

## HUMAN RIGHTS PERSPECTIVE OF FREEDOM OF SPEECH AND EXPRESSION

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### ABSTRACT

Freedom of Expression was guaranteed selectively, and dissent was repressed through unlawful restrictions on peaceful protests and by Silencing Critics. Human Rights defenders, including Students, Academicians, Journalists and Artists, were arbitrarily arrested, often without Charge or Trial. Despite a Supreme Court ruling to reduce prison overcrowding to curb the spread of COVID-19, the Authorities continued to incarcerate many who were critical of the Government. The Authorities failed to adequately investigate or punish perpetrators of violence based on caste, sex and gender, and carried out reprisals against those who reported rape and caste based Crimes. There was widespread impunity and lack of accountability for murders and attacks carried out by vigilante Mobs and Police officers against Religious Minorities. Swift and Extreme Restrictions were placed on freedom of movement in response to the pandemic, leaving thousands of migrant workers stranded without adequate food and protection. Some restrictions to curb the pandemic also threatened the Right to Privacy.

In December 2019, the Government passed the Citizenship (Amendment) Act (CAA) enabling irregular migrants from Afghanistan, Bangladesh and Pakistan to obtain Indian Citizenship, excluding Muslims. The discriminatory nature of the CAA sparked peaceful protests across the Country, which was met with Arbitrary Arrests

and Detention and widespread demonization of those protesting. The Government's Strategy to curb COVID-19 included a punitive lockdown at very short notice, lack of transparency in disbursing relief funds, threats to privacy, and demonization of Religious Minorities.

New Restrictions were imposed on Freedoms of Expression and Assembly in response to the COVID-19 Pandemic. On 24 March, Prime Minister Modi imposed a Nationwide Lockdown (Janata Curfew), comprising mandatory 'Stay-at-Home' quarantine under the Disaster Management Act, a Draconian Law which gives the Government sweeping powers in Disaster Situations. Breaches of the lockdown resulted in arrests and detentions.

**KEYWORDS:** Indian Constitution, Freedom of Speech and Expression, Right to Privacy, Human Rights.

### INTRODUCTION:

Freedom of Expression was guaranteed selectively, and dissent was repressed through unlawful restrictions on peaceful protests and by Silencing Critics. Human Rights defenders, including Students, Academicians, Journalists and Artists, were arbitrarily arrested, often without Charge or Trial. Despite a Supreme Court ruling to reduce prison overcrowding to curb the spread of COVID-19, the Authorities continued to incarcerate many who were critical of the Government. The Authorities failed to adequately investigate or punish perpetrators of violence based on caste, sex and gender, and carried out reprisals against those who reported rape and caste based Crimes. There was widespread impunity and lack of accountability for murders and attacks carried out by vigilante Mobs and Police officers against Religious Minorities. Swift and Extreme Restrictions were placed on freedom of movement in response to the pandemic, leaving thousands of migrant workers stranded without adequate food and protection. Some restrictions to curb the pandemic also threatened the Right to Privacy.

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across the Country, which was met with Arbitrary Arrests and Detention and widespread demonization of those protesting. The Government's Strategy to curb COVID-19 included a punitive lockdown at very short notice, lack of transparency in disbursing relief funds, threats to privacy, and demonization of Religious Minorities.

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Many arrested activists were elderly and in poor health. However, they were held in overcrowded prisons where several inmates had either tested positive or died from COVID-19. Varavara Rao, an 80-year-old poet arrested in the Bhima Koregaon case in 2018, tested positive for COVID-19 in July while in prison. Nevertheless, the Courts continued to reject the bail pleas of the activists.

At least Nine students peacefully protesting against the CAA were arrested and jailed under Counter Terrorism and Sedition Laws. Many other Anti CAA protesters were subjected to intense intimidation and harassment from the Police. Meanwhile, the Authorities ignored violence and hate speech by the supporters of the CAA against those protesting draconian Counter Terrorism Laws, including the Unlawful Activities (Prevention) Act and National Security Act. Safoora Zargar, a research scholar who was three months pregnant at the time, and Umar Khalid, a former student union leader, were among those arrested. Safoora Zargar was later released on bail.

