



# Centre for the Sustainable Use of Natural and Social Resources

**Republic of India**

**Joint Submission to the UN Universal Periodic Review**

**41<sup>st</sup> Session of the UPR Working Group**

**Report on Freedom of Association and Assembly in India**

**Submitted by: Centre for the Sustainable Use of Natural and  
Social Resources with co-sponsorship of additional 2698  
organisations and 1457 individuals (full list available in annex  
1).**

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**About the submitting organisations:**

A. Centre for the Sustainable Use of Natural and Social Resources (CSNR) is a registered non-profit, non-political, secular and non-governmental organization started in 1996. Its objectives include promotion and protection of human rights through campaigning for peace and communal harmony in Kandhamal district following the communal violence. It has been working with both at grassroots level and macro level – directly with the communities – with policy makers, to empower local communities. It also actively contributes to policy research, networking and advocacy initiatives at the state level. While CSNR works at the national level, its current primary focus is Odisha State as its area for implementation of activities and its target population are Adivasis, Dalits, Minorities ( religious, cultural, linguistic and sexual ), Person with disability, women and children, elderly and affected populace who have been suffered in the name of development and climate change. The core values of CSNR are to respect human rights, non-violence, social justice, gender equality, accountability, transparency, secular, non-political and democracy.

B. This joint submission is endorsed by additional 2698 organisations and 1457 individuals, including 2219 organisations and 1032 individuals that have opted to stay anonymous for fear of reprisals (full list available in annex 1).

## **Freedom of Association and Assembly in India**

### **1. Introduction**

1.1 The report predominantly focuses on the status of freedom of association and assembly in India since its last Universal Periodic Review (UPR) in 2017. This report was based on research from credible sources of information including the government, international organisations, media reports, and academic publications drawn from the public domain. Input from experts and human rights defenders from all over India were sought through an online national consultation that was jointly conducted by FORUM-ASIA and HRDA on October 12, 2021, held for the purpose of this submission. Nearly 110 participants, all experts working substantially on the freedom of assembly and association, took part in the consultation and contributed to the drafting process of this report.

1.2 In the UPR in 2017, India received nine recommendations regarding freedom of assembly and association, including five recommendations specifically to review and amend the Foreign Contribution (Regulation) Act, 2010 and guarantee free right to association. Further, India was encouraged during the proceedings to respect international standards and the right to assembly in law enforcement operations.<sup>1</sup> India noted these recommendations.

### **2. Freedom of Association and Assembly in India: Overview**

2.1. The Indian Constitution guarantees fundamental rights of citizens such as the right to ‘assemble peaceably and without arms’<sup>2</sup> and to form ‘associations or unions’<sup>3</sup> subject to reasonable restrictions.<sup>4</sup> India is also bound by international human rights covenants including the International Covenant on the Civil and Political Rights<sup>5</sup>, which guarantee the rights to freedom of assembly and of association.

2.2. Whereas the constitutional framework of India is compliant with the international law standards, it is observed that by exercising policing

laws and other security legislations, these fundamental human rights are frequently subject to heavy restrictions and are not guaranteed on the ground.<sup>6</sup>

- 2.3. India has witnessed historic protests during this UPR cycle including the protests against the Citizenship Amendment Act (CAA) 2019, across the country.<sup>7</sup> These mass protests were peaceful and yet met with brutal repression by the state.<sup>8</sup>
- 2.4. Protesting the imposition of the three farm laws<sup>9</sup>, thousands of farmers marched to the borders of the national capital in the *Dilli Chalo* campaign demanding that the laws should be repealed and for the negotiation of Minimum Support Price.<sup>10</sup> Finally, after a year-long protest, the laws were repealed in December 2021. The farmers' protest of 2020-2021 demonstrates the inalienable importance of the right to peaceful assembly in a democracy and that it is one of the crucial tools available to individuals and groups against the state machinery.
- 2.5. To manage the COVID-19 pandemic, the Indian Government imposed a nationwide lockdown with notice of just four hours.<sup>11</sup> Millions of persons including migrant labourers were stranded. Enforcement of the lockdown was met with police excesses. The pandemic was used as a reason to shut down ongoing protests and to restrict peaceful assemblies.
- 2.6. There has been a systematic clampdown in Kashmir after the abrogation of Article 370 of the Constitution of India and the special status of Jammu and Kashmir.<sup>12</sup> Several politicians, academics, journalists were detained or placed under house arrest restricting the right to assembly and organising peaceful protests.<sup>13</sup>
- 2.7. Police authorities routinely subject protesters and organisers of peaceful public assemblies to surveillance. For instance, facial recognition technology was used to track down protesters in New Delhi and Uttar Pradesh.<sup>14</sup> There is no coherent law concerning surveillance and privacy. Mass surveillance using facial recognition technology in the absence of

a legal framework raises serious concerns about the lack of accountability.<sup>15</sup>

