

HUMAN RIGHTS IN INDIA

STATUS
REPORT 2021



CRUSHING DISSENT





Indian American Muslim Council

Peace, Pluralism & Social Justice

Indian American Muslim Council (IAMC) is a Washington, DC based advocacy organization established in 2002 by Muslim Americans of Indian descent, with chapters across the United States.

IAMC is the largest advocacy organization of the Indian Muslim diaspora. It is a 501(c)3 tax-exempt non-profit.

*The core mission of Indian American Muslim Council is as follows:
To defend fundamental and civil rights of all.*

To preserve the pluralistic and democratic ethos enshrined in the constitutions of the United States and the Republic of India.

To facilitate increased interfaith and inter-community understanding in the United States with to the goal of safeguarding American society and institutions from infiltration by divisive and hate-filled ideologies.

To increase awareness about India in order to improve cultural and trade relations between the United States and the Republic of India.

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Foreword

If there were any skeptics as to the real nature of Narendra Modi's administration when he first became Prime Minister of India in 2014, their ranks shrank rapidly after he won reelection in 2019 securing a higher parliamentary majority.

The ravages on India's Constitution and the rule of law that Modi unleashed during 2014-19, were a clear indication of the horrors that he began rolling out merely weeks into his second term.

First, Modi revoked the special Constitutional status of Jammu and Kashmir, India's only Muslim-majority province, and unleashed more brutal military repression in the Kashmir valley, which was already reeling under one of the world's worst State repression for thirty years. In December 2019, Modi's government legislated the Citizenship (Amendment) Act (CAA) introducing a citizenship test barring only Muslim migrants from an expedited pathway to becoming Indian citizens, triggering nationwide protests against the law which saw the police kill over 35 peaceful protesters, nearly all of them Muslims, in unprecedented State violence.

The BJP-RSS-led violence against Muslims in Delhi in February 2020, the arrests of thousands of Muslims across the country, hundreds in Delhi alone in fabricated cases of rioting, the unfettered powers accorded to the National Investigative Agency (NIA) and the Central Bureau of Investigation (CBI) that the two have grossly abused, especially with regard to activists, lawyers, students and other opponents of the Modi regime, is also now unprecedented.

The government's plan is simple; to arrest any and everyone that stands in its way and charge them with crimes such as terrorism and sedition that carry some of the harshest punishment under Indian law. While the police, the other investigative agencies such as the NIA and the CBI, and, of course, the prosecutorial functions are fully under the government's total control, the Indian judiciary has unequivocally submitted to the Modi administration.

For over a year after the suspension of civil liberties and habeas corpus in Kashmir, the Indian Supreme Court has refused to hear bail petitions from those who have been falsely accused of various crimes, merely for exercising their right to public dissent. Such individuals now include renowned public intellectuals, from Gautam Navlakha to Varavara Rao to Anand Teltumbde, an unspeakable inhumanity of the arrest, imprisonment and denial of basic needs of faith leaders like Father Stan

Swamy, an ailing 83-year-old activist and Jesuit priest and youth leaders such as Umar Khalid, Sharjeel Imam and many others.

It is not just the criminal justice system that has collapsed in India. Wider governance has crashed, too. Even before the pandemic hit India, unemployment was at a 45-year high. Manufacturing, industry, services and agriculture were already grinding to a halt in 2019. Banks have lost billions of dollars worth in loans and value because the Modi government has failed in both oversight and policy making. It has instead raided the central Reserve Bank of India and grabbed its reserve capital for running the government. The crises of forced migration, acute poverty, hunger and disease are racing towards their worst in decades.

Other pillars of democracy, both State and non-State, have been destroyed, too. The Indian news media is an extension of Mr. Modi's government, implementing the agenda of Hindutva, the stated goal and ideology of the Rashtriya Swayamsevak Sangh (RSS), Mr. Modi's mother organization that wants to convert India into a Hindu nation by relegating non-Hindus such as Muslims and Christians to the status of second-class citizens with curtailed and unequal rights. The Indian Election Commission, once fiercely independent, is now Modi's puppet.

This moment is without doubt the most challenging that India has faced in 73 years since it gained independence from British colonial rule in 1947. While those of us who believe in the Indian Constitution, which the RSS wants to subvert and alter, continue to fight the communal onslaught of the Hindu nationalists in our bid to keep India pluralist and secular, there is no question that this threat to India's core values is a clear and present danger that is growing by the day.

It is under these circumstances that we bring you this compendium of short essays on different aspects of this threat.


This is another step in our global work to shine a light on the egregious behavior of the Indian State under tremendous pressure from the RSS-BJP ideology of Hindutva.

*Rasheed Ahmed
Executive Director
Co-Founder & A Past-President,
Indian American Muslim Council (IAMC)*



"This movement was about mohabbat (love) and barabari (equality). Why are our young people being put in jail because of it? This was not a battle I fought alone, it was a shared struggle, and it continues to be shared."

- **Bilkis Dadi**. The 82-year old became the face of the anti-CAA protest at Shaheen Bagh



"The nature of the present NIA investigation of me has nothing to do about Bhima-Koregaon case in which I have been booked as a 'suspected-accused' and consequently raided twice (August 28, 2018 and June 12, 2019). But it had everything to do to somehow establish (i) that I am personally linked to extremist leftist forces, (ii) that through me Bagaicha is also relating to some Maoists. I denied both these allegations in strongest terms. I have informed them that I am not in a position to undertake the long journey given my age and the nature of the epidemic ravaging the country. Hoping human sense will prevail. If not, I / we must be ready to face the consequences."

- Fr Stan Swamy. Excerpts from the 83-year-old Jesuit priest's letter written before his arrest on October 8, 2020. He has moved court requesting permission to use a straw / sipper to drink water as his hands shake due to Parkinson's disease. But the National Investigation Agency (NIA) and Taloja jail authorities keep offering ridiculous excuses like non-availability of straws and sippers to deny his re-quest.



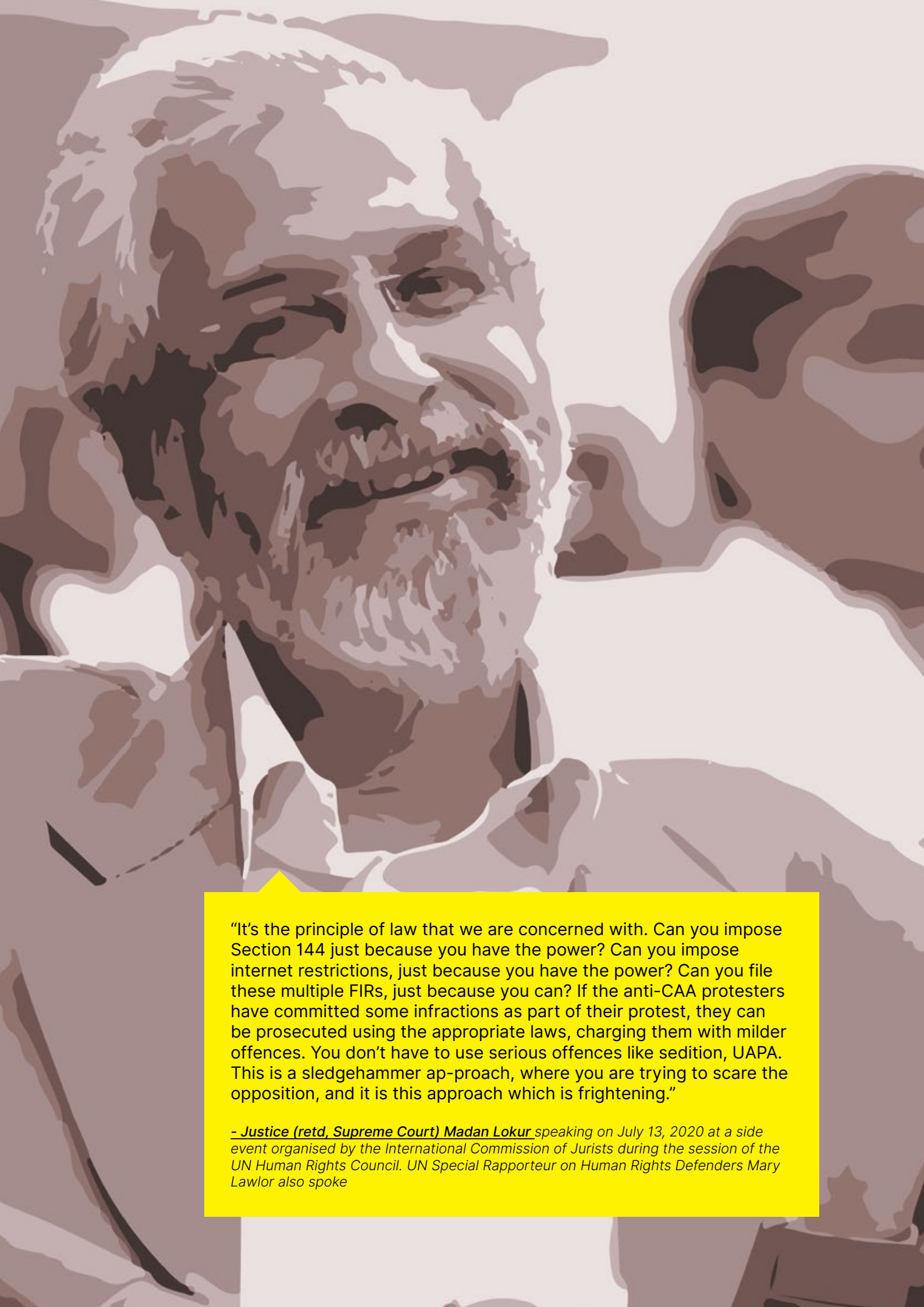
"This human rights work we are doing is very much in the public domain. It is a different matter that this must be an irritant for (the) government. Apart from this, I, in my capacity as a lawyer, have un-dertaken several cases related to land acquisition, Adivasi (indigenous peoples) Rights, Forest Rights, PESA (right to local self-government). Defaming me would also be convenient to defame the organisa-tions associated with me."

*- **Sudha Bharadwaj, lawyer, trade unionist, senior civil liberties activist** with the People's Union for Civil Liberties (PUCL), Chhattisgarh was arrested on August 28, 2018. On November 1, 2020 she spent her third birthday in jail. Even the Supreme Court did not grant her bail and release her during the COVID-19 pandemic despite her co-morbidities.*



"In a jail made for 534 inmates, there are 1,600 people kept with one barrack holding at least 100-125 of us. There are just 4-6 toilets. With just one attached toilet and 125-150 inmates, the smell of their sweat and urine mixed, with unbearable heat due to electricity cuts, makes life hell over here, a living hell indeed."

- Excerpt from Dr. Kafeel Khan's second letter (Jul 27, 2020) out of five that he wrote from UP's Mathu-ra prison, where he was jailed during the pandemic. Dr. Khan had been behind bars from January to September, 2020 for a speech against the Citizenship Amendment Act (CAA) 2019. This is his second incarceration, the first being for nine months in 2017. In August that year he was initially hailed as a he-ro for saving children who would have died for want of oxygen at the BRD Medical College and Hospital in Gorakhpur, and then falsely implicated. Gorakhpur is the hometown of the present chief minister of Uttar Pradesh, Adityanath.



"It's the principle of law that we are concerned with. Can you impose Section 144 just because you have the power? Can you impose internet restrictions, just because you have the power? Can you file these multiple FIRs, just because you can? If the anti-CAA protesters have committed some infractions as part of their protest, they can be prosecuted using the appropriate laws, charging them with milder offences. You don't have to use serious offences like sedition, UAPA. This is a sledgehammer ap-proach, where you are trying to scare the opposition, and it is this approach which is frightening."

- Justice (retired, Supreme Court) Madan Lokur speaking on July 13, 2020 at a side event organised by the International Commission of Jurists during the session of the UN Human Rights Council. UN Special Rapporteur on Human Rights Defenders Mary Lawlor also spoke

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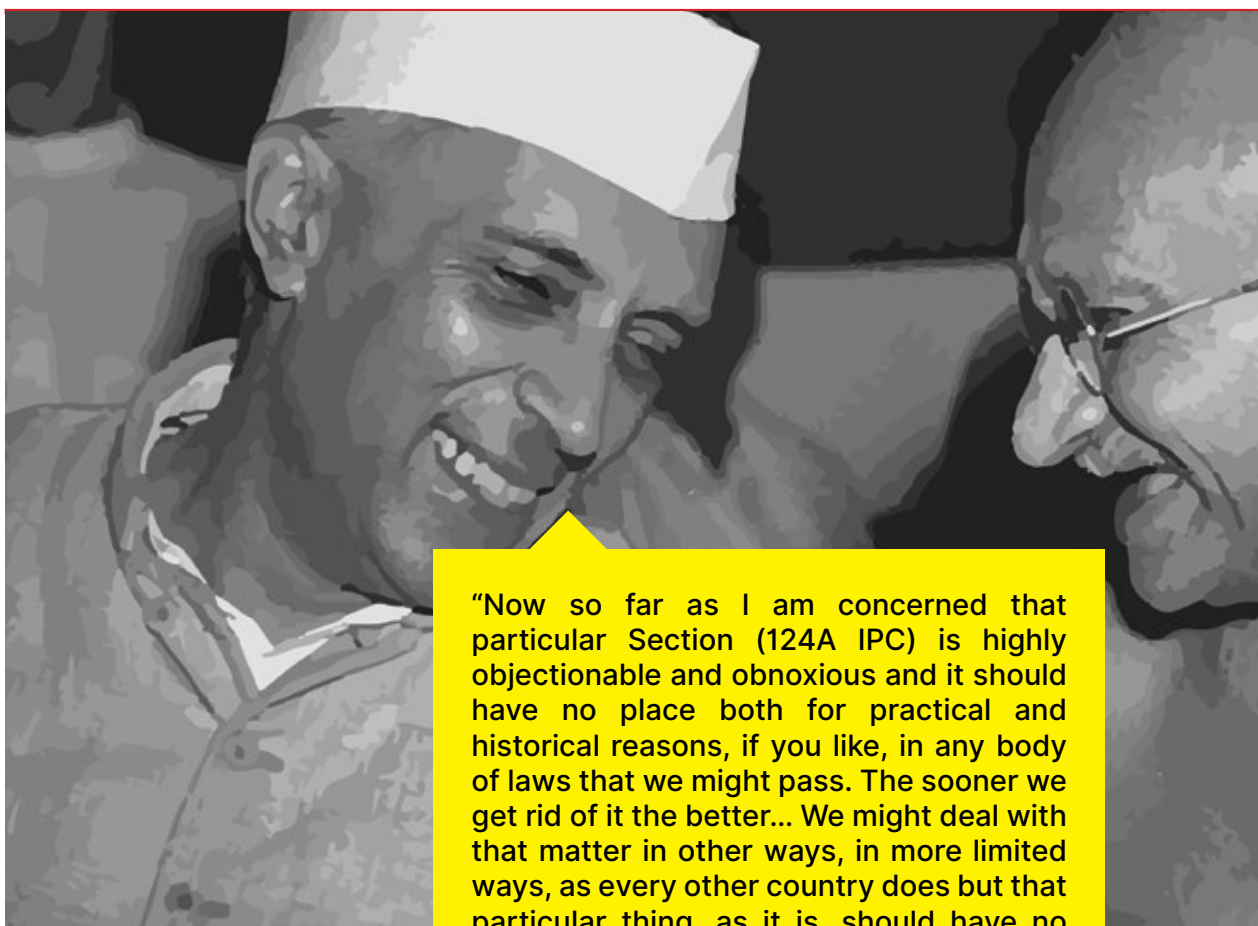
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Glossery

BJP - Bharatiya Janata Party (the ruling government in India)
MP - Member of Parliament
MHA- Ministry of Home Affairs
GDP - Gross Domestic Product
UDHR - Universal Declaration of Human Rights
WHO - World Health Organization
NGO - Non-governmental Organization
IPC - Indian Penal Code
CrPC - Criminal Procedure Code
CAA - Citizenship Amendment Act, 2019
NPR - National Population Register
NRC - National Register of Citizens
ECI - Election Commission of India
RTI - Right To Information
UP - Uttar Pradesh (a BJP ruled state in India)
PIL- Public Interest Litigation
OBC - Other Backward Classes
SC - Scheduled Castes
ST - Scheduled Tribes
SECC - Socio-Economic Caste Census
FRA - Forest Rights Act, 2006
MoEF - Ministry of Environment and Forests
CJI - Chief Justice of India
NJAC - National Judicial Appointments Commission
NCRB - National Crime Records Bureau
EIA - Environment Impact Assessment
RTE - Right to Education
GER- Gross Enrolment Ratio
NCW - National Commission for Women
NEP - National Education Policy
JEE - Joint Entrance Exam
NTA - National Testing Agency
IIM - Indian Institute of Management
NSSO - National Sample Survey Office
NFHS - National Family Health Survey
NFF - National Fishworkers' Forum
ICDS - Integrated Child Development Services
AWW - Anganwadi workers
AWH - Anganwadi Helpers
ESI - Employee State insurance
EPF - Employee Provident Fund
ASHA - Accredited Social Health Activists
ANM - Auxiliary Nurse Midwife
LGBT*QIA+ - lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual
NTFP - Non-Timber Forest Produce
NHM - National Health Mission
NRHM - National Rural Health Mission
NUHM - National Urban Health Mission
EFI - Evangelical Fellowship of India
USCIRF - United States Commission on International Religious Freedom



CRUSHING DISSENT



“Now so far as I am concerned that particular Section (124A IPC) is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better... We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in variety of ways and apart from the logic of the situation, our urges are against it.”

- Jawaharlal Nehru, the first Prime Minister of India

A case against the infamous Sedition Law

Sedition is an offence under the Indian Penal Code (IPC) and is defined under section 124A as follows: Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may

be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

The origin of the law of sedition is buried in India's colonial past dating back to the 19th century, it was enacted in 1870 by the British.¹ Abolished in England decades ago,² it has been misused, more so, after Independence, as a tool by the police to quash democratic dissent. The

ignominious use of the law against writer, Arundhati Roy (2010), doctor activist, Binayak Sen (2007), cartoonist Aseem Trivedi (2012) and right-wing politician Praveen Togadia (2003) and Simranjit Singh Mann (2005) are cases in point.

The Tamil Nadu police slapped sedition cases against thousands during the protests against the Kudankulam Nuclear Power Project in 2012-13. Decades earlier, in 1980-81 when, in the name of curbing Naxalites, Tamil Nadu cracked down on civil liberties activists and agricultural labor, hundreds of people were charged with sedition. Despite stating in its 2019 poll manifesto that it would repeal this section of the law, the Indian National Congress, now in the Opposition, did not do so during ten years that it was in power (2004-2014). Sedition is clearly an impediment to the right to dissent in a democracy which emanates from the Right to freedom of expression and speech under Article 19(1)(g) of the Indian Constitution.

Current Scenario

According to data released by the National Crime Bureau (NCRB) in its last report of 2018, the number of sedition cases registered in the country in 2016 there were 35, but 2018 saw 70 such cases. The data further indicates that while Jammu and Kashmir saw only one case in 2017, it jumped to 12 sedition cases in 2018! The number of sedition cases filed since 2015 stood at 191, of which trials were completed in 43 cases. However, the prosecution managed conviction only in four cases. None of the four cases in which trials were completed in 2015 ended in convictions.³ This section of the law is being so

rampantly invoked, that any case that involves a person doing or saying anything that appears to be against the government, or even a comment on the government, invites sedition. Whether or not the police are able to prove the charge when the matter goes to trial in court is debatable, but sedition is clearly being used as an arm-twisting tactic to intimidate dissenters. One example of how randomly the sedition charge is being invoked is an incident whereby a local leader of Anjuman-e-Islamia in Jammu and Kashmir was charged for sedition, on July 26, 2020 for delivering a speech in which he called for people to continue offering prayers at mosques, dismissing any threat from the coronavirus. There is no news of him having been granted bail. While this may be considered as offence of disobeying an order of a public servant or mischief, this statement in no way falls under the definition of 'sedition.'⁴

Yet another example of misuse of sedition law was the case where the mother of school student in Bidar, Karnataka, was charged with sedition when the child participated in a play on January 21, 2020, that allegedly criticized Prime Minister Narendra Modi. The district court granted bail to the mother.⁵ The state is ruled by the BJP. 19-year-old Amulya Leona was arrested by the Bengaluru police for saying "Pakistan Zindabad" in a speech.⁶ Mere sloganeering does not amount to sedition, the Supreme Court of India has held in 1995. Sedition has also been invoked widely against journalists. On May 11, 2020, Dhaval Patel, a journalist from Ahmedabad, Gujarat, was charged with sedition and arrested for writing an article that said that the state's Chief Minister may be replaced after displeasure of his handling of the COVID-19 crisis.⁷ While

this instance may seem unusual, there are several such instances of the misuse of the Sedition law.

Jurisprudence

Not too long ago, in 2016, the Supreme Court bench comprising Justices Dipak Misra and Uday Lalit asked authorities to be guided by the principles laid down by the Constitution Bench in *Kedar Nath Singh vs. State of Bihar*⁸ while dealing with offences under section 124A of IPC. The petition was filed against the misuse of the sedition law and the instances cited were of sedition charge against Amnesty International India for organising a debate on Kashmir and against Kannada actor-turned-politician, Ramya for her 'Pakistan is not hell' remark.⁹ The Courts, have over the years, considered the scope of sedition in several cases. In *Arun Jaitley vs. State of UP*, the High Court of Allahabad (November 5, 2015)¹⁰ the court held that the article merely voiced

the opinion of the author and was not a call to arms.

The way forward

- The rampant use of the sedition charge in any case that involves any comment against the government and suggests sections of the penal code are invoked while filing of a criminal complaint (FIR) arbitrarily when officials abuse their power.
- Severe restrictions in invoking this charge must be enforced and put in place by the legislature and judiciary.
- Making the charge non-cognisable in nature so that police may not arrest without warrant, judicial scrutiny before its application are the first few immediate steps needed before Sedition is completely removed from Indian criminal law.

1) <https://www.outlookindia.com/website/story/opinion-section-124a-the-case-against-the-much-misused-sedition-law/347936>

2) In 2009, India's colonizers who introduced sedition here, abolished it in their own country. After a long campaign by free speech organizations, the UK got rid of offences of seditious libel and criminal defamation.

3) <https://www.deccanherald.com/national/only-4-sedition-cases-saw-conviction-in-4-years-ncrb-793187.html>

4) <https://indianexpress.com/article/india/anjuman-e-islamia-leader-booked-on-seditioncharges-6523640/>

5) <https://timesofindia.indiatimes.com/city/bengaluru/karnatakas-shaheen-school-sedition-case-bail-granted-to-students-mother-and-teacher/articleshow/74137184.cms#:~:text=BIDAR%3A%20A%20Bidar%20court%20in>

6) <https://www.outlookindia.com/website/story/india-news-girl-who-chanted-pakistanzindabad-at-caa-protest-denied-bail-slapped-with-sedition/347632>

7) <https://cpj.org/2020/05/indian-journalist-dhaval-patel-arrested-charged-wi/>

8) In *Kedar Nath Singh vs. State of Bihar*, which is a judgment from 1962, the Supreme Court had held that, "a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government".

