of the accused. An independent digital forensics lab has found that the recovered documents were recovered were planted on the hard disks using NetWire, a malware which is used for surveillance and planting of documents.⁹⁵ Nine of the accused were subjected to surveillance by Pegasus. Rona Wilson’s electronic devices were subjected to “aggressive surveillance” spanning more than 22 months. Arsenal Consulting has reported that at least 10 incriminating letters, which are part of the chargesheet filed against Rona Wilson and the co-accused, were planted on his computer.⁹⁶

- 6.2.5. The accused HRDs were arrested and faced long and arduous conditions of imprisonment. They were denied basic facilities and rights: including medical bail,⁹⁷ denial of straw and sipper to late Fr. Stan Swamy who suffered from Parkinson's disease⁹⁸ and spectacles to Gautam Navlakha.⁹⁹ The accused were denied access to books in jail; letters written by them to their relatives and lawyers were held back for weeks.¹⁰⁰
- 6.2.6. Significant international pressure and voices of domestic civil society calling for the State to release the HRDs was ignored by the government.¹⁰¹ Despite credible information that the charges were based on flimsy, fabricated evidence, the judiciary or the government failed to intervene. Even during peak COVID-19 crisis, where the government was directed by the Supreme Court to reduce overcrowding in prisons to handle the pandemic¹⁰², the HRDs were not released on humanitarian grounds. The Bhima Koregaon case demonstrates that the process is the punishment in special security legislations.
- 6.2.7. The American Bar Association Centre for Human Rights, upon a preliminary analysis of the case in 2019, has opined that there are serious concerns of procedural irregularities and violations affecting the s right of the accused to a fair trial.¹⁰³ Most of the HRDs continue to be imprisoned though the trial is yet to commence.

6.3. Abuse of Foreign Regulation (Contribution) Act (FCRA)

- 6.3.1. FCRA stands in violation of international standards on rights of association. It is a draconian legislation that seeks to control the functioning of HRDs and civil society organisations by restricting their right to access resource. Of particular concern are the amendments to the Act in 2010 and 2020 which introduced arbitrary provisions to effectively choke the working of NGOs.¹⁰⁴ Analyses by former UN Special Rapporteur on freedom of assembly and association, Mr. Maina Kiai,¹⁰⁵ International Commission of Jurists¹⁰⁶ and International Center for Non-Profit Law (ICNL) ¹⁰⁷ have revealed that FCRA 2010 and the 2020

amendments are not consistent with international law and hinder exercise of the right to association.

- 6.3.2. Provisions of the FCRA have been misused by the State to either deny license or suspend, cancel and not renew existing licenses of organisations and to initiate criminal cases against them. Prominent organisations, which are active in the domains of civil liberties and social justice, and are critical of the government policies and actions have been subjected to arbitrary actions under the FCRA.¹⁰⁸ Further, FCRA does not provide for a grievance redressal system, appellate processes and lacks oversight mechanisms and safeguards. Any challenge to state action is through the courts, and cases are not taken up on a priority basis.
- 6.3.3. Between 2016-2020, 8,353 FCRA licenses of civil society organisations were not renewed.¹⁰⁹ Between 2017-2021, 6,678 NGOs' licenses were cancelled.¹¹⁰ Around 29,000 NGOs' FCRA license either not renewed or cancelled since 2011.¹¹¹ Reputed organisations including Lawyers Collective¹¹², Anhad¹¹³, Sabrang Trust¹¹⁴, Centre for Promotion of Social Concerns¹¹⁵, Navsarjan Trust¹¹⁶, Commonwealth Human Rights Initiative¹¹⁷, Oxfam India¹¹⁸, Greenpeace India¹¹⁹, Amnesty International India¹²⁰ and others, have been targeted through provisions of FCRA.
- 6.3.4. The Supreme Court in the case of 'Indian Social Action Forum (INSAF) v Union of India', categorically stated that the central government cannot brand an organisation 'political' and deprive it of its right to receive foreign funds for using "legitimate forms of dissent" like bandh, hartal, (strike) road roko (road closure), jail bhara (mass arrests) to aid a public cause.¹²¹ There are several other challenges by NGOs, whose FCRA licenses have been either suspended, refused or not renewed, pending in various high courts. Most of these petitions are pending since 2016 and continue to wait for appropriate relief. These challenges to government actions under FCRA are not treated on priority by the courts and they continue to be pending for over five years. During this prolonged period of pendency, several of these organisations have either scaled down their operations or cease to exist.¹²²

