

**Questionnaire for International Organizations and Civil Society by the
UN Special Rapporteur on the situation of human rights defenders
Mary Lawlor, 9 February 2021**

The UN Special Rapporteur on the situation of human rights defenders, Ms. Mary Lawlor invites you or your organization to respond to the questionnaire below. Submissions received will inform the thematic report of the Special Rapporteur on the issue of long term detention of human rights defenders, which will be presented to the UN General Assembly in October 2021.

The questionnaire on the report is available at OHCHR website in English (original language) as well as in French, Spanish, Russian and Arabic (unofficial translations): (<https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>).

All submissions received will be published in the aforementioned website, unless you/your organization clearly indicated that you did not wish to have your input be made publicly available when submitting your response.

There is a word limit of 2500 words per questionnaire. Please submit the completed questionnaire to defenders@ohchr.org

Deadline for submissions: **19 March 2021**

Contact Details

Please provide your contact details in case we need to contact you in connection with this survey. Note that this is optional.

Type of Stakeholder (please select one)	<input type="checkbox"/> International or Inter-governmental Organisations <input checked="" type="checkbox"/> Civil Society Groups or Organisations <input type="checkbox"/> Individual human rights defender <input type="checkbox"/> Academic/training or research institution <input type="checkbox"/> Other (please specify)
Name of Stakeholder/ Organization (if applicable)	SHAMBROS ADVOCATES AND SOLICITORS
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<p>Can we attribute responses to this questionnaire to you or your organization publicly*?</p> <p>*On OHCHR website, under the section of SR on human rights defenders.</p>	<p>Yes</p> <p>Comments (if any):</p>
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This report is drafted and submitted by SHAMBROS ADVOCATES AND SOLICITORS, a civil society organisation, striving to work for the preservation of human rights.

India has been grappling with the issue of arbitrary arrest and detention of human rights defenders for decades now. Activists and protestors have faced discrimination and violence at various levels, with the involvement of government authorities as well.

In the recent years, where the narrative has been shifting towards the right-wing, human rights defenders while dealing with arbitrary arrests and trials at the hands of judiciary, have also been the epicentre of media trial.

This paper focuses upon the various legislative aspects which make it nearly impossible for activists and defenders to legitimately fight for a cause. Further, it discusses cases where human rights of defenders were violated by the authorities under varying circumstances.

New Delhi

India

March 19, 2021

SITUATION OF HUMAN RIGHTS IN INDIA

India has gained disrepute over the years in the international community for human rights violations. Citizens across the country, who tried to raise their voice against injustice, were silenced under the garb of arbitrary application of various legislations, ranging from defamation to anti-terrorism.

Over the past few years, India has witnessed the presence and grown in cases of human rights violations, at various levels, starting from individual victimisation to targeting organisations. The World Report 2020¹ highlighted few of such cases and situations, such as impunity for security forces, discrimination and violence against minorities, lack of protection to refugees, etc.

SITUATION OF HUMAN RIGHTS DEFENDERS (HRDs)

HRDs, activists and protestors have voicing their concerns for different issues such as minority rights, land rights, rights of backward lower caste and indigenous groups, right to information (RTI) activists, rights of women, environment rights, so on and so forth.

In majority of the cases, the pressing issues being raised by HRDs are legitimate and need immediate attention. Yet, due to conflicting interests with the authorities and national policies, they are silenced. Repeatedly, when defenders try to gather public attention, they are either threatened, arrested or in the worst case scenario, 'eliminated'.

National Human Rights Commission (NHRC) of India, has acknowledged and appreciated the work conducted by HRDs. In the process, NHRC also established a 'Core Group on NGOs and Human Rights Defenders'², further requesting the States to cooperate with the Commission to protect HRDs. Even though NHRC has been working actively to preserve human rights, yet since they hold a 'recommendatory' position only, and cannot enforce decisions, their working capacity is limited.