9) <https://thewire.in/law/criticism-of-government-does-not-constitute-sedition-says-supreme-court>

10) The Magistrate, while adjudicating on an article authored by the "accused" titled "NJAC Judgement-An Alternative View" held that it "undoubtedly spread hatred and contempt against a duly elected Government and accordingly, in his opinion, the applicant prima facie appears to have committed offences under Section 124A and 505 I.P.C."



24 year old Tabrez Ansari, tied up to the street light pole and beaten to death in Jharkhand. Police also complicit in the death by putting wounded Tabrez inside the cell, without medical help on time.

How hate speech sparks hate crimes in India

Black's Law Dictionary, (9th Edition) defines the expression 'hate speech' as "Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence."

In India, hate speech plays a key role in instigating hate crimes. These are crimes committed against members of specific communities who are singled out and targeted with the intention of intimidating them. Usually hate speech is replete with communal slurs often related to stereotypes associated with the community being targeted. Though hate speech has been around for a long time,¹ it has become more frequent since May 2014, and is used as a tool to incite hatred, violence, animosity, particularly towards minority communities with the aim to establish dominance of the majority.²

Democracy thrives on disagreements provided they do not cross the boundaries of civil discourse. Critical and dissenting voices are important for a vibrant society. However, care must be taken to prevent public discourse from becoming a tool to promote speech inimical to the right to a life or dignity of weaker and marginalized sections, speech that promotes hatred against a section. Responsible speech is the essence of the liberty granted under Article 21 of the Constitution.

One of the greatest challenges before the principle of autonomy and free speech principle is to ensure that this liberty is not exercised to the detriment of any individual or the disadvantaged section of the society. In a country like India, with diverse castes, religions and languages, this issue poses a greater challenge.³

Legal provisions

Hate speech has not been defined in any law in India.

However, legal provisions in certain legislations prohibit select forms of speech as an exception to freedom of speech. The Indian Penal Code has various sections that, although do not define the term hate speech, but seek to penalize every possible scenario of hate speech.

- Section 153A IPC penalises 'promotion of enmity between different groups on grounds of religion.'
- Section 295A IPC penalises 'deliberate and malicious acts, intended to outrage religious feelings.'
- Section 298 IPC penalises 'uttering, words, etc., with deliberate intent to wound the religious feelings.'
- Section 505(1) and (2) IPC penalises 'publication or circulation of any statement, rumour or report causing public mischief and enmity, hatred or ill-will between classes.'

Further, under section 123 (3A) of the Representation of The People Act, 1951, the law prohibits the misappropriation or misuse of religion and religion for political ends, defining such as a corrupt electoral practice and prohibits them.

The Protection of Civil Rights Act, 1955 penalises incitement to, and encouragement of untouchability⁴ through words, either spoken or written, or by signs or by visible representations or otherwise. The Religious Institutions (Prevention of Misuse) Act, 1988 prohibits religious institution to allow the use of

its premises for promoting disharmony, feelings of enmity, hatred, illwill between different religious groups. Section 95 of the Criminal Procedure Code (CrPC) empowers the state government to forfeit publications that are punishable under the hate speech sections of IPC as mentioned above.

Thus, even if hate speech per se does not find its place in the criminal laws, its manifestations have been captured in the provisions of these laws. The only gap that remains is the right usage and application of these charges against the perpetrators of hate which is going on a decline.

In *Pravasi Bhalai Sangathan v. Union of*

"As a Supreme Court of the nation we cannot allow you to say that Muslims are infiltrating civil services. You cannot say that the journalist has absolute freedom doing this."

- Justice DY Chandrachud, Supreme Court of India, September 2002

India, (Ref: AIR 2014 SC 1591, at para. 7.) the Supreme Court has unambiguously stated that hate speech is an effort to marginalize individuals based on their membership to a group, that can have a social impact. Moreover, the Court stated that hate speech lays the groundwork for broad attacks on the vulnerable that can range from discrimination, to ostracism, deportation, violence, and even to genocide. The court had directed the Law Commission of India to consider defining Hate Speech to curb the menace which led to the Law Commission's 267th report on Hate Speech. The year 2020 saw some

incidents of blatant hate speech with burgeoning protests and demonstrations against the Citizenship Amendment Act (CAA) across the country. The hate machinery of right-wing hardliners got to work to demoralize and undermine the protestors by resorting to hate speech. The riots that were caused in North East Delhi in February 2020 were a direct result of the hate speeches made by some rightwing leaders in Delhi in the preceding days. BJP leaders such as Anurag Thakur,⁵ Parvesh Varma⁶ and Kapil Mishra had, while campaigning for elections in Delhi had delivered some perilous hate speeches.

In January 2020, Brinda Karat had filed a petition against the hate speeches delivered by the BJP leaders but the same was dismissed in August 2020 citing lack of prior permission of Central government since the respondents were Members of Parliament (MP).⁷

On February 26, 2020 a bench headed by Justice Dr. S Muralidhar directed the Delhi Police to take a decision within a day on the complaint made by social activist Harsh Mander seeking registration of FIRs against the leaders for alleged provocative speeches. Next day, the Solicitor General told the Court that the Delhi Police have decided to defer the decision on FIR as the riot situation was not “conducive” for registration of the same. Justice Muralidhar expressed “anguish” that the city is burning and questioned the Delhi Police on the delay and its lack of acknowledgment of the speeches themselves as crimes. The matter was then passed to a different bench and no FIR has been lodged since then against hate speech inciting the Delhi riots.

In July 2020, Delhi Police submitted an affidavit before the High Court claiming that no evidence has surfaced so far to indicate any role played by BJP leaders Kapil Mishra, Anurag Thakur and Parvesh Verma in either instigating or participating in the Delhi Riots.⁸

In September 2020, the Supreme Court prevented Sudarshan News from airing subsequent episodes of a show titled ‘Bindass Bol’, after the first episode blatantly demonized Muslims. The show accused them of conspiring to take over civil services!⁹

Current scenario

Hate speech has largely made its inroads online. Reportedly, ‘IT cells’ or troll armies of right-wing groups are constantly at work spreading hate on social media. Their posts, in the form of videos or pictures, garner thousands of views and comments conforming to these extreme expressions of hatred. A Wall Street Journal report of August 14, 2020 stated that a top Facebook official in India was opposed to applying the social media platform’s hate speech rules to at least one Bharatiya Janata Party (BJP) politician and other “Hindu nationalist individuals and groups.”¹⁰

The 134-page fact finding report of Delhi Minorities Commission mentioned in detail the build up towards the riots and this included the hate speeches of BJP leaders. Yet no action has been taken against them. On January 3, 2020 Shri Somasekhara Reddy, a Member of the Legislative Assembly of the BJP from Karnataka “cautioned” Muslims against participating in anti- CAA¹¹ protests, “We

are 80 per cent and you (Muslims) are 18 per cent. Imagine what will happen if we take charge...Beware of the majority when you live in this country". BJP MP Parvesh Varma publicly threatened to demolish all mosques in his constituency.¹²

- Implement the recommendations of the 267th Law Commission report; insertion of new section 153C

(Prohibiting incitement to hatred) and section 505A (Causing fear, alarm, or provocation of violence in certain cases) in the Indian Penal Code

- The law enforcement agencies, especially the police, ought to take decisive action against hate speech, without succumbing to political pressure and agenda.



Screengrab from video tweeted by @KapilMishra_IND (for creativity and concept purpose graphical filters added)

BJP leader Kapil Sharma openly threatens violence standing next to Ved Prakash Surya (Deputy Commissioner of Police, North East Delhi). Date: February 23, 2020. Place: Jafraabad, New Delhi.

1) <https://europepmc.org/article/pmc/pmc7371832>

2) <https://sabrangindia.in/article/look-whos-talking-hate-speech-cant-be-free-speechsays-jaitley>

3) <http://lawcommissionofindia.nic.in/reports/Report267.pdf>

4) A practice that allowed as section of Indian society to suffer the indignity of cruel exclusion and violence; prohibited by Article 17 of the Indian Constitution

5) Anurag Thakur raised a slogan in an election rally in Delhi on the January 20, 2020 where he incited the public present to repeat: "Deshkeghaddaron ko, golimaaronsaalon ko" (Shoot down the rascals/the traitors to the country).

6) On January 28, 2020, in a televised interview, Mr Parvesh Verma said, "The people of Delhi know that the fire that raged in Kashmir a few years ago, where the daughters and sisters of Kashmiri Pandits were raped...This fire can reach the residences of Delhi anytime. People of Delhi will have to decide wisely. These people will enter your houses, rape your sisters & daughters, kill them."

7) <https://sabrangindia.in/article/ruling-surprising-and-disappointing-brinda-karat-hatespeech- case-dismissal>

8) <https://www.nationalheraldindia.com/india/delhi-riots-no-evidence-to-indicate-role-ofkapil-mishra-anurag-thakur-parvesh-verma-police-tells-delhi-hc>

9) <https://www.thehindu.com/news/national/supreme-court-stays-sudarshan-tv-showbroadcast/article32611765.ece>

10) "How Facebook's Hate Speech Rules Collide With Indian Politics" - <https://www.wsj.com/articles/facebook-hate-speech-india-politics-muslim-hindu-modi-zuckerberg-11597423346>

11) Citizenship Amendment Act, (CAA), 2019

12) <https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>



Gauri Lankesh was an Indian journalist-turned-activist, she was shot to death on 5 September 2017, by 3 unidentified men outside of her residence.

Freedom of the Press: Journalism under attack in India

Freedom of Press is one of the main tenets of a true democracy. Journalism is known as the Fourth Estate in a democracy; thus it is one of the pillars upon which a democracy stands. Freedom of Press has been interpreted within the ambit of freedom of speech and expression under Article 19(1)(a) of the Indian Constitution.

However, this freedom gets stifled when journalists are punished or booked for reporting the truth, that is not palatable to the either the government, or are killed by some anti-social elements for digging out truth and doing their job.

India's ranking in the World Press Freedom Index has been on a constant decline since 2010. While in 2013 and 2014, it was listed at 140 among the 180 nations, it climbed to 136 in 2015 and

133 in 2016. However, since 2017, it has begun yet again to decline – from 136 to 138 in 2018, 140 in 2019, to arrive at 142 in 2020¹.

There is another report called the Global Impunity Index prepared by the Committee to Protect Journalists (CPJ) which was released in October 2019. This index highlights countries where journalists are murdered in the line of duty and the perpetrators go unpunished.

The report states that between 1992 and 2020, 51 journalists have been killed in India and out of them 32 are cases where the culprits have virtually gotten away with murder!²

The New York Times also took a deeper look into freedom of the press

in India in an article titled Under Modi, India's Press is not so Free anymore.³ The NYT piece said, "Mr. Modi has shrewdly cultivated the media to build a cult of personality that portrays him as the nation's selfless savior. At the same time, senior government officials have pressed news outlets — berating editors, cutting off advertising, ordering tax investigations — to ignore the uglier side of his party's campaign to transform India from a tolerant, religiously diverse country into an assertively Hindu one." It adds, "With the coronavirus pandemic, Mr. Modi has gotten more blatant in his attempt to control coverage and, as with other difficult stories, some Indian news executives seem willing to go along."

When it comes to journalists being killed, it is observed that it is mostly those journalists who work in the hinterlands in regional language press reporting on crime and corruption.

Legislative background

There is no central law to protect or safeguard journalists. Maharashtra is the only state that has a law called the Maharashtra Media Persons and Media Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2017 which provides for punishment up to three years or a fine of up to Rs 50,000 or both in case of attack on media persons on duty. The offences are cognizable and non-bailable. However, as of August 2020, the law has not been implemented. Chhattisgarh and Bihar, where several media persons have come under attack in the past, are also mulling a similar legislation for the safety of journalists.⁴

Keeping in mind the failing performance of India on the World Press Freedom

"Indian media is in a state of crisis which isn't accidental or random but structural...While journalism as an organisation may have tinkered into non-existence, journalists continue to survive. Can we restore the sanctity of reporting news? I hope audiences will value truthfulness in reporting, and the diversity of voices and platforms. A democracy can thrive only as long as its news is truthful."

- Ravish Kumar, journalist and Ramon Magsaysay Award Winner

Index, the government took cognizance of it and in May 2020 established an Index Monitoring Cell (IMC). This cell has been given the mandate of examining why India's rankings have been falling in press freedom indices. The problem with this cell is that it will dissect the index that has ranked India poorly without admitting that there are, in fact, circumstances that have been inconducive to freedom of Press.

Judicial intervention

Looking at the history of cases against journalists, it seems like the courts have generally ruled in favour of freedom of press. Journalist Zubair Ahmed who was arrested by police in Andaman and Nicobar islands for questioning the reason for putting a family under quarantine, was granted bail by the local court.⁵ Further, Dhaval Patel, a Gujarat-based journalist who was charged with sedition for writing an article that said that the state's Chief Minister may be replaced due to his ineptitude in handling the COVID-19 crisis, was granted bail by a Sessions Court.⁶

The Calcutta High Court granted bail to Safikul Islam, owner of ArambaghTV YouTube channel and Suraj Ali Khan, a reporter working for the web channel who were arrested for exposing the alleged unfair distribution of COVID-19 funds to private clubs by the state government.⁷

On the other hand, the courts have failed to bring justice to slain journalists over the years. The continuous study conducted by CPJ shows that since 1992 until 2020, only two cases of murder of journalists have been concluded with the culprits being held guilty, Jyotirmoy Dey (killed in 2011) of Midday and Ram Chander Chatterpatti (killed in 2002). The other 33 journalists and their families are still waiting for justice which may never come their way.

Current scenario

The cases of journalists being killed that received much media attention were those of J Dey, Gauri Lankesh and Shujat Bukhari. Between 2015 and 2020, 13 journalists have been murdered, all of whom belonged to regional or niche news media.⁸ However, killing is not the only tool used to silence the press.

Journalists were specifically in danger during the COVID-19 pandemic, suffering death due to the disease and worse also being subject to lay-offs. Independent reports have collated frightening figures: 1,000 journalists were laid off in the months between March- August 2020 alone.⁹ Besides, governments even targeted individual, independent journalists exposing administrative ineptitude and corruption.¹⁰

The Kashmir conundrum

Journalists in Kashmir especially (and also Jammu) have been facing the heat decades, but far more sharply after August 5, 2019 when the Modi government in its second elected term, without democratic consultation, abrogated Articles 370 and 35A and changed the status of the state. Independent reporting by the media leads to summons from local police stations, warnings, threats, and of course charges accompanied in many cases with arrests.¹¹ For several months, the newspapers in the Valley went to press without editorials and op-eds. Many newspapers slashed their number of pages as they had been deprived of government advertisement. And the harassment of journalists became more vigorous.¹²

In April 2020, a female photo journalist in Kashmir valley, Masarat Zehra (26), was booked under the draconian Unlawful Activities (Prevention) Act, which empowers the government declare individuals as terrorists. Gowhar Gilani, journalist and author of the book *Kashmir: Rage and Reason* who writes for Germany's public broadcaster Deutsche Welle¹³ was also targeted. A special communique from three UN Special Rapporteurs on May 12, 2020 (AL IND 8/2020) sums up the grave risk with which journalists in Kashmir function.¹⁴ Specifically, it names Zehra, Gilani, Naseer Ganai, working for a news magazine published out of Delhi and Peerzada Ashiq, special correspondent for an Indian newspaper, reporting out of Kashmir Valley.

The Jammu and Kashmir administration recently approved the Media Policy,



Masarat Zahra, 26, a photojournalist from Kashmir, was charged under Unlawful Activities Prevention Act (UAPA). Registering her under such a strong case is an act of intimidation and silencing of the press.

2020 (the “Policy” or “Media Policy”) that sought to create a “sustained narrative on the functioning of the government in the media.” This has been met with widespread criticism and protest.¹⁵

The rest of India under a right-wing government fared only slightly better. On August 26, 2020 a Meerut journalist and his family was attacked in their home allegedly by a leader of regional political party, Bahujan Samaj Party.

In August, 2020 Prashant Kanojia was picked up by the police from his home in Delhi in connection with a Tweet. Kanojia was accused of “disrupting communal harmony”. According to independent news portal The Wire, the First Information Report (FIR) released

by the police “points to a deleted tweet URL and says, in its description of the alleged offence, that Kanojia’s tweet had shown Hindu Army leader Sushil Tiwari as saying the Ram temple in Ayodhya should not allow Dalits, STs and OBCs entry.” It is alleged that the video had been morphed.

In north east Delhi, on August 11, three journalists including a woman staffer of Caravan magazine were attacked by a mob demanding that they delete footage about communal tension that broke out in the area after foundation stone laying ceremony of Ram temple in Ayodhya. A Webinar on September 5, co hosted by The Wire, SabrangIndia, Delhi Union of Journalists & Brihanmumbai Union of Journalists focussed on this plight.¹⁶

- Enact a legislation penalizing attacks on journalists to safeguard freedom of press
- Protect journalists from getting arrested in cases that emerge from

their reporting, such as defamation, sedition, promoting enmity, by mandating preliminary inquiry before making arrest, while acquiring permission from Magistrate



Combination image of Narendra Dabholkar (left), Govind Pansare (center) and MM Kalburgi (right). According to Central Bureau of Investigation (CBI) charge sheet filed in September last year, Akolkar and Pawar, two members of the right-wing organisation Sanatan Sanstha, which is a Sangh Parivar (Saffron Family) gunned down the rationalist.

- 1) <https://thewire.in/media/as-press-freedom-rank-falls-govts-new-index-monitoring-cell-to-meet-on-thursday>
- 2) The Road to Justice- Breaking the cycle of Impunity in the killing of journalists Committee to protect Journalists - <https://www.nytimes.com/2020/04/02/world/asia/modi-india-press-media.html>
- 4) <https://economictimes.indiatimes.com/news/politics-and-nation/maharashtra-only-state-with-law-to-protect-scribes/articleshow/72214265.cms?from=mdr>
- 5) <https://www.outlookindia.com/website/story/india-news-andaman-journalist-arrested-over-tweet-on-coronavirus-gets-bail/351639>
- 6) <https://timesofindia.indiatimes.com/city/ahmedabad/journalist-gets-bail-in-sedition-case/articleshow/76049158.cms>
- 7) <https://www.ifj.org/fr/salle-de-presse/nouvelles/detail/category/pressreleases/article/india-calcutta-high-court-grants-bail-to-arabagh-tv-journalists.html>
- 8) https://cpj.org/data/killed/asia/india/?status=Killed&cc_fips%5B%5D=IN&start_year=1992&end_year=2020&group_by=location
- 9) <https://www.newslaundry.com/2020/05/24/stop-press-how-covid-19-is-only-part-of-the-media-layoffs-story>; <https://www.pratidintime.com/covid-19-hits-tv-print-media-hard/>
- 10) <https://www.thehindu.com/news/cities/Coimbatore/news-portal-founder-arrested-in-coimbatore/article31418909.ece>
- 11) <https://www.thecitizen.in/index.php/en/NewsDetail/index/9/>
- 12) <https://www.nationalheraldindia.com/india/journalism-in-kashmir-going-through-tough-times>
- 13) <https://www.nationalheraldindia.com/india/journalism-in-kashmir-going-through-tough-times>
- 14) Signed by David Kaye (United Nations special rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression between August 2014 and July 2020), Leigh Toomey (UN Vice- Chair on Arbitrary Detentions) and Mary Laylor (UN Special Rapporteur on the situation of human rights defenders) the communiqué flags the enormous dangers under which the media functions in that state.
- 15) The Policy effectively authorises the government to intervene and determine content that qualify as fake news, unethical content and or 'anti-national activities.' The Policy also allows the Directorate of Information and Public Relations ("DIPR") to examine such content, on the basis of which journalists may be de-empaneled and have legal action taken against them. Where fake news or news 'inciting hatred' or 'disturbing intra-community harmony' is concerned, if so interpreted, journalists shall be proceeded against under the Indian Penal Code, 1860 or cyber laws. See: <https://lawschoolpolicyreview.com/2020/07/31/kashmir-media-policy-2020-crackdown-on-freedom-of-expression/>
- 16) <https://sabrangindia.in/video/attack-free-speech-times-covid-19>



National Security legislations: A clampdown on human rights

There are some laws in the country that are used as a means for preventive detention i.e detaining someone to prevent them from committing an offence, in the interest of public order. The concept of preventive detention sounds perilous, especially when it gets codified into counter-terror or 'national security' legislation without institutional checks and balances that respect the Right to Life (Article 21 of the Indian Constitution).

While Article 22 of the Indian Constitution does unfortunately make room for preventive detention, the past decades have seen states misuse this provision to enact counter-terror laws, thus seriously affecting fundamental freedoms. India has laws like the National Security Act, 1980 (NSA); the Public Safety Act, 1978 (PSA); the Unlawful Activities (Pre-vention) Act, 1967 (UAPA) and the Prevention of Terrorism Act, 2002 (POTA), which go

beyond the evil of preventive detention and target minorities and the marginalized under the garb of "protecting interest of national security".

These laws are widely criticized as being 'draconian', highly oppressive and seemingly imperialist in nature. They are violative of fundamental as well as basic human rights, the most important one being, the Right to Life (Article 21) that protects an individual from being deprived of his life or personal liberty, except according to procedure established by law. But when this "procedure established by law" is misused to a point where it is clearly arbitrary and done with a motive of fulfilling one's political agenda, then it certainly needs to be screened for being in violation of the Constitution. These laws enable the government to bypass human rights to serve partisan interests.

Legislative background

As mentioned above, NSA, PSA, UAPA and before that POTA are the main laws that under the guise of safeguarding national security, detain mostly innocent individuals for democratically doing any act that is against the government or even closely displeased the authorities.

Under NSA, an individual can be detained without invoking a charge against him, for a period of 12 months. This law, and the other similar laws were used to suppress the nationwide protests

“A law is bad in itself when it overturns all notions of natural justice on its head and allows the executive to apply the law at its subjective discretion”

– **Gautam Navlakha, activist¹**
(charged under UAPA)

against the Citizenship Amendment Act (CAA) that began in December 2019, especially in the state of Uttar Pradesh, as soon as the law was passed by the Parliament. Under the NSA, the person can be detained for 10 days without being informed about the charges against him, which is not possible to do under the usual criminal laws that are required to adhere to human rights. Very similar to the NSA, is the Public Security Act (PSA) that is applicable in the (erstwhile state) Union Territory (UT) of Jammu and Kashmir (J&K). Before August 5, 2019, J&K enjoyed a special status under the Constitution but as soon as this special status was revoked, the UT has been under a

complete lockdown which restrictions on movement, communication and complete suspension of public and social life. This was followed immediately by invoking the PSA against all such individuals who were likely to organize and protest this move of the ruling government. PSA allows the authorities to keep an individual detained or under arrest for a period of 2 years without trial.

The UAPA was amended in 2019 which enabled the government to arbitrarily declare individuals as terrorists. The Act, basically, punishes commission, funding and support of unlawful activities and terrorist acts. Even a vague act of questioning the territorial integrity of India is an offence under the Act. Clearly, it is up to the detaining authorities and the courts (when it finally reaches doors of justice) to define this offence. The other vague offence is causing disaffection against India; this is also likely to meet the same fate as the previous offence.

POTA was repealed in 2004, but the terrorism related provisions were inducted into the 1967 law, the UAPA and hence the legacy of the law lives on, terrorizing people. Hence, the 2004 amendment of UAPA is quite pivotal such that the voters were made to believe that POTA had been repealed while all its provisions were quietly incorporated into UAPA.