6.4. Response of National Human Rights Commission of India (NHRCI) in protection HRDs

- 6.4.1. NHRCI is mandated to encourage the efforts of CSOs working in the field of human rights and protect HRDs. The NHRC has designated a Focal Point on HRDs, an officer in its law division. The UN Special Rapporteur on the situation of human rights defenders recommended in 2012 that the Focal Point should play a proactive role and should be a “member of the Commission, and have a human rights defender background to fully understand the challenges faced by defenders.”¹²³ Despite this recommendation made nearly 10 years ago, the Commission has not made a Member of the Commission the Focal Point for HRDs.
- 6.4.2. As per data compiled by HRDA-India, 445 complaints pertaining to attacks against HRDs were filed with the NHRC between January 2017 till December 2021. The response of NHRC has been found unsatisfactory. Enquiries are delayed and the complaints process has yielded little to no results.
- 6.4.3. NHRCI has failed to undertake a review of FCRA which affects the functioning of NGOs and HRDs. It has further failed to take suo motu action in crucial cases where HRDs were threatened, attacked or subjected to criminal charges. The credibility and independence of the institution stands greatly affected due to its continued silence against persecution of HRDs by the government.
- 6.4.4. NHRCI is yet to respond on the Asia Pacific Forum (APF) Regional Action Plan on HRDs, regional actions and national actions, launched in March 2021. Although the Action Plans were introduced a year ago, there have been no actions so far and no initiatives have been taken on the ground in India by the NHRCI for the protection and promotion of HRDs.¹²⁴

7. Recommendations

- 7.1. Enact a national law to recognise and protect human rights defenders in compliance with UN declaration on human rights defenders and other international standards
- 7.2. Repeal or significantly amend the UAPA and sedition laws to be in conformity with the international laws.
- 7.3. Strengthen co-operation with the UN Special Procedures, including the communications procedure in cases of attacks against HRDs.
- 7.4. End use of counterterrorism and national security legislations against HRDs to deter them from carrying out legitimate and peaceful human rights work.
- 7.5. Enable a peaceful working environment for HRDs without fear of reprisals and ensure protection of human rights defenders from all forms of attacks including harassment, surveillance, criminalisation, judicial harassment, etc.
- 7.6. Drop all charges against all human rights defenders in all cases where they have been charged under the UAPA and sedition charges.

¹ Report of the Working Group on the Universal Periodic Review India, A/HRC/36/10/Add.1

² “List of recommendations proposed to be accepted/noted by the Government of India”, A/HRC/36/10/Add.1, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/260/43/PDF/G1726043.pdf?OpenElement>

³ Available at: <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx>

⁴ Available at: <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx>

⁵ Available at: <https://www.frontlinedefenders.org/en/location/india>

⁶ Id.

⁷ Id.

⁸ UAPA is an anti-terror legislation which has vaguely defined offences including ‘unlawful activity’. It carries harsh punishments and insufficient procedural safeguards against state action. The law permits long periods of pre-trial detention; the right to bail is ‘illusory’. Available at: <https://indianexpress.com/article/explained/section-43d5-how-it-sets-the-bar-for-bail-so-high-under-uapa-7390673/>

⁹ Sedition is defined as speech that brings or attempts to bring “hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law”. It carries variable punishment of imprisonment from three years to life and/or fine.

¹⁰ Criminal defamation carries a maximum punishment of two years imprisonment and/or fine.

¹¹ “UN representative: India doesn’t properly protect human rights defenders”, The Indian Express, January 16, 2021, Available at: <https://indianexpress.com/article/india/stan-swamy-bhima-koregaon-stan-swamy-arrest-united-nations-human-rights-7148223/>

¹² “Final warning: death threats and killings of human rights defenders”, Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, A/HRC/46/35, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/355/11/PDF/G2035511.pdf?OpenElement>

¹³ Available at: <https://www.ohchr.org/en/news/2020/06/un-experts-urge-india-release-protest-leaders?LangID=E&NewsID=26002#:~:text=%E2%80%9CThese%20defenders%2C%20many%20of%20them,that%20criticism%20of%20government%20policies>

¹⁴ Available at: <https://www.ohchr.org/en/press-releases/2020/10/bachelet-dismayed-restrictions-human-rights-ngos-and-arrests-activists-india?LangID=E&NewsID=26398>

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¹⁶ General Secretary of the Bhartiya Kisan Union (BKU) Ekta Jagmohan Singh has claimed that over 50,000 cases have been filed against protesting farmers in Haryana alone, and there are thousands of other cases filed in Delhi and Uttar Pradesh or by the Indian Railways. See, Abhimanyu Sharma, “What happens to all the cases filed by GoI & states against protesting farmers?”, TimesNowNews.com, December 8, 2021, Available at: <https://www.timesnownews.com/india/article/what-happens-to-all-the-cases-filed-by-goi-states-against-protesting-farmers/838962>

