

## Human Rights Defenders, Freedom of Association, Assembly and Expression

### SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the 2nd UPR cycle in 2012, India received four recommendations (127, 43, 67 and 68) on the protection of Human Rights Defenders (HRDs) and one (126) on limiting the freedom of expression on the internet. India accepted in revised form the recommendation from Austria advising to ensure a safe working environment for journalists. India did not accept recommendations made by Czech Republic, Spain and Norway to enact a law on the protection of human rights defenders and implement the recommendations made by the Special Rapporteur on the rights of human rights defenders following her visit in 2011. India also did not accept the recommendation made by Sweden to ensure that measures limiting freedom of expression on the internet are based on clearly defined criteria in accordance with international human rights standards. In the last 4 years, however, the human rights situation in India has rapidly deteriorated. HRDs, journalists and civil society groups have come under direct assault due to the state's onslaught. Regressive laws like sedition laws, criminal defamation laws and restrictive Foreign Contributions Regulations Act 2010 (FCRA) regulations are being used by the Indian government to criminalise dissent and curtail Freedom of Speech and Association.

### NATIONAL LEGAL FRAMEWORK

Article 19 of Indian Constitution guarantees freedom of speech and expression which implies that the citizens are free to express their views, beliefs, and convictions freely, through writing, printing, pictures or any other manner including the devices of electronic, broadcasting, and press. The constitutional provision also provides the right to assemble peacefully and without arms. It guarantees to citizens the right to form associations, and unions. There exists no legal framework for the protection of human rights defenders (HRDs). Only domestic mechanism available is the Focal Point on HRDs at the National Human Rights Commission.

There are, however, many Indian laws, which are used to subvert freedom of expression and association in India. Section 144 of the Code of Criminal Procedure prevents peaceful public gatherings, restrict protests and stifle people's movements. Section 124-A of the Indian Penal Code forms the Sedition Law which was made by the British raj in 1870, as a method of repressing the dissenters. Section 499 & Section 500 of the Indian Penal Code define defamation and provide for up to two years in prison and a fine. The government has used FCRA to target civil society organisations. In December 2016, the FCRA of 20,000 Indian NGOs was cancelled.

### CHALLENGES

### ISSUES AND IMPACTS

#### Freedom of Association

The government has used restrictive legislation and policies to target civil society organisations, suspended the operations of some and cancelled the registration of others. The Indian authorities have on several occasions frozen the bank accounts of organisations thereby preventing them from accessing funding to carry out their operations using Foreign Contributions Regulations Act 2010 (FCRA).

The Ministry of Home Affairs (MHA) first suspended and later cancelled the FCRA registration of the human rights organisation, Lawyers Collective. On June, 2016 FCRA of Sabrang Trust and Greenpeace India were also cancelled. In similar vein, FCRA of 25 NGOs was not renewed as on 31st October, 2016 which included human rights organisations such as Indian Social Action Forum and Centre for Promotion of Social Concerns (known through its program unit People's Watch).

In 2015, MHA instituted an order to freeze the bank accounts of Greenpeace India to prevent the organisation from receiving funds from abroad and accused Greenpeace of engaging in activities that were against India's economic interests. In April 2015, the US-based Ford Foundation was included on an official "watch list" by the MHA. The implications were that funds from the Ford Foundation could not be released to beneficiaries in India without the approval of the Ministry of Home Affairs (MHA).

#### Human Rights Defenders

HRDs have been subjected to judicial persecution, intimidation, harassment, assault and have been the victims of smear campaigns to discredit them and the work they do. In 2016, WHRD Soni Sori was attacked and her assailants threatened her that they will attack again if she continued working on the cases of extrajudicial killings by police. In the case of Jagdalpur Legal Aid Group, a group of young women lawyers providing pro-bono legal aid, were barred from practice and evicted from Jagdalpur, Chhattisgarh in 2016. In January 2015, the Indian authorities prevented WHRD Priya Pillai, the International Campaigner for Greenpeace, from travelling to the UK to speak to MPs about the impact of a coal mines in Madhya Pradesh. In September 2014, HRD Dr. SP Udaykumar, who leads the anti-nuclear movement in Kudankulam, was barred at the Delhi Airport to visit Nepal to attend a consultation on human rights violation which was also to be attended by the UNSR on Freedom of Assembly and of Association. On 14 September 2016, HRD Mr. Khurram Parvez, a Kashmiri activist, was barred at the Delhi Airport from attending the UN Human Rights Council and later arrested on his return to Srinagar.

