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Joint Stakeholder Report
(India 4th UPR)

Impunity and disproportionate use of force by law
enforcement agencies

31st March 2022

World Organisation Against Torture (OMCT) and Youth for Human Rights
Documentation



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I. Introduction

1. This submission outlines OMCTs and YHRDs concerns about police excesses such as custodial torture and deaths, extra-judicial killings and excessive use of force inflicted on minorities and other vulnerable groups, since India's last Universal Periodic Review (UPR) in 2017.
2. In the third UPR cycle, the government of India expressed commitment to fight torture, by first and foremost supporting recommendations on the ratification of the UN Convention against Torture. In addition, India had also accepted to take appropriate measures to avoid excessive use of force by security officers. Moreover, India had also supported several recommendations on the protection of religious minorities and prevention of intercommunal violence. Despite these positive commitments, the reporting period was marked by disproportionate use of force by law enforcement agencies ranging from varied forms of physical force to the use of firearms, sometimes causing deaths and serious injuries. In all these cases, accountability of the police has been largely protracted, delayed, and insufficient. Prosecution of police officers for human rights violations amounting to criminal offences has rarely materialized. Some of the most egregious incidents of excess force during this period are:

II. Extra-judicial killings

3. Extrajudicial killing, understood in international law as the deliberate killing of a person outside any legal framework, are popularly known as “police encounters or encounter killings” in the Indian context. In official and popular understanding, the term “encounter” refers specifically to an alleged shootout incident between police or security forces and suspected criminals or terrorists, leading to death of the suspects in police firing done in ‘self-defence’. In the reporting period, the number of killings arising in the course of such shootouts in particular Indian states has steadily risen.
4. According to the National Human Rights Commission's (NHRC) Annual Report of 2017-2018, the Commission registered 164 nationwide “encounter deaths” during that period.¹ Until October 2020, the NHRC reported 62 alleged extrajudicial killings.² In

¹ See- https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf, pg 12.

² World Report 2021:India. Human Rights Watch. <https://www.hrw.org/world-report/2021/country-chapters/india>

response to a question on the number of encounter killings since 2017, the Union Minister of State for Home Nityanand Rai informed that the total number was 655 in the country.³ According to him, “191 police encounter killings in Chhattisgarh followed by Uttar Pradesh (177) Assam (50), Jharkhand (49), Odisha (36), Jammu and Kashmir (35), Maharashtra (26), Bihar (22), Haryana (15) and Tamil Nadu (14) incidents were reported in the last five years.”

5. The states of Uttar Pradesh (UP) and Assam have shown worrying trends of killings in the course of police encounters. UP has seen a recent spate in police killings with the state government promoting it as a policy of crime control. As per news reports, since March 2017, 8,472 instances of police firings have taken place, leading to the deaths of 146 men and bullet injuries to 3,302 more.⁴ Further, as per ground reports and data released by the police, around 37% of those killed between March 2017 and March 2021 were Muslims and most of those were residents of western Uttar Pradesh, home to a large Muslim community.⁵ According to civil society estimates, thousands of others have been maimed and crippled for life due to bullet injuries and are incarcerated with no medical attention. These injury cases so far have not been widely reported by the media.⁶
6. Reports by civil society organisations claim that these police killings are not spontaneous shootouts as alleged by the police, but staged killings, with marks of torture on bodies and evidences of close range shots.⁷ They further highlight how the police and government have not complied with the guidelines laid down by the Supreme Court⁸ and the NHRC⁹ to account for the deaths and injuries due to police shootings. Further, a culture of impunity has been pushed at all levels of the justice system, with even the NHRC flouting norms and

³ After Chhattisgarh & UP, Assam Records 3rd Highest Encounter Killings In India <https://www.sentinelassam.com/north-east-india-news/assam-news/after-chhattisgarh-up-assam-records-3rd-highest-encounter-killings-in-india-577399>

⁴ Operation Langda: In UP encounters, 3,300 ‘criminals’ shot at. <https://indianexpress.com/article/india/operation-langda-in-up-encounters-3300-criminals-shot-at-7451222/>

⁵ See <https://scroll.in/article/1005307/thok-do-adityanath-governments-zero-tolerance-of-crime-leaves-a-trail-of-victims>

⁶ See <https://scroll.in/article/1005307/thok-do-adityanath-governments-zero-tolerance-of-crime-leaves-a-trail-of-victims>

⁷ The Report “Extinguishing Law and Life: Police Killings and Cover-up in the State of Uttar Pradesh” documents 17 instances of such killings by the police in Uttar Pradesh since 2018. The report lays bare how the state circumvents the safeguards laid down by the Supreme Court and the National Human Rights Commission (NHRC). It also exposes the complicity of the NHRC in turning a blind-eye to the cover-up. The report can be accessed here - <https://yhrd.in>

⁸ *People’s Union for Civil Liberties and Anr. v. State of Maharashtra and Others* (2014) 10 SCC 635, available at: <https://indiankanoon.org/doc/25812914/>

⁹ NHRC, ‘Guidelines on Deaths in the course of Police Action’, 12 May 2010. Available at: <https://nhrc.nic.in/sites/default/files/Death%20During%20the%20course%20of%20Police%20Action.pdf>

exonerating accused police officials.¹⁰ Victims or their families seeking accountability and human rights defenders supporting their cause have been subjected to reprisals by state actors, putting at peril their physical safety and freedom of movement as well as steps towards accountability taken by them.