¹⁷ It has been reported that the governments of Uttar Pradesh, Uttarakhand, Himachal Pradesh, Madhya Pradesh and Haryana had agreed to withdraw cases against protesters. “Farmers’ protest: State govts to take decision on withdrawal of cases filed against farmers, says Tomar”, Mint, December 12, 2021, Available at: <https://www.livemint.com/news/india/farmers-protest-state-govts-to-take-decision-on-withdrawal-of-cases-filed-against-farmers-says-tomar-11639312350455.html>

¹⁸ For example, in Tamil Nadu, thousands of cases were filed against protesters agitating against CAA, farm laws and other environmental causes and development projects. Following a change in regime, the State government withdrew 5,570 cases against peaceful protesters. See, “Tamil Nadu withdraws 5,570 cases against protesters”, The Hindu, September 14, 2021, Available at: <https://www.thehindu.com/news/national/tamil-nadu/tn-government-withdraws-5570-cases-against-protestors-of-controversial-projects-caa/article36446419.ece>

¹⁹ In October 2021, the police of Uttar Pradesh illegally detained group of HRDs, who were en route to a peaceful protest at Shaheed Smarak, Lucknow. They were also forced to sign a document declaring that they will abstain from further peaceful protests. Available at: <https://hrdaindia.org/illegal-and-repeated-detention-of-sandeep-pandey-and-other-hrds-at-lucknow-by-the-uttar-pradesh-police>.

²⁰ For instance, on January 27, 2022, nine HRDs from Silger village, Chhattisgarh, were arrested and held in custody to prevent them from meeting the governor and raising the issue of violation of laws in establishment of a camp in the village. Police claimed that the HRDs had violated COVID-19 protocols, whilst they were dragged out of a bus, arrested and their documents were confiscated. HRDA-India has sent an urgent appeal seeking intervention into this case. Available at: <https://hrdaindia.org/illegal-detention-and-harassment-of-hrds-by-chhattisgarh-police>

²¹ Ramjanam Kushwaha, HRD working on Adivasi issues, was slapped with false criminal cases and externment order in November, 2020. Available at: <https://hrdaindia.org/externment-of-hrd-mr-ramjanam-kushwaha-by-the-sonbhadra-administration>. In November, 2021, John Miran Munda, tribal HRD has been subjected to harassment with false criminal cases and an externment order restraining from entering particular areas and also asking him to mark his attendance daily at a police station situated 130 kilometers from his residence. Available at: <https://hrdaindia.org/externment-of-tribal-hrd-john-miran-munda-under-fabricated-charges-by-jharkhand-police-and-administration>. Dalit HRD Santosh Mane has been subjected to an externment order in Maharashtra as reprisal against his anti-case activism. Available at: <https://hrdaindia.org/externment-of-dalit-hrd-mr-santosh-mane-from-sangli>

²² Article 9(3), International Covenant on Civil and Political Rights 1966.

²³ <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>

²⁴ The industries causing the climate crisis and attacks against defenders. Global Witness. (n.d.). Retrieved December 23, 2021, Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>

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- ²⁵ “People Power under Attack 2021”, Civicus Monitor, Available at: <https://civicus.contentfiles.net/media/assets/file/2021GlobalReport.pdf>.
- ²⁶ Asian Human Right Defenders Portal, Available at: <https://asianhrds.forum-asia.org/>
- ²⁷ Available at: <http://attacksonrtiusers.org/>
- ²⁸ Bismee Taskin, “These 5 Journalists were killed in India in 2020. 4 ‘murdered’, 1 died on dangerous assignment”, The Print, December 11, 2021, Available at: <https://theprint.in/india/these-5-journalists-were-killed-in-india-in-2021-4-murdered-1-died-on-dangerous-assignment/779932/>
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- ³⁰ “Behave or face the fate of Shujaat Bukhari, J-K BJP leader Chaudhary Lal Singh warns scribes”, The New Indian Express, June 24th, 2018, Available at: <https://www.newindianexpress.com/nation/2018/jun/24/behave-or-face-the-fate-of-shujaat-bukhari-j-k-bjp-leader-chaudhary-lal-singh-warns-scribes-1832785.html>
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- ³⁵ Available at: <https://www.ohchr.org/en/press-releases/2021/07/india-death-custody-priest-stan-swamy-devastating-un-expert?LangID=E&NewsID=27313>;
<https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>
- ³⁶ Available at: <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>
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- ⁵⁴ The HRDs are: Nihalsing B Rathod, Isha Khandelwal, Shalini Gera, Degree Prasad Chouhan, Partho Sarothi Ray, Yug Mohit Chaudhry, Ragini Ahuja, PK Vijayan, and a journalist who wished to remain anonymous. See, “India: Human Rights Defenders Targeted by a Coordinated Spyware Operation”, Amnesty International, June 15, 2020, Available at: <https://www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/>
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Abhishek Angad, “Year on, withdrawal of Pathagadi cases crawls; CM Soren says will look into it”, The Indian Express, December 21, 2020, Available at: <https://indianexpress.com/article/india/year-on-withdrawal-of-pathalgadi-cases-crawls-cm-soren-says-will-look-into-it-7112728/>

