

Situation of Human Rights Defenders, Freedom of Expression (FoE), Assembly and Association (FoAA) in India & Freedom of Religion and Belief (FORB)

by Human Rights Defenders Alert-India

Human Rights Defenders Alert (HRDA) India is a national platform of human rights defenders in India with more than 3000 HRD members. This statement will give an overview of the attacks, threats, and persecution of HRDs and suppression of Freedom of Expression, Association, **Assembly** (FoEAA) and Freedom of religion and belief (FORB) in India.

We welcome the Human Rights Dialogue which took place between India and the EU on July 15, 2022, wherein both reiterated their commitment to human rights. However, the situation of HRDs in India continues to deteriorate rapidly. According to Frontline Defenders Global Analysis¹, India has the fourth highest number of HRDs killed in 2021. Between 2015 and 2019, OHCHR recorded 53 killings of HRDs in India. Commonwealth Human Rights Initiative (CHR!) has documented 36 Right To Information (RTI) activists in India, killed between 2017-2022².

Judicial harassment of HRDs: HRDs in India have increasingly been labelled as terrorists, seditious, criminalized, and incarcerated in retaliation for their work. Laws used by the authorities to target and persecute HRDs include the draconian Unlawful Activities (Prevention) Act (UAPA)³, the National Security Act (NSA), the Jammu & Kashmir Public Safety Act (PSA), and the Foreign Contribution Regulations Act (FCRA) along with long pre-trial detention. According to our available data, there are currently at least 29 HRDs incarcerated in various Indian prisons under the UAPA, across India.

Illustrative cases include:

- **Bhima Koregaon-Elgar Parishad case:** Since June 2018, 16 HRDs -- journalists, activists, academicians and lawyers -- have been jailed under the UAPA in the Bhima Koregaon case.⁴ The accused – Sudhir Dhawale, Rona Wilson, Shoma Sen, Mahesh Raut, Surendra Gadling, Sudha Bhardwaj, Arun Ferreira, Vernon Gonsalves, Varavara Rao, the late Stan Swamy, Anand Teltumbde, Gautam Navalakha, Hany Babu, Jyoti Raghoba Jagtap, Sagar Tatyaram Gorkhe, and Ramesh Murlidhar Gaichor – have been repeatedly denied bail, despite health concerns.⁵ Reports by Arsenal Consulting, a digital forensics consulting company, revealed that the Pegasus spyware was used to plant evidence⁶ on the computers of at least two of the accused in the case. With the exception of Varavara Rao and Sudha Bharadwaj who are out but with stringent bail conditions, all those accused are currently in pre-trial detention stretching into four years.
- **Fr. Stan Swamy:** On 5 July 2021, 84-year-old Jesuit priest, incarcerated for nine months in the Bhima Koregaon case died in custody due to the lack of effective and timely medical treatment in jail and the routine denial of bail. The UN Working Group

¹ <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2021-0>

² <https://attacksonrtiusers.org>

³ Section 43D-2 of the anti-terror law, [the Unlawful Activities Prevention Act \(UAPA\)](#). Section 43D-2 of the UAPA allows for the period for investigation (i.e., the time allowed by law to the police to file a charge sheet or final report) to extend up to a maximum of 180 days for offences punishable with death, imprisonment for life, or imprisonment for a term not less than 10 years. Under ordinary criminal law, the maximum period is 90 days for this threshold of offences. Preventive detention laws, such as [the National Security Act \(NSA\)](#) and [Kashmir's Public Safety Act \(PSA\)](#) enable the political executive to pass detention orders, allow for detention up to 12 months and more. The lack of judicial oversight in this system results in recurring detention often over years.

⁴ The case relates to caste-based violence that took place in Bhima Koregaon, in the state of Maharashtra on 1 January 2018. While Hindu nationalist political figures, associated with the RSS, were first implicated as instigating the violence, the State soon filed charges against HRDs even while most of them were absent at the site of violence. Prosecution of Hindu nationalist leaders is not taking place

⁶ <https://www.washingtonpost.com/world/2021/12/17/india-pegasus-bhima-koregaon/>

on Arbitrary Detention has publicly released its opinion⁷ that his death in custody will forever remain a stain on India's human rights record.

