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**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF INDIA**

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SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UNIVERSAL PERIODIC REVIEW OF INDIA

Introduction

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of India.
2. In this submission, the ICJ raises concerns and makes recommendations about the following:
 - a. crackdown on human rights defenders;
 - b. impunity and accountability;
 - c. death penalty;
 - d. human rights of minorities;
 - e. international human rights instruments and engagement with UN Special Procedures.

Crackdown on human rights defenders

3. In the third UPR, India noted but did not accept a recommendation for enacting a law on protecting human rights defenders (HRDs)¹ effectively against harassment.² Since then, HRDs have continued to be routinely detained and charged under overbroad national security laws, particularly under the Unlawful Activities Prevention Act (UAPA), as well as under the penal code³ often attached to UAPA charges and under the Public Safety Act.
4. The UAPA empowers the Central Government to designate an organization as a "terrorist organization",⁴ and in 2019, the Parliament further amended the law to designate an individual as a "terrorist".⁵ In addition, the possibility of being granted bail under the UAPA is much smaller than under the Code of Criminal Procedure, and under the UAPA there is no provision for anticipatory bail, which means that bail is rarely granted to those charged with UAPA offences.⁶
5. According to Ministry of Home Affairs' data, the number of arrests made under the UAPA increased by 72 per cent between 2015 and 2019.⁷ Further, of the 2,642 cases pending under UAPA in 2019, trials had ended only in 128 cases (5.4 per cent of cases) and resulted in convictions only in 27 cases, while in 94.6 per cent of cases trial was still pending.⁸ In light of above, the ICJ is concerned at the prolonged detention and extensive delays in commencement of trial, combined with the low rate of conviction under UAPA.
6. On 28 October 2020, officials from the National Investigation Agency (NIA), India's federal counterterrorism agency, raided the offices and homes of several human rights organizations and HRDs in Kashmir, India, including Khurram Parvez, a renowned HRD from Kashmir, Chairperson of the Asian Federation Against Involuntary Disappearances.⁹ He was subsequently arrested on 22 November 2021 and has remained in arbitrary detention, where he is at risk of torture and other ill-treatment.¹⁰ Khurram faces several baseless charges, including under the UAPA of "criminal conspiracy", "waging war against the government of India", "raising funds for terrorist activities", and "recruiting any person or persons for the commission of a terrorist act".¹¹
7. In connection with the Bhima Koregaon cases¹² and the Delhi riots cases,¹³ at least 31 HRDs¹⁴ have been detained on allegations of, among other crimes, being members of or funding terrorist organizations (Ss. 20, 38, 40, UAPA); being involved in a criminal conspiracy (S. 120B, Indian Penal Code, IPC); and on charges of waging a war against the government (S. 121, IPC).¹⁵ However, the Indian Courts are yet to confirm any formal charges and trials are yet to start in any of these cases. Notably, 20 of the 31 HRDs were arrested in 2020, after the emergence of the COVID pandemic, and related stringent restrictions on movement beginning on 24 March 2020.¹⁶ At least six of the 29 defenders are aged above 60 years, and suffer from serious health problems, which their detention has exacerbated, also due to the restrictions imposed on access to medical care and family

visits in response to the COVID-19 pandemic.¹⁷ One of them has already died in custody.¹⁸ As of date, of these 31, only six have been released on bail.¹⁹

8. Based on ICJ interviews, HRDs face multiple violations of their human rights, particularly delays in their bail hearings and denial of bail, as well as cruel, inhuman or degrading treatment in prison, and lack of access to adequate medical facilities.²⁰
9. Although in the third UPR several countries recommended that India amend its Foreign Contribution Regulation Act (FCRA) to guarantee the ability of civil society organizations to access foreign funding, consistent with the right to freedom of association,²¹ its existence is an obstacle to the critical work of HRDs and civil society organizations.²²
10. FCRA 2010 regulates access to foreign funds for persons, associations and companies.²³ The Government prohibits civil society organizations from accessing an FCRA certificate based on the prohibition on receipt of foreign funds for activities against “public interest”, “economic interest” or “security” where these terms are not defined or defined overly broadly.²⁴ Overall, the categories of persons and organizations prohibited from receiving foreign funds are overbroad; the restrictions are not tightly connected to, much less necessary, achieving any legitimate aim of the law; and they are not proportionate to the aims of the law.²⁵
11. In 2020, the FCRA 2010 was further amended to add governmental oversight, additional regulations and certification processes, while reducing the limit of NGOs’ administrative expenditure that can be allocated to foreign contributions to 20 per cent from the previous 50 percent ceiling and imposing restrictions on access to public servants.²⁶
12. The Government has indicated that the FCRA licence of 5933 NGOs lapsed in 2021,²⁷ and that the licence of 1898 NGOs has been cancelled since 2017.²⁸ NGOs whose licences have been cancelled, suspended or not renewed include well-known organizations such as the Commonwealth Human Rights Initiative,²⁹ Lawyers Collective,³⁰ People’s Watch,³¹ and Oxfam India.³² The FCRA does not provide for a grievance system for redress or any appellate authority. Thus, the only legal recourse available to NGOs is to approach the Courts to ask for the Government’s decision to be struck down. There are over 100 pending cases in High Courts across the country concerning the cancellation of FCRA licences.³³
13. In addition, Amnesty International India has been forced to cease operations in the country since 29 September 2020, due to the freezing of its bank accounts, on charges of money laundering, after two years of harassment by the Government, particularly the Enforcement Directorate (financial investigation agency under the Ministry of Finance).³⁴