⁶³ Ajoy Ashirwad Mahaprashasta, “How Delhi Police Turned Anti-CAA Whatsapp Group Chats into Riots Conspiracy”, August 3, 2020, Available at: <https://thewire.in/communalism/delhi-riots-police-activists-whatsapp-group>

⁶⁴ Out of the 34 persons, 26 are Muslims, 21 Sikhs, one member of a Scheduled Tribe and two Hindus. The refusal to officially disclose names or details has substantiated doubts that the UAPA is used against persons belonging to minority communities, Dalits and adivasis. See, Gaurav Vivek Bhatnagar, “Delhi arrested 34 under UAPA in 2020. Here’s why the Home Ministry won’t list them out”, The Wire, August 16, 2021, Available at: <https://thewire.in/government/details-of-the-9-uapa-firs-that-the-union-govt-refused-to-share-in-parliament>

⁶⁵ Ishrat Jahan, one of the accused in FIR 59 of 2020 was released on bail on March 14, 2022 after her arrest on February 26, 2020. Co-accused Gulfisha Fatima and Tasleem Ahmad were denied bail on March 15, 2022. See, <https://www.thequint.com/news/law/uapa-accused-ishrat-jahan-gets-bail-in-delhi-riots-larger-conspiracy-case>; <https://scroll.in/latest/1019692/delhi-violence-court-rejects-bail-for-gulfisha-fatima-and-tasleem-ahmad-in-uapa-case>

⁶⁶ Sukanya Shantha, “When process is punishment: Hidme Markam's activism and the sketchy cases against her”, The Wire, April 5, 2021, Available at: <https://thewire.in/rights/hidme-markam-chhattisgarh-arrest-activist-rights>.

⁶⁷ Id.

⁶⁸ According to the norms, midday meal for children should provide nutrition-rich and balanced meal providing minimum of 450 calories and include pulses, roti, rice, vegetables with fruit and milk on certain days. See, “UP journalist gets clean chit in ‘salt-roti’ midday meal video case”, The Print, December 19, 2021, Available at: <https://theprint.in/india/up-journalist-pawan-jaiswal-gets-clean-chit-in-salt-roti-midday-meal-video-case/337877/>

⁶⁹ Omar Rashid, “Journalist who exposed salt-roti meal in school booked by UP govt”, The Hindu, September 2, 2019, Available at: <https://www.thehindu.com/news/national/other-states/journalist-who-exposed-salt-roti-meal-in-school-booked-by-up-govt/article29320560.ece>. The district administration attempted to substantiate the charge by alleging that since Jaiswal, a print journalist had shot a video, it indicated that he was part of a conspiracy to defame the government. See, Namita Bajpai, “You’re print journalist, why take video’: UP government to examine FIR against scribe booked for salt-roti expose”, The New Indian Express, September 3, 2019, Available at: <https://www.newindianexpress.com/nation/2019/sep/03/up-government-to-examine-fir-against-journalist-who-exposed-salt-roti-mid-day-meal-2028354.html>

⁷⁰ Editors Guild of India condemned the FIR and asked the government to withdraw these cases and ensure that Jaiswal is not further harassed or harmed. See, “Editors Guild urges UP govt. to withdraw cases against journalist who shot mid-day meal video”, The Print, September 2, 2019, Available at: <https://theprint.in/india/editors-guild-urges-up-govt-to-withdraw-cases-against-journalist-who-shot-mid-day-meal-video/285637/>. Press Council of India launched suo motu investigation into the case and stated that it would launch an investigation. See, “Press Council of India launches fact-finding on FIR against UP journalist”, The Wire, September 5, 2019, Available at: <https://thewire.in/media/mirazpur-journalist-pawan-jaiswal-mid-day-meal-fir>