- **Teesta Setalvad:** On June 25, 2022, Gujarat police entered WHRD Ms. Setalvad's house in Mumbai and arbitrarily detained her without a warrant, in retaliation to her legal actions seeking justice, and reparation for the victims of the 2002 Gujarat communal riots. She is currently lodged in a prison in Ahmedabad after her bail was denied, along with two former senior police officials in Gujarat.
- **Delhi Communal Violence:** 18 HRDs leading and participating in protests against the Citizenship Amendment Act (CAA) 2019⁸ which makes citizenship to India subject to religious identity, are being persecuted for their protests against this law. They were accused of instigating communal violence in Delhi⁹ and charged in 2020 under the UAPA and stringent sections of the Indian Penal Code. 12 defenders remain in jail today.
- **GN Saibaba:** A renowned academic and HRD was convicted with life imprisonment in March 2017 by the Indian courts under the UAPA and sedition charges, despite no direct evidence for alleged links to banned groups. He is 90% disabled and living under extremely harsh prison conditions, with little or no access to required medical facilities. The UN Working Group on Arbitrary Detention has publicly released its opinion¹⁰ in this case also.
- **Khurram Parvez:** On 22 November 2021, Khurram Parvez, a Kashmiri HRD, was arrested under the UAPA and is currently lodged in Delhi's Tihar Jail.

Freedom of Expression and Freedom of the Press: In 2022, India slipped to a ranking of 150 among 180 countries in the Reporters Without Borders Press Freedom Index. India has the highest number of journalists murdered in retaliation for their work. (CPJ 2021)

Anti-terror laws and sedition are used routinely against journalists to silence dissent. Muslim journalists, specially in Kashmir, have been particularly at risk. **Siddique Kappan**, a journalist and his two associates were arrested on 5 October 2020 while travelling to Uttar Pradesh State, to report the brutal gang rape and murder of a Dalit girl. They were charged under the UAPA, and others including sedition. Kappan and his associates remain in Mathura jail. **Fahad Shah**, a Kashmiri journalist, is currently detained under the PSA.

The Foreign Contribution (Regulation) Amendment Act, 2020. (FCRA): The FCRA fails to comply¹¹ with India's international legal obligations and constitutional provisions to respect and protect the rights to freedom of expression, association, and peaceful assembly and effectively restricts access to foreign funding, particularly for small non-governmental organizations. In September 2020, the FCRA was amended¹², further increasing the legislation's reach and the government's ability to use it to arbitrarily impede the work of CSOs. The amendments add intrusive and undue government oversight, additional regulations and certification processes, and operational requirements, which have adversely affected CSOs' access to foreign funding and their ability to carry out human rights work.

⁷ <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>

⁸ The Citizenship Amendment Act was passed by the Indian Parliament in December 2019 and can be accessed at: <https://egazette.nic.in/WriteReadData/2019/214646.pdf>. This amends the Citizenship Act 1955 to relax Indian citizenship requirements for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians fleeing religious persecution in Pakistan, Bangladesh, and Afghanistan. The CAA 2019 excludes Muslims.

⁹ The violence took place in Northeast district of Delhi from 23-26 February 2020. 53 people were killed, hundreds injured, and property damaged including Muslim places of worship. The majority of those killed were Muslims.

¹⁰ <https://www.freedom-now.org/wp-content/uploads/AUV-WGAD-Opinion-2021-21-IND.pdf>

¹¹ <https://www.icj.org/india-repressive-law-on-foreign-contributions-stifles-ngos-must-be-revised-or-scrapped/>

¹² https://fcraonline.nic.in/home/PDF_Doc/fc_amend_07102020_1.pdf

Since 2011, close to 29,000 CSOs have had their FCRA license either not renewed or cancelled. As of February 2022, 22,489 CSOs continue to have the valid FCRA license with many of them awaiting the status of their renewal application. By September 2021, at least 90 international NGOs, supporting Indian CSOs have been placed on government's Prior Reference Category (PRC).

Violent reprisals against protestors continue to be a serious concern. Police used severe force against the protestors during the anti-CAA protests that were held in different parts of the country. In the State of Uttar Pradesh, at least 23 persons were admittedly killed and 83 injured in police action to clamp down the protests. In some instances, firearms, water cannons, stun grenades, and tear gas were deployed by the police against peaceful protestors.

In May 2018, sixteen people were killed and over a hundred were injured in Thoothukudi, Tamil Nadu, when police opened fire on persons engaging in peaceful protest against the expansion of a copper smelter plant. Protesters are arbitrarily arrested, detained and subjected to criminal cases to silence them and to restrict their right to peaceful assembly. Thousands of protestors were arrested in various states for protesting against CAA or the three amended farm laws.