### **3. Status of Right to Freedom of Assembly**

#### ***3.1. Right to Protest***

3.1.1. India has a rich history of public assemblies, processions and protests which were a significant part of the independence movement. In the case of ‘Himmat Lal K Shah v. Police Commissioner Ahmedabad’, the Supreme Court has recognized that “public streets are the ‘natural’ places for expression of opinion and dissemination of ideas”.<sup>16</sup> Yet, increasingly, the right to assemble peacefully is restricted by administrative authorities and courts exercising judicial review on constitutionally impermissible grounds of avoiding inconvenience to the public.<sup>17</sup>

3.1.2. The anti-CAA protests in Shaheen Bagh, Delhi,<sup>18</sup> were challenged in Supreme Court on the ground that the protesters were causing inconvenience to the general public: commuters, shopkeepers etc. The Court held that protest should be organised in “designated places” and “public ways and public spaces cannot be occupied in such a manner and that too indefinitely”.<sup>19</sup>

3.1.3. In October 2017, the National Green Tribunal (NGT) banned all protests and sit-ins in and around Jantar Mantar, New Delhi, which was used as an open space allotted by authorities to carry out protests.<sup>20</sup> On appeal, the Supreme Court held that while there can be no blanket ban, Delhi Police can frame guidelines for granting permissions for protests at Jantar Mantar and Boat Club which have been historic sites for protests in the capital.<sup>21</sup> However, the guidelines are restrictive and affect the right to assemble peacefully<sup>22</sup> and run foul of international standards.<sup>23</sup>

3.1.4. Mass protests during this period included protests of indigenous communities against the Statue of Unity, a tourism project in the state of Gujarat that acquired their lands.<sup>24</sup>

3.1.5. HRDA-India has noted and issued urgent appeals where the right to protest and peacefully assemble are threatened. These include an instance where Chhattisgarh police used excessive force against protesters leading to the death of 3 HRDs.<sup>25</sup> It has also issued urgent appeal where environmental activists faced threat, intimidation, assault, and fabricated charges for protesting peacefully against the Jindal Steel Plant in Odisha.<sup>26</sup>

### **3.2. *Prior Permissions***

3.2.1. Though not in keeping with the spirit of Article 19(1)(b) of the Constitution, India in practice, requires prior permissions to conduct protests rather than prior notification. Police legislations of several states authorize police authorities to grant permission for public assemblies or meetings.<sup>27</sup>

3.2.2. The discretion vested with the State is exercised in an arbitrary and often discriminatory manner. Permission is denied to protest against the State or majoritarian policies/politics amounting to subject matter censorship. Vague reasons such as apprehension of violence or public order disruption are given as a ground to deny permission. Rather than providing protection to protesters engaging in peaceful assembly, apprehension of violence against protesters is used to deny the right itself.<sup>28</sup>

### **3.3. *Laws restricting the right to assembly in 'public order'***

3.3.1. General criminal laws such as the Code of Criminal Procedure (CrPC), state police laws as well as special legislations such as the Armed Forces (Special Powers) Act<sup>29</sup> and the Public Safety Act<sup>30</sup> are used to restrict peaceful assemblies.

- 3.3.2. Section 144 of the CrPC authorises the magistrate to issue an order “in urgent cases of nuisance or apprehended danger” to restrict any person or groups from assembling peacefully. Courts have consistently held that Section 144 is meant to be used only in exceptional and proximate situations that give rise to an apprehension of danger or major unrest. It should not become another instrument at the hands of the party in power to quell democratic voices of dissent.<sup>31</sup> Yet, Section 144 CrPC is routinely extended by the local authorities in most parts of the country. This provision was also invoked to disrupt anti-CAA protests and also by internet shutdowns.<sup>32</sup>
- 3.3.3. In light of the frequent internet shutdowns in Kashmir valley and curfew enforced by a massive number of military and para-military troops, freedom of assembly was severely affected.<sup>33</sup>
- 3.3.4. In Kashmir, state authorities invoked Section 107 of the Code of Criminal Procedure permitting detention where ‘breach of peace’ is apprehended and detained several persons.<sup>34</sup> However, those arrested and detained were released only upon signing an undertaking that they will not make any comments, statements, make public speeches, hold or participate in any public assembly relating to the events in Jammu and Kashmir for a period of one year.<sup>35</sup>