On 26<sup>th</sup> June, the UN High Commissioner for Human Rights called on India to immediately release human rights defenders who had been arrested for protesting against the CAA. However, the majority remained in detention at the end of the year. In December, Uttar Pradesh police arbitrarily arrested 10 Muslim men under a law introduced by the Uttar

Pradesh Government that targets consensual interfaith marriages, and allegedly tortured them. The legislation, which has been termed the "love jihad" law by right-wing nationalists and leading politicians, had not been approved by the Indian Parliament or the state legislature.

### Freedoms of Expression and Assembly

New restrictions were imposed on freedoms of expression and assembly in response to the COVID-19 pandemic. On 24 March, Prime Minister Modi imposed a nationwide lockdown, comprising mandatory 'stay-at-home' quarantine under the Disaster Management Act, a draconian law which gives the government sweeping powers in disaster situations. Breaches of the lockdown resulted in arrests and detentions. Even before the pandemic, freedom of assembly was restricted, including by burdening civilians with recovering the cost of damages to public property after peaceful protests turned violent.

A year after the government revoked the special status of Jammu and Kashmir and split the state into two union territories, the clampdown on civil liberties and restrictions on communications services continued. Political leaders such as Farooq Abdullah, Omar Abdullah and Mehbooba Mufti, who were administratively detained in 2019, were released in 2020. However, the union government continued to silence those who demanded accountability and imposed a harsh media blackout.

At least 18 journalists in Kashmir were physically attacked by police or summoned to police stations. Dissent was further suppressed when a new media policy was introduced by the Jammu and Kashmir government to create "a sustained narrative on the functioning of the government in media" by checking "anti-national activities". On 20 October, the Jammu and Kashmir government closed the office of the *Kashmir Times*, without prior notice, after its editor, Anuradha Bhasin, had challenged the communications blockade in the Supreme Court. The NIA also raided the offices and residences of civil society activists including Khurram Parvez and three of his associates, and

Parveena Ahangar, who had reported extensively on human rights abuses in Kashmir. The NIA alleged that the activists had raised funds for “carrying out secessionist and separatist activities” in Jammu and Kashmir.

During the nationwide lockdown imposed after the COVID-19 outbreak, more than 50 journalists were arrested or charged under emergency laws for spreading “misinformation” or “fake news”. On 7 April, Uttar Pradesh police lodged a First Information Report (FIR) against journalist Prashant Kanojia for allegedly making “objectionable remarks” about Prime Minister Modi and Chief Minister Yogi Adityanath on social media. Shortly afterwards, the Uttar Pradesh police registered another FIR against The Wire, a daily news website, and its editor Siddharth Varadarajan for reporting that Yogi Adityanath had attended a public religious event after the nationwide lockdown was announced.

On 28 September the Government amended the Foreign Contribution (Regulation) Act (FCRA), banning large NGOs from passing to grassroots NGOs funds received from foreign donors. The new amendments also required all FCRA-registered non-profit organizations to limit their administrative expenses to 20% of donations (from the earlier 50%). This amendment was likely to force NGOs to reduce staff, potentially reducing human rights work.

On 30 September, Amnesty International India was forced to halt its operations after the government froze its bank accounts without notice. The organization was forced to lay off all its staff and pause all its campaign and research work. This occurred shortly after Amnesty International India had published briefings demanding accountability for grave human rights violations carried out by the Delhi police and the government during the Delhi riots and in the Jammu and Kashmir region.

More than 160 farmers died after three laws on farming were passed by Parliament in August with minimal consultation. The causes of death included suicides, as well as heart attacks and road accidents during protests. In

November, as the farmers marched towards Delhi to protest the laws, the Delhi police indiscriminately used water cannons and fired tear gas shells, injuring protesters.