⁷¹ See further, “UP journalist gets clean chit in ‘salt-roti’ midday meal video case”, The Print, December 19, 2021, Available at: <https://theprint.in/india/up-journalist-pawan-jaiswal-gets-clean-chit-in-salt-roti-midday-meal-video-case/337877/>

⁷² The police alleged that she collaborated with a separatist organisation to spread disaffection against the Indian state and that she was part of a global conspiracy to defame India and create unrest. Disha Ravi was charged for sedition and conspiracy and detained for 10 days before bail was granted. “Disha Ravi Part of Global Conspiracy to Defame India: Delhi Police to Court,” The Times of India, February 20, 2021, Available at: <https://timesofindia.indiatimes.com/india/disha-ravi-part-of-global-conspiracy-to-defame-india-delhi-police-to-court/articleshow/81125428.cms>.

⁷³ Amy Gunia, “What the Arrest of Disha Ravi, a Climate Activist Linked to Greta Thunberg, Says About India’s Crackdown on Dissent,” Time, February 16, 2020, Available at: <https://time.com/5939627/disha-ravi-india-toolkit-arrest/>. Justice Deepak Gupta, former Supreme

Court judge has said that the use of sedition law in recent years such as the case against Disha Ravi is “a straight-up attempt to stifle the voices of dissent”. See, “‘Nothing Seditious,’ Says Ex-SC Judge on Farm Protest Document, Decries Disha Ravi's Arrest,” Scroll.in, February 16, 2021, Available at: <https://scroll.in/latest/987087/nothing-seditious-says-ex-sc-judge-on-farm-protest-document-decries-disha-ravis-arrest>.

⁷⁴ “Odisha tribal activists opposing Hindalco bauxite mining get death threats”, News Click, September 24, 2021, Available at: <https://www.newsclick.in/odisha-tribal-activists-opposing-hindalco-bauxite-mining-death-threats>

⁷⁵ Rajaraman Sundaresan, “How Odisha Government Kept the Public Out of A Public Hearing For A Bauxite Mine”, Article 14, November 25, 2021, Available at: <https://article-14.com/post/how-odisha-government-kept-the-public-out-of-a-public-hearing-for-a-bauxite-mine-619f0831a5c44>

⁷⁶ “‘We've been implicated falsely’: Telangana Adivasi teacher couple booked under UAPA”, The News Minute, December 1, 2020, Available at: <https://www.thenewsminute.com/article/weve-been-implicated-falsely-telangana-ativasi-teacher-couple-booked-under-uapa-138702>

⁷⁷ Available at: <https://thewire.in/media/manipur-journalist-kishorechandra-wangkhem-jailed-nsa-cow-dung-covid-19-released>

⁷⁸ The Print, CBI, Ed, it probes against opposition politicians - on at election time, off after that, April 16, 2021, Available at <https://theprint.in/india/cbi-ed-it-probes-against-opposition-politicians-on-at-election-time-off-after-that/640596/>.

⁷⁹ “In the 2020 amendments, an additional provision on summary inquiry prior to renewal has been added. Misuse of this provision being played out is already witnessed and experienced, as majority of the NGOs with FCRA license were due for renewal in October 2021. NGOs, often those who are critical of the State actions, witnessed such inquiries conducted by local officials of the Intelligence Bureau (IB) and other officials associated with the MHA. These inquiries are not limited to financial audits but used as means to investigate work and beneficiaries of the NGOs, specifically to record work with religious minorities and contemporary issues witnessing public opposition.”. HRDA-India, “Submission to 50th HRC session report – Access to Resources”, February 18, 2022.

⁸⁰ The ED conducted raids at the home and office of Harsh Mander, Director of Centre for Equity Studies (CES) and associated with the Kawan e Mohabbat (Caravan of Love), were carried out in September 2021 in connection with an alleged money laundering probe. Available at: <https://www.hindustantimes.com/cities/delhi-news/edraids-office-home-of-activist-harsh-mander-in-money-laundering-probe-101631781847302.html>

⁸¹ Available at: <https://thewire.in/rights/bharatiya-kisan-union-ekta-ugrahan-farmers-protest-foreign-donationsafter-bank-seeks-details-of-foreign-donations-farmers-union-accuses-govt-of-intimidation>