Impunity and accountability

14. In the third UPR, the Indian Government accepted recommendations to take appropriate measures to avoid excessive use of force by security officers,³⁵ and to ensure greater respect for the principles of proportionality and necessity in the context of actions by the armed forces and police.³⁶ However, excessive use of force by security forces has continued since then.
15. In response to the passage of the Citizenship (Amendment) Act, 2019 protests erupted throughout the country from 4 December 2019 for several months.³⁷ The protests resulted in more than 31 deaths nationwide,³⁸ and several hundred people sustained injuries due to the use of lethal weapons, such as firearms, and less-lethal weapons, such as teargas, indiscriminate baton charging and water cannons, among others. The state of Uttar Pradesh saw the largest number of deaths, reported by the Uttar Pradesh Police at 19.³⁹ Firozabad in Uttar Pradesh recorded the greatest number of deaths, seven.⁴⁰ In the cases reported to the ICJ and other organizations, law enforcement officials used firearms and less-lethal weapons in circumstances where such use was not necessary, proportionate or exercised with precaution in violation of Principles 3 and 9 of the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁴¹

16. The Armed Forces Special Powers Act (AFSPA) (both 1958 and 1990) gives armed forces the power to arrest without warrant, to enter and search any premises, and in certain circumstances, "fire upon or otherwise use force, even to the causing of death", in "disturbed areas".⁴² AFSPA comes into force once an area subject to the Act has been declared "disturbed" by the central or state government to the extent that the use of armed force is deemed necessary. This declaration is not subject to judicial review. AFSPA also violates the right to life and personal security as it allows the armed officers to arrest based on suspicion that a cognizable offence has already taken place or is likely to take place in the future,⁴³ but fails to provide a time limit as to when the arrested person must be brought to a police station, indicating only that it has to be done "with the least possible delay."⁴⁴ In practice, this often results in torture and/or cruel, inhuman degrading treatment of detainees by security forces during interrogation.⁴⁵ Several domestic authorities have repeatedly recommended that AFSPA be repealed.⁴⁶ In the third UPR, India noted but did not accept any of the recommendations to revise or repeal AFSPA,⁴⁷ or to review Code of Criminal Procedure, particularly S. 46 as regards the use of force by law enforcement.⁴⁸
17. Many national security laws also contain sanction provisions pursuant to which the investigating authority requires prior permission from the government before any member of the security forces can be prosecuted in a civilian court for certain crimes, including offences arising from the commission of grave human rights violations.⁴⁹ In those cases, sanction provisions serve to entrench impunity as permission to prosecute is rarely, if ever, granted. The prosecution sanction regime violates article 2(3) of the ICCPR, which guarantees the right to an effective remedy against violations of the rights guaranteed by the Covenant.
18. In 2012, the NGO Extra Judicial Execution Victims Family Association and Human Rights Alert filed a petition at the Supreme Court of India, alleging that between 1979 and 2012, security forces in Manipur extra-judicially executed 1528 people. On 14 July 2017,⁵⁰ the Supreme Court passed a judgment directing the Central Bureau of Investigation (CBI) to investigate 48 incidents of "fake encounters or use of excessive or retaliatory forces, lodge necessary FIRs and to complete the investigations into the same by 31st December, 2017 and prepare charge sheets, wherever necessary".⁵¹ The case is still pending and the Supreme Court has not listed it for effective hearing since September 2018. The CBI has pressed charges against perpetrators in 21 incidents but in six cases, the central government has denied prosecution sanction under section 6 of the AFSPA and section 197 of CrPC despite the CBI investigation clearly establishing the involvement of armed forces personnel in committing the crime, thus granting them immunity. The victim's plea in the court for proceeding with the case without prosecution sanction is pending in the Manipur High Court [order dated 22 February 2021 in Cril. Misc. (FR) Case No. 633/2020].
19. The number of 'encounter deaths' are undercounted and there exists no official estimate of fake encounter deaths. As of January 2022, 355 cases of deaths in police encounters are pending with the National Human Rights Commission.⁵² However, the Commission has limited powers to investigate allegations of human rights violations by the Armed Forces.⁵³
20. Between 2004-2017, Uttar Pradesh accounted for 44.55 per cent of the encounter cases across all states,⁵⁴ and the trend has continued since. The number of encounters in Uttar Pradesh has increased to 5178, the number of deaths is 103 and the number of injuries is 1859 between 2017-2019.⁵⁵

