

Name: National Solidarity Forum

Country: India

Date of submission: 15/06/2012

Questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

It would be greatly appreciated if responses were brief. They may be submitted in bullet-points if preferred.

For non-governmental organizations, should they wish, their identity will remain confidential (only the country where they operate will be disclosed). Furthermore, they need only answer questions which are relevant to them, and may share information about defenders other than themselves.

1. a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.

No. There are no such acts in India now.

- b) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.

Not Applicable

- c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.

There is no special provision for the HRDs, except those are meant for a common citizen, which are quite weak at the face of impunity enjoyed by the officials.

2. a) Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.

The Government of India introduced a bill in the Parliament only to 'protect whistleblowers', which had been consulted duly with the civil society. Again, whatever may be, it has been obstructed in the Rajya Sabha (Upper House).

Some of the fundamental weaknesses of the Bill are :-

- ***It does not cover the state-government (provincial) employees.***
- ***it does not extend its jurisdiction to the corporate sector***
- ***it does not provide a penalty for attacking a complainant***
- ***The Central Vigilance Commission (CVC) was designated in 2004 to receive public-interest disclosures, The power of the CVC is limited to making recommendations; it cannot impose penalties***
- ***The bill has a limited definition of disclosure, and does not define victimisation. It speaks of non-admission of anonymous complaints and lack of penalties for officials who victimise whistleblowers.***

- b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

3. (a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

4. a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.

- **Yes. For registration two laws are there, namely 'the Societies Registration Act, 1860'(SRA) and 'India Trusts Act 1882'.**
- **For receiving funding from foreign sources – Foreign Contribution (Regulation) Act 2010(FCRA) (before Amendment it was Foreign Contribution (Regulation) Act 1976.**
- **Also, Income Tax Acts are there to restrict the functioning.**

b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.

- **First of all, it is a cumbersome process (as per our experience in Odisha) to get an organisation registered the SRA. Apart from complying many so-called requisites; one has to pass several layers of administrative controls. Even after complying everything, one cannot get registration, unless bribes at various levels.**
- **The new FCRA purposefully provides one registered organisation has to undergo renewal of it in a five yearly duration. This restriction was not there before 2010. The intelligence department of the Government has been keeping constant watch on NGOs. It is tracking its work at every bit. The FCRA 2010 prevents NGOs in organising public programmes such as rally, not speak of public demonstration of protests to any of government actions. Even, one cannot express its concerns through public demonstrations on human rights violations due to corporate actions. While FCRA act does define (vaguely define) the term 'political nature', but the government debar a on the ground of being 'organisation of political nature'. The government can declare any NGOs for its human rights activities as organisation of political nature. (Some of the organisations, those raised their voice against the forcible displacement by UAIL bauxite mining in 1995 – 2000, had to lose FCRA registration.) Any organisation working with Panchayat Raj Institutions to strengthen the process of self-governance will be in problems as the Panchayats have been designated as 'legislature'.**

Also, it discourages the organisations doing research, advocacy activities by limiting that NGOs cannot spend more than 50% as 'administrative expenditure', while such organisations spend more on remuneration and travel.

5. a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered? **Yes.**

b) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

6. Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

7. a) Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

b) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?

8. Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.