FREQUENTLY USED LEGISLATIONS

➤ UNLAWFUL ACTIVITIES (PREVENTION) ACT (UAPA), 1967³

The said act has been used time and again, against human rights defenders, activists and protestors, voicing their concerns against different legislations and government policies. This act is the only major legislation in India which defines 'terrorism'. As per the latest amendment⁴ to the act, the definition of 'terrorism'⁵ has been drafted in a way to widen the scope and further include 'an organisation or an individual' as opposed to only 'an organisation' before.

¹ World Report 2020, India Events of 2019, Human Rights Watch, <https://www.hrw.org/world-report/2020/country-chapters/india>.

² Constitution of Core Groups on NGOs and Human Rights Defenders, July 10, 2018 <https://nhrc.nic.in/coregroups/constitution-core-group-ngos-and-human-rights-defenders>.

³ <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>. (Annexure- 1, Pg.-1)

⁴ The Unlawful Activities (Prevention) Amendment Bill, 2019, Bill No. 130-C of 2019, Lok Sabha July 24, 2019, http://164.100.47.4/billstexts/lbills/PassedLokSabha/130_C_2019_Eng.pdf. (Annexure- 1, Pg.-2)

⁵ *Id.* "(...) Section 32- (...) (2) The Central Government shall exercise its power under clause (a) of sub-section (1) in respect of an organisation or an individual only if it believes that such an organisation or individual is involved in terrorism. (3) For the purposes of sub-section (2), an organisation or an individual shall be deemed to be involved in terrorism if such an organisation or an individual— (a) commits or participates in acts of

This amendment has given various implementing agencies the absolute authority to arrest and detain any individual on mere apprehension of threat. As there is no internationally recognised definition of terrorism, the government took the liberty of drafting one suiting their needs.

Since the process of recognising an individual or organisation as a terrorist relies on 'belief', the authorities in the recent past have targeted HRDs under UAPA. Although they are mostly booked for 'conspiracy'⁶ or 'supporting a terrorist organisation'⁷, but these are further clubbed with other offences, resulting into a heavier and longer sentence.

➤ INDIAN PENAL CODE (IPC), 1860⁸

The said code, in many cases, is used in combination with UAPA, in order to make a watertight case against HRDs. The criminal code also provides for a vast range of charges for arresting and prosecuting HRDs under varying circumstances.

Crimes such as 'criminal conspiracy',⁹ 'sedition',¹⁰ 'hate speech',¹¹ 'imputations and assertions prejudicial to national integration',¹² are attached to the UAPA charges, in order to secure a conviction. In some situations, where enough evidence is not available to support UAPA charges, IPC charges secure a non-bailable arrest. (as under 153 A, non bailable- case example Akhil Gogoi).

➤ INFORMATION TECHNOLOGY ACT (IT ACT), 2000¹³

Since HRDs are also dependent on technology, as much as anybody else, they are more susceptible to scrutiny and checks. Using technology to share and broadcast their ideologies, or even a small piece of information, may put HRDs in harms way.

The virtual movement of HRDs is watched by the authorities closely in order to watch for signs of a fall out. The act authorises the government to monitor and collect traffic data or information for the purposes of cyber security.¹⁴

The Act also provided with a provision which criminalised sharing of offensive messages or sharing false information or deceptive message punishable with 3 years' imprisonment.¹⁵ Although the said section was declared unconstitutional by the Hon'ble Supreme Court of India¹⁶ in 2015, yet police and various other authorities continued to book people under the said act.

terrorism, or (b) prepares for terrorism, or (c) promotes or encourages terrorism, or (d) is otherwise involved in terrorism." (Annexure- 1, Pg.-1)

⁶ *Id.* Section 18 (Annexure- 1, Pg.-1)

⁷ *Id.* Section 39 (Annexure- 1, Pg.-1)

⁸ The Indian Penal Code, 1860, <https://indiankanoon.org/doc/1569253/>. (Annexure- 1, Pg.-4)

⁹ *Id.* Section 120B. (Annexure- 1, Pg.-4)

¹⁰ *Id.* Section 124A. (Annexure- 1, Pg.-4)