7. In December 2018, five UN Special Rapporteurs expressed concerns over the allegations of the increasing number of extrajudicial killings by police in UP since March 2017 and wrote a detailed communication regarding 15 of these cases to the Government of India calling for an urgent review of the use of force by the UP police and prompt, independent and thorough investigations into all allegations of unlawful killings to bring the perpetrators to justice.¹¹ Thereafter the Supreme Court stated that the killings required “serious consideration” and had agreed to examine a selection of the cases filed before it in public interest litigations. The proceedings in these cases have remained pending for over two years.¹²
8. Further, the state of Assam too has witnessed a rise in extra-judicial killings at the hands of the State Police. As per the latest figure, thirty-one persons have been killed, mostly belonging to ethnic or religious minorities.¹³ In 2019, the extrajudicial execution of 4 rape accused in the city of Hyderabad in south India, became both a spectacle of public applause and condemnation.¹⁴

¹⁰ Extrajudicial Killings in UP Being Covered Up, Even NHRC Flouting Norms: Report.

<https://thewire.in/rights/extrajudicial-killings-in-up-being-covered-up-even-nhrc-flouting-norms-report>

¹¹ OHCHR, Communication sent by four Special Rapporteurs concerning the extrajudicial killings in Uttar Pradesh, 11 December 2018. Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24240>

¹² The People’s Union for Civil Liberties (PUCL) filed a public interest litigation in the Supreme Court in January 2019; supported by an application to implead as a co-petitioner by the civil society collective, ‘Citizens Against Hate’ (CAH), towards compliance with the Court’s guidelines to investigate the police actions in these killings. Details of 17 cases were submitted to the Court by the CAH. See The Indian Express, ‘SC says UP encounters need ‘serious consideration’, issues notice to Yogi govt’, 14 January 2019. Available at:

<https://indianexpress.com/article/india/sc-says-up-encounters-require-serious-consideration-issues-notice-to-yogi-adityanath-govt-5537237/>

¹³ In BJP rule, 31 killed in Assam’s alleged encounters – most belong to ethnic or religious minorities.

<https://scroll.in/article/1012903/framed-most-people-killed-in-assams-alleged-encounters-belong-to-ethnic-or-religious-minorities#:~:text=A%20list%20compiled%20by%20the,been%20confirmed%20by%20the%20police.>

¹⁴ <https://www.telegraphindia.com/india/4-accused-in-hyderabad-rape-murder-case-killed-in-encounter-police/cid/1724716>

III. Torture and custodial deaths

9. Custodial torture and violence remain an entrenched and routine law-enforcement strategy across India. A civil society report - '*India: Annual Report on Torture 2019*'¹⁵ - has noted that “most deaths in police custody occur primarily as a result of torture” while identifying ‘15 trends of torture and impunity’.
10. As per official records, 1,888 custodial deaths were reported across the country, while 893 cases registered against police personnel over the last 20 years.¹⁶ But only 26 policemen were convicted for murder in this period. The NHRC recorded a total of 1,723 cases of death of persons in judicial custody and police custody across the country from January to December 2019. These included 1,606 deaths in judicial custody and 117 deaths in police custody¹⁷ i.e. an average of five deaths daily.
11. In June 2020, police in Tamil Nadu state detained P. Jayaraj, 60, and his son J. Fenix, 31, allegedly for keeping their mobile phone shop open longer than allowed under Covid-19 lockdown rules.¹⁸ Both men were kept in police custody the entire night and died two days later after being subjected to brutal torture.¹⁹
12. In January 2021, the illegal detention and custodial torture of young dalit labour activist Shiv Kumar working in the Kundli Industrial Area by the Haryana police came to light when he was abducted and later shown as arrested.²⁰ The Central Bureau of Investigation (CBI), investigating the case, affirmed the allegations of custodial torture by the policemen.²¹
13. In November 2021, a Muslim man accused of kidnapping a Hindu woman died in police custody in Uttar Pradesh’s Kasganj district. As per police claims, he hung himself to a tap

¹⁵ <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>

¹⁶ 1,888 custodial deaths in 20 years, only 26 policemen convicted.

<https://indianexpress.com/article/india/custodial-deaths-policemen-convicted-7624657/>

¹⁷ <https://www.thehindu.com/opinion/op-ed/reducing-custodial-deaths/article30756407.ece>;

See NHRC Monthly Human Rights Cases Statistics from January to December 2019 at

<https://nhrc.nic.in/complaints/human-right-case-statistics>

¹⁸ <https://www.ndtv.com/india-news/jeyaraj-benicks-tamil-nadu-custodial-deaths-madras-high-court-says-grounds-to-book-police-on-basis-of-post-mortem-report-2254355>

¹⁹ <https://www.bbc.com/news/world-asia-india-53202707>

²⁰ <https://caravanmagazine.in/crime/five-medical-reports-before-gmch-recorded-no-signs-custodial-violence-shiv-kumar-interview> ; <https://www.thehindu.com/news/national/other-states/nhrc-seeks-police-report-on-custodial-torture-of-activist-shiv-kumar/article34028575.ece>

²¹ Sattankulam custodial deaths | Police tortured Jayaraj and Benicks knowing it will result in death, says CBI charge sheet - <https://www.thehindu.com/news/national/tamil-nadu/sattankulam-custodial-deaths-police-tortured-jayaraj-and-benicks-knowing-it-will-result-in-death-says-cbi-charge-sheet/article32958821.ece>

in the police station washroom with the drawstring of his jacket hood.²² The father of the deceased alleged that his son was tortured and murdered in the police station and he came to know of his son's death from local reporters.²³

14. Despite having accepted relevant recommendations in the previous UPR cycle, the government of India has neither ratified the UN Convention against Torture, nor enacted a domestic anti-torture law. In only few cases registered against police officers for torture or custodial deaths have the police been held accountable and convicted for murder.