The UAPA 2004 amendment made substantial changes to the definition of ‘unlawful activity’, included the definition of ‘terrorist act’ and ‘terrorist organisation’ from the repealed POTA, and also introduced the concept of a ‘terrorist gang’. In fact, chapters IV, V and VI dealing with ‘punishment for terrorist activities’, ‘forfeiture of proceeds of

terrorism’ and ‘terrorist organisations’ respectively, were heavily borrowed from the repealed POTA. The schedule to the POTA of ‘terrorist organisations’ was also incorporated into the UAPA verbatim.² Further amendments such that of 2008 was moved after the gunmen attacked Parliament, were regarding maximum period in police custody, incarceration without a chargesheet and restrictions on bail. The 2012 amendments to the UAPA further expanded the already vague definition of “terrorist act” to include offences that threaten the country’s economic security.³

During the monsoon session of the Parliament, the government presented data revealed that for 3,005 cases registered under UAPA between 2016-2018, only 821 chargesheets were filed.⁴

Current Scenario

Dr.Kafeel Khan, a human rights defender, was charged under NSA immediately after he was granted bail in Uttar Pradesh, for giving a ‘provocative’ speech at an anti-CAA protest. He has been in detention under NSA since February but the same was deemed illegal by Allahabad High Court and Khan was released from custody on September 1.⁶

The misuse of PSA saw the detention of Former Chief Ministers of J&K, Mehbooba Mufti and Omar Abdullah who were the prominent figures, among the thousands who were detained under

this law. While Abdullah was released in March, Mufti walked out in October. UAPA has been increasingly invoked in response to the anti-CAA protests. It was also used to falsely implicate and arrest scholars, academicians, social activities, authors in the Elgar Parishad case.⁷ Those charged under UAPA due to anti-CAA protests and the resulting riots in North East Delhi, to name a few, were Safoora Zargar (who was released in June while being 5 months pregnant), Jawaharlal Nehru University (JNU) students Sharjeel Imam, Devangana Kalita and Natasha Narwal. The activists and scholars arrested in the Elgar Parishad case include Varavara Rao (aged 80, who contracted COVID-19), Mahesh Raut, Gautam Navlakha, Sudha Bharadwaj, Anand Tel-tumbde, to name a few.

The way forward

- With due regard to human rights and natural principles of justice, these national security legislations need to be re-pealed
- In the alternative, such laws that arbitrarily curb personal liberty of a person without reasonable cause, have no place in a democracy, need to be at the least amended to include lesser periods of arbitrary detention and the legal re-quirement of Judicial Review Committees that review arrests under such laws.

1) <https://indianexpress.com/article/india/activist-gautam-navlakha-criticises-uapa-inopen-letter-before-surrender-6362016/>

2) <https://thewire.in/rights/uapa-anti-terrorism-laws>

3) <https://thewire.in/rights/uapa-anti-terrorism-laws>

4) <https://sabrangindia.in/article/over-3000-uapa-cases-and-only-821-chargesheets>

5) <https://www.scoobserver.in/court-case/association-for-protection-of-civil-rights-v-unionof-india>

6) <https://sabrangindia.in/article/kafeel-khans-speech-does-not-disclose-any-effortpromote-hatred-or-violence-allahabad-hc>

7) The Elgar Parishad case is one where activists and scholars were arrested for being connected with the event by that name organized on December 31, 2017 to commemorate 200th anniversary of the Battle of Bhima Koregaon where clashes took place. Police claims that speeches made at Elgaar Parishad were at least partly responsible for instigating violence the next day and drew out clues about the operations of a larger underground network of banned Naxalite groups, of which those arrested are being accused to be a part of.



Criminalization of protest

In a democracy, the right to protest is inherent in the right to freedom of speech and expression. In Indian Constitution, this right is enshrined under Article 19(1) (a), albeit with certain limitations or reasonable restrictions. Protests have been widely used as tool of dissent in India against government authorities and its agencies.

But there is a stark difference in how protests were handled in the pre-2014 times versus how they are viewed today. Not only has the word 'protest' gotten a negative connotation and viewed as an 'anti-national' activity, the State has increasingly dealt with protests with an iron hand in the past few years.

After the Citizenship Amendment Act (CAA), 2019 was passed in a roughshod way without entertaining legitimate amendments from the Opposition, there was a major outbreak of protests across the country. The CAA 2019 is viewed as a highly divisive law with the ultimate aim

to discriminate against Muslim minorities from outside the country and eventually also to be used as a weapon against the ones within.

Briefly, the law enabled religious minorities, except Muslims, from three neighboring countries, Pakistan, Afghanistan and Bangladesh, to get citizenship of India. Without delving deeper into it, the law is *prima facie* unable to justify reasonable classification as permitted by the Indian Constitution and resorts to abject discrimination on religious grounds which is against the basic tenets and structure of the Indian Constitution.

It was against this law that a wave of protests began in different parts of the country. People were out on the streets, being part of peaceful march, rallies and University students were a significant part of these protests. Of the many peaceful anti-CAA protests in Delhi were the protests outside Jamia Milia Islamia

University (JMIU), Delhi in February 2020.

A democratically elected government, which may have anticipated protests, instead felt threatened by them and began using brute force against young protestors on December 15, 2019 (JMIU, Aligarh Muslim University-AMU, Uttar Pradesh-UP1), January 5, 2020 (Jawaharlal Nehru University-JNU, Delhi) and in four cities of northern UP from December 2019 into January 2020. Dozens of protestors were also unlawfully arrested in acts of state intimidation. If not for the COVID-19 pandemic, the protests would have continued in some form or the other but the voice of dissent continues to echo. The behaviour of both the Delhi police (evidenced in video footage showed brute violence, sexual assault on students of JMIU an internationally renowned university) and similar brutality was visible at AMU and JNU apart from other locations.

It was the police brutality at JMIU that led to women community elders to stage the historic sit in at Shaheen Bagh, a protest that captured the imagination of India and the world.

In Assam, curfew was imposed, police opened fire, protestors were beaten up, internet was suspended and over 170 people were arrested.² In Uttar Pradesh, the police action was the most brutal. There were reports that minors were arrested and tortured in Bijnor.³ In Lucknow around 280 people were arrested which included journalist and activist, Sadaf Jafar and retired IPS officer SR Darapuri.

Ironically, however in a brazen whitewash, India's statement at the 43rd

session of the United Nations Human Rights Council (UNHRC) which was held in February 2020, was that it was a nation where the right to protest was "vibrantly and noisily celebrated every day."⁴

Delhi 2020 violence

The February 2020 violence unleashed in north eastern part of Delhi was driven by hate and insightful speech against India's minorities especially aimed at those protesting the anti-Constitutional CAA 2019 and proposed NPR, NRIC. The Indian Home Minister, Amit Shah's statement on the floor of Indian Parliament⁵ set the stage for the state sponsored vendetta that was to follow against the very community that had staged peaceful protests in Delhi post December 2019. He politically outlined what his party saw as a "conspiracy behind the protests" and that is how the investigations thereafter proceeded. The hate mongers, to date have not been prosecuted. Over 55 persons lost their lives in the February 2020 violence and large sections of the Muslim community lost their homes and work places.

"The blanket labelling of dissent as anti-national or anti-democratic strikes at the heart of our commitment to protect constitutional values and the promotion of deliberative democracy."

**–Justice D.Y. Chandrachud
(Supreme Court judge delivering
the 15th PD Desai Memorial
Lecture)**

Reports of the Delhi Minorities Commission⁶ and Independent Lawyers have documented this thoroughly.⁷

Legislative tools to curb protests

An increasingly emboldened and authoritarian Indian government used the COVID-19 Pandemic Lockdown to crack-down on peaceful protesters, community and family. At least 22 persons were detained under the draconian anti-terror laws in Delhi alone. The arrests of students and activists continued even during the nationwide lockdown that was imposed to control the COVID-19 pandemic. For instance, two students of AMU were arrested by Delhi Police under charges of sedition, promoting enmity, assault, rioting and so on for taking part in anti-CAA protests in December 2019.⁸ The law enforcement agencies, empowered by the impunity granted by the political executive who oversaw these actions, failed to draw a line between activities against the state and right to freedom of speech and expression while acting upon anti-CAA protestors. Among the most popular laws invoked were the National Security Act, Unlawful Activities (Prevention) Act (UAPA) and law of sedition under Indian Penal Code (IPC). It is assumed that sedition was used more often as it is a cognizable offence allowing police to make arrests immediately.⁹

Mostly these arrests were made to instil fear and to subjugate and suppress the protestors and their dissenting voice. There are chances that the hundreds of FIRs filed across the country during the

anti-CAA protests may never come up for hearing or have a substantial outcome. It is only those prominent faces of the protest that have been hand picked and kept in custody to act as a deterrent for protestors in the coming future.

During the lockdown another arrest that was made and had garnered international attention was the arrest of Jamia Milia Islamia student Safoora Zargar, who was pregnant at the time of her arrest and finally released, after many attempts at securing bail, when she was almost 5 months pregnant. At one point, a Sessions Court had denied her bail as there was prima facie case that she had conspired to “block a road”. Safoora was one of the leaders of the peaceful protests, part of the Jamia Coordination Committee. Today, she along with others like Ishrat Jahan, Umar Khalid and 19 others are charged with sedition, among other offences, as well as sections of UAPA.

In Uttar Pradesh, Dr.Kafeel Khan was arrested in January 2020 for delivering a speech at an anti-CAA protest at AMU. He was granted bail by the high court but before he could be released, he was slapped with charges under National Security Act. He was released on September 2.

About the arrests carried out during the lockdown, Rajya Sabha member Manoj Kumar Jha said, “Most judges are operating from home. Twice I saw that there were no arguments that happened, what the police wanted happened and custody of the activist was handed over to them. It is amply clear that this timing was chosen to act against these activists as courts are not going to function

normally right now.”¹⁰

Judicial intervention

The bail hearings of the anti-CAA protestors had come up before the high court's first. The Karnataka High Court granted bail to the protestors in Mangaluru stating that arrests were made by police to hide its own excesses; however it took them seven months to walk free after the Supreme Court had to intervene. Hearing a petition against the denial of permission by the Maharashtra government to organize an indefinite protest at Beed, the Bombay High Court upheld the right to protest the Citizenship Act even as it refused to go into the question of the constitutionality of the new law.¹¹

The way forward

- A penal provision, section 144 of the Indian Penal code is used by state police virtually 24X7 to curb protests of citizens even when political rallies and religious congregations (especially of the majority) are allowed.
- Protests need to be recognized as legitimate expressions of the Citizens Voice against acts of injustice by state or non-state actors
- Draconian counter terror laws, with no provisions for checks and balances need to be amended/repealed.
- Judicial Scrutiny of Executive Action against Protesters needs to become prompt and the norm

1) <https://economictimes.indiatimes.com/news/politics-and-nation/jamia-violence-newcctv-footage-shows-delhi-police-attacking-students-in-library/videoshow/74157538.cms>;

<https://theprint.in/india/governance/15-women-30-men-sexually-assaulted-by-delhipolice-at-february-caa-clash-in-jamia-report-says/479788/>;

<https://www.aljazeera.com/news/2020/2/16/india-footage-appears-to-show-police-attack-on-jamia-students>; As per a fact-finding report of National Federation of Indian Women (NFIW), the police used chemical gas on a gathering of protestors that include university students and sexually assaulted men and women, while also arresting some of them.

<https://indianexpress.com/article/cities/delhi/jamia-police-violence-library-new-video-students-6271631/>

2) <https://www.sabrangindia.in/article/175-arrested-over-1400-detained-assam-govtsays-all-well>

3) https://www.huffingtonpost.in/entry/caa-uttar-pradesh-police-torturedchildren_in_5e0207b5e4b05b08babab722

4) <https://www.deccanherald.com/national/north-and-central/right-to-protest-celebrated-vibrantly-noisily-in-india-centre-tells-unhrc-808500.html>

5) <https://www.thehindu.com/news/national/shah-contradicts-himself-on-delhi-riots/article31052878.ece>

6) <https://scroll.in/latest/967742/delhi-violence-minority-panel-report-blames-bjp-leaders-for-inciting-people-through-their-speeches>; <https://thewire.in/communalism/delhi-riotskapil-mishra-minority-commission-report>

7) <https://www.livelaaw.in/news-updates/delhi-riots-causes-fallout-and-aftermath-a-report-by-citizens-and-lawyers-published-164099>

8) <https://sabrangindia.in/article/attack-anti-cao-activists-continue-aligarh-muslimuniversity-amu-students-arrested>

9) <https://www.hrw.org/news/2020/06/15/india-end-bias-prosecuting-delhi-violence>

10) <https://www.thequint.com/news/india/delhi-police-anti-cao-protests-arrests-kavita-krishnan-prashant-bhushan>

11) <https://www.bloombergquint.com/law-and-policy/how-high-courts-have-looked-at-anti-cao-protests-and-police-action>



The Independence of the Indian Judiciary

The independence of the Indian Judiciary has, of late, been called in question by the legal fraternity, even retired judges of the Supreme Court. When the members of the bench themselves raise such questions, the faith of the people in the judiciary is bound to be shaken.

Independence of judiciary is determined mainly by the appointment of judges. The independence and autonomy of any institution is determined by who appoints the head of that institution and how much power does the institution hold. The courts are a part of judiciary, which is intrinsic to the three pillars of parliamentary democracy. Under the Indian Constitution, there is separation of powers between the judiciary, executive and the legislature. Although these three pillars hold democracy together, it is the independence of the judiciary being the protector of the Constitution that is the most important, as without it a democracy is bound to collapse.

Hence it is important that the appointment of judges is independent of all political influence. All judges of high courts and the Supreme Court are appointed and transferred by the Collegium system which has not been provided for in the Constitution, but through a series of judgments called the "The three judges cases".

The Constitution provides that Judges of the Supreme Court shall be appointed by the President of India in consultation with the Chief Justice of India and other Judges of the Supreme Court and the High Courts as the President of India may deem necessary.

Judicial intervention

The S.P. Gupta case (December 30, 1981) or the First Judges Case declared that the "primacy" of the CJI's recommendation on judicial appointments and transfers

can be refused for “cogent reasons.” The ruling gave the Executive pri-macy over the Judiciary in judicial appointments for the next 12 years.

Supreme Court Advocates on Record Association versus Union of India or the Second Judges Case(October 6, 1993) gave back CJI’s power over judicial appointments and transfers and held that the CJI only need to consult two senior-most judges. In Special Reference case of 1998 or the Three Judges Case (October 28, 1998)the Supreme Court lays down that the CJIs should consult with a plurality of four senior-most Supreme Court judges for appointments and transfers. This is how the collegium came into existence, which continues till date.

The Collegium System has attracted much criticism. With a government like the present one in power in India however, rampant abuse of executive influence is also feared.

Legislative background

The 14th Law Commission report of 1958 chaired by MC Setalvad said there can be no doubt that it is clearly undesirable that Supreme Court judges should look forward to other government employment after their retirement. The report recommended barring of further employment of Supreme Court judges just like the similar bar on post-retirement employment of chairman of Union Public Service Commission and the

Comptroller and Auditor-General of India. The National Judicial Appointments Commission (NJAC) comprising Chief Justice of India as Chairperson and other members being two senior judges,

the Law Minister and two eminent persons was proposed by the legislature to replace the Collegium. The Bill received President’s assent in December 2014. This law was struck down by a 5-judge bench of the Supreme Court as being unconstitutional and stated that it would undermine the independence of the judiciary as it would give the executive a say in appointment of judges.¹

Current scenario

The first chinks in the armour became visible with the sensational press conference of four senior most judges of the Supreme Court, when Justice Dipak Misra was the Chief Justice in 2018. Justice Chelameswar, Justice RajanGogoi, Jus-tice Madan B Lokur, and

“The Supreme Court’s descent was not fortuitous or coincidental, but was part of a larger, deliberately crafted strate-gy on the part of the executive to seize control of the arms of the state, in ways that would benefit its own political agenda.”

- Justice AP Shah while delivering a lecture titled *The Supreme Court in Decline: Forgotten Freedoms and Eroded Rights in the memory of Justice Hosbet Suresh* on September 18, 2020 at a virtual session organised by Citizens for Jus-tice and Peace (CJP) in association with Bohra Youth Association Sansthan, Central Board of Dawoodi Bohra Community, Centre for Study of Society and Secularism, Institute for Islamic Studies and Majlis Law Centre.

Justice Kurien Joseph were perturbed on the allocation of politically sensitive and important cases to judges junior to them. Among the many demands for change was a “consultation process” among the five senior-most judges of the court in drawing up the roster and work allocation.

Surprisingly, although Justice Gogoi went on to become the Chief Justice, he not only did not change the system he himself had once demanded.² In the serious case of allegations of sexual abuse, he actually sat in hearing on his own case! Later, on retirement, he accepted from the present government the appointment to become a Member of Parliament of the Rajya Sabha (Upper House)! “The most dangerous thing about Gogoi going to the Rajya Sabha is that he is a man who has no regard for the most sacred of all constitutional principles – the separation of power between the organs of government,” wrote Member of Parliament Mahua Moitra, in one of her articles.³

Another instance of serious apprehensions being raised about political influence was when at an international judicial conference in February 2020, Justice Arun Mishra described the Prime Minister as “a versatile genius” and “an internationally acclaimed visionary”. Justice Mishra is known to have been assigned some of the most politically sensitive cases. The senior-most judges’ press conference was a result of Justice Mishra being assigned the case seeking a probe into the death of Justice Loya.^{4 5}

Justice Madan Lokur, former judge of the Supreme Court has commented on judicial independence after Justice Gogoi accepted the political position of Member of Parliament. He pointed out

how sealed cover jurisprudence was increasingly being practiced in cases like the allegations of corruption in the Rafale deal and the detention report of minors in Kashmir, with utter disregard to provisions of the Evidence Act as well as the right to information of the petitioners whose case got dismissed. Even the report on sexual harassment charges against Justice Gogoi, while he was the Chief Justice, and the follow up report on alleged conspiracy behind these harassment charges, are all under sealed covers.⁶ Justice AP Shah has been another strong critic.⁷

“The absence of any urgency shown by the courts in hearing cases concerning human rights has emboldened the executive, who now know that when such issues are raised, they can take it easy and even keep a person in custody on trumped up charges at least for a couple of days, if not longer. A few days in custody, I believe, is enough to shake up an innocent person. And so, cases of non-existent sedition are filed for keeping persons in detention till she or he learns the lesson that it is better to keep shut,” said Justice Lokur.

Justice Lokur has also questioned the midnight transfer of Justice Muralidhar of Delhi High Court.⁸ “Nobody gets transferred at an unearthly hour and also without any ‘joining time’, least of all a constitutional authority,” he said.⁹

“For a CJI whose tenure...strengthened the perception (beginning with the tenure of his predecessor) that the judiciary could not take on the government on crucial issues, it was unwise to have accepted the offer (referring to Gogoi’s acceptance of MP position),” Said Justice Lokur.¹⁰

The way forward

- The issue of Judicial Reform needs greater commitment
- Justices of the higher Judiciary should probably be allowed to continue in their positions till much longer with complete benefits and thereafter prevented from accepting official positions for a decade
- The appointment procedure also needs transparency but through a process that is diverse and representative
- Justices from all diverse parts of Indian society especially marginalized sections and women need to find adequate place in the Indian judiciary at all levels.

1) <https://indianexpress.com/article/opinion/columns/theres-a-chilling-similarity/>

2) <https://www.ndtv.com/india-news/justice-loya-controversy-grows-investigate-deathsays-justice-ap-shah-1779264>;
<https://www.theguardian.com/world/2018/jan/12/indiasupreme-court-judges-integrity-dipak-misra>

3) <https://thewire.in/law/ranjan-gogoi-mp-india-is-done-with-whataboutery-my-lords>

4) Justice Loya's mysterious death led to a situation in which Amit Shah – then BJP president, and now Union home minister – got discharged from the Sohrabuddin- Kausar Bi murder case without even having to stand trial.

5) <https://www.ndtv.com/india-news/justice-loya-controversy-grows-investigate-deathsays-justice-ap-shah-1779264>

6) <https://thewire.in/law/judicial-independence-three-developments-that-tell-us-fair-is-foul-and-foul-is-fair>

7) <http://www.sabrangindia.in/article/era-scs-glorious-jurisprudence-has-vanishedjustice-ap-shah>

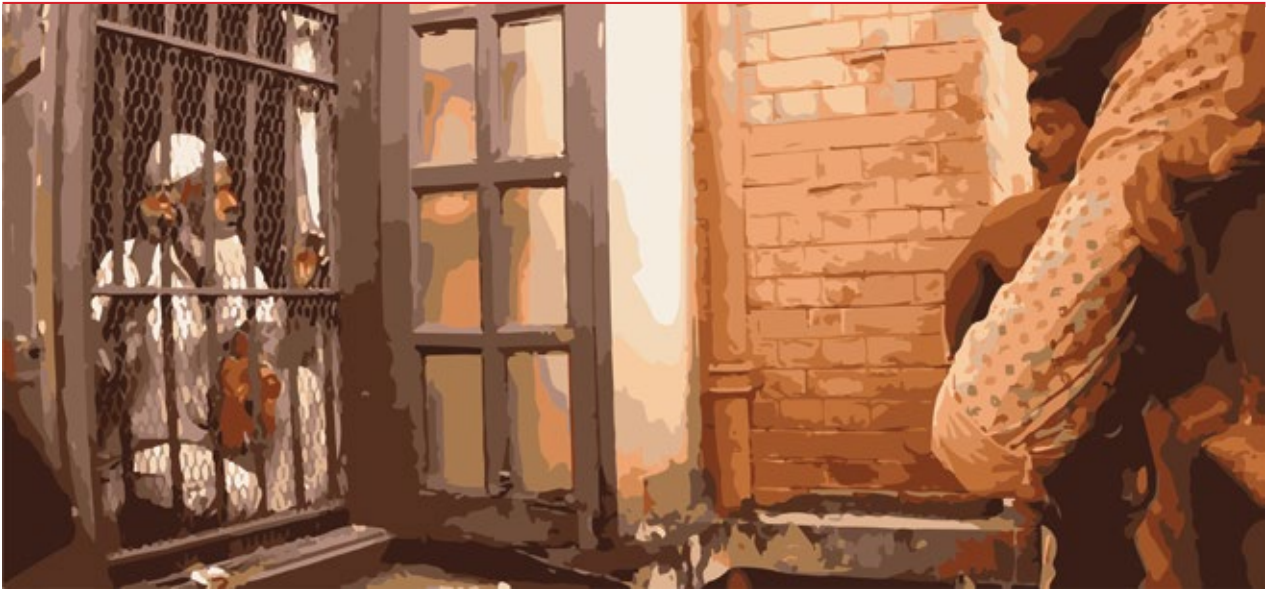
8) Justice Muralidhar had asked Delhi police to decide within 24 hrs whether they would file FIR against BJP leaders involved in hate speech after which the Delhi riots took place

9) <https://thewire.in/law/judicial-independence-three-developments-that-tell-us-fair-is-foul-and-foul-is-fair>

10) <https://thewire.in/law/judicial-independence-three-developments-that-tell-us-fair-is-foul-and-foul-is-fair>

Image from inside the Detention Camp in Assam, India, source Telegraph India

CITIZENSHIP CRISIS



Family visiting the detained members in the detention camp, Assam, India. Photo: Shaheen Abdulla, Maktoob

Citizenship crisis in Assam

On August 31, 2019, the final National Register of Citizens (NRC) was released in Assam. It excluded 1.9 million people, who now along with their families face the specter of statelessness. Two other processes, the 'Declared Foreigner' and 'D Voter' process together with the NRC exclusions potentially target 2.2 million Indians and their families in all. The first draft of the NRC published in July 2018 had excluded 4 million from NRC List and although the final draft exclusion was much lesser in number, it was still a significant number. The process has been arduous and traumatic affecting religious and ethnic minorities, 69 per cent affected by this are women. Behind this much criticized process off seeking a documentary test of citizenship is the peculiar history of the North Eastern state of Assam, ethnic strife and a targeting of the linguistic and religious minorities. The purpose of the entire NRC process was to identify people who allegedly emigrated illegally from Bangladesh after 1971, when East Pakistan became Bangladesh. After much conflict the Assam Accord was signed in 1985 and this document

forms the basis of the ongoing process of the NRC.