Death Penalty

21. In the third UPR, several countries recommended that India should abolish the death penalty or establish a moratorium on capital punishments⁵⁶ or sign the second optional protocol to ICCPR.⁵⁷ However, India continues to retain the death penalty for several offences,⁵⁸ including for non-lethal crimes.⁵⁹ Moreover, the number of capital offences has increased since 2017. For example, the 2019 Protection of Children from Sexual Offences Act introduced the death penalty for certain categories of rape of children.⁶⁰

22. India has carried out four executions since its previous UPR in 2017: Mukesh Singh, Akshay Thakur, Vinay Sharma, Pawan Gupta were simultaneously executed on March 20, 2022. All of them were convicted for the gang rape and murder of a 23-year-old student on 16 December 2012.⁶¹

Human rights of minorities

23. The Indian Parliament passed the Citizenship (Amendment) Act, 2019 (hereinafter CAA) on 11 December 2019.⁶² The CAA amends the Citizenship Act, 1955, so as to give protected status to Hindu, Sikh, Jain, Parsi, Buddhist and Christian migrants from Pakistan, Afghanistan and Bangladesh, all Muslim-majority countries, who entered India on or before 31 December 2014. The CAA grants such persons an expedited route to citizenship, but controversially excludes from its ambit Muslims and persons from other ethnic and religious groups, in violation of international law and standards protecting against discrimination and providing for equal protection of the law.⁶³
24. On 5 August 2019, the Indian Government pushed through a legislative package eliminating the special status accorded to Jammu and Kashmir under Article 370 of the Indian Constitution, which granted autonomy to Jammu and Kashmir and limited the Indian Government's legislative powers in the state. The move was preceded by a communication blackout, arbitrary detention of political leaders, banned movement and meetings of people, and increased military presence, purportedly to quell protests.⁶⁴
25. The procedure adopted to revoke the special status and autonomy of Jammu and Kashmir appears to be incompatible with judgments and observations of High Courts and the Indian Supreme Court that have clarified that the President of India would need the agreement of the government of Jammu and Kashmir to change its status.⁶⁵

International Instruments and Engagement with UN Special Procedures

26. In the third UPR, India accepted a recommendation to respond positively to visit requests by special procedures.⁶⁶ However, more than 20 such visit requests, including to Jammu and Kashmir, are pending at present. Further, between 2016 and 2018, a number of Special Rapporteurs had sent as many as 58 communications, and had received no response.⁶⁷
27. In its third UPR, India accepted several recommendations to ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁶⁸ However, to date, India has not ratified the CAT and has signed but not ratified the International Convention for the Protection of All Persons from Enforced Disappearance. Nor has it taken action towards becoming a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the First and Second Option Protocol (OP) to the ICCPR; the OP to the International Covenant on Economic, Social and Cultural Rights; the OP to the Convention on the Elimination of All Forms of Discrimination against Women; the OP to the CAT; the OP to the Convention on the Rights of the Child; the OP to the Convention on the Rights of Persons with Disabilities; and the Rome Statute of the International Criminal Court.
28. In October 2017, the Law Commission of India recommended that India ratify the CAT and pass a law to prevent torture and punish its perpetrators and proposed a bill.⁶⁹ However, torture is still not specifically criminalized.⁷⁰ In 2020, in the Lok Sabha (Lower House of Parliament), the Government responded that there is "no proposal to bring a legislation" in regard of torture as the existing penal code provides punishment for such offences.⁷¹