⁸² The NIA raided the residence of Ms. Parveena Ahanger, Chairperson of the Association of Parents of Disappeared Persons (APDP), and the office of APDP; the premises of the NGO Athrout, which provides education and medical aid to vulnerable communities; daily newspaper *Greater Kashmir*; and the houses of Mr. Khurram Parvez, Coordinator of the Jammu and Kashmir Coalition of Civil Society (JKCCS), JKCCS members Parvez Ahmad and Parvez Ahmad Matta. The NIA also conducted a raid at the residence of Swati Seshadri, a member of JKCCS in Bengaluru. Available at: <https://www.omct.org/en/resources/urgent-interventions/simultaneous-nia-raids-on-human-rights-defenders-home-ngos-and-newspapers-offices>

⁸³ Available at: <https://www.omct.org/en/resources/urgent-interventions/simultaneous-nia-raids-on-human-rights-defenders-home-ngos-and-newspapers-offices>

⁸⁴ Shakir Mir, “Why J&K Activist Khurram Parvez is in NIA crosshairs again”, The Quint, November 23, 2021, Available at: <https://www.thequint.com/news/india/why-jk-activist-khurram-parvez-has-long-been-a-target-for-govt>

⁸⁴ Available at: <https://thewire.in/rights/bharatiya-kisan-union-ekta-ugrahan-farmers-protest-foreign-donationsafter-bank-seeks-details-of-foreign-donations-farmers-union-accuses-govt-of-intimidation>

⁸⁵ “UN Human Rights Experts Call For 'Immediate Release' of Khurram Parvez”, The Wire, December 23, 2021, Available at: <https://thewire.in/rights/un-human-rights-experts-call-for-immediate-release-of-khurram-parvez>

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ “Bhide, ekbote booked for inciting violence after activist files plaint, The Times of India, January 3 2018, December 29, 2021, Available at: <https://timesofindia.indiatimes.com/city/pune/bhide-ekbote-booked-for-inciting-violence-after-activist-files-plaint/articleshow/62343730.cms>

⁸⁹ Tarique Anwar, “Arrests of Activists: Why Pune Police is Aggressively Pursuing Tushar Damgude's FIR”, Newslick, September 24, 2018, Available at: <https://www.newslick.in/arrests-activists-why-pune-police-aggressively-pursuing-tushar-damgudes-fir>

⁹⁰ Siddhartha Deb, “The unravelling of a conspiracy: Were the 16 charged with plotting to kill India's prime minister Framed?”, The Guardian, August 12, 2021, Available at: <https://www.theguardian.com/world/2021/aug/12/bhima-koregaon-case-india-conspiracy-modi>

⁹¹ Abhishek Dey, “Bhima Koregaon case: Pune Police is not pressing charges against Hindutva leader Sambhaji Bhide”, Scroll.in, August 31, 2018, Available at: <https://scroll.in/article/892601/bhima-koregaon-case-pune-police-is-not-pressing-charges-against-hindutva-leader-sambhaji-bhide>

⁹² Available at: <https://thewire.in/rights/bhima-koregaon-case-trying-without-a-trial-is-the-intent-of-draconian-uapa-law>

⁹³ Mandhani, A. (2020, October 31), “2 years, 3 Charge Sheets & 16 arrests - Why Bhima Koregaon accused are still in jail”, The Print, October 31, 2020, Available at: <https://theprint.in/india/2-years-3-charge-sheets-16-arrests-why-bhima-koregaon-accused-are-still-in-jail/533945/>

⁹⁴ He observed in the dissenting opinion: “The use of the electronic media by the investigating arm of the State to influence public opinion during the pendency of an investigation subverts the fairness of the investigation. The police are not adjudicators nor do they pronounce upon guilt. In the present case, police briefings to the media have become a source of manipulating public opinion by besmirching the reputations of individuals involved in the process of investigation. What follows is unfortunately a trial by the media.”

⁹⁵ Jignesh Mevani, Meena Kandasamy, “There is no case. release the bhima koregaon 16 and compensate them”, The Wire, April 22, 2021, Available at: <https://thewire.in/rights/bhima-koregaon-arrests-activists-arsenal-report>

⁹⁶ Sukanya Shantha, “Rona Wilson’s iPhone infected with Pegasus Spyware, says new forensic report”, The Wire, December 17, 2021, Available at: <https://thewire.in/rights/rona-wilson-pegasus-iphone-arsenal>

⁹⁷ Vakasha Sachdev, “When can an accused in jail get medical bail? is it possible in UAPA cases?”, The Quint, October 13, 2021, Available at: <https://www.thequint.com/news/law/when-can-an-accused-get-medical-bail-from-courts-uapa-bhima-koregaon>