IV. Excessive use of force to curb peaceful protests

15. With the passage of the discriminatory Citizenship (Amendment) Act, 2019 (CAA)²⁴, there was a stream of nationwide protests. While the vast majority of these passed off peacefully, the state response was heavy-handed in states governed by the Hindu nationalist political party Bharatiya Janta Party (BJP) – particularly Assam, where six people were shot dead, and in UP, where 22 Muslims were shot dead on a single day on 20th December 2019. In national capital Delhi, where police forces are under the control of the BJP-led central (federal) government, there were several violent police actions against anti-CAA protesters – particularly Muslim students - in December 2019.

A. Police Crackdown in Uttar Pradesh

16. The Uttar Pradesh chief minister Yogi Adityanath pledged “revenge” against anti-CAA protestors and stated they should be fed “bullets not biryani.”²⁵ Police have been particularly aggressive against protesters in UP, engaging in what Human Rights Watch has called “Deadly Use of Force against Protesters”.²⁶ The first reported anti-CAA protests in UP were led by Muslim students at the Aligarh Muslim University (AMU) in Aligarh district. On 13th

²² Uttar Pradesh: Man who died in custody hung himself with drawstring of jacket hood, claim police.
<https://scroll.in/latest/1010201/up-man-accused-of-kidnapping-dies-in-police-custody-family-alleges-he-was-murdered>

²³ <https://timesofindia.indiatimes.com/city/agra/man-accused-of-kidnapping-dies-in-police-custody-family-alleges-murder/articleshow/87613876.cms>

²⁴ “They will lock us up or just kill us’: Muslims fearful in West Bengal.
<https://www.theguardian.com/world/2019/dec/12/they-will-lock-us-up-or-just-kill-us-muslims-fearful-in-west-bengal>

²⁵ ‘Feed them bullets not biryani’: BJP uses Delhi elections to stoke religious hatred.
<https://www.theguardian.com/world/2020/feb/06/feed-them-bullets-not-biriyani-bjp-uses-delhi-elections-to-stoke-religious-hatred>

²⁶ India: Deadly Force Used Against Protesters.
<https://www.hrw.org/news/2019/12/23/india-deadly-force-used-against-protesters>

December 2019, around 700 AMU students who took part in a peaceful protest march were reportedly booked by police²⁷. On 15th December, police forces violently dispersed another protest by AMU students, before entering the university campus and the students' residential buildings and assaulting students using batons, tear gas, water cannons and rubber bullets, leading to 60 students being hospitalised.²⁸ In the days following the attack on AMU students, restrictions on assembly, movement and access to internet were imposed in several districts across the state, particularly in those with higher concentration of Muslims.²⁹

17. On Friday (when Muslims congregate for prayers), 20th December 2019, police forces, along with Hindu civilians, were deployed outside prominent mosques across the state. In at least 13 (of 75) districts, almost simultaneously after the commencement of Friday prayers, police forces used excessive – including lethal – force against peaceful anti-CAA protesters, using batons, stun grenades, tear gas, rubber bullets and, on several occasions, live bullets.³⁰ At least 23 people, all Muslims from working-class families, are reported to have died due to the police action on 20th December. Of the 23 killed, 22 died due to gunshot wounds.³¹ In each case, the fatal injuries were reported on the upper parts of the victims' body. Deaths

²⁷ <https://www.edexlive.com/news/2019/dec/24/amusu-releases-detailed-report-about-police-brutality-violence-on-campus-that-took-place-on-december-9700.html>

²⁸ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25343> (pg. 3) and Aligarh Muslim University students allege they were tortured in police custody after Sunday protests. <https://scroll.in/article/947178/aligarh-muslim-university-students-allege-they-were-tortured-in-police-custody-after-sunday-protests>

²⁹ On 18th December, notices were issued to more than 3,000 persons across the state, warning them not to participate in anti-CAA protests planned for the following Friday – 20th December, 2019. (<https://amp.scroll.in/article/947844/notices-to-recover-damages-from-protestors-in-uttar-pradesh-based-on-flawed-high-court-order>) Arbitrary detentions of thousands of people, including prominent HRDs and community leaders, were reported on the 17th and the 19th. (<https://scroll.in/latest/947399/caa-protests-lucknow-advocate-mohammad-shoaib-detained-whereabouts-unknown-say-colleagues>) Also see -

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25080> (pg. 3)

³⁰ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25080> (pg. 6). For instance, in Muzaffarnagar district, police forces barged into an Islamic seminary and ransacked the premises, destroying property and assaulting students, including minors. (See Collated from various media sources by Sanhati, “Profiles: The 23 People Who Died in Uttar Pradesh during the CAA-NRC Protests”) Later that day, a joint mob of police personnel and Hindu civilians is reported to have ransacked homes and destroyed private property in a Muslim neighbourhood in the same district. (see <https://caravanmagazine.in/politics/muzaffarnagar-police-hindutva-groups-attack-muslims-attempt-recreate-2013-riots>) Similar accounts – of police forcibly entering homes in Muslim localities, assaulting residents, ransacking their houses and vandalising property – were reported from Bijnor and Lucknow districts. (See <https://www.indiatoday.in/india/story/bijnor-ground-report-muslim-families-flee-as-up-police-vandalise-homes-harass-women-after-clashes-over-cao-1631046-2019-12-24> and <https://scroll.in/latest/948116/cao-protests-victims-narrate-incidents-of-police-brutality-in-lucknow-mangaluru/>) In Kanpur district, video footage showed police forces smashing car windows and damaging property in a pre-dominantly Muslim neighbourhood. (<https://scroll.in/article/947980/in-uttar-pradesh-reports-of-violence-and-police-brutality-from-15-districts>). In Meerut district, a senior police officer was caught on video threatening Muslim anti-CAA protesters, and asking them to go to Pakistan, a common anti-Muslim slur. (<https://www.indiatoday.in/india/story/meerut-sp-akhilesh-narayan-threaten-cao-protesters-pakistan-video-1632137-2019-12-28>).

³¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25080> (pg. 6)

were reported from nine districts: Bijnor (2), Firozabad (7), Kanpur (3), Lucknow (1), Meerut (5), Muzaffarnagar (1), Rampur (1), Sambhal (2), and Varanasi (1). Also among the dead was an 8-year-old child, who reportedly died during a stampede that had occurred when police attacked protesters in Varanasi district.³² Several of the victims' families across districts have alleged that they were not protesters but in fact bystanders who were some distance away from the protest sites.³³

18. Arbitrary detentions of hundreds of peaceful demonstrators were reported from across the state.³⁴ UN experts (in February 2020) highlighted reports that over 1000 people were arrested for alleged involvement in violence, and that 5,558 'preventive' arrests were made.³⁵ Requests under the Right to Information Act to provide up-to-date accounts of total detentions and arrests were rejected by UP police authorities.
19. Moreover, the UP state government sealed properties of those they accused of being involved in protests and arbitrarily issued notices to at least 500 people for recovery of public property damaged or destroyed during the anti-CAA protests.³⁶ The government held that this action was for restitution for damage to public property during violence accompanying protests, in acts of retribution.³⁷ The government also employed a "name and shame" campaign against protesters and peaceful activists it had served with notices for damages by plastering their photographs along with their names and addresses on

³² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25080> (pg. 6)

³³ Collated from various media sources by Sanhati, "Profiles: The 23 People Who Died in Uttar Pradesh during the CAA-NRC Protests", available at: <http://sanhati.com/excerpted/19479/>

³⁴ In Muzaffarnagar district, where police ransacked a madrassa, 35 students – including 14 children – were detained, along with the madrassa's septuagenarian cleric.

(<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25603> pg. 6) Those detained were reportedly assaulted in custody, and subject to communal abuse. Arbitrary detention of dozens of children was also reported from Sambhal and Bijnor districts, bringing the total number of alleged arbitrary detentions of children to 41, according to local CSO fact-finding. These children were reported to have faced custodial torture and inhuman treatment, including assault and deprivation of food, water and sleep. (See <https://www.thequint.com/news/politics/caa-protests-minors-detained-sambhal-uttar-pradesh-police>; <https://www.thequint.com/news/india/caa-nrc-protests-in-bijnor-uttar-pradesh-minors-detained> and <https://scroll.in/article/952964/up-police-detained-41-children-during-cao-protests-some-were-tortured-says-citizens-report>)

³⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25080> (pg. 2)

³⁶ Abdul Alim Jafri, "CAA-NRC: Adityanath Govt Sends Property Confiscation Notices to 498 People," Newslick, December 31, 2019, <https://www.newslick.in/cao-ncr-adityanath-govt-sends-property-confiscation-notices-498-people>

³⁷ 67 shops of alleged protesters sealed in Uttar Pradesh district.

<https://www.newindianexpress.com/nation/2019/dec/23/67-shops-of-alleged-protesters-sealed-in-uttar-pradesh-district-2079914.html> ; After CAA protests, UP government panel set up to seize property. <https://timesofindia.indiatimes.com/city/lucknow/after-cao-protests-up-government-panel-set-up-to-seize-property/articleshow/72922128.cms>

billboards across the state, placing them at risk of vigilante violence.³⁸ Continuing with its repressive actions, two years after an anti-CAA (Citizenship Amendment Act) protest in Rampur district turned violent, the UP police invoked the Goondas Act³⁹ against 67 people⁴⁰ who were allegedly part of the demonstration in 2019.

B. Police crackdown in Delhi

20. The first reported anti-CAA protests in Delhi were led by Muslim students of Delhi's Jamia Milia Islamia university. In December, 2019, Jamia students faced excessive force from Delhi Police on two occasions: On 13th December, Jamia students participating in a protest march were stopped by police and assaulted with batons and tear gas shells, leaving dozens injured, including several with bone fractures and head injuries.⁴¹ On 15th December, police personnel stormed the campus – reportedly without permission of university authorities – and attacked hundreds of unarmed students including women using batons, tear gas shells, rubber bullets and sound bombs, before detaining around 50 students.⁴² Nearly 60 people, including over 50 students, six police officials and two firemen, were injured at the Jamia University protests.⁴³ This assault took place at around the same time police in UP were attacking students of AMU. Elsewhere in Delhi, police

³⁸ Piyush Srivastava, “Banners on roads to name & shame activists in Lucknow,” Telegraph, March 7, 2020, <https://www.telegraphindia.com/india/banners-on-roads-to-name-shame-activists-in-lucknow/cid/1751703>

³⁹ The Uttar Pradesh Control of Goondas Act, 1970, makes special provisions for the control and suppression of goondas (gangsters) for maintenance of public order. The Goonda Act in Uttar Pradesh is vague and arbitrary, has a wide sweep and can lead to a decision to ‘extern’ just about anybody the state authorities wish to perceive as a goonda. See - <https://www.newsclick.in/how-preventive-detention-laws-assam-UP-haryana-work>

⁴⁰ Two years on, Uttar Pradesh police invokes Goondas Act against 67 anti-CAA protestors, most of them labourers. <https://timesofindia.indiatimes.com/city/bareilly/2-yrs-on-up-police-invokes-goondas-act-against-67-anti-caa-protesters-most-of-them-labourers/articleshow/84183269.cms>

⁴¹ <https://www.newindianexpress.com/cities/delhi/2019/dec/13/50-jamia-students-detained-after-clash-with-delhi-cops-during-citizenship-act-protest-2075676.html>

