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Human Rights in Asia-Pacific; Review of 2019 - India

The government revoked Jammu and Kashmir's special status and launched a widespread crackdown, detaining opposition leaders and activists, denying them due process, severing communication links, and preventing access to services. Nearly two million people were pushed to the brink of statelessness in procedures that were arbitrary and discriminatory. Human rights defenders faced huge challenges, including arbitrary arrest, detention and prosecution as a means of silencing them while freedom of expression was censored with draconian laws. Millions of indigenous forest dweller families were threatened with forced eviction. Women were not adequately protected from sexual and domestic violence, harassment and discrimination. There was a serious lack of accountability for murders and other attacks carried out by vigilante mobs against hundreds of people based on their religious, ethnic, caste and gender identities.

Jammu and Kashmir

In August, the government revoked the special status of Jammu and Kashmir (J&K) guaranteed under Article 370 of the Indian Constitution and bifurcated the state into two union territories. This was preceded and followed by a region-wide clampdown on civil liberties, increased militarisation, a communications blackout and detention of key political leaders such as Farooq Abdullah, Omar Abdullah and Mehbooba Mufti. In a move to silence critics, hundreds of other political leaders and activists were also detained under various administrative detention laws. No official information on the number of people detained, their access to lawyers or family members, where they were held and under what charges was made available.

Government-imposed restrictions prevented journalists and activists from independently documenting and sharing information about the situation, including allegations of human rights abuses. Access to emergency services, healthcare, education and other services were highly restricted. The United Nations human rights experts including the Special Rapporteur on the promotion and protection of freedom of expression, the Special Rapporteur on the situation of human rights defenders, Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the right to peaceful assembly and association and the Special Rapporteur on extrajudicial, summary or arbitrary executions described the crackdown as 'a form of collective punishment'.

While many communication services have been restored such as telephone, mobile phones, SMS etc., the internet continues to be shut down. Kashmir valley accounts for half of all internet shutdowns in India that reports the highest number of shutdowns in the world.

Prior to August, Kashmiri women and men throughout the country faced targeted attacks, harassment and arbitrary arrests after 42 members of the security forces were killed in Pulwama, J&K, in a suicide bomb attack in February. Kashmiri university students and traders in northern states, primarily Uttarakhand, Haryana and Bihar were beaten, threatened, and intimidated by some Hindu nationalist groups causing many students to flee their universities.

In June, the authorities denied Amnesty International India permission to hold an event to launch a briefing on the misuse of the draconian J&K Public Safety Act (PSA) in Srinagar, the region's capital verbally citing the 'prevailing law and order situation' as the reason.

Discrimination

The Assam authorities published its National Register of Citizens in August from which almost two million people were excluded pushing them to the brink of statelessness. The only available remedy available to those excluded from becoming stateless was through the Foreigners Tribunals, a quasi-judicial body where, in many cases, proceedings were arbitrary, and decision-making biased and discriminatory, particularly against women who were less likely to have access to identity documents to prove their status.[i] The Tribunals, chaired by members with limited judicial experience, frequently declared individuals as “irregular foreigners” as a result of clerical errors like minor differences in spellings of names or date of birth on electoral rolls. Over 1000 declared foreigners were detained in one of the six detention centres in Assam which are rife with overcrowding and lack of segregation between undertrials, convicts and the detainees. Amnesty International India has also documented the deteriorating mental and physical health of detainees. The construction of 'India's largest detention centre' was underway in Goalpara, Assam which is estimated to hold around 3000 people who have been declared to be foreigners.

Repressive Laws

Many repressive amendments were made to laws such as the Citizenship Act, Unlawful Activities (Prevention) Act (UAPA), Transgender Persons (Protection of Rights) Act and the Right to Information (RTI) Act etc.