Recommendations

29. The ICJ therefore calls upon the Working Group and the HRC to recommend to the Indian authorities the following:
- a. Repeal or amend the UAPA in line with fundamental rights guaranteed under the Constitution of India as well as international law and standards. In particular, repeal or

amend provisions on anticipatory bail and default bail to bring them in line with constitutional and international law and standards;

b. Release all HRDs who are arbitrarily detained under overbroad national security laws;

d. Conduct a thorough and consultative review of Indian law with a view to reforming provisions that limit freedom of speech and expression in a manner inconsistent with international human rights law;

c. Repeal the FCRA and ensure laws regulating non-governmental organizations are not used in an arbitrary or discriminatory manner against NGOs critical of the government and to silence dissent;

d. Repeal the AFSPA and other state and central level laws that similarly violate international human rights law;

e. Conduct prompt and independent investigations in all instances disclosing credible evidence of gross violations of human rights perpetrated by or with the alleged involvement of the security forces; hold perpetrators to account, and respect the rights of victims, including to compensation, including in the Manipur extrajudicial execution cases;

f. Repeal section 197 of the Code of Criminal Procedure, and other sanction provisions; and grant permission to investigate and prosecute in all pending applications relating to allegations of gross human rights violations;

g. Immediately declare a moratorium on executions with a view to abolishing the death penalty for all crimes and in all circumstances; commute all death sentences;

h. Amend the Citizenship Amendment Act to guarantee that there is no discrimination based on national origin or religion in access to citizenship;

i. Become a party to the above-mentioned international human rights treaties and to the 1951 Convention Relating to the Status of Refugees and its the 1967 Protocol and facilitate the visits of all UN Special Procedures.

Endnotes

¹ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, para, 161.134 in A/HRC/36/10, recommendation made by Lithuania.

² General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, para, 161.135 in A/HRC/36/10, recommendation made by Germany.

³ Indian Penal Code: Sedition, S.124A; defamation, S. 499; blasphemy, S. 295A; criminal conspiracy, S. 120A; imputations, assertions prejudicial to national-integration, S. 153B.

⁴ Section 20, The Unlawful Activities (Prevention) Act, 1967.

⁵ The Unlawful Activities (Prevention) Amendment Act, 2019, <https://egazette.nic.in/WriteReadData/2019/210355.pdf>

⁶ Sections 436 to Section 450 of the Code of Criminal Procedure provide for bail for accused persons. The courts are not required to look into the allegations or the seriousness of the offence, only whether the accused will obstruct the trial proceedings and if that is unlikely, the person is to be released on bail. However, UAPA bail provisions are more stringent than under the Code of Criminal Procedure, as under UAPA, bail is decided on merits. Section 43D(5) of the UAPA provides that a court must reject the accused's bail plea if, after examining the case diary and the police officer report, it is of the "opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true". Thus, at the bail stage, UAPA requires the court to examine evidence provided by the police in determination of the bail plea, which is not required under the CrPC. Further, Section 43D(4) of the UAPA lays down that Section 438 of the CrPC which provides anticipatory bail shall not apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under the UAPA.

⁷ Government of India, Lok Sabha Unstarred Question 2486, dated 9 March 2020, Persons Arrested Under UAPA, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/LS-09032021/2486.pdf>; See Crime in India 2020, Statistics Volume II, page 866, 867, <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%202.pdf>; See also The Wire Staff, "UAPA: 72% Rise in Arrests Between 2015 and 2019" *The Wire*, 10 March 2021, <https://thewire.in/government/uapa-72-rise-in-arrests-between-2015-and-2019>

⁸ Shemin Joy, "Sedition, UAPA cases decrease in 2020; convictions still at low: NCRB data" *Deccan Herald*, 15 September, 2021, available at <https://www.deccanherald.com/national/sedition-uapa-cases-decrease-in-2020-convictions-still-at-low-ncrb-data-1030721.html>

⁹ “Kashmir daily office, activists’ homes raided by Indian agency”, *Al Jazeera*, 28 October 2021, available at

<https://www.aljazeera.com/news/2020/10/28/indian-agency-raid-multiple-locations-in-kashmir>

¹⁰ ICJ Press Release, India: Kashmiri Activist Held Under Abusive Law, 25 November, 2021 available at

<https://www.icj.org/india-kashmiri-activist-held-under-abusive-law/>; See Peerzada Ashiq, “Kashmir rights activist Khurram Parvez arrested”, *The Hindu*, November 23 2021, available at <https://www.thehindu.com/news/national/other-states/kashmir-rights-activist-khurram-parvez-arrested/article37635483.ece>