⁴² <https://www.reuters.com/article/india-citizenship-protests-university-idINKBN1YL0JP>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25080> (pg. 3); Sonal Mehrotra Kapoor, “On Camera, Jamia Students Take Cover In Library As Police Fire Tear Gas,” NDTV, December 16, 2019, <https://www.ndtv.com/delhi-news/citizenship-amendment-act-on-camera-jamia-students-take-cover-in-library-as-police-fire-tear-gas-2149415> ; “Watch: This group of women courageously defended a man from being attacked by the Delhi Police,” video report, Scroll.in, December 16, 2019, <https://scroll.in/video/946938/watch-this-group-of-women-courageously-defended-a-man-from-being-attacked-by-the-delhi-police>. Also see Barkha Dutt’s interview with the women. “Barkha Dutt meets Jamia’s ‘Viral’ Women who’ve become the face of protests against Citizenship Law,” December 16, 2019, YouTube, <https://www.youtube.com/watch?v=julJIXbRmFA>

⁴³ “Violence rocks south Delhi during anti-citizenship law protest, buses torched, nearly 60 injured,” Press Trust of India, December 15, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/citizenship-act-protest-violence-arson-in-south-delhi-buses-torched/articleshow/72681998.cms>

are also reported to have used indiscriminate force against anti-CAA protesters in localities with substantial working-class Muslim populations. On 17th December, police used batons and tear gas against Muslim anti-CAA protesters in Seelampur area, causing dozens of injuries.⁴⁴ On 20th December, police used indiscriminate force in Daryaganj area, causing dozens of injuries, including to the head.⁴⁵ Over 40 Muslims were reported to have been arbitrarily detained, including at least 10 children.⁴⁶

V. Arbitrary and prolonged detention

21. Terrorism, preventive detention, and anti-conversion laws are being increasingly and regularly invoked as tools for the persecution of religious minorities and other vulnerable groups, journalists and human rights defenders.

A. *Unlawful Activities (Prevention) Act*

22. The Unlawful Activities (Prevention) Act 1967 (UAPA) gives the authorities the ability to detain persons without charge in cases related to insurgency or terrorism for up to 180 days, makes no bail provisions for foreign nationals and creates presumption against bail in the case of detained citizens of the country. State governments also reportedly held persons without bail for extended periods before filing formal charges under the UAPA. According to the crime records, 6,900 UAPA cases were reported between 2014 and 2020 with an average of 985 cases reported each year.⁴⁷ Between 2017 and 2020, on average, charges were made in 165 cases every year, which is 16% of the average number of cases reported in these years.⁴⁸ In 2019, 1,226 UAPA cases were filed, a 33% increase from 2016.⁴⁹ In September 2020, Journalist Siddique Kappan⁵⁰, who was on his way to Hathras district in

⁴⁴ <https://www.businesstoday.in/latest/economy-politics/story/anti-cao-protests-turn-violent-in-seelampur-protestors-lathicharged-tear-gas-used-240771-2019-12-17>

⁴⁵ <https://www.indiatoday.in/india/story/delhi-gate-daryaganj-citizenship-amendment-act-protest-violence-car-fire-police-1630163-2019-12-20>

⁴⁶ <https://www.hindustantimes.com/india-news/minors-detained-after-violence-during-delhi-s-anti-citizenship-act-protest-released/story-TMNkr8sOYQqnVAQIy59gkI.html>

⁴⁷ In seven years, 10,552 Indians have been arrested under UAPA – but only 253 convicted.

<https://scroll.in/article/1010530/in-seven-years-10552-indians-have-been-arrested-under-uapa-and-253-convicted>

⁴⁸ Ibid.

⁴⁹ The crippling effect of sedition and UAPA on dissent in India

<https://www.hindustantimes.com/analysis/the-crippling-effect-of-sedition-and-uapa-on-dissent-in-india/story-QBCPtSpVeYgbdnavysc8UL.html>

⁵⁰ The Siddique Kappan case and the assault on India's Constitution.

<https://scroll.in/article/1006767/the-siddique-kappan-case-and-the-assault-on-indias-constitution>

UP, to cover the brutal gangrape and murder of a Dalit woman, was arrested under various offences under the UAPA. In Tripura, where members of a fact-finding team had gone to report on the recent anti-Muslim violence, the BJP-led government registered cases against 102 persons including journalists and lawyers under the UAPA for publishing or posting "distorted and objectionable" news items/statements regarding the communal tensions.⁵¹

B. National Security Act

23. On October 19, the Allahabad High Court in Uttar Pradesh ruled that the state's Prevention of Cow Slaughter Act "was being misused against innocent persons"⁵² and granted bail to a Muslim arrested under the act. UP police had filed charges in 1,716 cases of cow slaughter and made more than 4,000 arrests under the Prevention of Cow Slaughter Act as of August. According to Uttar Pradesh State government data, the National Security Act (NSA) was also used in some cow slaughter cases.⁵³ Persons detained under the NSA may be held up to 12 months without formal charges. Apart from this, as per Government records, the NSA was also used against individuals who protested the Citizenship (Amendment) Act, 2019 (CAA)⁵⁴ thereby criminalising the democratic right to protest.