### **Unfair Trials**

The courts, particularly the Supreme Court, failed to monitor the government’s response to the COVID-19 crisis in a timely manner. On 13 March, even before the national lockdown was imposed, the Supreme Court declared that the courts – for public health reasons – would function at reduced capacity. Between 23 March and 4 July, the Supreme Court only took up cases of “extreme urgency”, barring physical hearings and relying on video conferencing facilities.

No qualifying criteria or definitions were laid down for cases of “extreme urgency”, leaving judges with wide discretion, resulting in many significant cases involving grave human rights violations either not being heard or being seriously delayed. On 3 April, the Bombay High Court, while hearing a bail application, maintained that the meaning of the term “urgent” was subjective and did not, for example, apply to those seeking bail while awaiting the outcome of their trial.

The Supreme Court routinely undermined its own impartiality and independence. In August it convicted Prashant Bhushan, a lawyer and human rights defender, under the outdated provisions of criminal contempt laws. Prashant Bhushan had criticized on Twitter the court’s functioning since 2014.

### **Unlawful Attacks and Killings**

In February, communal violence broke out in the capital, New Delhi. According to government data, 53 people mostly Muslims died in the riots, and more than 500 were injured. In the build-up to the Legislative Assembly elections in Delhi, held on 8 February, several political leaders made hate speeches against the Anti CAA protesters. On 27 January, referring to the protesters at Shaheen Bagh, the

Delhi epicentre of peaceful sittings against the CAA, the Union Minister of State for Finance, Anurag Thakur, encouraged the crowd to chant “shoot the traitors of the nation”. On 28 January, Parvesh Verma, Member of Parliament for the ruling Bharatiya Janata Party (BJP) claimed that the protesters from Shaheen Bagh would enter citizens’ homes and “rape your sisters and daughters and kill them”. In another speech on the same day, he promised to “not leave even one of [the mosques] standing” after the BJP’s election win in Delhi. These speeches were followed by violence on university campuses against those protesting against the CAA. Hate speeches by political leaders continued after the Delhi elections, followed by widespread violence in the North East district of Delhi. On 23 February, BJP leader Kapil Mishra called on Twitter for people to rally against a women-led protest in Jaffrabad in North East district of Delhi, urging people to “prevent another Shaheen Bagh”. At the rally, he warned the police of dire consequences if the protesters did not vacate the site. Communal violence erupted shortly after his speech.

#### **Excessive use of Force**

The police used unlawful force and committed various other human rights violations, abusing laws to intimidate people and silence dissent on behalf of the union government. During the February communal violence in Delhi, members of the Delhi police pelted stones alongside rioters, tortured people in custody, dismantled sites of peaceful protest and stood by as rioters attacked peaceful protesters and destroyed public and private property. No independent investigation was launched into these acts.

As the COVID-19 pandemic unfolded, the discriminatory enforcement of the lockdown restrictions by the police heightened human rights concerns. The majority of those arrested for violating the lockdown guidelines belonged to marginalized communities such as Scheduled Castes, Scheduled Tribes, De-notified Tribes, Muslims or low-income workers. In March, migrant workers who were travelling back home were forced by the Uttar Pradesh police to crawl on the road carrying their belongings, as punishment

for breaching the lockdown guidelines. On 18 April in Uttar Pradesh, a Muslim man, Mohammed Rizwan, died in hospital two days after being beaten by police with batons when he went out to buy essential supplies. On 19 June, low-income workers P. Jayaraj and his son J. Bennicks were picked up for questioning by the Thoothukudi police in Tamil Nadu for keeping their small shop open during lockdown. The two men were allegedly tortured to death in police custody.