II-Current situation of Freedom of religion and Rights of Religious Minorities in India:

In 2017, the Indian Ministry of Home Affairs (MHA) reported 111 deaths and 2,384 injuries in 822 incidents of communal/ethnic violence in a single year marking a 28 % rise since 2014.¹³ The Government of India, admitted in Parliament that 130 complaints of 'Hate News' on Social Media Platforms were reported¹⁴. Hate crimes, including hate speeches and writings in traditional media, have multiplied, as have calls for targeted killings and abusive use of inciteful hate on social media. Fundamentally discriminatory laws such as the Citizenship Amendment Act 2019 that institutionalise discrimination and exclusion of minority groups have been passed.

Cow vigilantism: 24 out of 29 States in India apply a restriction or a ban on cow slaughter and instances of vigilantism and violence over suspicion of eating beef or cow slaughter have sharply risen in India.

Love Jihad: Interfaith marriages (known as Love jihad) are increasingly targeted in India wherein Muslim men are accused of luring Hindu women in marriage by force or deception to forcefully convert them to Islam. In 2021, Uttar Pradesh, India's most populous state, even passed an "anti-conversion law" (UP Prohibition of Unlawful Conversion of Religion) to check cases of love jihad with records showing that in 2021, the UP police registered 14 cases, out of which 13 involve Hindu women pressured to convert to Islam. However, the government has repeatedly denied the existence of love jihad in Indian Parliament.

Anti-conversion laws: India has no central anti-conversion law. 8 states¹⁵ have enacted anti-conversion laws make religious conversion by force or allurement a punishable offence. Prosecutions have been launched under these Acts against Christian missionaries, who have

¹³ The Hindu, "111 killed in 822 communal incidents in 2017: Govt", 6 February 2018. Available at: <https://www.thehindu.com/news/national/111-killed-in-822-communal-incidents-in-2017-govt/article22670770.ece>. Accessed on: 16 March 2022. First post, 'Communal violence rose by 28% from 2014 to 2017, but 2008 remains year of highest instances of religious violence', 9 February 2018. Available at: <https://www.firstpost.com/india/communal-violence-rose-by-28-from-2014-to-2017-but-2008-remains-year-of-highest-instances-of-religious-violence-4342951.html>.

¹⁴ <https://sabrangindia.in/article/only-8-election-time-online-hate-speech-complaints-2022-only-130-instances-2019-centre>, 25 March 2022

¹⁵ "Freedom of Religion laws" are currently in force in eight states — (i) Odisha (1967), (ii) Madhya Pradesh (1968), (iii) Arunachal Pradesh (1978), (iv) Chhattisgarh (2000 and 2006), (v) Gujarat (2003), (vi) Himachal Pradesh (2006 and 2019), (vii) Jharkhand (2017), and (viii) Uttarakhand (2018). Himachal Pradesh (2019) and Uttarakhand legislations also declare a marriage to be void if it was done for the sole purpose of unlawful conversion, or vice versa. Further, the states of Tamil Nadu (2002) and Rajasthan (2006 and 2008) had also passed similar legislation (PRS 2020). <https://www.epw.in/engage/article/anti-conversion-laws>

often been accused of incentivizing and forcing conversions, especially in tribal areas in several states.

III-Recommendations on HRDs:

- Ensure that all human rights defenders charged under anti-terror legislation and subjected to prolonged pre-trial detention are immediately released.
- Enact a comprehensive law, in compliance with international law, for the protection of human rights defenders.
- Undertake a review of the Unlawful Activities Prevention Act (UAPA) and assess its compliance with international law.
- Strengthen cooperation with the UN Special Procedures, including the communications procedure in cases of attacks against HRDs.

IV-Recommendations on FoE and FoAA:

- Amend the 2010 Foreign Contributions Regulations Act (FCRA) to bring it in compliance with India's international human rights obligations related to freedom of association, notably by repealing the 2020 amendments.
- Ensure that law enforcement officials and security forces are adequately trained and abide by the United Nations basic principles on the use of force and firearms and in accordance with other international standards.
- Strengthen Indian penal provisions that criminalise hate speech both online and offline.
- Enact a law to ensure a safe working environment of journalists, in line with the recommendation accepted during the second UPR.

VI-Recommendations on Freedom of Religion and Belief (FORB)

- Enact the Prevention of Communal and Targeted Violence Bill and review and repeal the following anti-minority laws within one year:
 - Citizenship Amendment Act 2019.
 - All 'anti-conversion' laws passed by six states which target religious minorities
- Specific Policy assurance not to implement an all India NPR/NRC (Indian Government)
- Foreigner Tribunals¹⁶ in Assam state must follow Indian constitutional and international law standards, close detention centres.
- Stop targeting of Minority institutions in the social sector especially those running schools, charities, or children's homes.

¹⁶ The Foreigners Order, 1952 under the Foreigners Act, 1946.