¹¹ Junaid Kathju, “Activist Khurram Parvez’s judicial custody extended till 19 Feb”, *The Kashmir Walla*, 24 January 2022, available at <https://thekashmirwalla.com/activist-khurram-parvezs-judicial-custody-extended-till-19-feb/>

<https://thekashmirwalla.com/activist-khurram-parvezs-judicial-custody-extended-till-19-feb/>

¹² The Bhima Koregaon violence took place on 1 January 2018, when Dalit groups had collected to commemorate the bicentenary celebration of the Bhima Koregaon battle. Violence broke out when some groups, led by alleged Hindu extremist activists, Sambhaji Bhide and Milind Ekbote, carrying saffron flags entered the arena, purportedly in response to the inflammatory speeches delivered at the 31 December 2017 event. The violence led to the death of one Dalit person and injuries to five others, allegedly at the hands of Hindu extremists on 1 January 2018. This led to an official written police complaint (FIR) by a Dalit woman, an eye witness, on 2 January 2018 against the alleged Hindu extremist activists - Sambhaji Bhide and Milind Ekbote. A counter FIR was filed on 8 January 2018 by Tushar Ramesh Damgude, an eye witness and a Hindu nationalist, against six activists who had participated in the Elgar Parishad event on 31 December 2017 - Sudhir Dhawale, Sagar Gorkhe, Harshali Potdar, Ramesh Gaichor, Dipak Dhengale and Jyoti Jagtap - stating that activists at the Bhima Koregaon festival made provocative speeches leading to violence. Sixteen human rights defenders (HRDs) – including doctors, lawyers, academics, poets – associated with the Bhima Koregaon case have been charged under the UAPA since 2018 in connection with the violence that took place on 1 January 2018 at Bhima Koregaon and allegations that they played a role in organising the Bhima Koregaon event, due to their alleged links with banned Maoist organizations. In November 2018 an allegation of conspiring to assassinate the current Prime Minister of India Narendra Modi was added. Of these 16 HRDs, 13 HRDs are in prison as pre-trial detainees, while co-accused Stan Swamy, 84 year old Jesuit priest, imprisoned since October 8, 2020, died in judicial custody in July 2021, due to poor health exacerbated by lack of medical care in prison, and two accused, 80 year old Varavara Rao and Sudha Bharadwaj have been released on bail. See ICJ, Joint Statement on the death of human rights defender Father Stan Swamy, July 6 2021, available at

<https://www.icj.org/joint-statement-on-the-death-of-human-rights-defender-father-stan-swamy/>.

¹³ In December 2019, the Indian Government passed the Citizenship (Amendment) Act (CAA) amending the Indian Citizenship Act to expedite the process for citizenship for migrants who are Hindu, Sikh, Jain, Parsi, Buddhist, and Christian from neighboring countries of Afghanistan, Bangladesh, and Pakistan, all Muslim majority countries, if they entered India before 2014 following religious persecution. While the law gave protected status to these religious groups, it excluded Muslims. The passage of this law resulted in nation-wide protests as the law violates the rights to equality and non-discrimination. In February 2020, the protests organized in Delhi against the CAA took a violent turn in north-east Delhi in Muslim majority neighborhoods between Hindu and Muslim groups, leading to the death of over 53 people, majority being Muslims. As per media reports, more than 200 people were injured and shops and houses were burnt. This resulted in the arrest of 15 activists in 2020, throughout the COVID-19 pandemic, even though there was a nation-wide lockdown from 22 March to 31 May 2020. Over 700 FIRs were filed by the police against student activists and other individuals. On 6 March 2020, FIR 59/2020 was filed by the Special Cell Delhi Police (Delhi riots FIR) accusing youth activists under various sections of the IPC, such as waging a war against the state (S. 121, IPC), rioting with a deadly weapon (S. 148, IPC) along with being part of a conspiracy (S. 120B, IPC), as well as under the UAPA, the Arms Act and the Prevention of Damage to Public Property Act. Many HRDs have also been accused of offences under other FIRs for their alleged role in the anti-CAA protests before the riots took place in February. Under the Delhi riots FIR, arrests were carried out by the Delhi police during the nation-wide lockdown from March 2020 till May 2020 and during the pandemic till October 2020. See, ICJ, Joint Open Letter to the Indian Government calling for the release Of human rights defenders at risk, May 27 2020, available at

<https://www.icj.org/joint-open-letter-to-the-indian-government-calling-for-the-release-of-human-rights-defenders-at-risk/>