⁹⁸ Fr. Stan Swamy was arrested in October 2020 when he was 83 years old. His health was reportedly fragile and he was not able to take care of his daily, basic needs. He was denied bail on multiple occasions; the NIA denied him the use of a sipper and straw for more than a month despite his application before a court. Despite numerous complaints that he was at risk for COVID-19 in light of his advanced age, health conditions, and that he was not vaccinated, he was denied bail. Fr Swamy tested positive for COVID-19 and was transferred to a hospital only after the intervention of the Bombay High Court. His application for bail for medical reasons was pending before the Bombay High Court while he succumbed to illness and died on July 5, 2021. The NHRC issued notice to the State “to ensure every possible medical treatment” on July 4, 2021, a day before his death. A petition on his custodial death is still pending at the NHRC with no response from the state authorities.

⁹⁹ Geeta Pandey, “Why is India denying prisoners spectacles and straws?”, BBC, December 27, 2020, Available at: <https://www.bbc.com/news/world-asia-india-55410715>

¹⁰⁰ Jyoti Punwani, “Why are these prisoners being denied their rights?” Rediff, July 5, 2021, Available at: <https://www.rediff.com/news/special/bhima-koregaon-case-why-are-these-prisoners-being-denied-their-rights/20210705.htm>

¹⁰¹ Available at: <https://thewire.in/rights/bhima-koregaon-arrested-activists-letter>

¹⁰² Available at: <https://www.thehindu.com/opinion/editorial/protecting-prisoners-the-hindu-editorial-on-overcrowding-of-prisons/article34545382.ece?homepage=true>

¹⁰³ These include trial by media, efforts by the police to prejudice the accused through press conferences and selective leaking of documents, fabricated evidence, materials purportedly recovered

by the arrested persons not seized in accordance with law, arrested persons not being informed of the grounds of their arrest. See, American Bar Association Center for Human Rights, “Preliminary Report: Arrest of Indian Attorneys and Activists in Apparent Retaliation for Human Rights Work” October 2019, Available at:

https://www.americanbar.org/content/dam/aba/administrative/human_rights/JD/Asia/preliminary-report-india-bhima-koregaon.pdf

¹⁰⁴ The amendments to FCRA notified by the Ministry of Law and Justice on 28 September, 2020 have brought in stringent restrictions and the major amendments are: inclusion of “public servants” in the list of persons who are prohibited to receive any foreign funding; the complete prevention on transfer of the funds from the receiver to any other person or organization; the mandatory requirement to have a State Bank of India (SBI) account in New Delhi in order to receive FCRA which will be designated as the “FCRA Account”; cancellation of FCRA certificate or registration for a period of 180 days in addition to the 180 days allowed at present and; the reduction to the upper limit of 20% from 50% on the percentages of the fund that could be utilized for administrative expenses. See, ‘Recent amendments in the Foreign Contribution (Regulation) Act - Government, public sector – India’, Oct 20th, 2020, Available at: <https://www.mondaq.com/india/government-contracts-procurement-ppp/994272/recent-amendments-in-the-foreign-contribution-regulation-act>. See further, HRDA-India, “Submission to 50th HRC session report – Access to Resources”, February 18, 2022.

¹⁰⁵ Available at: <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>

¹⁰⁶ Available at: <https://www.icj.org/wp-content/uploads/2020/12/India-FCRA-Briefing-Paper-2020-ENG.pdf>

¹⁰⁷ Available at: <https://www.icnl.org/wp-content/uploads/FCRA-Amendments-Briefer-7-7-21.pdf>

¹⁰⁸ Id. UN High Commissioner for Human Rights Ms. Michelle Bachelet stated: “The FCRA has been invoked over the years to justify an array of highly intrusive measures, ranging from official raids on NGO offices and freezing of bank accounts, to suspension or cancellation of registration, including of civil society organizations that have engaged with UN human rights bodies..... I am concerned that such actions based on the grounds of vaguely defined 'public interest' leave this law open to abuse, and that it is indeed actually being used to deter or punish NGOs for human rights reporting and advocacy that the authorities perceive as critical in nature. Constructive criticism is the lifeblood of democracy. Even if the authorities find it uncomfortable, it should never be criminalized or outlawed in this way. Available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26398&LangID=E>

¹⁰⁹ Available at: <http://164.100.24.220/loksabhaquestions/annex/175/AU1260.pdf>

¹¹⁰ Available at: <http://164.100.24.220/loksabhaquestions/annex/175/AU1278.pdf>, <http://164.100.24.220/loksabhaquestions/annex/173/AU3748.pdf> and <http://164.100.24.220/loksabhaquestions/annex/178/AU1054.pdf>

¹¹¹ In 2014-2015, India had more than 40,000 NGOs with valid FCRA license. As on February 28, 2021, 22,489 NGOs had FCRA license, and 189 NGOs were granted prior permission over the past five years.