The NRC process required citizens to produce documentary evidence of residence in Assam before March 24, 1971. They required proof that either they or their ancestors were residing in India before that date. These were called legacy documents. The other set of documents were linkage documents that established person's relationship with those ancestors. Poor history of documentation, bureaucratic hurdles, corruption and the limited resources of the economically challenged classes made documents a luxury for a large section of people. Worse still is the fact that minor name and date discrepancies have led to exclusions.²

Judicial intervention

The NRC process can be broadly divided into two stages. The first is circumstances under which the Supreme Court struck down the newly enacted Illegal Migrants (Determination by Tribunals)

Act, 1983, and the Illegal Migrants (Determination by Tribunals) Rules, 1984 in the *Sarbananda Sonowal v Union of India* case (2005, 2007).³ The second phase is the Supreme Court's role in "overseeing" the NRC process between 2008 – 2019. In *Sarbananda Sonowal v Union of India* (decided on July 12, 2005), the Supreme Court relied upon unverified – and now disproved – data to hold that migration amounted to "external aggression" upon India. It then invoked Article 355 of the Constitution to strike down a state enacted legislation that, in accordance with broader principles of Indian criminal law, transferred the burden of proof in a case where any person is accused of not being an Indian, to the State. The Court upheld a pre-independence, colonial law and its sections – Section 9 of the Foreigners Act, 1946 – that placed the burden on the individual accused of being a foreigner.

The second stage in the judicial interventions related to Citizenship in Assam is the *Assam Public Works vs Union of India* Case. Since 2009, Justice Ranjan Gogoi who rose to become India's Chief Justice oversaw the case defying judicial convention.⁴ It was the bench led by Justice Gogoi who, in 2018 accepted the rather outrageous and controversial contention of then NRC co-ordinator Prateek Hajela who passed this Executive order: All persons born before June 30, 1987 whose either parent have been declared 'doubtful voter' (also a non-adjudicated process conducted by junior officials of the Election Commission of India- ECI) or 'declared foreigner' (through a notice served by the Assam Border Police) should also be excluded from the final NRC.⁵ As a consequence, scores of persons who have been excluded from the final NRC are children

of these doubtful voters or declared foreigners. The worst injustice and failure of due process is that a majority of these doubtful voters/declared foreigners have not even gotten a chance to defend their citizenship, and yet their children are being made to suffer the consequences of this unfair and arbitrary process. In January 2020, the SC ruled in an intervention application filed by the Mumbai-based Citizens for Justice and Peace that upholding national and international legal principles of unification of the family no child/minor would be sent to Detention Camps.⁶ Under the SC monitored process, Standard Operating Procedures (SOPs) were established after discussions with all stakeholders. But some concerns still remained about a disproportionately large impact on minorities and marginalized communities.

Some orders by the Supreme Court (*Supreme Court Legal Services Committee vs. Union of India* May 10, 2019), have mitigated the situation somewhat especially when the court directed that those who have spent more than three years in detention camps in Assam be set free subject to certain conditions.⁷ On April 13, 2020, owing to the COVID-19 crisis, the court decided to further relax this condition and directed that people who have spent more than two years in detention may be released subject to conditions which were lenient compared to the May 2019 decision. In a space of seven months some human rights organisations managed the release of scores of detainees.⁸

Foreigners Tribunals

Those excluded from the NRC, those declared 'D' Voters or 'Declared Foreigners' face Assam's dreaded

Foreigners Tribunals (FT), that have drawn criticism for allegedly not following Constitutional guarantees, principles of natural justice or evidence laws. Not only has their functioning been erroneous and widely criticised but the inefficiency of India's judicial system is likely to threaten 2.2 million plus excluded as it would

"We all agree that the NRC has spawned a humanitarian crisis. We worry because there are no signs of this crisis abating"

- Jury members of a People's Tribunal on Citizenship Crisis in Assam

take, by one estimate, 234 years for all to navigate their appeals in the higher courts! The issue with the FTs is that they do not function independently and are not free from executive influence. Tenure and salaries are decided by the government, keeping the members under the supervision and control of the appointing authority. Moreover, two-third of the decisions are allegedly made ex-parte, and often, the main grounds are not mentioned in the notice sent by the FTs to the suspected persons.⁹

Detention Camps

The consequences of being declared non-Indian is this: A person faces Assam's dreaded Detention Camps. As of August 2020, there are 6 makeshift detention camps in Assam housed within premises of prisons. Over a year after the NRC List was declared, the specter of statelessness haunts Assam and widespread impoverishment and trauma

has led to over 107 deaths, a majority by suicide.¹⁰

Legislative background

The Citizenship Act, 1955 clearly states that anyone born in India on or after January 26, 1950 up till July 1, 1987 is an Indian citizen by birth. Anyone born on or after July 1, 1987 but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is an Indian citizen at the time of his birth is an Indian citizen. And anyone born after the commencement of the Citizenship (Amendment) Act, 2003 and both of whose parents are Indian citizens at the time of his birth is an Indian citizen.

The only exception to this was Assam where as per the 1985 Assam Accord foreigners who came to the state up to March 24, 1971 were to be regularised as Indian citizens. For the rest of the country, those born outside the country after January 26, 1950 and residing in India without proper documents is a foreign, illegal immigrant. Such persons are subject to laws like the Foreigners Act, 1946 and Passport (Entry into India) Act, 1920 and tribunals are already empowered to detect, detain and deport them.¹¹

The major statutes governing NRC update in Assam are The Citizenship Act, 1955, and The Citizenship (Registration of Citizens and Issue of National Identity cards) Rules, 2003. The Assam Accord is where the inception of NRC in Assam lies. Massive protests on the illegal immigrants issue started in Assam in 1979 and finally in 1985 the government and the protestors (read All Assam Students Union and other outfits)

signed an agreement called the Assam Accord which stated that those illegal immigrants who came to Assam between 1966 and March 24, 1971 were to be declared foreigners and disenfranchised for following 10 years and those who came on or after March 25, 1971 “shall continue to be detected, deleted and practical steps shall be taken to expel such foreigners”. Clearly, this laid down the framework from the NRC as is seen in Assam since 2018.

Current scenario

For each one of the 1.9 million people excluded from the NRC, they were supposed to receive NRC rejection slips spelling out the reason for their exclusion from the final NRC draft. According to the procedures framed under the supervision of the Supreme Court, a person would be entitled to a 120-day window to appeal for inclusion after receiving such an order at the FT. Today with the ruling BJP threatening a fresh review of numbers excluded, further trauma awaits people.

The fear of getting excluded from the NRC, being declared ‘foreigner’ and finally being sent to detention center, has created a situation of permanent paranoia among the vulnerable communities, especially Bengal origin Muslims and Bengali Hindus living in the state of Assam. This fear has created anxiety and pushed many people to suicide.¹²

The way forward

- A judicious solution, involving all stake holders, outside the individual court driven process needs to be urgently found respecting national constitutional process and international obligations
- All sides of the Political Spectrum need to be drawn in; shrill propaganda and hysteria need to be abjured
- National and international pressure needs to be put so that each of the 2.2 million individuals and their families are not compelled to navigate a case by case Court process that will go on ad infinitum

1) Members of jury included Justice (Rt) Madan Lokur, Justice (Rt) Kurien Joseph, Justice (Rt) AP Shah, Ambassador Deb Mukharji, Ms. Githa Hariharan, Dr. Syeda Hameed, Prof. Monirul Hussain and Dr. Faizan Mustafa

2) <https://economictimes.indiatimes.com/news/et-explains/is-a-pan-india-nrc-possible-the-lesson-from-assam/articleshow/72454225.cms>

3) Till then and thereafter, the law which is applicable in the entire country for dealing with the illegal migrants/foreigners is a colonial Act of 1946 i.e. the Foreigners Act 1946. With the object of proper determination of illegal migrants, citing the state of Assam as a special case, Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 were enacted for the State of Assam. Unfortunately the SC struck this law down.

4) Judicial propriety demands that a Judge hailing from the state within which a dispute or contentious issue has arisen, generally stays away from adjudicating that case.

5) <https://cjp.org.in/what-next-for-those-left-out-of-the-nrc/>

6) CJP filed an IA 181511/2019 in Writ Petition (Civil) 274/2009 dated November 28, 2019 on which the Supreme Court passed an Order on January 6, 2020.

7) <https://cjp.org.in/sc-offers-relief-to-assam-detention-camp-inmates/>

8) <https://cjp.org.in/the-arduous-task-of-securing-bail-for-inmates-of-assams-detention-camps-cjp/>

9) Contested Citizenship in Assam: People's Tribunal on Constitutional Processes and Human Cost – A tribunal held in New Delhi on September 7 and 8, 2019

10) <https://www.deccanherald.com/national/east-and-northeast/a-year-after-assams-nrc-final-list-citizenship-crisis-of-over-19-lakh-people-lingers-on-879939.html>;

<http://www.sabrangindia.in/article/107th-citizenship-related-death-assam>

11) <https://economictimes.indiatimes.com/news/et-explains/is-a-pan-india-nrc-possible-the-lesson-from-assam/articleshow/72454225.cms>

12) Contested Citizenship in Assam: People's Tribunal on Constitutional Processes and Human Cost – A tribunal held in New Delhi on September 7 and 8, 2019



The impending citizenship crisis in India

The Citizenship Amendment Act (CAA) was passed by both houses of the Indian Parliament, without requisite debate, on December 9 and 11, 2019.² The proposed amendments have drawn huge criticism since 2014 when they formed the basis of the Narendra Modi-driven Manifesto of the Bharatiya Janata Party (BJP).

For the first time in Indian law, defying Constitutional non-negotiables like the *equality before the law and equal protection before the law (Article 14) and right to life with dignity and without discrimination (Article 21, 15-16)*,³ religion-based discrimination is being legitimized.

The amendments in India's 1955 Citizenship Act enables any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered India on or before December 31, 2014 to more efficiently, in a shorter span of time, get citizenship by naturalization. Muslims

from these countries are not entitled to this fast track process and other neighbouring countries like Myanmar, Nepal and Sri Lanka are also excluded.⁴

The problem does not end here. Along with these amendments the threatened all-India National Register of (NRC) along with the National Population Register (NPR) could deal body blows to the country's secular foundations. In fact, the aggressive tones used to electorally use this chronology of selective exclusion by none less than India's Minister for Home Affairs, Amit Shah,⁵ where he even used derogatory terms like "termites" for refugees, not only revealed the true intent of the Modi government, but also spawned creative and spontaneous protests. In fact, to curtail these citizens voices, even before the COVID-19 pandemic and lockdown, emergency provisions were brought in.⁶

This lethal combination of CAA+NPR+NRC could cause social strife and generate

bad blood between communities, while also causing irreparable damage to the basic structure of the Constitution and democracy as a whole.

Current scenario

Considering that the country is plagued with an unprecedented health crisis due to COVID-19, the government has put the NPR-NR(IC exercise temporarily on hold. However, given the poor performance of the Modi regime on the economic front there is no reason to believe that such a non-productive and potentially divisive process will not be announced in 2021 !

The problems in having a country-wide NRC are already reflected in the NRC that already has created havoc in the state of Assam and has impoverished thousands of households, leading to several deaths either due to suicide for fear of being declared a foreigner or by death in the detention camp itself. It has been observed that about 69 % of the 1.9 million people who are out of the NRC in Assam are women. This shows that the method of asking people to furnish documents to prove their citizenship means that the NRC can only catch those who lack the required documents and not illegal immigrants.

How are CAA, NPR and NRC related?⁷

The government announced the launch of the NPR while denying that it was beginning the process of an all India NRC, however the Rules that are part of the 2003 Amendment to the Citizenship Act of 1955 clearly link the two. The NPR is a process mandated under the Rules drafted by the first NDA Govt under

Atal Bihari Vajpayee in 2003. Under the Citizenship Act 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003, junior level government employees (typically under political pressure and prone to unaccountable functioning and corruption) are empowered –if the national government announces such a process –to conduct door to door enumeration of citizens. There is no clarity in the existing Rules about what documents will or will not be demanded. Based on this enumeration data, this government employee has the power to segregate and declare any person as a ‘doubtful citizen’ and exhibit a list of the same. In Assam, the non-Constitutional Foreigners’ Tribunals have non-judiciously led to the further misery of hundreds of thousands. What will the procedure for adjudication be for those excluded under India’s Citizenship law of 1955 ?⁸

Widespread protests by citizens, especially Muslims erupted. Even the political opposition stood against the CAA-NPR-NRC. The iconic Shaheen Bagh protests with Muslim women of all

“The process for declaring persons as non-citizens through the NPR and NRIC is arbitrary and inhuman. It will come at an enormous cost to the poorest in our country who will be left to wade through complex procedures, having to scramble for documents, and still be left out. They would then face the prospect of being in detention centers.”

– **Prashant Bhushan, civil rights lawyer¹**

generations⁹ at the forefront captured the imagination of India and the world.

The strong arguments behind these agitations were this: the problem with CAA+NPR+NRC is that it is not only discriminatory towards Muslims but also puts many other sections at a disadvantage; especially those who, due to their social status, do not have access or lose access to documents that could prove their citizenship. These include, the marginalized,¹⁰ the extremely poor, the undocumented citizens, women who move to their husband's house after marriage and even shift cities or towns, Adivasis or tribal communities, orphans and abandoned children, members of LGBTQIA community who are mostly

disowned at birth by their families, disabled persons, people who lose their documents as they live in flood prone areas or have lost documents due to a one-time natural calamity and the list of the disadvantaged could go on.

CAA violates Constitutional secular principles and is a violation of Articles 13, 14, 15, 16 and 21 which guarantee the right to equality; equality before the law and non-discriminatory treatment by the Indian State. There is no way for a Muslim who is declared an 'illegal migrant' to get citizenship in India. Indian Muslims could be badly affected by CAA+NRC, because those Muslims who do not have the documents required to prove their citizenship in a nationwide NRC could



Anti-CAA protest in Mumbai Image: cjp.org.in

be declared as illegal migrants and they would not be able to use CAA, like non-Muslim Indians perhaps could, to get citizenship by lying and claiming that they are illegal migrants from Bangladesh, Pakistan and Afghanistan.¹¹

Legislative background

The CAA amends the definition of “illegal migrant” under the Citizenship Act, 1955 and provides that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before December 31, 2014 is not an illegal migrant. This citizenship is to be given under citizenship by naturalization, which is one of the modes of gaining citizenship in India.

Further it says that any proceeding pending against a person in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him and that even if such proceeding is pending against any person, he will not be disqualified from applying for citizenship under naturalization. However, this amendment is not applicable to scheduled areas of Assam, Meghalaya, Mizoram or Tripura.

The legal provision for NPR is in The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 formulated under the Citizenship Act, 1955.¹²

The present Indian government thereafter announced that the Decadal Census Registration process would go hand in hand with the proposed NPR-NRIC. However the standards of information in the two processes are completely different.¹³ The former is meant as a

demographic pointer for government to formulate policies and schemes whereas the latter is intended towards an identification of citizens.

January 2020: Government announced that the NPR update process (there was a previous process conducted for the Aadhaar card process around 2010) along with the House-listing phase of Census 2021 which was slated to begin on April 1, 2020 but the pandemic has delayed the government’s plans. NPR will include door-to-door survey conducted by government employees, just like the Census but the data collected is set to be the kind that will enable authorities to segregate doubtful citizens from that list and then give a chance to these doubtful citizens to submit their documents and then, finally, prepare a National Register of Indian Citizens or NRIC, excluding those who are unable to provide any documentary proof of their citizenship. One can draw the connection between NPR and NRC from the law itself. As per the preparation methodology prescribed in Citizenship (Registration of Citizen & Issue of National Identity Cards) Rules 2003, it is from the NPR that data will be taken for updating the Local Register of Indian Citizen (i.e. part of NRC) after scrutiny and verification.

Judicial intervention

After the CAA was passed by the Parliament and received the President’s assent, several petitions were filed before the Supreme Court seeking that the law be declared unconstitutional for being ultra vires of the Constitution and for violating the basic structure of the Constitution. More than 140 petitions were filed before the apex court¹⁴, either in support or opposing the CAA. The

petitioners pleaded for an interim stay or a stay on the NPR. The court, however, refused to grant stay before hearing out the government. The center, then submitted a detailed affidavit before the court stating that (CAA) is “perfectly legal and constitutional” and could not be questioned before a court as it does not impinge upon any existing rights of a citizen.

The petitions are now pending before the apex court as physical functioning of the court has been stopped owing to the COVID-19 threat and only few matters are heard every day by benches via video conferencing mode.

The way forward

- Scrap the CAA 2019 or amend it further to include Muslims from Pakistan, Afghanistan and Bangladesh to be granted citizenship, at par with other religious communities
- Stop the process of NPR-all India NRC completely as this threatens to not only impact India’s social harmony but cause all people huge resources besides punching a hole in the state’s exchequer: the process has already cost the state of Assam about Rs. 16 billion to carry out NRC between 2013-2019.

1) <https://indianexpress.com/article/opinion/columns/citizenship-amendment-actprotests-protests-violence-nrc-modi-govt-6213319/>

2) <https://www.theweek.in/news/india/2019/12/12/full-text-the-citizenship-amendment-bill-2019.html>

3) <https://cjp.org.in/why-the-cao-must-be-opposed-because-it-discriminates/>

4) <https://thewire.in/law/citizenship-amendment-bill-unconstitutional>

5) <https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-fivetimes-amit-shah-didso>

<https://indianexpress.com/article/india/npr-nrc-link-amit-shahcentral-government-parliament-6183572/>

6) <https://www.theguardian.com/world/2019/dec/18/india-clamps-down-againstcitizenship-law-protests>

7) <https://cjp.org.in/npr-nrc-faqs/>; <https://cjp.org.in/how-dangerous-is-the-cao-nrc/>

8) <https://www.timesnownews.com/india/article/kerala-cm-pinarayi-vijayan-gives-threereasons-for-rejecting-cao-heres-what-he-said/548466>

9) <https://www.hindustantimes.com/india-news/bilkis-dadi-of-shaheen-bagh-on-time-slist-of-100-influential-people/story-WxcXluH1ApLLKxuc13p8AN.html>

10) <https://cjp.org.in/indias-poorest-citizens-will-bear-the-brunt-of-npr-nrc/>

11) <https://cjp.org.in/teesta-setalvad-addresses-massive-crowd-on-cao-npr-nrc/>

12) <https://cjp.org.in/citizenship-laws-in-india-faqs/>

13) <https://cjp.org.in/npr-manual-released/>

14) <https://cjp.org.in/teesta-setalvad-addresses-massive-crowd-on-cao-npr-nrc/>

RELIGION AND CASTE





Shahida, Delhi Riot Survivor Image: Amnesty

Muslims: A persecuted religious minority in India

Muslims are the largest minority in India and arguably the most persecuted one. As per the 2011 Census data there are 172.2 million Muslims in India which comes to 14.2% of the total population. The British fomented a communal divide to quell the burgeoning revolts to their oppressive rule. This led to the Partition where Pakistan opted for religion-based nationhood, while India remained secular.

While a vast majority of Muslims opted for staying behind, putting their faith in the Indian Constitutional values of equality and non-discrimination, the reality of Pakistan has been continually used as an intimidation and threat against them. Organizations who themselves had little or nothing to do with the Indian freedom struggle and who have, instead openly propagated religion-based nationhood for India, have held second class citizenship as a constant threat to

the religious minorities and the political dissenter.²

The assassination of Mahatma Gandhi on January 30, 1948, was an act carried out by proponents of this very ideology, as they found his commitment to Hindu-Muslim unity and composite nationhood a threat. The Rashtriya Swayamsevak Sangh (RSS) was banned by the Indian government after its functionaries were found to be directly or indirectly involved in the act and its celebration.

The poor share that Muslims have got in the socioeconomic share of India's development has been documented by the government.³ Detailed analyses show that in areas like public sector and government employment, Muslim participation has been affected by the existence of institutionalized discrimination, whereas in those like the arts, cinema and sports

—where prejudice does not so easily manifest—Muslim presence not just flowers but excels.⁴ This discrimination has worsened with the ascendance to power of the hardline parties to power.

A culture of impunity pervades with powerful perpetrators escaping the long arm of the law, especially when it comes to attacks against the minorities and India's marginalized sections. The targeting of Muslims in India has taken different forms over the decades.⁵

After these bouts of targeted pogroms, came the full blown genocidal carnages like Gujarat 2002⁶ and Muzaffarnagar 2013. Since 2014, the forms of violence have shifted to individual, horrific and targeted cases of spectatorial lynchings. Though in February 2020, we saw a return to a full-blown carnage in Delhi. The violence was a clear retaliation to the successful peaceful and democratic protests against the amendments to the Citizenship Law (CAA 2019) that brought in discriminations based on religion. In 2013, the northern state of Uttar Pradesh saw another bout of violence that began with an intra-community conflict and then took the shape and form of targeting the religious minorities.

Ever since a hardline BJP came to power in the Centre in 2014, Muslims in India have increasingly become targets of mob lynching in the name of cow protection, criminalization of triple talaq, and targeted and inciteful hate speech. Cases of Mohsin Sheikh (Pune), Mohammed Akhlaq (Dadri), Pehlu Khan (Alwar) and Alimuddin Ansari (Jharkhand) are still fresh in public memory.

Muslims are also reeling under the evil of the caste system. The upper castes among

Muslims are Ashraf Muslims, equivalent to Brahmins in Hindus who hegemonize Islamic organizations and institutions, including educational institutions. The backward, Dalit and tribal Muslim communities — Raeen, Ansari, Mansuri, Qureishi, Alvi, Salmani, Halalkhor, Ghosi, Hawari, Saifi, Siddiqui, Idrisi, Van Gujjar, etc. have organized themselves under the identity of Pasmanda (Persian for those who have been left behind)⁷ The victims in nearly all communal incidents are almost always the subordinate castes while the beneficiaries are the forward caste sections.⁸ In the fourteen Lok Sabha elections until 2019, only 60 Muslims from Pasmanda background have been elected.⁹

Religion, citizenship and law

The ruling government's anti-Muslim agenda materialized when it passed the discriminatory CAA which enables non-Muslim communities from Pakistan, Bangladesh and Afghanistan to get citizenship in India.

This was to be followed by preparing a National Register of Citizens (NRC) to identify citizens in accordance with the citizenship law. This was to be preceded by the National Population register (NPR), this whole process was to gather documents from people so that they could prove their citizenship and the ones who wouldn't be able to prove the same would be granted easy citizenship under CAA and the only ones who would be left out would be the marginalized Muslim community members. This led to countrywide protests.