¹¹ *Id.* Section 153A. (Annexure- 1, Pg.-5)

¹² *Id.* Section 153B. (Annexure- 1, Pg.-5)

¹³ The Information Technology Act, 2000, <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>. (Annexure- 1, Pg.-09)

¹⁴ *Id.* Section 69B. (Annexure- 1, Pg.-09)

¹⁵ *Id.* Section 66A. (Annexure- 1, Pg.-09)

¹⁶ Shreya Singhal v. Union of India (2015), WP (Criminal) No. 167 of 2012. (Annexure- 1, Pg.-10)

The use of technology has left HRDs vulnerable and prone to be targeted by spyware attacks. One such incident occurred in 2019 where HRDs were 'unlawfully' targeted with spearphishing emails.¹⁷ In another such case of virtual attack, WhatsApp service was targeted by the surveillance agency.¹⁸

➤ FOREIGN CONTRIBUTION REGULATION ACT (FCRA), 2010¹⁹

The said act has been used by the government and authorities to limit the powers and functioning of NGOs and HRDs. FCRA has been used to justify raids and freeze bank accounts, suspend or cancel registration, of various civil society organisations, in order to cripple their system.²⁰

Since the new government came into power in 2014, the Ministry of Home Affairs has cancelled FCRA registration of over 14,800 NGOs.²¹ Over 6,600 cancellations alone happened in the past 3 years, out of which majority of the NGOs were educational institutions, and rest were cultural and religious organisations.²²

Such an aggressive approach against civil society organisations is a sufficient evidence to the fact that government is tightening their grip over the functioning of such organisations, not giving them enough room to operate without any threat.

In a nutshell, all the legislations mentioned above are used by the government and the authorities to crackdown on HRDs, civil society organisations, NGOs, and any other such individual or organisation who is working for a social cause. In majority of the cases, a combination of provisions from different acts are applied, in order to frame strong charges against HRDs. Since the provisions under UAPA require a higher and stronger threshold to prove, provisions from IPC survive till the end to secure a conviction.

The conviction rate under UAPA has been at a surprising rate of 2.2% from 2016-2019, whereas the persons arrested and persons convicted in the years from 2016 to 2019, under the UAPA in the country are 5,922 and 132 respectively.²³ The stark difference in numbers is indicative of the fact that stringent

¹⁷ India: Human Rights Defenders Targeted by a Coordinated Spyware Operation, Amnesty International and Citizen Lab, June 15, 2020, <https://www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/>. (Annexure- 1, Pg.-11)

¹⁸ Indian Activists, Lawyers Were 'Targeted' Using Israeli Spyware Pegasus, Sukanya Shantha, The Wire, October 31, 2019, <https://thewire.in/tech/pegasus-spyware-bhima-koregaon-activists-warning-whatsapp>.

¹⁹ The Foreign Contribution Regulation Act, 2010. (Annexure- 1, Pg.-12)

²⁰ Greenpeace in India barred from receiving foreign funding, Agence France-Presse, The Guardian, September 04, 2015, <https://www.theguardian.com/environment/2015/sep/04/greenpeace-in-india-barred-from-receiving-foreign-funding>.

²¹ FCRA registration of 1,807 NGOs cancelled in 2019 for violation of laws, PTI, November 12, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/fcra-registration-of-1807-ngos-cancelled-in-2019-for-violation-of-laws/articleshow/72020138.cms?from=mdr>.

²² FCRA licences of 6,600 NGOs cancelled in past three years: Govt to Lok Sabha, Deeptiman Tiwary, The Indian Express, March 18, 2020, <https://indianexpress.com/article/india/fcra-licences-of-6600-ngos-cancelled-in-past-three-years-govt-to-lok-sabha-6319507/>.