#### **Impunity**

The police continued to carry out unlawful killings – some amounting to extrajudicial executions – with impunity. In July in Kashmir, three young labourers in an apple orchard were unlawfully killed by members of the Indian army. The Armed Forces (Special Powers) Act, which governs the use of force by security personnel in Kashmir, grants virtual immunity to members of the security forces from prosecution for alleged human rights violations. In another extrajudicial execution in July, Vikas Dubey was allegedly killed while being escorted to the city of Kanpur after his arrest by Uttar Pradesh police. Four of his associates were also killed unlawfully by the Uttar Pradesh police. Uttar Pradesh police had earlier claimed in a tweet that since 2017 it had killed 103 “criminals” and injured 1,859 others in 5,178 “police engagements” – a common euphemism used by state actors for alleged extrajudicial executions. Hate crimes including violence against Dalits, Adivasi (Indigenous) communities and religious minorities were also committed with impunity. In September, a Dalit woman was allegedly raped and murdered by a group of dominant-caste men in Hathras district in Uttar Pradesh, and cremated by the Uttar Pradesh police without her family’s consent. The accused men were arrested only after nationwide protests. Later, several FIRs were registered by the Uttar Pradesh police against protesters for criminal conspiracy and sedition.

#### **Right to Health and Livelihood**

The handling of the COVID-19 pandemic exposed weaknesses in the public health care system. It also resulted in unsafe and poor working conditions for those who lack adequate social and economic protection, such as community health care workers and religious minorities. The government accused members of the Muslim Tablighi Jamaat minority of spreading COVID-19, and as a result, health care facilities denied access to Muslims. Instances of hospitals refusing Muslim pregnant women and cancer patients surfaced in April 2020. In the months following the nationwide lockdown of March, social media and WhatsApp groups were flooded with calls for social and economic boycotts of Muslims, alongside fake news stories and other misinformation.

The COVID-19 pandemic overburdened the public health care system, but little protection was provided to front-line health workers in terms of safety equipment and social security such as medical and life insurance. These included people working in the community, such as Accredited Social Health Activist workers and sanitation workers.

The Supreme Court delayed a hearing in a public interest case urgently seeking transport, food and shelter for migrant workers who were left stranded for over a month by the sudden imposition of the lockdown. On 7 April, as many migrant workers were walking to their distant homes in the absence of government-sponsored or public transport, India's Chief Justice, S.A. Bobde, stated while hearing the petition that the Supreme Court "did not want to interfere with the government decisions for the next 10-15 days". At least 200 migrant workers were killed in road accidents while walking long distances home in other districts or states during the lockdown. In May, after intense public pressure, the government began running special trains for stranded migrant workers. However, many died from a lack of food and water on these trains, including a four-year-old child who died of hunger. During the lockdown, workers in the informal sector – who constitute more than three-quarters of India's workforce – faced enormous difficulties due to rampant job losses. However, many states suspended the legal protections otherwise afforded to workers, such as

regulation of working hours, the right to form trade unions, and safe working conditions. The COVID-19 lockdown resulted in an increase in violence against women, particularly domestic violence. Pregnant women and girls faced further barriers accessing health care, and there was an increased risk of maternal mortality and morbidity.

#### **Right to Privacy**

In April, the Government launched the mobile app Aarogya Setu, purportedly to speed up contact tracing and ensure timely access to essential health services and public health information. No information was provided on which government bodies would have access to the data collected through the app. Aarogya Setu's code was not open to the public, in violation of the government's own policy. Although the Ministry of Electronics and Information Technology maintained that downloading the app was not mandatory, many government departments and private companies, including the Airport Authority of India, made it mandatory for their staff to install it.

#### **CONCLUSION:**

It is well known to all that, "The Best Test of Truth is the Power of Thought to get itself accepted in the Market", according to Oliver Wendell Holmes. Libertarian view, conflates the Power of ideas with the Corporate Power to delivery those ideas. Also confuses Truth with Popularity. The Freedom of Speech and Expression guaranteed by Art. 19(1) (a) included the Freedom of the Press. For propagating his ideas a Citizen had the right to publish them, to disseminate them and to circulate them, either by word of Mouth or by Writing. The Intermediaries Guidelines, 2011 force Private Censorship by Internet Companies, making them liable for failing to trawl the content of their users and take down content that is against the rules. They are required to take down content which may cause "Annoyance" and constitute "Blasphemy" which are not defined. If these defects are understood and rectified with the help of Law then Freedom of Speech and Expression guaranteed in the Indian Constitution will serve its purpose to all in the future.