In the monsoon session, the UAPA, India's principal counter-terrorism law was amended to allow the government to designate an individual as a terrorist. It gives an overbroad and ambiguous definition of a 'terrorist act' giving unbridled power to the government to brand any ordinary citizen or activist a terrorist. It stands to implicate individuals for being proactive members of the society, ban critical thinking and criminalise dissent by

designating them terrorists. In the same session, the RTI Act was also diluted. The amendments to the Act weakened the independence of the Information Commissions by resting the power to determine their tenure, salary and conditions of service with the central government.

In December 2019, during the winter session of the Parliament, the Transgender Persons (Protection of Rights) Act was passed. The Act undermines the rights of transgender and intersex persons, and violate India's international human rights obligation and the 2014 ruling of the Supreme Court in the case of *NALSA v. Union of India*. Amongst other flaws, the Act lays out a vague bureaucratic procedure to be followed for legal gender recognition of the transgender persons.

During the same session, the Citizenship (Amendment) Act was passed amending the Citizenship Act to enable irregular migrants to acquire Indian citizenship through naturalisation and registration. However, it restricts the eligibility to only Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who entered India on or before 31 December 2014. The Act also reduces the requirement of residence in India for citizenship by naturalisation from 11 years to 5 years for these particular communities.

Besides adversely impacting the refugees and asylum seekers, the amendments also impinge on the human rights of Indian citizens, particularly Muslims. In the winter session of the Parliament, the Union Home Minister, Amit Shah announced a nationwide National Register of Citizens (NRC) which will document the citizenship of more than 1.3 billion people in the country raising concerns on the fate of excluded Muslims from the Register. In wake of nation-wide protests against the Act, the Government of India temporarily withdrew its announcement.

Freedom of Expression

Human rights defenders faced huge challenges to pursue their activities, including arbitrary arrest, detention and prosecution as a means of silencing them.

Nine prominent human rights activists arrested in 2018 under the Unlawful Activities (Prevention) Act, remained arbitrarily detained for 'waging a war against the country'. All nine have worked with the most marginalised people of India, such as Dalits and Adivasis, and held views opposing the government. In February, the Maharashtra police arrested academic Anand Teltumbde, accused of involvement in the Bhima Koregaon violence that took place near Pune in 2018 and of links to the Communist Party of India (Maoist), a banned organisation. He was released a day later on 4 February, after a court ruled his arrest was illegal.

In June, the Central Bureau of Investigation filed a criminal case against the Lawyers Collective for allegedly violating the Foreign Contribution (Regulation) Act, a law that unduly restricts the right of organizations to access foreign funding. The Collective's activities include provision of legal aid and advocating for the rights of marginalized groups.

Draconian sedition charges continued to be used for criminalizing dissent. Pa Ranjith, a film maker and Dalit rights activist, Hard Kaur, a rapper, and Shehla Rashid, a Kashmiri politician and activist were amongst many others who were slapped with sedition charges for criticizing the government. On 7 June, journalist Prashant Kanojia was arrested for sedition in the capital, New Delhi, after he posted social media content criticizing Uttar Pradesh's Chief Minister. On 12 June, the Supreme Court released him on bail but the charges against him remain.

On 3 October, 49 renowned celebrities were charged with sedition for writing an open letter to Prime Minister Narendra Modi urging him to take meaningful action against hate crimes. In their letter, they had cited government and other independent data to highlight the rise in hate crimes and decline in their convictions.

Central and state governments across India also cracked down on peaceful protests (including various universities and minority institutions) against the discriminatory Citizenship (Amendment) Act. Various state governments either arrested those protesting against the Act or imposed prohibitory orders under Section 144 of the Code of the Criminal Procedure. Protestors were also met with a show of force, mass detention and large scale internet shutdowns. In Uttar Pradesh alone, over 18 people were killed including an 8-year old child and over 5000 were detained

Indigenous Peoples' rights

On 13 February, the Supreme Court, acting on a petition filed by wildlife groups, ordered the eviction of all forest dwellers in India, after their claims to remain on their traditionally held land was rejected by the states under the Forest Rights Act. According to the Ministry of Tribal Affairs, nearly two million families were affected. The Central Government intervened, and on 28 February, the Court put the order on hold while it awaited information from states to ascertain whether they had followed due process in rejecting the claims. The Court still awaits responses from all states.