¹⁴ The 31 human rights defenders are: Arun Ferreira, Sudha Bhardwaj, Varavara Rao, Vernon Gonsalves, Anand Teltumbde, Gautam Navlakha, Hanybabu Tarayil, Sagar Gorkhe, Ramesh Gaichor, Jyoti Jagtap, Rona Wilson, Shoma Sen, Sudhir Dhawale, Surendra Gadling, Mahesh Raut, Stan

Swamy (deceased), Natasha Narwal, Devangana Kalita, Ishrat Jahan, Miran Haider, Safoora Zargar, Asif Iqbal Tanha, Taahir Hussain, Mohd Parvez Ahmed, Mohd Illyas, Saifi Khalid, Shahdab Ahmed, Tasleem Ahmed, Saleem Malik, Mohd Saleem Khan and Athar Khan. <https://indiacivilwatch.org>

¹⁵ A. Mandhani, "2 years, 3 charge sheets & 16 arrests — Why Bhima Koregaon accused are still in jail" *The Print*, 31 October 2020, <https://theprint.in/india/2-years-3-charge-sheets-16-arrests-why-bhima-koregaon-accused-are-still-in-jail/533945/>; See also Times Now Digital, "Delhi riots: Photos of 20 accused to be put up at public places; reward for people giving information on them" *Times Now News*, 27 November 2020; <https://www.timesnownews.com/delhi/article/delhi-riots-2020-photos-of-20-accused-to-be-put-up-at-public-places-reward-for-people-giving-information/687320#:~:text=Delhi%20Police's%20first%2017%2C500%2Dpage,Malik%2C%20M%20ohammed%20Salim%20Khan%20and.>

¹⁶ See Hannan Ellis Petereson, "India's Covid anguish fuels calls to release rights activists from jail" *The Guardian*, 13 May 2021, <https://www.theguardian.com/world/2021/may/13/india-covid-anguish-fuels-calls-to-release-human-rights-activists-from-jails>

¹⁷ HRDs over 60 years of age - Shoma Sen (61) – suffering from multiple ailments including osteoarthritis, glaucoma and high blood pressure. Vernon Gonsalves (64) – suffering from high blood pressure, Sudha Bharadwaj (61- released on bail) – suffering from two severe comorbidities – diabetes and high-blood pressure – and also has a history of pulmonary tuberculosis. Anand Teltumbde (71) – suffering from respiratory ailments, Gautam Navlakha (70) – developed lump in chest while in judicial custody. Varavara Rao (81-released on bail) - diminishing neurological and physical health condition, takes 13 medicines daily for neurological problems, cholesterol, blood pressure, prostate, acidity, gastroesophageal reflux, constipation, cardiac issues and pain relief. Stan Swamy (84-deceased) – suffered from Parkinson's disease, a progressive neurological condition, loss of hearing in both ears.

¹⁸ Stan Swamy died on 5 July 2021. S. Dasgupta, "Stan Swamy death 'institutional murder by inhuman state', kin of Bhima Koregaon accused say" *The Print*, 06 July 2021, <https://theprint.in/india/stan-swamy-death-institutional-murder-by-inhuman-state-kin-of-bhima-koregaon-accused-say/690547/>. See ICJ, Joint Statement on the death of human rights defender Father Stan Swamy, July 6 2021, available at <https://www.icj.org/joint-statement-on-the-death-of-human-rights-defender-father-stan-swamy/>.

¹⁹ Safoora Zargar was granted bail on 26 June 2020 – see Delhi High Court, *Safoora Zargar v. State*, Crl. Bail Application 1318/2020, dated 26 June 2020; Varavara Rao was granted bail on 22 February 2021, see Bombay High Court, *Dr. P.V.Varavara Rao v NIA & State of Maharashtra*, Criminal Appeal No.52/2021 in Criminal Appeal LDVC No.143/2020, 22 February 2021; Devangana Kalita, Asif Iqbal Tanha and Natasha Narwal were granted bail on 15 June 2021 - see Delhi High Court *Devangana Kalita v. State of NCT of Delhi*, Crl.A.90/2021, Judgment dated 15 June 2021; Delhi High Court, *Natasha Narwal v. State of NCT of Delhi*, Crl.A.82/2021, Judgment dated 15 June 2021; Delhi High Court, *Asif Iqbal Tanha v. v State of NCT of Delhi*, on 15 June 2021; Sudha Bharadwaj was granted bail on December 1, 2021.

²⁰ Information available on file with the ICJ.

²¹ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, paras 161.135 – 161.140; 161.142-161.143 in A/HRC/36/10, recommendations made by Germany, Norway, Republic of Korea, United States of America, Czechia, Switzerland, Pakistan, Canada.