¹¹² FCRA registration of Lawyers Collective, an organisation that provides legal aid for the marginalized sections in the society, was cancelled in 2016. Appellate proceedings concerning FCRA was pending before the Bombay High Court. While so, criminal case was filed by the Central Bureau of Investigation in 2019 and the offices and residences of the organisation and its Trustees Indira Jaising and Anand Grover were raided. The organisation has challenged the criminal prosecution initiated as mala fide and vindictive since it is a prominent voice critical of the ruling dispensation. The High Court directed the CBI to not take any coercive action against Lawyers Collection. The CBI challenged this order and the case is pending before the Supreme Court. See, “Statement by the Lawyers Collective on CBI raids on its office and homes and offices of Ms. Indira Jaising and Mr. Anand Grover”, Available at: <https://lawyerscollective.org/>

¹¹³ The FCRA license was renewed in March 2016 but was cancelled in December 2016. See, Gaurav Vivek Bhatnagar, “NGOs take to social media to slam FCRA license cancellation”, The Wire, December 16, 2016 Available at: <https://thewire.in/politics/ngos-take-social-media-slam-fcra-licence-cancellation>

¹¹⁴ “Cancellation of FCRA of Sabrang Trust to stop public justice says Teesta Setalvad”, June 12, 2017, Available at: <https://cjp.org.in/cancellation-of-fcra-of-sabrang-trust-to-stop-public-justice-says-teesta-setalvad/>

¹¹⁵ The CBI registered a case in January 2022 against the Centre for Promotion of Social Concerns (CPSC), an NGO, and its programme unit People’s Watch for allegedly violating provisions of the FCRA in the years 2011-13. The organisations have alleged that belated prosecution indicates that the intention of the investigative agencies is oblique, to stifle right to association and free speech. “People’s Watch and its parent NGO booked for alleged violation of foreign funding law”, The New Indian Express, January 10, 2022, Available at: <https://www.newindianexpress.com/states/tamil-nadu/2022/jan/10/peoples-watch-and-its-parent-ngo-booked-for-alleged-violation-of-foreign-funding-law-2405023.html>

¹¹⁶ Syed Khalique Ahmed, “FCRA license cancelled, BGO Navsarjan lays off all staffers”, The Indian Express, December 27, 2016, Available at: <https://indianexpress.com/article/cities/ahmedabad/fcra-licence-cancelled-ngo-navsarjan-lays-off-all-staffers-4440969/>

¹¹⁷ “Delhi High Court upholds suspension of FCRA nod for rights body”, The Hindu, February 16, 2022, Available at: <https://www.thehindu.com/news/national/delhi-high-court-upholds-suspension-of-fcra-nod-for-rights-body/article65053852.ece>

¹¹⁸ Available at: <https://www.oxfamindia.org/press-release/fcra-renewal-denied>

¹¹⁹ Aneesha Mathur, “Centre cancels Greenpeace India’s FCRA registration”, The Indian Express, September 4, 2015, Available at: <https://indianexpress.com/article/india/india-others/greenpeace-indias-fcra-registration-cancelled-govt/>

¹²⁰ “International NGO Amnesty shuts operations in India, alleges “witch-hunt” by Got, The Economic Times, September 29, 2020, Available at: <https://m.economictimes.com/news/politics-and-nation/human-rights-group-amnesty-halts-india-operations-says-faces-harassment/articleshow/78379069.cms>

¹²¹ Available at: <https://www.thehindu.com/news/national/centre-cant-brand-an-organisation-as-political-for-aiding-a-public-cause-supreme-court/article31003668.ece>

¹²² The most recent order is that of the Delhi High Court in the case of the Commonwealth Human Rights Initiative, whose petition challenging FCRA suspension was dismissed. Available at: <https://www.thehindu.com/news/national/cbi-registers-criminal-case-against-lawyers-collective-names-anand-grover-in-fir/article28051166.ece>

¹²³ “Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya”, February 6, 2012, A/HRC/19/55/Add.1, Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/A-HRC-19-55-Add1.pdf>

¹²⁴ Available at: https://apf-prod.s3.amazonaws.com/media/resource_file/Regional_Action_Plan_on_HRDs_English.pdf?AWSAccessKeyId=AKIA57J6V557ISASX34R&Signature=E0vLuO9oYUsubJuzOl6stPV0fts%3D&Expires=1648043788