In June, the Special Rapporteurs on adequate housing, the rights of indigenous peoples and on the human rights of internally displaced persons expressed concern about the adverse impact of Supreme Court's order on the lives of millions of tribal people.

Women's rights

Women continued being subjected to sexual and domestic violence, including by husbands and other relatives, and sexual harassment at workplace, while perpetrators continued to enjoy impunity.

In April, a woman employed as a junior court assistant at the Supreme Court, made an allegation of sexual harassment against the Chief Justice of India (CJI) in connection with an incident in 2018. The CJI responded by convening a panel of judges to examine concerns that the claims were motivated by the complainant's wish to attack the judiciary's independence. Media reports said the CJI claimed the victim was the subject

of an “ongoing criminal investigation”. Subsequently, the complaint was referred to an in-house committee made up of three judges including two female judges but not including any external members as required under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. The complainant was not allowed to bring her lawyer to the committee proceedings and denied her request for information on the committee’s procedures. Consequently, she withdrew from the proceedings. After the panel cleared the CJI of any wrongdoing, it denied her access to a report detailing its findings.

In July 2019, the Muslim Women (Protection of Rights on Marriage) Act was passed by the Parliament which came into force in September 2019. It criminalizes the discriminatory practice of triple *talaq* (Islamic instant divorce available only to men) making it punishable by up to three years’ imprisonment.

Communal and ethnic violence

Scores of hate crimes against Muslims and other religious groups, ethnic groups, including Dalits and Adivasi (an indigenous tribal people), as well as caste and gender-based crimes, took place across the country. Many were carried out by vigilante groups and mobs. Violent attacks included mob “lynching”.

Legislation against these crimes remained inadequate. In July, the Uttar Pradesh Law Commission submitted a draft bill to the state government which aimed to strengthen laws against lynching. In August, the Rajasthan government passed its Rajasthan Protection from Lynching Bill making it the second state after Manipur to criminalize mob lynching as an offence separate from murder with stronger penalties.

Government data on mob lynching by “cow protection” vigilantes remained inadequate because it failed to recognize the gravity of and discriminatory motive behind the crime and rather addressed it under provisions of the Indian Penal Code related to “rioting”, “unlawful assembly” or “murder”. The National Crime Records Bureau had not released its annual report of crime, prison and suicide statistics for the third consecutive year. The failure to collect and preserve data, along with the police’s failure to conduct an effective investigation, resulted in dozens of perpetrators being acquitted.

In June, a video of the brutal mob killing of Tabrez Ansari, a 24 year-old Muslim labourer in Jharkhand went viral. It showed him tied to a pole and being beaten by men armed with iron rods and sticks, while his attackers forced him to chant ‘Jai Sri Ram’ (Hail Lord Rama) and ‘Jai Hanuman’ (Hail Hanumana). Eleven men were charged with his murder, but the murder charge was dropped and converted to culpable homicide not amounting to murder when police claimed that the post mortem and forensic reports found he had died of a heart attack and that the killing was not premeditated. However, on September 18, the police filed a supplementary charge sheet retaining the murder charge against 11 accused based on a fresh medical report after the police sought a second opinion from specialist doctors.

In August, six out of nine men charged with the murder of Pehlu Khan, a dairy farmer who was lynched on the suspicion of cow smuggling, were acquitted by a lower court in Rajasthan. The remaining three are juvenile and being tried by the court designated for trying juvenile offenders. While ordering their acquittal, the court held that the video which captured the attack on Pehlu Khan was not admissible evidence. At the same time, the police filed a case against the deceased Khan and his two sons for smuggling cows.

[i] Amnesty International India, *Between Fear and Hatred: Surviving Migration Detention in Assam*, 23 November 2018

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