²² International Commission of Jurists, India's Foreign Contribution Regulation Act: A Tool to Silence Indian Civil Society Organization: A Briefing Paper, November 2020, available at <https://www.icj.org/wp-content/uploads/2020/12/India-FCRA-Briefing-Paper-2020-ENG.pdf>

²³ Preamble, The Foreign Contribution Regulation Act, 2010, available at https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

²⁴ The Foreign Contribution (Regulation) Rules 2011 : Rule 3

²⁵ ICJ, "India's Foreign Contribution Regulation Act: A Tool to Silence Indian Civil Society Organization: A Briefing Paper", November 2020, available at <https://www.icj.org/wp-content/uploads/2020/12/India-FCRA-Briefing-Paper-2020-ENG.pdf>

²⁶ The Foreign Contribution (Regulation) Amendment Act, 2020 available at https://fcraonline.nic.in/home/PDF_Doc/amend_07102020_1.pdf. See International Commission of Jurists, "India: FCRA Amendment 2020 will undermine the work of Civil Society", September 24, 2020, <https://www.icj.org/india-fcra-amendment-2020-will-undermine-the-work-of-civil-society/>.

²⁷ Vijaita Singh, "FCRA registration of 6,000 NGOs lapses", *The Hindu*, January 1, 2022, available at <https://www.thehindu.com/news/national/oxfam-india-jamia-millia-islamia-among-nearly-6000-ngos-whose-fcra-registration-has-ended/article38085623.ece>

²⁸ Government of India, Rajya Sabha Unstarred Question 854, "Cancellation of FCRA Licenses", 9 February 2022, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022->

pdfs/RS09022022/854.pdf ; PTI, "Govt cancelled FCRA licence of 1,900 NGOs in last five years", *Times of India*, February 9 2022, available at <https://timesofindia.indiatimes.com/india/govt-cancelled-fcra-licence-of-1900-ngos-in-last-five-years/articleshow/89452240.cms> ;

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³⁵ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, para, 161.95 in A/HRC/36/10, recommendation made by Greece.

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⁴² Section 4: Special Powers of the armed forces, Armed Forces Special Powers Act, 1958.

⁴³ Section 4: Special Powers of the armed forces, Armed Forces Special Powers Act, 1958.

⁴⁴ Section 5: Arrested persons to be made over to the police, Armed Forces Special Powers Act, 1958.

⁴⁵ See Torture, Extra-judicial Killings and Forced Disappearances in India, 2008, available at <https://2019.hrln.org/wp-content/uploads/2018/03/State-terrorism.pdf>

⁴⁶ Justice Jeevan Reddy Committee set up by the Government of India in 2005 in the aftermath of the extrajudicial execution of Thangjam Manorama in Manipur, called for the repeal of AFSPA, stating, "[t]he Armed Forces (Special Powers) Act, 1958 should be repealed...recommending the continuation of the present Act, with or without amendments, does not arise. The Act is too sketchy, too bald and quite inadequate in several particulars. It is true the Supreme Court has upheld its Constitutional validity but that circumstance is not an endorsement of the desirability or advisability of the Act ... The honorable Court has added certain riders of its own ... The Committee is of the opinion that legislative shape must be given to many of those riders ... the Act, for whatever reason,

has become a symbol of oppression, an object of hate and an instrument of discrimination and high handedness. It is highly desirable and advisable to repeal this Act altogether ...". The Justice Verma Committee, which was constituted in December 2012 after the gangrape committed in Delhi recommended that AFSPA be "immediately reviewed" to determine the need to resort to such laws.

⁴⁷ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, paras 161.97 and 161.248 in A/HRC/36/10, recommendations made by Switzerland and Pakistan.

⁴⁸ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, paras 161.98 in A/HRC/36/10, recommendation made by Sierra Leone.

⁴⁹ For example - Code of Criminal Procedure, 1973, section 45, section 132(1), section 197; Armed Forces (Special Powers) Act 1958, section 6; Armed Forces (Special Powers) Act 1990, section 7; Unlawful Activities Prevention Act 1967, section 45; The Narcotic Drugs and Psychotropic Substances Act (NDPS) 1985, section 59(3); Jammu and Kashmir Disturbed Areas Act 1992, section 6; Maharashtra Control of Organized Crime Act 1999, section 23(2); Jammu and Kashmir Public Safety Act 1978, section 21.