C. Public Safety Act

24. Similarly, the Public Safety Act 1978 applicable to the erstwhile state of Jammu and Kashmir permits state authorities to detain persons without charge or judicial review for up to two years without visitation from family members. As per a civil-society report, a total of 662 persons including a former chief minister and sitting MP,⁵⁵ were charged under the PSA in 2019.⁵⁶ In addition to the PSA, the UAPA too is being used widely in the Union Territory of Kashmir. On June 21, 2021, the Police charged several persons under the Unlawful Activities (Prevention) Act for sloganeering at the funeral of cricketer Mohamad

⁵¹ Tripura violence: Journalists among 102 booked under UAPA for 'distorted and objectionable' posts <https://www.deccanherald.com/national/east-and-northeast/tripura-violence-journalists-among-102-booked-under-uapa-for-distorted-and-objectionable-posts-1048524.html>

⁵² 94 out of 120 orders quashed: Allahabad High Court calls out abuse of NSA in Uttar Pradesh. <https://indianexpress.com/article/express-exclusive/national-security-act-uttar-pradesh-police-detentions-cow-slaughter-ban-7260425/>

⁵³ In Uttar Pradesh, more than half of NSA arrests this year were for cow slaughter. <https://indianexpress.com/article/india/in-uttar-pradesh-more-than-half-of-nsa-arrests-this-year-were-for-cow-slaughter-6591315/>

⁵⁴ <https://thewire.in/government/up-national-security-act-cow-slaughter-accused>

⁵⁵ Explained: What is Jammu and Kashmir's Public Safety Act? <https://indianexpress.com/article/explained/farooq-abdullah-psa-jammu-and-kashmir-explained-6001031/>

⁵⁶ How the Public Safety Act Continues to Haunt Kashmir. <https://thewire.in/rights/psa-detentions-kashmir>

Amin Dar.⁵⁷ These trends continue even after Amnesty International declared it to be a 'Lawless Law'.⁵⁸

D. Anti- conversion laws

25. India's anti-conversion laws have fueled violence against Muslims and Christians. While the constitution protects the right to proselytize, 10 states have anti-conversion laws⁵⁹ criminalizing conversion using force, allurement, inducement, or fraud thereby prohibiting consensual conversions. In 2019, BJP-ruled Himachal Pradesh increased the penalties for forced conversions.⁶⁰ On November 25, 2020, Uttar Pradesh approved a law which would impose penalties of up to 10 years in prison for "unlawful religious conversions" and "interfaith marriages with the sole intention of changing a girl's religion."⁶¹ The law which claims to tackle the alleged conspiracy theory of 'Love Jihad'⁶² a proposition of right wing groups that Hindu women are being forcibly converted. Seven months into the enactment of the law, as many as 162 suspects have been charged in these 63 cases registered across the state.⁶³ In June, the Anti-Terrorist Squad had arrested two Muslim scholars Mohammad Umar Gautam and Mufti Quazi Jahangeer Quasmi under the draconian anti-conversion law.⁶⁴
26. A fact-finding report by the Evangelical Fellowship of India (EFI) listed 39 cases of threats or violence against Christians from January to November this year in Karnataka.⁶⁵ These attacks have frequently targeted prayer services and have also led to the widespread

⁵⁷ UAPA And PSA Go Side By Side In Kashmir.

<https://www.outlookindia.com/website/story/india-news-uapa-and-psa-go-side-by-side-in-kashmir/38782>

⁵⁸ A 'Lawless Law' - Detentions under the Jammu and Kashmir Public Safety Act.

https://www.amnestyusa.org/files/asa200012011en_11.pdf

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<https://www.uscirtf.gov/sites/default/files/Limitations%20on%20Minorities%20Religious%20Freedom%20in%20South%20Asia.pdf>

⁶⁰ The Himachal Pradesh Freedom of Religion Act, 2019. https://prsindia.org/files/bills_acts/acts_states/himachal-pradesh/2019/Act%2013%20of%202019%20HP.pdf

⁶¹ 79 cases booked under unlawful conversion law in U.P

<https://www.thehindu.com/news/national/79-cases-booked-under-unlawful-conversion-law-in-up/article37127689.ece>

Anti-conversion laws violate right to equality <https://www.tribuneindia.com/news/comment/anti-conversion-laws-violate-right-to-equality-307214>

⁶² On 'love jihad', BJP picks up baton from vigilante groups. Police, judicial apparatus have aided this move.

<https://indianexpress.com/article/opinion/columns/love-jihad-law-india-bjp-7067013/>

⁶³ 7 Months of UP's Anti-Conversion Law: 162 People Booked in 63 Cases <https://www.thequint.com/news/india/7-months-of-ups-anti-conversion-law-162-people-booked-in-63-cases#read-more>

⁶⁴ People Umar Gautam Helped Convert to Islam Deny Charges That He 'Forced' Them

<https://thewire.in/religion/umar-gautam-forced-conversion-helped-muslim-converts>

⁶⁵ Fact Finding Report of attacks against Christians in North Karnataka New Delhi, 13th December 2021.

<https://files.constantcontact.com/cf0c2406701/d1eb7a4e-b606-49a3-a6f4-fc80f728d790.pdf>

shuttering or destruction of churches. The Christian NGO Persecution Relief documented 293 instances of attacks or harassment of Christians in the country in the first half of the year, despite the widespread pandemic lockdown, including six rapes and eight murders. There were 208 incidents during the same period in 2019.

E. Arbitrary arrests for hurting religious sentiments

27. India's hate speech legislation that predominantly falls under the Indian Penal Code (IPC), 1860, specifically Sections 153A⁶⁶ and 153B⁶⁷ and Section 295A⁶⁸ have been repeatedly used to clamp down dissent. These sections that nowhere define the term 'hate speech' have been weaponized against the members of civil society, human rights defenders, lawyers, artists, comedians, journalists, and minorities. Since the BJP came in power, such 'hate speech' laws have effectively become Indian 'blasphemy law',⁶⁹ used by vigilante groups and state machinery to curb free speech⁷⁰ and creative expression.⁷¹
28. In January 2021, a young Muslim comedian named Munawar Faruqui was arrested⁷² by the Indore Police in the State of Madhya Pradesh after complaints by local Hindu vigilantes who claimed that he was 'going to' crack jokes 'offensive' to Hindus during a show. Despite no jokes having actually been cracked, Faruqui, along with five of his friends and fellow organisers of the show were arrested and had to spend over a month in jail before being granted bail. Subsequently a warrant against him was issued by the Uttar Pradesh police.⁷³