Justice for minorities

When it comes to our courts, Muslims have often faced situations where justice was allegedly delayed. While the land dispute in the Ayodhya case was resolved by the Supreme Court by handing over the land where Babri Masjid once stood to the Hindu plaintiffs, the criminal trial of the demolition of the mosque is still on going at the special CBI court. Judgement is now due on September 30, 2020. The Supreme Court, has time and again extended the deadline set for conclusion of the trial in which many BJP leaders are accused.

Punishment of perpetrators of the Gujarat 2002 genocide broke the pattern of impunity because of the rigorous intervention of citizens legal rights groups. As many as 172 persons were convicted, 124 to life imprisonment due to the active intervention of Citizens for Justice and Peace. The coming to power of those in close alliance with the perpetrators, however has begun to negatively influence even this.¹⁰

In the Pehlu Khan case, there was an

alleged attack on the lives of Khan's sons and lawyer. While lower courts convicted the perpetrators in the Alimuddin Ansari case, the accused got bail from higher courts and were even garlanded by former Union Minister and BJP leader Jayant Sinha at a felicitation ceremony.

Current scenario

The February 2020 violence of North East Delhi which took place in the backdrop of protests against the controversial Citizenship Amendment Act (CAA) led to over 70 Muslim deaths. This pogrom appears to have been an attempt to intimidate the Muslim community. Many fact-finding reports have highlighted instances of police inaction and even complicity in the targeting of Muslims, not much unlike the Gujarat genocide of 2002. Mobs, allegedly owing allegiance to hardline parties, were seen stopping men in the streets demanding to see their ID cards. If anyone refused, they were forced to show whether or not they were circumcised, as is common among Muslim men.¹¹ One instance of religion driven hate crime that caught the attention of even international media was of Tabrez



“Over the last couple of years, we have had so many instances of mob lynchings and George Floydtype killings – the difference in India being that Hindu(tva) vigilante mobs do the killing and the police, the legal system and the political climate help them to¹ get away with it”

– **Arundhati Roy**

Ansari (24) who was beaten for hours until he died at the hands of a Hindu mob forcing him to chant praises of Lord Ram. His family says they were threatened by the police with a similar fate when they begged to get him treated while he was in custody.¹² Eleven people have been charged in the case for murder.

The way forward

- Expedite hearings in cases of communal riots against minorities to bring them justice
- Enact the Prevention of Communal & Targeted Violence (Access to Justice & Reparations) Bill, 2011.¹³
- Strengthen the National Commission for Minorities and mandate its members to be part of investigation teams that inquire into incidents of communal violence
- Make lynching and other communally motivated crimes punishable under the Indian Penal Code
- Formulate an Equal Opportunity law to protect minorities from discrimination in social and political spheres

1) <https://www.opendemocracy.net/en/arundhati-roy-indian-muslims-facing-genocidalclimate-amid-pandemic/>

2) <https://sabrangindia.in/indepth/ideology-rashtriya-swayamsevak-sangh-rss-both-hateridden-and-supremacist-part-1>

3) The findings of the Justice Rajinder Sachar Committee report *Social, Economic and Educational Status of the Muslim Community of India*, submitted in November 2006 to the prime minister, had some significant findings. A similar if not as exhaustive initiative commissioned by former PM Indira Gandhi in the early 1980s, remained a document on paper. A summary can be read here

<https://www.sabrang.com/cc/archive/2007/jan07/index.html>

4) <https://www.sabrang.com/cc/archive/2004/july04/report1.html>

5) In the 1980s and 1990s—as the economic situation of Muslims improved after being devastated in the decades following Partition and Independence—targeted pogroms were frequent with the northern states of Uttar Pradesh (UP) and Bihar seeing many (Nellie, Assam (1983), Meerut-Hashimpura, UP (1987), Bhagalpur, Bihar (1989), Bombay (1992-1993) are only a few of the examples. See:

<https://www.sabrang.com/srikrish/hinrole.htm>, Through the late 1980s-1990s, the campaign for a Ram Temple at Ayodhya was nothing but a euphemism for an attack on the Indian Constitutional Order and bloodletting against India's largest minority, the Muslims., Gujarat with a vicious history of anti-minority violence saw a bout in 1969. In many or all of these judicial commissions of inquiry constituted by governments at the time, identified targeted hate speech and writing as instrumental in building an atmosphere conducive to the outbreak of targeted crimes and pinned the blame on institutionalised bias in the law and order machinery (police). Perpetrators were however not ever punished in criminal prosecutions by the state deepening the culture of impunity. See: <https://www.sabrang.com/srikrish/antimin.htm> That decade saw hate getting legitimacy and the increasing marginalization of Indian Muslims. This anti-Muslim rhetoric culminated in the demolition of the Babri masjid in 1992, an act that was preceded and followed by brute attack on Muslim life and property. In all these bouts of violence hardliner organizations, owing allegiance to the ideology of Hindutva (a politically instrumentalised Hinduisim)—these organizations are allied to the ruling Bharatiya Janata Party (BJP). See: Khakhi Shorts & Saffron Flags, Orient Longman; https://www.goodreads.com/book/show/1490272.Khaki_Short_and_Saffron_Flags; <https://www.sabrang.com/tribunal/vol2/prepvio.html>

6) The 2002 Gujarat carnage was a reaction to the burning alive of 58 persons on a train travelling from Faizabad (UP) to Godhra (Gujarat). Many of those who died are believed to have been kar sevaks (Religious volunteers). What followed was 300 incidents spread over days and weeks in 19 of the state's 25 districts where state functionaries and elected representatives failed in their duty to protect lives. As many as 2,000 innocent Muslim lives were lost in this targeted retaliatory violence, property worth millions belonging to the minority were destroyed and places of religious and cultural worship were desecrated. Gendered violence took a new, widespread and organized form, hate speech and accumulation of arms had preceded the Godhra train burning. The Concerned Citizens Tribunal- Crimes Against Humanity report on Gujarat 2002 held the then chief minister, Narendra Modi to be the 'chief architect of the state sponsored genocide.' For several years, the United States refused a visa for his travel to the country, that was till he became prime minister.

7) <https://theprint.in/opinion/indias-muslim-community-under-a-churn-85-backwardpasmandas-up-against-15-ashrafs/234599/>

8) <https://theprint.in/opinion/indias-muslim-community-under-a-churn-85-backwardpasmandas-up-against-15-ashrafs/234599/>

9) <https://www.milligazette.com/Archives/2004/16-30Nov04-Print-Edition/163011200463.htm>

10) In January 2020, the Supreme Court granted interim bail to 14 convicts involved in killing of 23 Muslims in Sardarpura village. In 2011, 33 had been convicted to life imprisonment. In the Naroda Patiya case where about 97 people died, elected representative from the BJP and a minister in the Gujarat cabinet, Maya Kodnani, Bajrang Dal leader Babu Bajrang, were the prominent accused. A special court had convicted both in August 2012; but the Gujarat High Court acquitted Kodnani in 2018 and Bajrang has been granted bail on medical ground in 2019 by the Supreme Court.

11) <https://www.theguardian.com/world/2020/mar/01/india-delhi-after-hindu-mob-riotreligious-hatred-nationalists>

12) <https://time.com/5617161/india-religious-hate-crimes-modi/>

13) <https://www.sabrang.com/cc/archive/2011/nov11/index.html>



2018 a vandalized statue of the Virgin Mary in Bihabandh, India. (Credit: Father Albert Xess.)

Christians under attack in India

While the Constitution of India enshrines Freedom of Religion as a Fundamental Right under Articles 25 to 30,² however, India's powerful right-wing organizations; Vishwa Hindu Parishad, the Bajrang Dal, and RSS Rashtriya Swayamsevak Sangh, believe in the idea of one religion-one nation based on the concept of Hindutva. They even use the Christian contribution to healthcare, education, social services, to fuel hate against Christians. They have fuelled a pernicious propaganda that Hindus are being 'forcibly converted' to Christianity, and must be stopped, either by force, or changing India's laws.³

A recent report titled, Hate and Targeted Violence against Christians in India, prepared by the Religious Liberty Commission (RLC) of the Evangelical Fellowship of India (EFI) stated that the attacks had increased in the first six months of 2020 during the COVID-19 lockdown.⁴

A culture of impunity pervades with powerful perpetrators escaping the long

arm of the law, especially when it comes to attacks against the minorities and India's marginalized sections. Christians have borne the attack of the political Hindutva right wing since 1998- 99.⁵ This was also the period of the first BJP dominated NDA I government.⁶ A selective census of Christians that went against the Indian Constitution was begun in the state of Gujarat.⁷ One of the most ghastly incidents was the burning alive of Australian missionary, Graham Staines and his two sons in January 1999, in the eastern state of Odisha.⁸ The killer of Staines, was Bajrang Dal member than Dara Singh who had also been charged in the murder of Muslim trader, Shaikh Rahman in Mayurbhanj district of the state and also convicted in the murder of a Christian priest, Dr Arul Das in Odisha. Singh was arrested after a yearlong chase in January 2000 after the murder of Graham Staines and is now serving his life sentence in prison.⁹

Thereafter, one of the most systemic and targeted attacks against Christians

was in Kandhamal district, also in Odisha, almost a decade later in 2007-08: over 395 churches and nearly 6,500 houses were destroyed and more than 75,000 people were displaced. Several cases of forced conversion to Hinduism were reported and about 40 women were reportedly raped and sexually assaulted. This pogrom was declared a response to murder of a Hindu preacher as a result of a 'Christian conspiracy'.¹⁰ Twelve years down, justice has eluded the thousands of Christians impacted in that bout of targeted violence.¹¹

Laws about Freedom of Religion

Certain laws, ironically termed 'Freedom of Religion law...' have been enacted in India since the 1960s to curb the freedom of faith.¹² While there is no evidence of 'forcible conversions' by Christian missionaries, the propaganda continues. In 2019, the Uttar Pradesh State Law Commission has also submitted a report to the state's chief minister, a hardliner, Ajay Bisht nee Yogi Adityanath, asking that a new law to check forcible religious conversions be passed. The draft legislation is called, Uttar Pradesh Freedom of Religion Bill, 2019.¹³ The Central government under Narendra Modi was also inclined to enact a similar 'anti-conversion law' but was advised against it by the Central Law Ministry stating that the matter is a state (federal) subject.

Judicial intervention

The Supreme Court in *Rev Stanislaus v. State of Madhya Pradesh* (January 17, 1977) the court unfortunately upheld anti-conversion laws of Orissa and Madhya

Pradesh and also held that there is no fundamental right to convert another person to one's own religion as that would impinge on freedom of conscience of the people. This decision has however been criticized for not recognising that (Article 25 of the Indian Constitution) recognizes the right to preach which includes the freedom to convert. This decision also overturned the Orissa High Court judgment ruling the state's anti-conversion to be ultra vires of the Constitution.

Dalit Christians

Caste plays a role even within religious minorities in India. A vast majority of Indian Christians, 70%, belong to Scheduled Caste communities that number 20 million. Dalit Christians are discriminated against after they were denied affirmative action benefits available to other Dalits. This was through the 1950 Presidential Order. Dalit Christians (and Muslims) are still not considered as Deprived/Scheduled castes under the Constitution since the Presidential order on Scheduled Castes included only Hindus (adding Sikhs and Buddhists later).¹⁴ A writ petition filed in 2004 for inclusion of Dalit Christians still awaits a verdict from the Supreme Court. The last hearing that began in Jan- February 2020 awaits judgment.^{15 16}

Current scenario

A recent report by Persecution Relief reveals that India's most populous state, Uttar Pradesh topped the tally, with 63 hate crimes against Christians. "Hostility against the Christian minority in India, is at an all-time high," said Shibu Thomas, who heads the organization, "this frightening and contagious crusade of



Australian Christina Missionary, Graham Staines along with his two sons, Philip (aged 10) and Timothy (aged 6), was burnt to death in India by members of a Hindu fundamentalist group named Bajrang Dal. In 2003

religious nationalism and intolerance has now peaked at new inhuman altitudes.”¹⁷

“From January 2016 to March 2020, as many as 1,961 cases of hate crimes against Christians have been recorded across India. In the first quarter of 2020, we recorded 187 cases. Between the first quarters of 2016 to the first quarter of 2020, there has been a rise of 128.04 percent of hate crimes against Christians all across the country,” said Shibu Thomas in an interview with Matters India¹⁸ In the past seven years, India has risen to No. 10 on the ‘Open Doors’ World Watch List, ranking just behind Iran in persecution severity¹⁹ The USCIRF has listed India as a CPC (Country of Particular Concern).²⁰

The way forward

- Enact the Prevention of Communal & Targeted Violence (Access to Justice & Reparations) Bill, 2011²¹
- Recognize right to convert to any

religion, while ensuring there is no coercion and repeal the laws that impinge on the freedom of faith; at best treat such ‘offences’ as civil wrongs instead of a criminal offence

- Ensure that Dalit Christians get the same benefits as those deprived castes among the Hindu, Sikh and Buddhist religion.

“Any conversion is voluntary, and everyone has the freedom to follow the religion of his own choice...Christians in India have constitutional guarantees to practice our faith, share the Good News and the message of Christ, which is for all humanity. This is not¹ conversion nor is anyone forced.”

- Bishop Gerald John Mathias of Lucknow, Uttar Pradesh

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- 1) <https://cruxnow.com/church-in-asia/2020/02/bishop-in-india-categorically-denies-the-false-allegations-of-forced-conversion/>
 - 2) Article 25 in The Constitution Of India 1949. Freedom of conscience and free profession, practice and propagation of religion. <https://indiankanoon.org/doc/631708/>
 - 3) Vishwa Hindu Parishad <https://vhp.org>, Bajrang Dal <https://vhp.org/vhp-atglance/youth/bajrang-dal/>, Rashtriya Swayamsevak Sangh <http://rss.org>
 - 4) Lynching, ostracization in targeted violence against Christians in first half of 2020: <https://efionline.org/2020/07/10/efi-rlc-half-yearly-report-2020/>
 - 5) <https://www.sabrang.com/cc/comold/jan99/cover.htm>;
<https://www.sabrang.com/cc/comold/july00/storybox1.htm>
 - 6) <https://www.sabrang.com/cc/comold/july00/co-story.htm>
 - 7) <https://www.sabrang.com/cc/comold/feb99/doc.htm>
 - 8) <https://cjp.org.in/remembering-the-graham-staines-murder/>; The then government counsel appearing in the judicial commission to investigate the triple murders by arson of missionary Graham Staines and his two sons, had found a link between arsonist/murderer, Dara Singh and the RSS. "Dara linked to Sangh: Government counsel": The Indian Express, August 15, 1999
 - 9) [https://en.wikipedia.org/wiki/Dara_Singh_\(Bajrang_Dal\)](https://en.wikipedia.org/wiki/Dara_Singh_(Bajrang_Dal))
 - 10) <https://thewire.in/communalism/kandhamal-violence-anniversary-remembrance>
 - 11) The National Solidarity Forum, representing 70 national and regional organizations, has issued a statement and appeal on the anniversary of the violence in 2020: according to the figures in the statement, there have been more than 3,300 complaints, but only 820 odd FIRs were registered. Of these, only 518 cases were charge sheeted. Of these 518 cases, 247 cases disposed off. Those cases disposed of have resulted in mass acquittals. A study conducted by SCI advocate, Vrinda Grover and professor of law, Saumya Uma, reveals that the conviction rate is as low as 5.13% in the charge sheeted cases. On August 2, 2016, the SCI stated in their judgement that the quantum and scope for compensation was not satisfactory and found that the court also found it disturbing that the offenders of law were not booked. The SC ordered a review of 315 cases of communal violence, however four years later, these cases have not been reopened. The SCI judgement did not set any deadline. There are houses, churches, institutions and volunteer organizations, whose properties were destroyed in targeted violence but who never received compensation despite the SC order.
 - 12) Madhya Pradesh, Arunachal Pradesh, Gujarat, Chhattisgarh, Jharkhand, Tamil Nadu, Himachal Pradesh and Uttarakhand.
 - 13) The draft legislation is called Uttar Pradesh Freedom of Religion Bill, 2019. <http://upslc.upsdc.gov.in/MediaGallery/8thReport.pdf>
 - 14) <https://sabrangindia.in/article/60-years-constitutional-rights-denied-20-millions-indiandalit-christians>
 - 15) Dalit Sikhs protested and they are included in Constitution (Scheduled Caste) Order 1950 after six years' denial of their birth, fundamental and constitutional rights by amendment Para 3 of Article 341 in 1956. Dalit Buddhists remained their birth, fundamental, constitutional rights of scheduled caste status denied for 40 years until the Para 3 of Article 341 was amended in 1990 to include them in the Presidential Order.
 - 16) The petition seeks parity from the SCI for the Scheduled Caste among Christians. Affirmative action and attendant benefits including special privileges in education, getting scholarships, employment opportunity, welfare measures, affirmative actions, right to contest in the reserved constituencies from panchayat (elections in village councils), legislative assemblies up to the Parliament are today available to Hindu, Sikh and Buddhist Dalits but denied Christians (and Muslims) from the depressed cases. Similarly remedy/protection under Scheduled Castes and Scheduled tribes (Prevention) of Atrocities Act, 1989 amended in the year 2018 are denied to Dalits among the religious minorities.
 - 17) <https://sabrangindia.in/article/anti-christian-hate-crimes-4087-percent-indiareport#:~:text=%E2%80%9CHostility%20against%20the%20Christian%20minority,against%20the%20community%20and%20works>
 - 18) <https://mattersindia.com/2020/05/christian-persecution-increased-in-india-shibuthomas/>
 - 19) Hindu nationalism and attacks with impunity: <https://www.opendoorsusa.org/christian-persecution/world-watch-list/india/>
<https://www.opendoorsusa.org/christian-persecution/stories/india-cracks-top-10-noroom-christians-persecution/>,
<https://www.opendoorsusa.org/christian-persecution/stories/beaten-neglected-andabused-a-crisis-for-indian-christians-during-COVID-19/>
 - 20) Countries of Particular Concern: India <https://www.uscifr.gov/countries-andissues/south-asia/countries-particular-concern-india>
 - 21) <https://www.sabrang.com/cc/archive/2011/nov11/index.html>



Rohit Vemula, a PHD student was the victim of cast discrimination, forced him to take his own life.

Dalits in India: Battling oppression and discrimination even today

Dalits are a class of people peculiar to India where the caste system is so stringent, it is being followed even in the 21st century. The term Dalit means 'oppressed', 'broken' or 'scattered' in Sanskrit and is used for people belonging to castes in India who have been subjected to untouchability. In legal and constitutional terms, Dalits are known in India as scheduled castes.

The philosophy of caste is contained in the Manusmriti, a sacred Hindu text dating from the second century BCE. 'Untouchable' outcast communities were forbidden to join in the religious and social life of the community and were confined to menial tasks that were viewed as polluting, such as animal slaughter, garbage picking, cleaning sewers and so on. Even in 2020, more than 90%¹ employees in sanitation and cleaning sector are Dalits.

Two great leaders had two different approaches for their upliftment. Mahatma

Gandhi believed in raising the status of Dalit people while retaining elements of the traditional caste system while Dr. Babasaheb Ambedkar, who was himself a Dalit, believed that change can be brought about only by destroying the caste system. He demanded separate legal and constitutional recognition similar in status to that accorded to Muslims, Sikhs and Christians, which was not agreeable to Gandhi. So, he gave up that demand and converted to Buddhism and many Dalits followed his footsteps.

As per the 2011 National census, the total female population of India stands at 58.7 crore of which 16.68% are Dalit women. In India, Dalit and Adivasi women's gender, compounded with their caste, makes them the most vulnerable to systemic and structural discrimination. The COVID-19 pandemic outbreak has created another layer of hardship for them. According to the NCRB, 2018 every day 10 Dalit and Adivasi women are raped and there is a

total of 6159 crimes registered against Dalit women and about 1882 crimes registered against Adivasis women under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act), these crimes include Rape, attempt to rape, assault, sexual harassment, intent to disrobe, voyeurism, stalking, insult to modesty.

The discrimination against Dalits in India exists in every sphere of life, be it academic, political, social or economic. It is still not acceptable in society that a High caste girl marry a low caste boy, which then leads to incidents of honour killings, where the girl's family kills the boy, in many cases even several years after their marriage. These incidents are quite rampant in the country and despite courts giving harsh sentences in such cases, there seems to be no deterrence.

Laws and other provisions

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is a law that specifically addresses crimes against Dalits. These crimes include, boycotting, force-feeding substances not fit for human consumption, dumping disgusting substances (ex. animal carcass) inside or at the entrance of the house, not allowing entry to SC/ST members to public places, verbally abusing or insulting using casteist slurs and so on. It also includes offences like making false statement against them, illegal takeover of property, and interfering with voting rights.

There is also a National Commission for Scheduled Castes that has the mandate to investigate into cases of atrocities against Dalits but in practice, there is

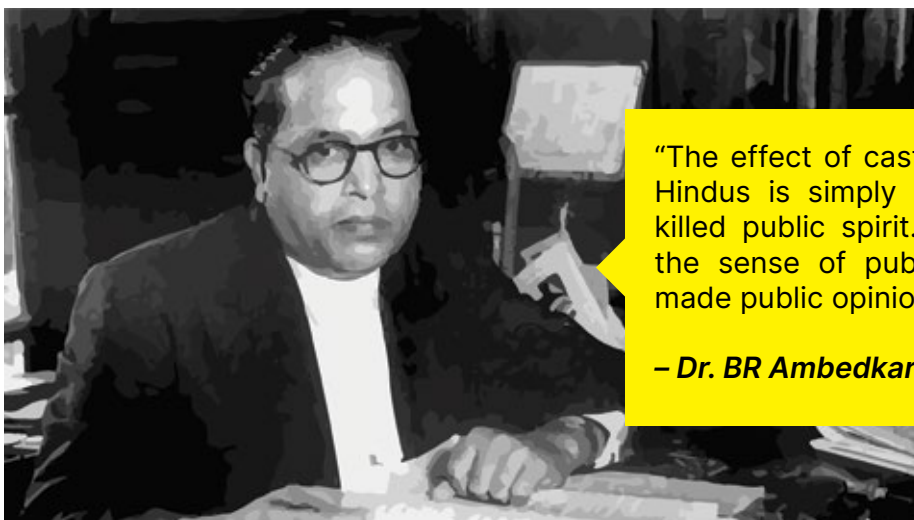
little the Commission does for upliftment of the community, and usually remains silent even when cases of atrocities against Dalits are reported almost daily.

Judicial intervention

There is a popular opinion that the Supreme Court, which mostly has upper caste persons as judges, has mostly misconstrued the concept of reservations for SCs as well as STs and have not dealt with issues of Dalits in the most adept manner. In *Dr. Subhash Kashinath Mahajan vs The State Of Maharashtra* (decided on March 20, 2018), the Supreme Court diluted the provisions relating to immediate arrest on commission of offences by stating that preliminary inquiry be conducted before arrest. This was nullified by the legislature by an amendment to the law.²

Again, the apex court in *Khuman Singh v. State of Madhya Pradesh* (decided on August 27, 2019) weakened the SC/ST Act by setting conviction in a case of murder of a Dalit by stating that, "there is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction is not sustainable".