A disturbing new trend witnessed is the targeting of HRDs making use of Right to Information Act (RTI). RTI activist Jawahar Lal Tiwary was kidnapped and his mutilated body was discovered four days later. Since March 2013, WHRD Teesta Setalvad has been subjected to judicial persecution, harassment and intimidation for her human rights activities. In April 2016, HRD Lama Lobsang Gyatso, General Secretary of the Save Mon Region Federation, was arrested for allegedly opposing the construction of a 7000 MW hydro power project in Tawang, Arunachal Pradesh,

**CHALLENGES**

**ISSUES AND IMPACTS**

Freedom of Expression and  
 Attack on Journalists

In policy and practice, the Indian authorities continue to use restrictive legislation including those which criminalise sedition and defamation to prosecute journalists and media agencies. Journalists have been assassinated, physically attacked, intimidated and harassed in their line of duty.

There are growing instances of Indian authorities blocking access to mobile Internet services during social or political unrest. The Information and Technology Act (2000) is used to target online activism. Section 69 A of the Act empowers the central government to impose blackouts on a website or censor it for the “sovereignty and integrity of India,” “security and defence,” and “public order.” In March 2016, police arrested journalist Prabhat Singh who reports on human rights issues, including extrajudicial killings after he posted messages on 'Whatsapp' in which he was critical of the police and requested that a law be passed to protect journalists in the Bastar region of Chhattisgarh. In May 2016, unidentified gunmen killed journalist Rajdev Ranjan in Bihar. He was targeted for his critical reporting. In February 2015, journalist and social activist Malini Subraminam was evicted from Jagdalpur, Chhattisgarh, in similar manner to Jagdalpur Legal Aid Group.

Freedom of Peaceful Assembly

The Indian authorities have forcefully dispersed peaceful protests calling for government action against injustices. The Indian government uses several measures to restrict right to freedom of assembly and of association. Section 144 of the Code of Criminal Procedure is routinely used to prevent peaceful public gatherings, aimed at restricting protests and to stifle people's movements. In April 2015, peaceful protests organised by the Kanhar Bandh Virodhi Sangharsh Samiti (KBVSS) and the All Indian Union of Forest Working People (AIUFWP) were forcefully dispersed by security forces at the site of the construction of Kanhar dam in Uttar Pradesh. The authorities have used excessive force including pellet guns during protests, especially in conflict-affected areas such as Jammu and Kashmir leaving 70 dead and several with eye and other injuries including blindness.

**RECOMMENDATIONS**

**Repeal or comprehensively amend the FCRA, in line with the legal analysis of UN special rapporteur on freedom of association and assembly, particularly sections that restrict the ability of civil society organisations to receive funds from foreign sources.**

**Refrain from acts leading to the closure of CSOs and instead promote a meaningful political dialogue that allows and embraces diverging views, including those of human rights defenders, civil society organisations, journalists, political activists and others.**

**Enact a strong law, in compliance with international standards, for the protection of human rights defenders and enable them to continue their legitimate peaceful work.**

**The NHRC should ensure that its focal point on HRDS should be a member of the commission as recommended by the UN SR on human rights defenders in her report in 2012. A fast-track procedure for complaints from defenders should be developed.**

**All human rights defenders detained for exercising their right to fundamental rights to freedom of expression, association, assembly should be unconditionally and immediately released.**

**Review and amend the IPC particularly sections 499 and 124 (a) to ensure that it is in line with the best practices and international standards in the area of freedom of expression.**

**Take definite steps to protect journalists and carry out independent investigations in all cases where journalists have been assassinated with a view to bringing the perpetrators to justice.**

**Unfettered access to online information resources should be allowed by removing restrictions on access to national and international news websites and social media outlets and the websites of civil society organizations.**

**Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the right to peaceful assembly and association in his annual report (2012)**

**Ensure that security forces abide by the United Nations basic principles on the use of force and firearms by law enforcement officials. Force should not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law.**

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Fact Sheet prepared by People's Watch (member, WGHR), HRDA-India and All India Network of Individuals and NGOs working with National and State Human Rights Institutions (AiNNI) for Working Group on Human Rights in India and the UN (WGHR).