⁶⁶ 153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. Available at: <https://indiankanoon.org/doc/345634/>

⁶⁷ Imputations, assertions prejudicial to national-integration. Available at: <https://indiankanoon.org/doc/771276/>

⁶⁸ 295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. Available at: <https://indiankanoon.org/doc/1803184/>

⁶⁹ Karan Kumar, 'Vague, unreasonable, constitutionally untenable: Why Indian variant of 'Blasphemy Law' – Section 295A IPC – should go', The Leaflet (blog), August 21, 2018, <https://theleaflet.in/vague-unreasonable-constitutionally-untenable-why-indian-variant-of-blasphemy-law-section-295a-ipc-should-go/>; Sarah Imran, 'Section 295A: The Indian blasphemy law in making', NewsClick, January 28, 2021, <https://www.newsclick.in/section-295-indian-blasphemy-law-making>

⁷⁰ Neeti Nair, 'A 91-year-old law is making a comeback in India due to lynchings and WhatsApp forwards', August 26, 2018, <https://theprint.in/opinion/a-91-year-old-law-is-making-a-comeback-in-india-due-to-lynchings-and-whatsapp-forwards/105387/> ;

⁷¹ Mahim Pratap Singh, 'Modi caricature lands cartoonist in jail,' The Hindu, September 28, 2011, <https://www.thehindu.com/news/national/modi-caricature-lands-cartoonist-in-jail/article2494467.ece>

⁷² How an Indian Stand Up Comic found himself arrested for a joke he didn't crack. <https://time.com/5938047/munawar-iqbal-faruqui-comedian-india/>

⁷³ As Indore Police Admits It Has No Evidence Against Comedian, UP Police Moves to Make Arrest <https://thewire.in/rights/comedian-munawar-faruqui-up-police-custody>

29. This in addition to several such instances over the years are testament to the growing criminalisation of free speech⁷⁴ and political criticism⁷⁵ and even more frequent censure of minority voices.⁷⁶

VI. Police Involvement in Mob violence and communal violence

30. Mob violence or lynchings by Hindu nationalist vigilante groups targeting minorities on suspicions of cow slaughter⁷⁷, sale and consumption of beef⁷⁸, interfaith marriage/relationship⁷⁹, theft and child theft among others, which emerged as a recurring trend since 2014, continued during this reporting period.⁸⁰ Across many incidents, the police were either complicit in the killings and the cover-up, or played a partisan role by stalling investigations and ignoring procedures. A common trend across cases is that instead of investigating and arresting those accused of mob violence, the police routinely

⁷⁴ 19 arrested for cheering Pakistan's Champions Trophy victory

<https://timesofindia.indiatimes.com/india/19-arrested-for-cheering-pakistans-champions-trophy-victory/articleshow/59243368.cms>; Rajasthan: Police arrest teacher who celebrated Pakistan's T20 win against India. <https://www.indiatoday.in/india/story/rajasthan-teacher-arrest-celebrated-pakistan-t20-win-against-india-1870152-2021-10-27>

⁷⁵ Arrest over a Facebook status: 7 times people landed in jail for posts against politicians.

<https://www.hindustantimes.com/india-news/arrested-over-a-facebook-status-7-times-people-landed-in-jail-for-posts-against-politicians/story-ON1jukoStfV6T8aYcJEVGJ.html>

⁷⁶ Arrest of tribal teacher over post on beef eating triggers outrage in Jharkhand', NewsClick, May 27, 2019

<https://www.newsclick.in/Jharkhnad-Activist-Arrested-Jeetrai-Hansda-Facebook-Remarks>

Rishav Raj Singh, 'Muslim student in Madhya Pradesh arrested for calling RSS men 'pigs' on Facebook', The Wire, July 23, 2020

<https://thewire.in/rights/muslim-student-in-madhya-pradesh-arrested-for-calling-rss-men-pigs-on-facebook>

⁷⁷ Most states in India impose either a partial or complete legal prohibition on cow slaughter. Since 2014, members of the BJP have increasingly used communal rhetoric that has spurred a violent vigilante campaign against cow slaughter and beef consumption. Following this, states like Rajasthan, Maharashtra and Haryana made their cow protection laws stricter to include new offences (transportation of cattle and/or beef, sale and possession of beef) and substantially increased penalties. This was seen as a deliberate attempt to create a shadow of illegality and criminality around anything to do with cow slaughter and beef eating. The narrative of illegality surrounding cow slaughter and beef consumption, fed by Hindu nationalistic politics and supported by law, creates the context and provides the justification for violence against vulnerable minorities. For instance, in UP, the BJP led government issued orders to close 'illegal' slaughterhouses. Although the illegality pertained to environmental and other regulations, the public perception sought to be created was of rampant existence of slaughterhouses stealthily slaughtering cows. See - <https://thewire.in/politics/cow-slaughter-laws-vigilantes-victims> and <http://www.firstpost.com/india/up-slaughterhouse-crackdown-here-is-all-you-need-to-know-about-the-laws-regulating-abattoirs-3356182.html>

⁷⁸ India: Vigilante 'Cow Protection' Groups Attack Minorities.

<https://www.hrw.org/news/2019/02/19/india-vigilante-cow-protection-groups-attack-minorities>

⁷⁹ The Year of Love Jihad in India.

<https://www.newyorker.com/culture/2017-in-review/the-year-of-love-jihad-in-india>

⁸⁰ See, Hunted- India's Lynching Files.

<https://www.thequint.com/quintlab/lynching-in-india/> and Is India descending into mob rule?