⁵⁰ <https://indiankanoon.org/doc/51378140/>

⁵¹ Paragraph no. 26 of the EEVFAM v/s UoI reported in 2017 SCC SC 743, decided on 14.07.2017

⁵² Monthly Salient Statistics of Cases Registered/ Disposed by NHRC During January 2022, https://nhrc.nic.in/complaints/human-right-case-statistics?field_date_value%5Bvalue%5D%5Bmonth%5D=1&field_date_value%5Bvalue%5D%5Byear%5D=2022

⁵³ See section 19 of the Protection of Human Rights Act: http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf.

⁵⁴ Phalguni Rao, "NHRC registered 1,782 fake encounter cases between 2000-2017; Uttar Pradesh alone accounts for 44.55%", *First Post*, February 2, 2018, available at <https://www.firstpost.com/india/nhrc-registered-1782-fake-encounter-cases-between-2000-2017-uttar-pradesh-alone-accounts-for-44-55-4332125.html>

⁵⁵ "5,178 encounters since 2017': UP Police boasts of killing 103, injuring 1,859" *The Week*, December 6, 2019, available at <https://www.theweek.in/news/india/2019/12/06/5-1-encounters-since-2017-up-police-boasts-of-killing-103-injuring-1-8.html>

⁵⁶ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, para, 161.104-115 in A/HRC/36/10, recommendations made by Mozambique, Greece, Namibia, Rwanda, Belgium, Lithuania, Italy, Spain, Australia, Montenegro, Timor-Leste, France.

⁵⁷ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, para, 161.1-161.2 in A/HRC/36/10, recommendations made by Estonia, Portugal.

⁵⁸ At least 11 sections in the Indian Penal Code prescribe the death penalty. Other laws that have capital punishment include the Unlawful Activities Prevention Act, 1967; Narcotics Drugs and Psychotropic Substances Act, 1985; Maharashtra Control of Organised Crime Act, 1999; and the Army Act. A list can be found on pages 32 and 33 of the Law Commission Report.

⁵⁹ See for example section 364A of the Indian Penal Code: Kidnapping for ransom, etc.— Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

⁶⁰ Section 5, The Protection of Children From Sexual Offences (Amendment) Act, 2019.

⁶¹ See ICJ, "India: Execution of perpetrators of Delhi gang rape is an affront to rule of law and does not improve access to justice for women", March 2020, available at <https://www.icj.org/india-execution-of-perpetrators-of-delhi-gang-rape-is-an-affront-to-rule-of-law-and-does-not-improve-access-to-justice-for-women/>

⁶² The Citizenship Amendment Act, 2019, available at <https://egazette.nic.in/WriteReadData/2019/214646.pdf>. The President assented to it on 12 December 2019 and the law came into force on 10 January 2020.

⁶³ See ICJ Press Release, India: Discriminatory citizenship law passed by Parliament violates international and constitutional law, December 11, 2019, available at <https://www.icj.org/india-discriminatory-citizenship-law-passed-by-parliament-violates-international-and-constitutional-law/>

⁶⁴ See ICJ Press Release, India: Discriminatory citizenship law passed by Parliament violates international and constitutional law, December 11, 2019, available at <https://www.icj.org/india-discriminatory-citizenship-law-passed-by-parliament-violates-international-and-constitutional-law/>

⁶⁵ The Citizenship Amendment Act, 2019, available at <https://egazette.nic.in/WriteReadData/2019/214646.pdf>

⁶⁶ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, para, 161.45 in A/HRC/36/10, recommendation made by Latvia.

⁶⁷ Suhasini Haider, "India cuts off UN panel after Jammu & Kashmir report", *The Hindu*, May 21, 2019, available at

<https://www.thehindu.com/news/national/india-cuts-off-un-panel-after-jammu-kashmir-report/article27190445.ece>

⁶⁸ General Assembly, Report of the Working Group on the Universal Periodic Review - India Addendum, A/HRC/36/10/Add.1, paras 161.5-161.9, 161.11 in A/HRC/36/10, recommendations made by Botswana, Norway, Czechia, Bulgaria, Greece, Guatemala, Italy, Lebanon, Montenegro, Mozambique, South Africa, Sweden, Turkey, Ukraine, United States of America, Australia.

⁶⁹ Law Commission of India, Report No 273, Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation, October 2017, available at

<https://lawcommissionofindia.nic.in/reports/Report273.pdf>

⁷⁰ For a detailed analysis see the following ICJ briefing paper: <http://icj.wpengine.netdnacdn.com/wp-content/uploads/2012/06/India-opinion-prevention-torture-legal-submission-2012.pdf>

⁷¹ Government of India, Lok Sabha Unstarred Question 290, Legislation on Torture, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2020-pdfs/ls-15092020/290.pdf>