Dalit Christians still are not considered as Dalits under the Constitution since the Presidential order on Scheduled Castes included only Hindus and later Sikhs and Buddhists were added to the list. Nearly 70% of the Christian population in India are from Scheduled Caste backgrounds.³ A writ petition filed in 2004 for inclusion of Christians still awaits a verdict from the Supreme Court.



"The effect of caste on the ethics of the Hindus is simply deplorable. Caste has killed public spirit. Caste has destroyed the sense of public charity. Caste has made public opinion impossible"

– **Dr. BR Ambedkar**

Being Dalit amidst the COVID-19 pandemic

The political and economic standing of Dalits has made them more vulnerable to the plight of the virus. Majority of the lower caste people live in rural areas away from essential goods shops, quality healthcare, internet connectivity and other services. A village in Andhra Pradesh did not have access to milk for a long time because of restrictions on movement. In Kerala, a 14-year-old daughter⁴ of a daily wage worker died by suicide as she was unable to access online classes. These stories are evidence of government's failure to provide for the Dalit community.⁵

Further, owing to rampant social discrimination, Dalits are sometimes driven to suicide. Some cases in the past few years have been of Rohit Vemula, and Dr. Payal Tadvī whose deaths have been dubbed 'institutional murders'. These are only the cases that were highlighted in the media due to extreme outrage, there are many such that miss the media glare. The mainstream news media usually ignores stories about the plight of Dalits, thus

these subjects never become an active part of daily discourse.

As far as political leadership goes, there is Mayawati who leads the Bahujan Samaj Party (BSP), there is Chandrashekhar Azad who leads the unregistered organization called Bhim Army (fashioned on the 'Jai Bhim' slogan of Ambedkarites) and there is Prakash Ambedkar⁶ leading Vanchit Bahujan Aghadi (VBA) and Jignesh Mewani, an independent MLA from Gujarat, to name a few. Upliftment of Dalits is viewed as a threat by upper castes since Dalits are driven by the Ambedkarite ideology of destruction of caste system. Hence, upper castes view this as a threat their power and place in the social hegemony.

The All India Survey on Higher Education for 2018- 2019 reports that Dalits account for only 14.9% of the 37.4 million students enrolled in higher education.⁷ Data from the National Family Health Surveys (NFHS) indicates that Dalit women die younger compared to the dominant caste women due to the existing disparities in health systems.⁸

The way forward

- Strengthen the National Commission for Scheduled Castes by widening its mandate and ensuring regular appointments
- Backlogs in reserved seats for Dalits be filled up by arranging special recruitment drives
- Increase budget allocation for education and provide for special scholarship for Dalit students
- Reservation in promotions in public sector and reservation in private sector

1) <https://feminisminindia.com/2020/04/17/hunger-kill-virus-food-distribution-priority-now/>

2) http://socialjustice.nic.in/writereaddata/UploadFile/PoA_Act_2018636706385256863314.pdf

3) National Council of Churches in India <https://www.thehindu.com/news/national/70-year-wait-for-dalit-christians-muslims-on-sc-verdict-over-castestatus/article32312331.ece>

4) <https://www.news18.com/news/india/unable-to-attend-online-classes-14-year-oldkerala-girl-sets-herself-ablaze-2648871.html>

5) <https://feminisminindia.com/2020/06/11/dalitlivesmatter-atrocities-against-dalitsincrease/>

6) Grandson of Babasaheb Ambedkar, former Member of Parliament

7) <http://aishe.nic.in/aishe/viewDocument.action?documentId=263>

8) <https://www.livemint.com/Politics/Dy9bHke2B5vQcWJJWNo6QK/Dalit-women-in-India-die-younger-than-upper-caste-counterpar.html>



Other Backward Classes in India today

Other Backward Classes (OBC) refer to communities that have been historically marginalized in India, and continue to face oppression and social, economic and educational isolation, but do not fall into the Scheduled Castes or Scheduled Tribes list.²

The history of reservation for the backward castes goes back to 1902 when Shahu Maharaj, the ruler of the princely state of Kolhapur, reserved 50% jobs for backward castes (all communities except forward groups such as Brahmins, Prabhus, Shenvis and Parsis).³ The question of who were the Scheduled Castes was debated and roughly settled before Independence within the executive. The makers of the Constitution left the decision of classification of backward classes with the executive at the state level with an option for the Centre to unify it. As of 2020, there are 2,633 entries enlisted under the central list of OBC category which comprise several classes,

communities and sub-communities. This means the total number of individually named classes/castes in the central list is between 5,000 and 6,000.⁴

An application filed by Chennai based scientist E Muralidharan in 2015 under the Right To Information (RTI) Act, revealed that despite the 27 percent reservation of seats for Other Backward Castes (OBCs), the actual number of OBC employees in government ministries, statutory bodies and departments stands at under 12 percent.⁵

The population of OBCs is not known in India since the census data does not account for it. Over the years there have been demands for a caste based census that will help fulfil Article 16(4) of the Indian Constitution that says that the backward classes will be provided reservation in state services, provided they are not adequately represented. The government has, in 2011, conducted a Socio-Economic Caste Census (SECC).

The data was partially released in 2015 but the caste data was withheld. A survey conducted in 2007 by the National Sample Survey Organization indicated that OBCs formed 41% of the population.⁶ Thirteen years later, this figure is bound to have increased.

Legislative background

The National Commission for Backward Classes was formed under Article 338A of the Constitution for the socially and educationally backward classes. The mandate of the Commission is to examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government. The section 9(2) of the National Commission for Backward Classes, 1993 states that advice of the Commission shall ordinarily be binding upon the Central Government. Article 340 of the Constitution gives the President the power to constitute a committee to investigate the conditions of backward classes in India and recommend measures for their welfare, upliftment, and development. The Mandal Commission was constituted under this Article by the Janata Party Government, to identify backward communities in India and recommend policy initiatives for their upliftment and welfare.

Based on the criteria it had set out to measure backwardness, it estimated that nearly 52% of India's population fell under the Other Backward Class category. Reservation of seats for Backward Classes in public employment or State-funded institutions is allocated at 27 percent.

In February 2020 the Odisha State Backward Classes (Amendment) Bill was passed by the state enabling the Backward Class Commission survey of the social and economic conditions of the backward classes in the State.⁷

Judicial Intervention

In July 2020, the central government admitted in the Madras High Court (HC) that OBCs were not given reservation in the All India quota of medical seats in courses such as the Bachelor of Medicine, Bachelor of Surgery and Bachelor of Dental Surgery since 1986.⁸ In its judgment delivered on July 27, 2020, the high court directed the Central government to constitute a committee with the participation state medical authorities and the Medical Council of India in providing reservation for OBCs under All India Quota (AIQ) in state-run colleges and to decide on the percentage of reservation within 3 months.⁹

Before approaching the Madras High Court, the petitioners, which included regional political parties, had approached the Supreme Court under writ jurisdiction of the court under Article 32 of the Constitution for implementation by the Centre of the existing 50% reservation for OBCs as per Tamil Nadu law in medical seats surrendered by the state in the all India quota for under graduate, post graduate and dental courses. The court, however asked the petitioners to approach the Madras High Court as "reservation is not a fundamental right". The bench said during the hearing that a plea under Article 32 (filing of Writ petition in SC) of the Constitution can be filed only in case of violation of fundamental rights and no such rights of political parties have been violated.

Current scenario

In 2017, the central government formed a panel to examine the sub-categorisation of OBCs and it found that around 20 per cent of OBC communities did not get any quota benefit between 2014 and 2018 and that only 40 out of 5,000-6,000 castes/communities among OBCs cornered 50 % of the reservation benefits in admissions to central educational institutions and recruitment to central services. Sub-

“If a large section of salaried, both private and government, are excluded from the OBCs, it will weaken the overall OBC narrative. In any section of the society, the role of the vanguard is played by the advanced section and the middle class. The educated middle class is the articulator of grievances of the community. If that class is pruned and clipped from the rest, it will be difficult for the poorer sections of the community to fight battles where the government has decided to dilute the quota benefits.”¹

- Dilip Mandal, Journalist, Academic

categorisation of OBCs, which comprise thousands of communities, castes etc, has been a long-standing demand among some sections to ensure better distribution of reservation benefits. While OBC reservation in government jobs was introduced in 1993, the education quota came into force in 2006.

The panel led by retired Delhi High Court Chief Justice G. Rohini, said that sub-categorisation had become “urgent and inescapable”. A member of the panel, JK Bajaj said that communities getting little or no benefits need to be given separate space to compete since the

different communities, irrespective of their backwardness, compete together for the 27 per cent reservation.¹⁰

With the Centre admitting that OBCs haven’t had reservation in medical courses since 1986, one wonders in how many such fields the reservation has not been implemented which has missed the public eye. The Indian Institutes of Management (IIMs), for example, do not offer reservation in teaching posts and have no intention of doing so in the future. These 20 IIMs had requested the Union government to include them in the Institutions of Excellence category, which would exempt them from the implementation of reservation in faculty positions.

The way forward

- Give the National Commission for Backward Classes or constitute a temporary commission to examine in which other fields has reservation not been implemented for OBCs
- Continue the affirmative action granted in all government jobs for the OBCs and not restrict this to a section only
- Conduct caste-based census to calculate population of OBCs. This will not only help in policy making but will help the already constituted panel under Justice Rohini to implement sub-categorization in OBCs to ensure the weaker classes truly benefit from reservations.

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- 1) <https://theprint.in/opinion/with-creamy-layer-hike-bjp-undoing-3-decades-of-mandalgains-getting-obc-support/456497/>
 - 2) <https://www.thequint.com/explainers/scheduled-caste-scheduled-tribe-obc-ebc-sc-stprevention-of-atrocities-act-explainer>
 - 3) <https://www.hindustantimes.com/analysis/how-mandal-changed-and-did-not-changeindia/story-K9gS9hXivYSKuX5IMYHPPI.html>
 - 4) <https://theprint.in/india/governance/less-than-1-of-obc-castes-corner-50-reservationbenefits-20-get-none-govt-panel-finds/458860/>
 - 5) <https://timesofindia.indiatimes.com/india/20-years-after-Mandal-less-than-12-OBCsin-central-govt-jobs/articleshow/50328073.cms>
 - 6) <https://timesofindia.indiatimes.com/india/OBCs-form-41-of-population-Survey/articleshow/2328117.cms>
 - 7) <https://www.hindustantimes.com/opinion/why-did-naveen-patnaik-government-passthe-obc-bill-in-a-hurry-opinion/story-E1MlbqoUfDVEz5kv1Ho40O.html>
 - 8) <https://www.hindustantimes.com/analysis/how-mandal-changed-and-did-not-changeindia/story-K9gS9hXivYSKuX5IMYHPPI.html>
 - 9) <https://www.newindianexpress.com/states/tamil-nadu/2020/jul/27/obc-medical-seatsmadras-hc-directs-central-government-to-form-panel-for-all-india-quota-2175404.html>
 - 10) <https://theprint.in/india/governance/less-than-1-of-obc-castes-corner-50-reservationbenefits-20-get-none-govt-panel-finds/458860/>



Image: cjp.org.in

India's Indigenous people and the struggle for Forest Rights

The term Adivasi that is used for India's Indigenous people, comes from the Sanskrit word 'adi' which means from the beginning, and 'vasi' meaning inhabitant. According to the 2011 population census Adivasis constitute a total population of 104 million. Today the figure is close to 107.2 million. This constitutes 8.6 percent of the Indian population (Census India 2011), making them the world's largest population of Indigenous people.²

Adivasis have faced historic injustices since colonial times. The colonial regime had encroached upon massive forest lands for commercial exploitation of timber and railways projects, thereby threatening the survival and livelihood of Adivasis. The Indian Forest Act of 1927 was enacted to quell this rebellion and give unchecked power to the Forest Department.

The People of India Project of the Anthropological Survey of India has

identified 635 Scheduled Tribes communities spread across the countries, out of a total of 4635 communities of various kinds. Even as the level of their poverty increases due to decline in their traditional occupations such as hunting and gathering, trapping, pastoral and shifting cultivation, there has been a notable increase in occupations such as horticulture, terrace cultivation, animal husbandry, sericulture, etc. although the mainstay of Adivasi population is dependent on non-timber forest produce (NTFP) and their economic condition remains severely constrained.³

India's indigenous populations are now reluctantly recognized as those who also protect India's natural resources, reserves and forests. However, conflicting interests in government, influenced by powerful corporations has rendered their rights and claims over land and livelihood to become very vulnerable.⁴

Legislative background

Schedules V and VI of the Indian Constitution protect the independence, autonomy and customary rights of Adivasi (Indigenous), Traditional Forest Dwelling and Indigenous Populations. However, even after Independence, Indian Parliament did not repeal the British-enacted Indian Forest Act, 1927 that legalized the formal encroachment on Adivasis lands and their rights. It was only in 2006 that rights of tribals finally found legislative intent and The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [known as the Forest Rights Act or FRA] was enacted after decades of struggle of India's forest dwelling communities. Despite provisions of equality, non-discrimination and equality before law, the issue of women's rights over land and ancestral property has remained a contested one, especially within India's patriarchal, caste and class ridden society. Schedules V and VI of the Indian Constitution, Adivasi (Indigenous), Traditional Forest Dwelling and Indigenous Populations were given a statutory base only with the enactment of this law. This Act for the first time vested Adivasi women and women forest dwellers equal and independent rights over forests and forest land. Revenue laws and all other land laws vest this right on women only after marriage and not as an independent right. The Act empowers forest dwellers (and not just scheduled tribes recognized under the Constitution) file claims for community and individual forest rights before different levels of committees.

Official figures show that 107.2 million crores plus of India's 1.340 billion population are directly dependent on

forests for livelihood, and another 100 million plus are indirectly dependent upon them. At least 50 percent of them are women. Women's leadership potential over control over such resources has also been recognized as a means of conserving not just the natural habitat and environment, but also indigenous means of production of variant kinds of forest produce whose worth runs into millions of rupees. The absence of protection of indigenous persons and forest dwellers rights to garner these resources through cooperatives hampers their economic independence which has been granted under law.

Fourteen years after the enactment of this "recognition of rights" law, that merely gave a legal framework to the customary rights over cultivation and ownership enjoyed by India's indigenous and forest dwelling communities for generations, despite guidelines by Government Ministries, powerful interests have not allowed the implementation of this law.^{5 6}

Judicial interventions against Indigenous Peoples

"We will never give up our Jal- Jungle- Jameen (Water-Forest- Land), it is our environment friendly agricultural practices that are helping conserve our resources and protecting us from Coronavirus. We will lay claim on¹ what is rightfully ours"

- Sokalao Gond, Adivasi Forest Rights Defender, jailed by the authorities in 2015 and 2018 on malicious grounds

An interim ruling of India's Supreme Court dated February 13, 2019 'ordered' the arbitrary eviction of lakhs of Adivasis whose 'claims to land had been rejected under the Forest Rights Act.' The interim judgement was pronounced in a 12-year-old legal challenge to the Forest Rights Act, 2006 itself. Instead of hearing arguments on the constitutionality or otherwise of the law, the court's undue hurry in passing such an order led to outrage. The Modi government was silent in the proceedings before the court. But nationwide protests broke out and within a fortnight, on February 28 evictions were stayed by the court. This move by the highest court led to over 19 intervening applications being filed by women leaders among the Indigenous people and groups struggling for the realization of land and livelihood rights.⁷

Laws that attack indigenous people's rights

The Modi government has, since 2015 enacted a series of laws that directly impact not just the environment and climate change, but severely affect the land and livelihood rights of India's indigenous and forest dwelling communities.⁸

Current scenario

As mentioned above, Adivasis in India have faced historical injustices. Yet, they remain undeterred using the law (FRA 2006) by their side.

However the failure to repeal the contesting 1927 law continues to pit the forest department against India's Indigenous peoples. Incidents of forceful evictions, destruction of shelters,

encroaching farmlands have exacerbated during the nation lockdown imposed owing to the COVID-19 pandemic.

- In Uttarakhand, forest officials visited a Van Gujjar settlement on June 16 and 17, and tore down a shelter belonging to the daughter of a senior member of the community. They also allegedly sexually assaulted some women.
- Thereafter the family members, including minors were arrested based on a falsified case that they had assaulted forest officials and kept in custody for a long time.⁹
- On July 15, tribals came together under the banner of 'Kaimur Mukti Morcha' and protested the actions of Bihar forest officials who have used various tactics to forcibly evict them, they have been subject to brute police firing on September 10-11, 2020.¹⁰
- In Jharkhand, on June 15, the Adivasi Ho community was beaten up brutally by Central Reserve Police Force (CRPF) personnel.¹¹
- In Chitrakoot district of UP, Adivasis were being forced out of their lands.¹²
- In Lakhimpur Kheri, UP the women of Tharu community were assaulted by forest officials and an FIR came to be registered against them.¹³
- These are just some of the reported incidents have taken place during the lockdown.

The way forward

- Implement the Forest Rights Act in its full spirit and repeal the exploitative 1927 Indian Forest Act
- Put in place a robust redressal mechanism for distressed forest dwellers who face administrative difficulties or who are harassed at the

hands of forest officials in false and malicious prosecutions.

- Repeal those laws that threaten the lands and livelihoods of indigenous and forest dwelling populations.



1) <https://cjp.org.in/sokalo-gond-adviasa-warrior-who-defends-her-people/>

2) <https://cjp.org.in/wp-content/uploads/2018/12/Faizi-and-Nair-Paper-on-Adivasis.pdf>

3) Singh, S.K. 1994. The scheduled tribes. People of India, vol. III. Delhi: Anthropological Survey of India,

4) <https://cjp.org.in/wp-content/uploads/2018/12/Faizi-and-Nair-Paper-on-Adivasis.pdf>

5) <https://www.fra.org.in/document/13-1-FP-1%20to%206.pdf>

6) Despite individual and community claims of rightful ownership over land being filed, these claims are not being decided in many tribal areas. Either a committee has not been formed, or if its formed, it has not considered the claims and if they have been rejected, no due process of law has been followed while rejecting them. This is the case with most of the claims filed by forest dwellers across the country.

7) The Supreme Court has had to, for the moment, at least, recognise that claims were rejected without following due process. What appears clear is the reluctance of state governments and their administration to recognise and process these community and individual claims. Land over which powerful corporates have their eye is the resource over which this battle is being fought.

8) (A) MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957: as mining mainly happens in the jungles it affects the life of the people living there. The original act allowed only 10sq km of land to allotted for mining but the amendment in 2015 removed the 10sq km limitation and now any amount of land can be given for mining by the government.

(B) THE COMPENSATORY AFFORESTATION FUND ACT, 2016: It promotes funds collection to replace forest land with agricultural land without the concurrence of indigenous peoples and forest dwellers. (C) NATIONAL WATERWAYS ACT, 2016:

111 waterways are included under this act, infrastructure projects will be developed on these water bodies and complete commercialization will take place leading to obstruction of peoples life living on the banks. (D) AMENDED ENVIRONMENTAL IMPACT ASSESSMENT ACT, 2006 (2020 notification): In 2006 this law was implemented to ensure prior environmental clearances, assessment of harm to natural resources, public hearings etc. Since 2006 there have been several dilutions to the law. Earlier the act stated that too carry out a project within 10 km of the national park you need to take the permission of the central government. In March 2020, the government has declared that it will scrap the act of 2006 and introduce a new notification. The notification itself of the new Environment Impact Assessment Act is exploitative in nature and has a clause for regularization of projects even if they fail to adhere to environmental norms; also there is no requirement of public hearings with the local population.

9) <https://sabrangindia.in/article/van-gujars-assaulted-police-and-forest-officials-cjpmoves-nhrc-demanding-justice>

10) <https://sabrangindia.in/article/bihar-adviasis-revive-call-jal-jungle-zameen>

11) <https://sabrangindia.in/article/jharkhand-adviasis-brutally-beaten-crpf-men-factfinding-report>

12) <https://sabrangindia.in/article/forest-officials-allegedly-harass-intimidate-adviasischitrakoot>

13) <https://sabrangindia.in/article/assault-tharu-women-prompts-fir-forest-officials-flexmuscles>



GENDER



Image source: Discover Society

Violence against women in India

Three months into the year 2020, a nationwide lockdown in wake of the COVID-19 pandemic forced both, men and women, to stay indoors. This was across all social and economic strata. The lockdown also meant a lot of people lost their jobs due to businesses cutting costs to get through the lockdown. This meant increasing stress and frustration which sometimes manifests itself into violence.

Gender-based violence is defined by the United Nations as any act of violence that results in physical, sexual, or psychological harm or suffering to women, girls, men, and boys, as well as threats of such acts, coercion, or the arbitrary deprivation of liberty.²

To speak about violence against women is to understand that violence is not just physical and does not just include battery or assault. Violence can manifest itself into physical, emotional, verbal, sexual, and economic violence. Emotional violence is difficult to understand even

for women themselves. It could include humiliating in front of people, threatening to hurt or harm the woman or someone close to her, insulting or making her feel bad about herself.

A study conducted by National Family Health Survey (NFHS) in 2015-16 found that 52% of women and 42% of men believe that a husband is justified in beating his wife in at least one of seven specified circumstances. The study observed that this trend had not seen much change since its last study of 2005-06.³ The NFHS study further found that 30% of women have experienced physical violence since age 15, and 6% have ever experienced sexual violence in their lifetime; 4% of ever-pregnant women have experienced physical violence during any pregnancy. Only 14% of women who have experienced physical or sexual violence by anyone have sought help to stop the violence; this percentage was 24% in the study of 2005-06.

As Dr. Indu Agnihotri points out in an article in *The Wire*,⁴ violence against women is a critical manifestation of social crisis and conflict that have roots in structures upholding inequalities, social hierarchies and policies of discrimination and exclusion. The exclusion of women from access to resources, policy making and justice is the violence that needs to be recognized.

Legislative background

Domestic violence was included under the definition of offence of 'cruelty' under section 498A of the Indian Penal Code (IPC) since 1983. It was only in 2006, that domestic violence was addressed as a real problem and a law was formulated to redress the same. The Protection of Women from Domestic Violence Act 2005, which came into effect in 2006, granted civil protection to women against domestic violence, while providing a comprehensive definition of domestic violence including all forms of physical, emotional, verbal, sexual, and economic violence while also including threats of such violence. The Act requires the appointment of protection officers to assist victims, and further acknowledges the importance of collaboration between the government and external organizations in protecting women.

The fight against sexual violence bolstered after the 2012 Delhi gang rape case which brought in the report of the Justice Verma Committee which drastically changed the penal code to becoming more favourable for redressal of crimes against women and classified them better. Crimes such as throwing acid, sexual harassment, assault with intent to disrobe, voyeurism, stalking found place in the IPC thus enabling

women to register these crimes. The definition of rape was also drastically changed to include all kinds of heinous acts that amount to rape.⁵

There are, however, still some lacunae in penal law that do not address crimes against women. For example, there is no law that punishes a public servant for resorting to any kind of sexual violence or even assault by a male officer on a woman.

Judicial intervention

The intervention of the judiciary is important in jurisprudence but it is more pertinent and important that this intervention culminates into a proper conclusion: justice to the victim. One needs to also look at the pendency of cases and rate of conviction in cases of crimes against women. NCRB data of 2018 states that the conviction rate in rape cases was a mere 27.2%.⁶

The failure of the criminal justice system is reflected in incidents such as a rape survivor setting herself ablaze after the rape accused was granted bail,⁷ and in another incident in Unnao itself the accused set the rape survivor ablaze as she was on her way to the hearing.⁸ Clearly, courts had a role to play here and substantively failed and continue to fail to protect survivors in such heinous attacks.