<https://www.bbc.com/news/world-asia-india-40402021>

file complaints against the victims, their families, and witnesses under the recently amended cow protection laws with increased penalties.⁸¹

31. In February 2020, communal violence broke out in New Delhi, in which more than 53 people, mostly Muslims, were killed.⁸² Over 200 were injured, properties and places of worship destroyed, and communities displaced in targeted attacks by Hindu mobs. The role played by police has been elaborated below:

A. *Inadequate steps to prevent violence*⁸³

32. Several witnesses claimed that their distress calls to police helplines were either ignored or met with open hostility.⁸⁴ A review of the call registers at two police stations in violence-hit areas confirmed that, in most cases, no action was taken by police.⁸⁵ Innumerable witness complaints have alleged that police personnel physically stationed at violence-hit sites too took little preventive action, mostly staying mute spectators while Hindu mobs wreaked havoc. The police also reportedly prevented emergency medical services from reaching Muslim victims, a situation that necessitated a midnight intervention by the Delhi High Court on 25th February.⁸⁶ A fact-finding mission to the area by doctors highlighted this, and remarked that the police had behaved like “a Hindu force”.⁸⁷

⁸¹ For instance in May 2018, a Muslim man was killed and his friend severely injured after they were assaulted by a group of men who accused them of cow slaughter. The police registered two cases in connection with the incident. The first case was filed against the victims, charging them with cow slaughter and later, a case of murder and attempt to murder was filed against the alleged assaulters. See - <https://scroll.in/article/879771/madhya-pradesh-police-book-dead-man-for-cow-slaughter-before-filing-case-against-his-attackers> For other instances, see - <https://thewire.in/rights/jharkhand-lynching-police-books-3-advocates-injured-in-attack-for-cattle-slaughter>; Madhya Pradesh police book murdered man for cow slaughter before filing case against his attackers. <https://scroll.in/article/879771/madhya-pradesh-police-book-dead-man-for-cow-slaughter-before-filing-case-against-his-attackers> ; Muslim Meat Trader Attacked in UP, Police File FIR Against Him. <https://thewire.in/communalism/muslim-meat-trader-attacked-in-up-police-file-fir-against-him>

⁸² <https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Civil%20Society%20or%20Individuals/RitumbraM2.pdf>

⁸³ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25603> (pg. 4) and Amnesty International India, “Investigative Briefing” (28th August, 2020), <https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>. (pg. 6)

⁸⁴ Delhi Minority Commission, “Report of the Fact-Finding Committee”, available at: <https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf> (pg. 68)

⁸⁵ <https://www.ndtv.com/india-news/no-action-case-pending-delhi-police-call-logs-offer-clue-why-violence-raged-for-4-days-2187419>

⁸⁶ <https://www.livelaw.in/top-stories/delhi-riots-delhi-hc-holds-midnight-hearing-to-direct-police-to-ensure-safe-passage-of-injured-victims-to-hospitals-153148>

⁸⁷ Progressive Medicos and Scientists Forum, “An Inquiry into the Anti-Muslim Violence in North-East Delhi”, 20th March, 2020, available at: <https://kafila.online/2020/03/20/an-inquiry-in-to-the-anti-muslim-violence-in-northeast-delhi-progressive-medicos-and-scientists-forum/>

B. Active participation in violence⁸⁸

33. There were also numerous reported instances of active participation in the violence by police, working along with Hindu rioters. Specific allegations of abuses committed by Delhi Police personnel include: at least one instance of murder at point-bank range⁸⁹; the murder of another during an alleged joint attack on a mosque by Hindu rioters and an elite riot control wing of the police, during which Muslim worshippers and worship leaders were assaulted, before the mosque was ransacked, looted, and set on fire⁹⁰; and the torture and abuse on camera of multiple injured Muslim youth lying on a road, one of whom later died after being denied medical aid.⁹¹ The police were also caught on camera on multiple occasions destroying CCTV cameras.⁹²

VII. Recommendations

- Swiftly ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, ensure that domestic legislation defines torture in line with international standards.
- Respond positively to visit requests by the special procedures of the Human Rights Council and extend an invitation to the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment and extrajudicial, summary or arbitrary executions for an official visit to the country.
- Take appropriate measures to avoid the excessive use of force by security officers and ensure that laws are fully and consistently enforced to facilitate equal access to justice for all including providing legal aid, in particular to vulnerable groups, minority groups and

⁸⁸See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25603> (pg. 4); Amnesty International India, “Investigative Briefing” (28th August, 2020), <https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>. (pg. 8)

⁸⁹ According to multiple eyewitness complaints submitted to the police, published by The Caravan (12th February, 2021), available at: <https://caravanmagazine.in/crime/three-eyewitnesses-accuse-delhi-police-official-murder-during-delhi-violence>

⁹⁰ According to multiple eyewitness complaints submitted to the police, published by The Caravan (11th March and 25th November, 2020), available at: <https://caravanmagazine.in/conflict/men-in-uniform-torched-mustafabads-farooqia-masjid-assaulted-people-inside-locals> and <https://caravanmagazine.in/crime/eight-months-on-delhi-police-ignores-eyewitness-complaints-farooqia-masjid-rampage>

⁹¹ Amnesty International India, “Investigative Briefing” (28th August, 2020), <https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf> (pg. 9)

⁹² Ibid.

marginalized people.

- Conduct thorough and impartial investigations into alleged instances of extrajudicial killings, torture, custodial deaths and deaths of protestors in police firings and prosecute police officials for murder.
- Invest, train and guide police officials in the field of human rights to deepen the respect about principles of proportionality and necessity of use of force.
- Allocate appropriate resources to reducing backlog and delays in the administration of cases in courts and strengthen the independent functioning of the judiciary in order to reduce delays in judicial proceedings, enhance transparency of the processes and guarantee the right to speedy trial in cases pertaining to police violence.