²³ Parliamentary proceedings | 2.2 % of cases registered under the UAPA from 2016-2019 ended in court conviction, The Hindu, February 10, 2021, <https://www.thehindu.com/news/national/22-of-cases-registered-under-the-uapa-from-2016-2019-ended-in-court-conviction/article33804099.ece>.

laws are used against HRDs to keep them in detention, for a year or two, in order to let the movement/cause simmer down and break the morale of others. Due to this pattern, we do not find cases where HRDs have been detained for a long term, extending up to 10 years. Arbitrary detention does exist, but no case information is available in the public domain, from the recent past where such detention has touched 10 years mark.

CASE LAWS

The following section will discuss a few case laws, starting from the most recent, pertaining to different working areas of HRDs, such as land rights, health and environment rights, women and child rights, rights of indigenous people, right to information activists, so on and so forth.

➤ **HUMAN RIGHTS JOURNALIST**

- SANTOSH YADAV²⁴

He was accused of participating in an encounter on August 21, 2015, with 18 villagers, who are still imprisoned. The police believes that the encounter is linked to Maoists, in which a Special Police Officer was killed. He was charged under IPC, UAPA, Arms Act, which made obtaining bail exceedingly difficult. As per his lawyer, he was physically abused by police officers while in remand. He was granted bail on February 27, 2017. Eventually he was acquitted of aiding and abetting Maoists militants.

➤ **RIGHTS OF WOMEN**

- HIDME MARKAM CASE²⁵

She is a woman human rights defender, who was arrested by the Chhattisgarh police on March 09, 2021. The arrest was made during an event marking the International Working Women's Day, while protesting the custodial torture and sexual violence by police against Adivasi women in the State. She was charged with UAPA, due to her alleged involvement in the Maoist activities, and remanded for 14 days in prison.

➤ **INDIGENOUS COMMUNITY LAND RIGHTS**

- AKHIL GOGOI CASE²⁶

He is a human rights defender and advisor with an organisation working with indigenous communities in Assam, protecting and promoting their land rights. He has been in detention, in Guwahati Central jail, since December 12, 2019, in relation with a case relating to the Anti-Citizenship Amendment Act (CAA) protests. Multiple other First Information Reports (FIRs) have been lodged against him,

²⁴ Santosh Yadav Acquitted of all Charges, January 09, 2020,

<https://www.frontlinedefenders.org/en/case/santosh-yadav-acquitted-all-charges>.

²⁵ Arbitrary Arrest of Adivasi Woman Human Rights Defender Hidme Markam, March 10, 2021,

<https://www.frontlinedefenders.org/en/case/arbitrary-arrest-ativasi-woman-human-rights-defender-hidme-markam>.

²⁶ Guwahati High Court Suspends Bail Granted to Human Rights Defender Akhil Gogoi, January 07, 2021,

<https://www.frontlinedefenders.org/en/case/guwahati-high-court-suspends-bail-granted-human-rights-defender-akhil-gogoi>.

pertaining to CAA protests, even including sedition. Despite he was granted bail by Guwahati High Court on March 17, 2020, he was not released. On March 19, 2020, 2 days after granting of bail, he was re-arrested, on a new FIR (Section 153A, IPC) in order to prevent his release.

- FATHER STAN SWAMY²⁷

He has been a victim of judicial harassment for the past few years. In 2018, he was falsely charged by the Jharkhand police, and an FIR was registered on the basis of a statement by the police officer himself. The officer also claimed that he was trying to fuel riots in Jharkhand. FIR was registered under Information Technology Act 2000, which included Section 66A, which was already declared unconstitutional by then. This is indicative of the fact that the police was keen on falsely booking Father Stan Swamy for illegal activities.

Further he was harassed by police officers on June 13, 2019, when his residence was raided, without any permission or search warrant. The raid was conducted in connection with the Bhima Koregaon case, and police alleged his involvement. It was mentioned by the police that since he was already charged under UAPA, the raid was conducted to collect more evidence and no search warrant is required. Eventually he was arrested on 26 November 2020. He has been a victim of police persecution for over 2 years, and while in custody, continues to be one.

²⁷ <https://www.frontlinedefenders.org/en/profile/fr-stan-swamy>.