Current scenario

The National Commission for Women (NCW) received 2,914 complaints of crimes against women, 660 of which were pertaining to domestic violence. 9 Among all kinds of violence, National

Crime Records Bureau (NCRB) data of 2018 shows that domestic violence against women was the highest reported

“We demand better street lighting in the hope that it will bring down the incidents of rape in cities and smaller towns. We promote mobile apps and pepper sprays and encourage young girls to learn martial arts to fight the rapists. We conveniently overlook the fact that rape happens in broad daylight and that the home is the most 1 frequently used location.”

- **Flavia Agnes, Women's rights activist and lawyer.**

gendered crime that year. A total of 89,097 cases related to crimes against women was registered which was a marginal rise from the 86,001 cases in the previous year.¹⁰

Gendered violence persists not just in domestic spaces, but also take place in public places, secure environments such as educational institutes, and many a times even inflicted by public servants. The past few months have been testimony to this as police excess was experienced across the country especially in Delhi and Uttar Pradesh and the police personnel resorted to sexual violence and torture on women part of protests against the Citizenship Amendment Act (CAA). A report by National Federation of Indian Women released a fact-finding report which stated that women as well as men were assaulted on their sensitive areas as they were disbursing a march of protesters.¹¹

Gendered custodial violence were witnessed in a wave of attacks on Adivasis in Uttarakhand¹² as well as Dudhwa National park¹³ in Uttar Pradesh. While no FIR was allowed to be registered in the Uttarakhand incident, an FIR has been lodged for the UP incident.

The way forward

- Since restriction of movement is still in place in some regions and unemployment is at its peak, it means the threat of domestic violence persists. Complaints of violence received must be redressed immediately by providing access to women to shelters or facilitate removal of the abuser from the household
- As courts are functioning in a restricted manner, courts should give importance to hearing cases of crimes against women and grant interim reliefs to womenAs courts are functioning in a restricted manner, courts should give importance to hearing cases of crimes against women and grant interim reliefs to women
- As courts are functioning in a restricted manner, courts should give importance to hearing cases of crimes against women and grant interim reliefs to women
- Ensure help lines, one stop centres, women police stations etc. are available at all times
- There is further need to enhance the gender sensitivity of the police, who need to work closely with women's groups to formulate safety plans of action for women.

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- 1) <https://indianexpress.com/article/opinion/columns/delhi-gangrape-nirbhaya-casewomen-safety-unsafe-at-home-and-in-the-workplace-4990390/>
 - 2) <https://dhsprogram.com/pubs/pdf/FR339/FR339.pdf>
 - 3) <https://dhsprogram.com/pubs/pdf/FR339/FR339.pdf>
 - 4) <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf>
 - 5) <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>
 - 6) <https://indianexpress.com/article/india/another-unnao-rape-victim-sets-self-afire-afteraccused-gets-bail-6170628/>
 - 7) <https://www.thehindu.com/news/national/other-states/unnao-rapevictim/article30236853.ece>
 - 8) <https://www.newindianexpress.com/nation/2020/aug/09/national-commission-forwomen-received-2914-complaints-in-july-highest-since-2018-2181164.html>
 - 9) <https://www.nationalheraldindia.com/national/domestic-violence-tops-crime-againstwomen-in-2018-ncrb>
 - 10) <https://nfiw.wordpress.com/>
 - 11) <https://sabrangindia.in/article/van-gujjars-assaulted-police-and-forest-officials-cjpmoves-nhrc-demanding-justice>
 - 12) <https://sabrangindia.in/article/assault-tharu-women-prompts-fir-forest-officials-flexmuscles>

RIGHTS VIOLATIONS





Image: commons.wikimedia.org

Dilution of Labor rights and laws

The COVID-19 led to a sudden shut-down of all economic activity, making daily wage earners particularly vulnerable and helpless. The move also affected businesses leading to pay cuts, loss of jobs as well as affecting ability of businesses to keep paying wages to their workers. Although the Ministry of Home Affairs (MHA) had directed all private establishments to pay full wages to their workers despite the lockdown and business being shut, the same was eventually revoked. The matter reached the Supreme Court (SC) where the matter was left to be decided by employers in dialogues with the workers. One is yet to see any outcome of these deliberations, leaving millions of persons living on monthly and daily wages in despair and no protection.

That businesses of private establishments have been adversely affected during the lockdown, is not in doubt. Instead of stepping in with incentive packages that could protect and restore this economic

activity, the regime in power in the Centre used this opportunity to goad regional (state governments) to erode and dilute those laws that protect health, safety and security of the working conditions of labor.

The most common dilution of labor rights was the increase in the work hours per day which was introduced by many states. Prominent Indian trade unions have written to the International Labor Organization (ILO) on the absence of any consultation or deliberations, making a mockery of the existence of a tripartite system of negotiations prevalent within the Indian system. The ILO in turn has written an advisory on this attack of fundamental freedoms by the government.²

Legislative changes

Uttar Pradesh (UP), India's most populous province currently ruled by a hardline BJP government (since March

2007) brought in the Uttar Pradesh Temporary Exemption for certain labor laws ordinance 2020" on May 8, 2020, rendering 38 labor laws defunct for the next 3 years. These laws include the Apprentices Act, 1961; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Cine Workers and Cinema Theatre Workers Act, 1981; Contract Labor Act, 1970; The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Industrial Disputes Act, 1947; Minimum Wages Act; Payment of Bonus Act, 1965; Trade Unions Act, 1926; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952. These are only among the significant laws that have been temporarily suspended. The inapplicability of the aforementioned laws means that migrant workers will not receive any kinds of benefits, there will be no government scrutiny on enterprises/businesses to ensure that workers are treated well and provided with basic amenities like clean drinking water, rest rooms and in case of migrants, residential accommodation. There will effectively be no regulation on bonuses to be paid, beedi (Indian tobacco leaf cigarette), factory workers, cine workers will remain unprotected.³

Madhya Pradesh (MP), another central Indian state ruled by the BJP, amended labor intensive laws such as the Factories Act, the Contract Act and the Industrial Dispute Act to the effect that employers will be empowered to hire and fire labor at their will; the right to dispute raising and grievance redressal will be put on hold. Contractors will not be required to obtain license for supplying labor up to 49 persons and hence will function without any regulation and control. The inspection system will be virtually

withdrawn and the entire enforcement machinery has been put under freeze.

Other states like Haryana, Uttarakhand, Himachal Pradesh (HP), Gujarat, Punjab, Rajasthan, Goa and Assam increased daily working hours from 9 hrs to 12 hrs (thereafter Rajasthan retracted this decision)⁴, some increased even weekly working hours and decreased intervals of break, with the sole intention of increasing production in private establishments to help them overcome the losses incurred during the lockdown.

"Most shameful part is the time that the government has chosen for appeasing corporate houses success and prosperity of which has been nurtured with sweat of already exploited workers. The government has benefited 50 corporate houses by waiving loans worth Rs 68.707 crore but is not ready to wipe tears of laborers who¹ are forced to starve."

- Gurdev Bhumla a trade union leader in Sangrur, Punjab.

Judicial intervention

The ordinance of the UP government, as mentioned before, is still in force but a notification issued by the state which had increased daily working hours and weekly working hours while also decreasing intervals of rest has been withdrawn after the matter had reached the Allahabad High Court. A Public Interest Litigation (PIL) had been filed in the HC against this notification which was withdrawn by the state before the second hearing.

Further, two PILs were filed before the SC; one was against similar notifications of Gujarat and MP government diluting labor laws, and the other was challenging the Constitutional validity of the notifications issued by Gujarat, Rajasthan, Haryana and HP, Uttarakhand, UP, MP, Assam, Punjab, and Goa.⁵

The one against Gujarat and MP notifications filed by one Pankaj Kumar Yadav has been dismissed by the Court in June 2020 on grounds that it “cannot be entertained.”⁶ The other PIL has also been dismissed by the court in June 2020 but the reasoned order for the same has not been made available on the court’s website.

Current scenario

Since both PILs against these notification diluting labor laws stand dismissed, this effectively means that the legal recourse for the protection of labor rights through the Courts has effectively shut. This also means that if labor rights continue to be violated by the states through tactics like ‘amendments’ to labor laws that were intended to protect these rights. These rights have been hard won over several decades.

Justice V Gopala Gowda, a former judge of the Supreme Court is on record saying that these ordinances passed by UP and Madhya Pradesh were prima facie in contravention of the provisions of the Acts themselves as the labor

laws have in-built provisions that allow such suspension only in case of public emergency. “COVID- 19 may be the most devastating pandemic the modern world has ever seen, but it still does not qualify as a public emergency...” said Justice Gowda.⁷

An article written by K R Shyam Sundar, professor at XLRI, Jamshedpur and Rahul Suresh Sapkal, Professor at TISS stated, “The near-complete suspension of labor laws in UP and the selective but crucial denials of labor rights in MP will lead to anarchy in the labor market. These changes will be terrifying for workers, who have fought for labor rights through numerous working-class struggles since the passage of the Factories Act.”⁸

The way forward

- The states that have diluted the labor laws should reinstate them to ensure workers get free and fair conditions of work
- Trade and business exchanges between these states and foreign companies need to factor in the preexistence and safeguards provided to workers before agreements are signed
- The workers who have not been paid wages during the lockdown for the reason that the establishment had to remain shut, should be paid the same in installments until all arrears are paid.

1) <https://www.tribuneindia.com/news/ludhiana/trade-union-leaders-protest-dilution-of-labor-laws-89936>

2) <https://sabrangindia.in/article/ilo-raises-deep-concern-over-recent-trend-labor-law-reforms-asks-pm-engage-states>

3) <https://sabrangindia.in/article/COVID-19-how-indian-states-are-snatching-away-rights-workers>

4) <https://sabrangindia.in/article/rajasthan-govt-retracts-12-hrs-working-day-aituc-lauds-move-asks-others-follow-suit>

5) <https://sabrangindia.in/article/battle-against-dilution-labor-laws-culminate-supremecourt>

6) https://main.sci.gov.in/supremecourt/2020/11336/11336_2020_34_5_22625_Order_17-Jun-2020.pdf

7) <https://www.newindianexpress.com/opinions/2020/jun/20/dilution-of-labor-laws-is-unconstitutional-2158931.html>

8) <https://www.epw.in/engage/article/changes-labor-laws-state-market-anarchy-labormarket>



Image: Financial Times

Right to Health: India's feeble infrastructure

The feebleness of India's public healthcare infrastructure and lack of access to primary and preventive health systems, became evident in wake of the COVID-19 pandemic and the resulting lockdown. In India, even if the right to health is not expressly mentioned in fundamental rights chapter of the Constitution, it has been considered by the courts to be manifest in the right to life under the all-encompassing and wide scope of Article 21.

Health, in India, needs to be understood not only in terms of physiological well-being but also in respect of its complex intersectionalities with social and political determinants such as poverty, gender, caste and community disparities, livelihoods, disability and sexuality.

According to a report of the Central Bureau of Health Intelligence under the

Directorate of Health Services, there has been no significant change in public expenditure on health in the past decade. In 2009-10, public health expenditure was 1.12% of GDP and it has more or less remained the same and in 2017-18 it was 1.28% of GDP, which is the highest share in the past decade.² The USA spends 18% of its GDP on public health.³

Article 25 of the Universal Declaration of Human Rights (UDHR)⁴ states that everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

COVID-19 and health systems

During the COVID-19 pandemic in India, there was a huge strain on public health infrastructure, which has not been adequately developed and was left largely neglected by successive governments. The crisis has also exposed systemic vulnerabilities of persons based on social identities and locations.

The migration crisis of workers in cities meant that women had no access to reproductive health services. Workers who walked hundreds of kilometres to reach their homes were left stranded without any access to health. Public as well as private health system are barely sustaining and face the threat of being crippled as the virus spreads more widely.

There were increasing reports of shortage of drugs⁵ required for treatment of COVID-19 (which eased up around August 2020), further there is a persistent and much prevalent shortage of healthcare staff such as doctors.⁶ There is also a shortage of ventilators and Intensive Care Units (ICUs).

The 20 lakh crore stimulus package that was announced on May 12, 2020 by the Centre to pump in money for dealing with COVID-19 makes up for 0.008% of India's GDP.⁷ The national Health Policy of 2015 stated that almost all hospitalization even in public hospitals leads to catastrophic health expenditures, and over 63 million persons are faced with poverty every year due to health care costs alone, it is because there is no financial protection

for the vast majority of healthcare needs.⁸

Right to health – judicial interpretation

The Supreme Court of India (SCI), in the absence of express mention of right to health in the Constitution, has interpreted it in *Bandhua Mukti Morcha v Union of India & Ors* (December 16, 1983) under Article 21, which guarantees right to life. In *State of Punjab & Ors v Mohinder Singh Chawla* (December 17, 1996) the highest court reaffirmed that the right to health is fundamental to the right to life and should be put on record that the government had a constitutional obligation to provide health services.⁹

In *Navtej Singh Johar & Ors. v. Union of India* (September 6, 2018), when the Supreme Court decriminalized homosexual intercourse, Justice DY Chandrachud had said in his concurring judgement, "Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. This Court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure effective enjoyment of the right to health."

In *Common Cause (A Regd. Society) vs Union Of India* (March 9, 2018) the SCI had accepted the harsh truth that although right to health has been interpreted to be manifest in the right to life which is a fundamental right, the state is not in a position to translate this right into a reality for all. The judgment pointed to the limitation of the government but stated that this cannot become an excuse for not attaining right to health for all.

Health policies and Constitutional provisions

The health policy is formulated by the Ministry of Health and Family Welfare. The largest health scheme in India is the National Health Mission (NHM) which has its two Sub-Missions, the National Rural Health Mission (NRHM), launched in 2005 and the National Urban Health Mission (NUHM) launched in 2013. This policy includes reproductive, maternal, neo-natal, adolescent health and also communicable and non-communicable diseases. The NHM aims at reducing Maternal Mortality Rate and Infant Mortality Rates, reduction of anaemia in women, reduction in incidence of tuberculosis, reduction in incidence of leprosy and malaria and so on.

While this is the broad policy for public health care, there are also others such as National Leprosy Eradication Programme (1983), Mission Indradhanush (2014) which aims to improve immunization coverage, the Pradhan Mantri Swasthya Suraksha Yojana (2003), the Integrated Child Development Service (1975). There is also provision for public health insurance under Rashtriya Swasthya Bima Yojana (2008).

All these policies mainly emanate from and find their basis in the Directive Principles of State Policy (DPSP) enshrined under Chapter IV of the Constitution. Article 38 speaks about securing a social order for

the promotion of welfare of the people, which cannot be achieved without good public health systems. Further, Article 39(e) speaks about health of workers and children. Article 41 states that public assistance should be given for old age, sickness and disability. Article 42 directs the State to provide just and humane conditions of work and for maternity relief. Lastly, Article 47 states that it is the duty of the state to raise the level of nutrition and the standard of living and to improve public health and to prohibit consumption of materials injurious to health.

The way forward

- Increase public health expenditure to more than 2.5% of the GDP
- Increase the doctor-patient ratio throughout the country to reach the minimum standard of 1:1000 as prescribed by WHO
- Ensure empanelment and participation of medical practitioners in the rural India
- Every state should develop its own health policy to align with the National Health policy so that it can drive implementation of health schemes in a more effective manner
- Of the total budget allocation, majority should be spent on disease prevention, improving public healthcare systems at primary levels, especially rural areas

1) <https://www.thehindu.com/opinion/op-ed/should-healthcare-be-a-fundamentalright/article31528818.ece>

2) <http://www.cbhidghs.nic.in/showfile.php?lid=11473> <https://theprint.in/health/at-1-28-gdp-india-expenditure-on-health-still-low-although-higher-than-before/313702/>

4) https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

5) <https://www.cbsnews.com/news/shortage-of-key-coronavirus-drug-remdesivir-fuels-black-market-in-india/>

6) <https://indianexpress.com/article/cities/mumbai/mumbai-shortage-of-doctors-icus-atgovt-hospitals-delay-in-elective-surgeries-6557760/>

7) <https://www.indiaspend.com/india-spent-1-of-gdp-on-public-health-for-15-years-result-is-vulnerability-to-crises/>

8) https://www.indiaspend.com/wp-content/uploads/2020/06/Draft_National_Hea_2263179a.pdf

9) <https://www.orfonline.org/expert-speak/declaring-the-right-to-health-a-fundamentalright/>

LABOR



Image: The Indian Express



Image: Creative Commons

ASHA workers: Nurturing the young and marginalized in India

Accredited Social Health Activist (ASHA) workers are community level healthcare workers who supplement the public health system as a part of the National Rural Health Mission which was launched in 2005.

ASHA workers are chosen from among the villagers and are aged between 25 to 45 years. After receiving necessary training, ASHA workers promote public health programs like universal immunization, services for reproductive and child health, construction of toilets etc. They are also involved in raising awareness regarding nutrition, sanitation, hygiene, healthy living and working conditions, the importance of safe delivery, breastfeeding, timely immunization to the child and also help in facilitating village community to avail medical camps and other public health services. They are given incentive-based payments for

the tasks completed by them and each state has a different design of incentives for paying ASHA workers. As per a submission made before the Parliament on February 7, 2019, by the Ministry of Women and Child Development, the fixed pay given by some states to ASHA workers within their respective states² is as follows:

State	Monthly fixed pay for ASHA workers
Sikkim	Rs. 3,000 (\$ 40.78 per month)
Kerala	Rs. 1,500 (\$ 20.39 per month)
Rajasthan	Rs. 1,600 (\$ 21.75 per month)
Haryana	Rs. 500 (\$ 6.80 per month)
West Bengal	Rs. 1,500 (\$ 20.39 per month)

Over 900,000 ASHA workers have played a pivotal role in India's fight against COVID-19 by conducting door to door surveys and have supplemented

government's efforts in containing the virus by creating awareness on the precautions as per government's guidelines released from time to time. In Uttar Pradesh, ASHA workers tracked 3.04 million migrant workers who returned to their state amidst the lockdown, by collecting data as well as samples for testing. Thus, working during a pandemic such as COVID-19 has meant increased hours of work and heightened personal risk as well. Throughout the pandemic ASHA workers have complained about not getting their payments on time, lack of basic safety kits such as masks and gloves, and the lack of proper medical insurance.

Legislative and judicial background

The ASHA Workers (Regularization of service and other benefits) Bill, 2018³ was introduced in the Lok Sabha in 2018 but it currently stands lapsed. The Bill was for conferring the status of permanent employee upon ASHA workers. It also included provisions such as providing accommodation within vicinity of their workplace and providing them benefits of group "C" employees of Central Government such as fixed remuneration, leaves, provident fund, retirement and other benefits.

Further, the courts have also recognized ASHA workers to be among the main frontline workers along with other healthcare workers such as doctors and nurses, and urged governments to provide them better protection and remuneration.

In May 2020, the Nagpur Bench of Bombay High Court deemed the Rs.

1,000 (Rupees One Thousand only) remuneration per month to be 'hardly sufficient' and stated that they were being treated in the most unfortunate manner by the Municipal corporation. The court stated that if the Corporation does not have the financial capacity for paying Rs. 200 per day to ASHA workers, apart from their remuneration, then it will pass specific orders for the same.⁴

The issue of lack of social security benefits, adequate remuneration, uniformity in remuneration across all states, lack of job security to ASHA workers has been raised in the Parliament from time to time.

Under the National Health Mission, an additional incentive of Rs. 2,000 was ordered to be given to ASHA workers until June 30, 2020 for doing routine and recurring work such as immunization, updating list of pregnant women, delivering medicines at home for people suffering from chronic diseases and so on. This was to be paid in addition to the incentives already received by ASHA workers under the National Health Mission.⁵

Current scenario

In the light of COVID-19 and the demand of ASHA workers for better payment and security for the additional work assigned to them some states responded and

"Some masks that were received for ASHA workers were torn and they had to tie dupattas or scarves 1 to cover their face."

- Suman Pujari, state president of Maharashtra Asha Workers Union

increased their fixed pay. Kerala and Telangana hiked their salaries to Rs. 7,000 while Karnataka has started paying ASHA workers Rs. 10,000 per month.⁶

In 2018, social security benefits were extended for ASHA and ASHA facilitators (helpers) as they were brought under the Pradhan Mantri Suraksha Bima Yojana (Life Insurance) whereby the premium paid by the Central government is Rs. 12 per beneficiary. They were also covered under the Pradhan Mantri Jeevan Jyoti Bima Yojana (Accident Insurance) whereby the premium paid by the central government is Rs. 330 per beneficiary per annum.

In April 2020, the Union Finance Ministry announced a special insurance scheme for health workers including ASHA workers. "Any health professional, who while treating COVID-19 patients, meets with some accident, then he/she would be compensated with an amount of Rs 50 lakh," said the press statement. However, it became clear that this cover was only in case a health professional dies due to accidentally contracting COVID-19 and

does not cover hospital care in case they fall ill while on duty.

About 6,00,000 ASHA workers launched a two-day strike on August 7, 2020 in different parts of the country demanding a minimum wage of Rs 21,000 per month, proper personal protection equipment kits and medical insurance for their families. In Delhi, they also protested the privatization of health schemes and institutions. In Bihar they protested when they did not receive their payment for months.⁷ Delhi Police filed FIR against 100 ASHA workers for staging a protest and violating social distancing norms.⁸

The way forward

- Increase their fixed pay to Rs. 12,000 and make it uniform across all states
- Revise their salary and incentives annually
- Provide them with social security benefits that will cover hospitalization in case of contracting COVID-19 or any other communicable disease

1) <https://timesofindia.indiatimes.com/india/no-masks-no-sanitisers-for-ashas-frontlinehealth-workers-say-feel-alone-in-our-fight/articleshow/75063758.cms>

2) <https://news.files.bbc.co.uk/include/vjsthasia/downloads/MRC234.pdf>

3) http://webcache.googleusercontent.com/search?q=cache:gxuw6j-JL_0J:164.100.47.4/billtexts/lbilltexts/asintroduced/2260as.pdf+&cd=1&hl=en&ct=clnk&gl=in

4) <https://indianexpress.com/article/cities/mumbai/rs-1000-per-month-to-COVID-warriors-asha-workers-insufficient-for-survival-hc-to-centre-state-govts-6390397/>

5) https://nhm.gov.in/New_Updates_2018/In_Focus/2DO_AS_MD_ASHA_incentives.pdf

6) <https://www.thehindu.com/society/at-the-forefront-of-indias-healthcare-system-ashaworkers-soldier-on-unprotected-and-poorly-paid/article31979010.ece#:~:text=In%20response%20to%20the%20increased,pays%20%E2%82%B910%2C000%20per%20month.>

7) <https://scroll.in/latest/969718/coronavirus-around-6-lakh-asha-workers-launch-protestdemand-better-pay-health-insurance>

8) <https://www.hindustantimes.com/cities/fir-against-100-asha-workers-for-jantar-mantarprotest/story-q2obOCJAWddgNEt0QeM7IL.html>



Image: Creative Commons

Indian Fishworkers: Hope sinks as rights shrink

India has a coastline of more than 8,000 kms, with around 3,937 marine fishing villages. The Marine Fishing Policy of Government of India, 2004, states that 1 million people are engaged directly in marine fishing and another 0.8 million engaged in post-harvesting operations. The fish and marine biodiversity of the country encompasses a wide spectrum of components that support the livelihoods of millions of people. Fishery resources are set in different ecosystems.

According to a report by National Fisheries Development Board, in India, fisheries and aquaculture is an important sector providing nutritional security and livelihood support in terms of gainful employment to more than 14 million people of the country. During the year 2017-18, the total production of fish in the country is estimated to have been 12.60 million metric tons.¹

The work schedule for fisherfolk is often irregular as it is mainly dependent upon the weather. Those in commercial fishing may require long trips where they have to stay away from their home port for several weeks or even months.

Impact of lockdown

After the national COVID-19 lockdown was announced in March 2020, many migrant fishworkers were stuck on their boats. They usually work as crew in mechanized fleets or engage in allied activities like fish processing, net-mending, or boat repairing.

After two fishworkers died off the coast of Gujarat, the remaining workers were finally sent back home to Andhra Pradesh, by bus. Prolonged stay on the boats and subsequent exposure to mosquito bites, lack of adequate sleep,

and lack of access to proper sanitation or bathing facilities severely impacted the physical and mental health of the migrant boat crew.² The fishworkers in Maharashtra were even not paid their wages on time, which meant no income for three preceding months before the lockdown and being stuck without work, away from home.

Fisherfolk who had ventured out to sea before the lockdown returned to discover that they could not land or sell their catch. They had to discard tonnes of highvalue catch overboard or sell them at throwaway prices. Overnight, supply chains collapsed, shutting down transport and cold storage facilities, causing tremendous wastage and significant losses.³

Even under ordinary circumstances, fishing communities have to deal with challenges such as environmental degradation, climate uncertainties, the impacts of large-scale developmental projects and a rapidly diminishing sense of cultural identity. They also have to face issues such as being detained by another country while fishing in deep seas, facing threat of eviction due to projects planned on coastline and other such issues. The lockdown only worsened things, hurting not just active fishers but also everyone along the fisheries supply chain: fish vendors, fish processors, middlemen, traders, ice factory workers and more.⁴

On April 10, 2020 fishing was declared to be an essential activity by the Ministry of Home Affairs (MHA) and permissions were given to resume fishing. The Ministry of Fisheries responded positively to

advocacy groups demanding measures to ensure fishers' health, safety, and financial security. The 61-day fishing ban that is imposed during monsoon has been reduced to 47 days to help fishers recoup their losses. This is still a risk to fishermen's lives as they will risk their lives by venturing out in deep seas with high tides.

The lockdown has exposed the poor conditions of migrant laborers in fisheries. It has also shown how excessive dependence on export markets makes fisheries highly vulnerable to global uncertainties. Further, when it comes to insurance, Central Marine Fisheries Research Institute (CMFRI)'s study in 2018, noted that insurance coverage was poor across India's marine fisheries and aquaculture industries. The study found that no insurance policy exists in the country for risks such as large-scale decline in the stock of fish species, damage of sea cages, loss of fish crops, or damage to farm structures.⁵

Policies, provisions and initiatives

The centrally sponsored 'National Scheme of Welfare of Fishermen' provides financial assistance to fish workers for construction of houses,

"If the fish die, it is GDP. If fisherman dies, it is ex gratia payment. That's the tragic difference."

- A Palsami, State Secretary National Fishworkers Forum (NFF)

community recreation hall, common working place, assistance during the lean period which was given by saving cum relief component, installation of tube-wells for the drinking water.⁶

There were demands for a relief package of Rs. 15,000 per month for fishworkers' households but the Ministry has not responded positively to this demand. The announcement in May 2020 of a Rs 20,000-crore economic stimulus package for the fisheries sector as part of the Pradhan Mantri Matsya Sampada Yojana was not in favor of fishers; it was mostly a repetition of the budget focusing on investments in aquaculture and infrastructure to augment exports with no immediate relief for fish workers affected during the lockdown.

The Draft National Fisheries Policy 2020 has come under the scanner and is being criticized. The National Fishworkers Forum (NFF) pointed out that the Ministry of Fisheries has published a policy draft on the National Fisheries Development Boards website, without seeking comments from the stakeholders. "They have neglected the traditional knowledge of fishworkers in this policy and there is nothing on their rights. Development without rights will lead to eviction of fishworkers from their livelihood," said Pradip Chatterjee from the National Platform of Small scale fishworkers (Inland). NFF states that "the main drive of this policy is earnings, rather than that food security."⁷

Each coastal state has its own maritime legislation that covers regulations for fishworkers.

Judicial intervention

One of the earliest victories for a fisherfolk movement was in Kerala where a long-drawn struggle demanding monsoon ban on trawling was taken to the Supreme Court by the NFF. In 1993, the SC upheld the Kerala High Court judgment affirming the government's order banning trawling during the monsoon. This was a victory of men over machines.⁸

The Orissa High Court in the case of Kolamuhana Primary Fisherman vs. State of Orissa and Ors (November 23, 1993) highlighted the need of the state to secure a social order for the promotion and welfare of the people as enshrined under Article 38 of the Indian Constitution. The High Court acknowledged the plight of the traditional fisherman but rejected their petition saying that Chilika lake belongs to the nonfishermen too and the fishing area must be jointly shared as it is the question of livelihood of both of them in the background of Article 21 of the Indian Constitution.

Traditional fisherfolk are usually deprived of an equal and level playing field and the coastal areas are exploited by larger corporates whose style of fishing is also causing degradation of the environment and pollution. This issue was addressed in the case of S. Jagannath vs. Union of India (December 11, 1996). The petitioner alleged that the big corporate companies have set up big prawn farms on a large scale in the ecologically fragile coastal areas. The Supreme Court passed the order in favor of the petitioners, drawing upon its power from the section 3(3) of the Environment (Protection) Act; the

polluter pays principle and directed the prawn farm owners to pay compensation to the affected fishworkers.

The way forward

- Provide immediate relief package for fishworkers' households as they have all suffered due to the lockdown restrictions of COVID-19
- Engage with NFF and other fishworker organizations and deal with issues like financial insecurity, insurance and other welfare schemes for fishworkers

1) http://nfdb.gov.in/PDF/ANNUAL%20REPORTS/Annual%20Report_2018-19.pdf

2) <https://thebastion.co.in/politics-and/the-shore-scene-the-heavy-toll-of-the-covid-19-onindias-fishers/>

3) <https://scroll.in/article/962910/trapped-between-lockdown-and-mega-developmentplans-indias-fishworkers-left-to-fend-for-themselves>

4) <https://scroll.in/article/962910/trapped-between-lockdown-and-mega-developmentplans-indias-fishworkers-left-to-fend-for-themselves>

5) <https://www.seafoodsource.com/features/indian-fishers-largely-not-insured-despitegrowing-risks>

6) <http://dahd.nic.in/related-links/centrally-sponsored-national-scheme-welfarefishermen#:~:text=The%20Centrally%20Sponsored%20National%20Scheme,period%20through%20saving%20cum%20relief>

7) <https://sabrangindia.in/article/fishing-trouble-or-troubling-fishworkers>

8) <https://www.ritimo.org/Fishworkers-Movement-in-Kerala-India>



Image: Watson Institute, Center for Contemporary South Asia

Migrant workers: Vulnerability showcased during the COVID-19 Pandemic

Internal migration is common in India, primarily for employment purposes. According to the data from the last census (2011), the total number of internal migrants in India was 45.36 crore (over 450 million) or 37% of the country's population. This includes inter-state migrants as well as migrants within each state. The annual net flows amount to about 1 per cent of the working age population. As per the same census data, the size of the workforce was 48.2 crore (over 480 million) people. This figure is estimated to have exceeded 50 crore in 2016 (India's Economic Survey).²

Professor Amitabh Kundu's 2012 study in Research and information System for Developing countries drew out estimates based on the 2011 Census,³ NSSO surveys and economic survey, which

show that there are a total of about 65 million inter-state migrants, and 33 per cent of these migrants are workers. By conservative estimates, 30 per cent of them are casual workers and another 30 per cent work on regular basis but in the informal sector.⁴ Adding street vendors to that would mean that there are 12 to 18 million people who live outside their home states and have been placed at a risk of losing their income.⁵

The COVID-19 pandemic led to the worst migrant crisis of all time in India. With the shutting down of all business and labor-intensive work, migrants, who live a hand to mouth existence, were left in a lurch in their host cities/towns. These people migrate to cities in search of work and end up working at construction sites or as contract laborers, sanitation workers

on contract, street vendors, staff in small restaurants, auto rickshaw drivers, taxi drivers, domestic helps and other jobs in the informal sector. Hence, when all these economic activities came to a halt suddenly, there was widespread fear and panic. What added to the woes of these migrant workers was the complete shutdown of public transport. They couldn't afford paying rent in the city, and they were unable to go back to their native places.

For many, the only option that remained was returning home on foot. Some cycled, some managed to hitchhike. But most just walked, often along the only route they knew: train tracks. Fathers carried children on their shoulders, women balanced belongings on their heads, people squatted atop crowded trucks—all determined to find a way home.⁶

On May 8, 2020, in Maharashtra's Aurangabad, 16 people were run over by a freight train; observers said they were so exhausted from walking that they had slept on the tracks and did not hear the train whistle. Just over a week later in Auraiya, in Uttar Pradesh, two trucks carrying migrant workers collided, killing 27.

Inaction and delayed response

After more than 40 days of imposing the lockdown, the government finally arranged for Shramik (Workers) Trains for migrants to go back home. But even in that, many migrants testified that they were made to pay for the train journey, some shelled out almost Rs. 700 per ticket.⁷ The government said it would provide food and water. However, one

migrant, Mohan recalls, "During the journey, the authorities dumped the water and food packets near the entrance and everyone fell over each other to grab their share."⁸

Even getting themselves registered for their journey was a convoluted and cumbersome process which led to people rushing and crowding at railway stations, a situation that should have been avoided when social distancing was the demand of the time. Data recorded by the Indian Railways showed that 10 million migrants traveled by the Shramik Trains allowed by the Central government after the public outcry. However, no government, central or state, paid for this travel; the money came from starved workers' pockets.

As per a May 2020 news report, as many as 170 people died while trying to make their way back home from their host cities, either walking, cycling or traveling on trucks meeting with accidents.

By the time the Union Finance minister announced free food grains, in May 2020, for the next two months to migrant workers who don't have ration cards with a financial support of Rs 3,500 crore, most of the workers had either left or are leaving under distressed conditions. The government could have gained more

"If not for obhab (want), why would we leave our birthplace?"

- Tinku Sheikh, migrant worker from West Bengal¹

trust of these poor folk by acting swiftly and extending confidence not by mere words, but by actually transferring cash

into their bank accounts for four to five months and by delivering ration without much hassle.⁹

Parliament

In a shocking display of ineptitude, the Ministry of Labor and Employment stated during the Parliament's monsoon session on September 14, 2020 that the government has no data on the death of migrant laborers during the lockdown! With this is also washed its hands off the issue of compensation to the vast population of migrant workers and their families. (*Unstarred Question No 188 raised by seven Members of Parliament.*)

Migrant workers' Right to Vote

With several state assembly elections scheduled to take place in the coming months, there are concerns about migrants being left out of the electoral process due to their forced relocation. This is why Citizens for Justice and Peace (CJP) has launched its #LetMigrantsVote Campaign with allied organizations.¹⁰

On July 10, 2020 a detailed memorandum making out a strong legal case for this was sent out: Migrants need the facility of a postal ballot. The memorandum demands their inclusion as 'notified electors' under Section 60(c) of the Representation of People Act, 1951 read with Part III A of the Conduct of Election Rules 1961, thereby allowing such migrant laborers access to the postal ballot.

Judicial intervention

Tired of administrative inaction, several individuals and human rights groups

moved court. But this did not yield expected results. In case of multiple public interest litigations, the Supreme Court accepted the Centre's submission that it was making its best efforts given the circumstances.

For example, on March 31, 2020, the Supreme Court readily accepted the Government's contention that migrants were traveling because of the outbreak of 'fake news' and further on April 4, 2020 the Court accepted the Government's contention that not a single migrant was now on the streets. This despite reportage to the contrary by print and electronic media, with haunting images of migrants still walking, suffering and even dying on these journeys. The Court disposed of the entire matter stating that the Central Government will consider the suggestions of the Petitioner.¹¹

On April 3, another public interest petition was heard seeking payment of wages to the migrants. During proceedings, the Chief Justice of India remarked that if the migrants are being fed why do they need money? The government claimed that all migrants were being fed, provided ration and the petitioner showed onground studies that showed that was not the case but the court orally observed that it could not place reliance on private studies when the Government is giving a completely different picture and asked the government to do its best and disposed the petition on April 21, 2020.

In another petition demanding that migrants be allowed to travel back home, filed in April, the government had arranged for trains and buses but when the question was raised on why the migrants were being asked to pay the fares, the court said it could not go into the issue of charges for travel. Almost 60

days after the lockdown was announced, and after facing vehement criticism from legal fraternity did the Supreme Court finally take suo-moto cognizance of the migrant workers crisis on May 26, 2020. Hearings thereafter took place on June 9, June 31, and September 1 and November 6. The matter remains pending in the Supreme Court.

The way forward

Due to the reverse migration and the delayed reaction of the government to send migrants back, the industries that are now opening up, are facing a severe shortage of workers. The sectors impacted include, mining, construction, logistics as well as the manufacturing sector.

- Implement the Inter-State Migrant Workmen (Regulation of Employment

and Conditions of Service) Act, 1979 which prohibits employment of inter-State migrant workmen without complete registration

- Ensure dignified and minimum wages, health and residence benefits for migrant workers and protection for women and education for children
- For those families who explore sustainable solutions in their home states, which include agrarian solutions, cooperative cultivation, better farm and labor wages and micro finance without interest, these should be encouraged through state intervention and policy
- Election Commission of India should take proactive steps to grant the Migrant Worker the ability to vote through a postal ballot or other means.

1) <https://cjp.org.in/migrant-diaries-tinku-sheikh/>

2) <https://indianexpress.com/article/explained/coronavirus-india-lockdown-migranworkers-mass-exodus-6348834/>

3) *Migration and Exclusionary Urbanisation in India*; AMITABH KUNDU and LOPAMUDRA RAY SARASWATI; *Economic and Political Weekly* Vol. 47, No. 26/27(JUNE 30-JULY 7, 2012), pp. 219-227 (9 pages)

4) <https://indianexpress.com/article/explained/coronavirus-india-lockdown-migranworkers-mass-exodus-6348834/>

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6) <https://www.nationalgeographic.com/history/2020/05/they-treat-us-like-stray-dogsmigrant-workers-flee-india-cities/>

7) <https://www.indiatoday.in/india/story/paid-for-train-tickets-with-final-savings-saymigrant-workers-from-bihar-1675197-2020-05-07>

8) <https://www.nationalgeographic.com/history/2020/05/they-treat-us-like-stray-dogsmigrant-workers-flee-india-cities/>

9) <https://timesofindia.indiatimes.com/blogs/toi-edit-page/what-government-agenciescan-do-to-ensure-safety-and-security-of-migrant-workers/>

10) <https://cjp.org.in/let-migrant-vote/>

11) <https://cjp.org.in/covid-19-and-the-indian-supreme-court/>



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Sanitation workers: At the bottom of the Rights Pyramid

The World Health Organization (WHO) defines 'sanitation work' as work that includes emptying toilets, pits and septic tanks; entering manholes and sewers to fix or unblock them; transporting fecal waste; working treatment plants; as well as cleaning public toilets or defecation around homes and businesses.¹

In India the sanitation workforce mainly comprises Dalits or people belonging to the castes dubbed 'untouchable' in complete contravention of the law. The still prevalent stringent caste system leads to further social stigmatization of sanitation workers. This stigma compounds their social ostracism and limitations on social mobility. This also often results in intergenerational discrimination, where children of sanitation workers often struggle to escape the vicious cycle

of limited opportunities and sanitation work.³

It is estimated that one manhole worker dies unblocking sewers by hand every five days in India (BBC 2018).⁴ But this number may easily be larger because the many unreported deaths. Further, an approximate five million people in India are engaged in sanitation work, of which two million are likely to be engaged in 'high-risk' work such as cleaning sewers and septic tanks.⁵

The COVID-19 pandemic led to the emergence of a few invisible heroes including sanitation workers whose efforts although recognized are not honored adequately. The ones cleaning COVID wards or quarantine centres, those picking up garbage from houses where

COVID patients are self-quarantining, or the ones cleaning surfaces that COVID affected people may have touched, are exposed to high risk of contracting the disease. Bangalore, New Delhi, Mumbai have recorded several deaths of sanitation workers due to COVID.⁶

Legal safeguards

In India, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 provides for rehabilitation of manual scavengers and provides for strict prohibition on the practice of manual scavenging and dry latrines. There is also a National Commission for Safai Karamcharis which gives suggestions to the government and takes suo moto action on incidents affecting sanitation workers. The government has also established National Safai Karamcharis Finance & Development Corporation in 1997 which aims to uplift sanitation workers by making available loan and non-loan schemes to them. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 punishes employment of manual scavengers as well as prohibits construction of dry latrines.

Judicial intervention

In 2003, Safai Karmachari Andolan, and NGO working for rights of sanitation workers filed a petition seeking writ of mandamus for the implementation of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and for 11 years, the continuing mandamus of the court called out state agencies for disregarding the law.

Until the Prohibition of Employment as Manual Scavengers and their

Rehabilitation Act, 2013 was passed it was difficult for courts to extend the scope of the 1993 Act to manual scavenging in sewers. In 2016, the Bombay High Court, in the case of Municipal Corporation of Greater Mumbai (MCGM) vs. Kachara Vahtuk Shramik Sangh granted permanent status to 2700 sanitation workers of MCGM who were employed on contract basis.⁷

The Telangana High Court, in August, asked Greater Hyderabad Municipal Corporation (GHMC) to consider regularization of sanitation workers while hearing a case filed by the workers seeking payment of their salaries.⁸

Current scenario

In India, sanitation workers are hired by municipalities or private companies, either as permanent employees or as casual or contract laborers. Thus, the worker is hired for less than a period of 240 days in a year i.e. approximately 8 months, he is not treated as a permanent workman as per the provisions of the Industrial Dispute Act, 1947⁹ and neither is he granted the temporary

"As a couple lost their lives after contracting the virus while working for the prevention of COVID, they should be given the status of 'corona martyrs'. The administration should also enhance the arrangements for protecting the¹ lives of other sanitary workers."

- Montu Adhiwal, leader of Sanitation Workers Union, Sangrur, Punjab

status under the Ministry of Personnel, Public Grievances and Pensions (Dept. of Personnel and Training, Casual Laborers - Grant of Temporary Status and Regularization) Scheme, 1993. This deprives them of rights under various labor laws including benefits of gratuity, provident fund, retrenchment and termination of employment related rights under the Industrial Dispute Act, Payment of Gratuity Act, etc. The absence of a statutory obligation to provide sanitation services on the part of state agencies leads to rights hanging in limbo, ineffective against everything but the worst violations.¹⁰

In 2018, the Ministry of Housing and Urban Affairs released Standard Operating Procedure (SOP) for 'cleaning of sewers and septic tanks' which describes the set of procedures to be followed for cleaning of sewers and emptying of septic tanks including the precautions to be employed and the emergency preparedness.¹¹

The Central Public Health and Environmental Engineering Organization under the Ministry of Housing and Urban Affairs has developed a Manual on Sewerage and Sewage Treatment Systems¹² wherein, the different methods of mechanized and manual cleaning of sewers and septic tanks are mentioned and guidelines on switching to mechanized cleaning and eliminating human casualties have been provided. The Government issued a health insurance scheme for health care workers fighting COVID-19 which provided for COVID-19

related death insurance of Rs 50 lakh for ninety days. The scheme, was silent on whether it extends to sanitation workers not employed in a hospital such as those who collect solid waste from cities and towns, including from quarantine centres. States like Tamil Nadu, Delhi, Punjab, Maharashtra announced health insurance for sanitation workers, along with health care workers, not covered under the central scheme.

The Safai Karamchari Union in Delhi had requested the State Government to provide special quarantine centres dedicated to their workers and to provide them free treatment.¹³

The way forward

- Get sanitation workers in formal workforce by employing them as state government employees, thus ensuring social security, better remuneration and safeguarding of their rights
- Ensure that they get insurance and protection especially for their dangerous work during the time of the pandemic
- Bring in technological advancement in sewage cleaning and other activities related to maintaining sanitation to minimize human intervention in cleaning sewers and human contact with human excreta
- Ensure strict implementation of the laws, SOPs and guidelines in place to ensure legislative intent is fulfilled

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- 1) <https://www.tribuneindia.com/news/ludhiana/sanitary-workers-want-martyr-status-for-victims-127998>
 - 2) https://www.who.int/water_sanitation_health/sanitation-waste/sanitation/sanitationworkers/en/#:~:text='Sanitation%20work'%20includes%20emptying%20toilets,defecation%20around%20homes%20and%20businesses.
 - 3) https://www.who.int/water_sanitation_health/publications/health-safety-dignity-of-sanitation-workers.pdf?ua=1
 - 4) https://www.who.int/water_sanitation_health/publications/health-safety-dignity-of-sanitation-workers.pdf?ua=1
 - 5) <http://sanitationworkers.org/wp-content/uploads/2018/04/Phase-1-Understanding-the-Problem-Part-I.pdf.%C2%A0>
 - 6) <https://www.ndtv.com/bangalore-news/bengaluru-sanitation-worker-28-dies-of-COVID-19-trade-union-demands-action-2264656>;
<https://timesofindia.indiatimes.com/city/delhi/sdmcs-sanitation-worker-who-tested-positive-for-coronavirus-dies-at-aiims/articleshow/75386566.cms>;
<https://thefactnews.in/bmc-sanitation-worker-tests-positive-for-coronavirus/>;
<https://www.thenewsminute.com/article/twenty-three-sanitation-workers-bengaluru-test-positive-coronavirus-127506>
 - 7) After questioning a few workers, the Court observed that they were denied their right to a decent pay, compensation in case of any medical injury, proper cleaning equipment, and had to work on all days without any leave under laborious work hours. This judgment was further upheld by the Supreme Court when MCGM went in appeal against the High Court order.
 - 8) <https://www.newindianexpress.com/states/telangana/2020/aug/13/regularise-sanitation-workers-telangana-high-court-to-government-2182634.html>. "The "outsourcing of employees" system adopted by the GHMC is a ruse to avoid extending service entitlements to the petitioners," remarked the court. The judge further said that the job benefits that other employees of the GHMC receive are not given to sanitation workers who are outsourced employees. "This amounts to unfair labor practice," said the judge.
 - 9) Section 25B, Definition of 'Continuous Service', Industrial Dispute Act, 1947
 - 10) <https://theprint.in/opinion/why-manual-scvengers-in-india-havent-got-their-rights-despite-laws-judiciary-intervention/371140/>
 - 11) <http://cpheeo.gov.in/upload/5c0a062b23e94SOPforcleaningofSewersSepticTanks.pdf>
 - 12) <http://cpheeo.gov.in/cms/manual-on-sewerage-and-sewage-treatment.php>
 - 13) <https://www.hindustantimes.com/cities/sanitation-workers-union-demands-dedicated-quarantine-centres-for-staff-members/story-WP9zRlxLf128dR8wB9COHP.html>
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