#### ***3.4. Use of force against protesters***

- 3.4.1. The brutal use of police force against protesters has been a major concern. Police used severe force against the protesters during the anti-CAA protests held in different parts of the country. In the State of Uttar Pradesh, at least 23 persons were admittedly killed and 83 injured in police action to clamp down CAA protests.<sup>36</sup> In addition, scores of persons were tortured, arrested and detained by the police. Some incidents are as follows:



- a. The police killed five protesters and several persons were injured in the anti-CAA protests in Assam in December 2019.<sup>37</sup>
- b. Chennai police lathi-charged protesters peacefully demonstrating against the CAA in February 2020. The protesters were denied permission by the police to hold a public assembly; when they continued to hold the meeting, they were assaulted to disperse.<sup>38</sup>
- c. Students of Aligarh Muslim University were tortured after they commenced peaceful protests against CAA. Armed security forces entered the University campus, launched a lathi charge, fired tear gas, used stun grenades on students.<sup>39</sup>
- d. In Jamia Millia Islamia University, police entered the campus and cracked down on students peacefully protesting against CAA. The police used tear gas, lathi charge and brutally attacked students after forcibly entering the campus. National Human Rights Commission of India (NHRCI) recommended administrative action against police officers involved in “damaging CCTV cameras, unnecessarily caning” and using tear gas shells inside the library but no criminal prosecution.<sup>40</sup> However, there is no compliance of the same.
- e. Students in Srinagar assembled and protested against the violence at Jamia Millia Islamia students. Police used batons and teargas shells to disperse the assembly. It is reported that journalists attempting to cover the incident were also beaten up and their cameras and phones were snatched away.<sup>41</sup>

3.4.2. State authorities used severe force, including water cannons, batons and tear gas, to stop farmers’ agitation and their attempts to enter Haryana or Delhi.<sup>42</sup> They were denied permission to enter the city<sup>43</sup> or conduct a peaceful protest at Jantar Mantar or Ramlila Maidan in New Delhi<sup>44</sup>. Four farmers were killed by a convoy of cars owned by a Minister run over them deliberately.<sup>45</sup> After one year of protest, in November 2021, the Indian government agreed to repeal the controversial Farm laws.<sup>46</sup>

3.4.3. In May 2018, thirteen people were killed and over a hundred were injured in Thoothukudi, Tamil Nadu, when police opened fire on persons engaging in peaceful protest against the expansion of Sterlite copper smelter plant run by Vedanta Corporation.<sup>47</sup> Pursuant to the public furore over the brutal massacre of the protesters who had assembled peacefully, several authorities took cognizance of the incident. Whereas the Madras High Court has been monitoring the case and has directed the Central Bureau of Investigation to conduct an investigation, the state government has constituted a judicial commission of inquiry. The NHRC conducted its independent investigation, pursuant to the public furore over the brutal massacre of peaceful protesters.<sup>48</sup> Though it is nearly four years since the incident, perpetrators have not been punished and accountability has not been fixed yet. Delayed investigation and prosecution cause concern and is a mark of impunity.

### ***3.5. Criminalisation and prosecution of protesters***

3.5.1. In Uttar Pradesh, the government cracked down severely on anti-CAA protesters resulting in arrests of thousands of people including children.<sup>49</sup> In addition, hoardings and banners were erected in several parts of the capital, displaying large photographs of the faces of protesters against whom proceedings for recovery of damages for “damaging public property” had been initiated for their role in organising and participating in the anti-CAA protests, rendering them vulnerable to assault and reprisals.<sup>50</sup>

3.5.2. In the state of Tamil Nadu, the earlier government, an ally of the Bharatiya Janata Party, the ruling political party(BJP), registered thousands of criminal cases against persons engaging in peaceful protests against the Farm Laws, CAA and other local issues such as projects with environmental/ecological impact such as Salem-Chennai

eight-lane expressway, methane extraction, Neutrino and Koodankulam nuclear power plant.<sup>51</sup> Following a change in regime, the present government withdrew 5,570 cases against peaceful protesters.<sup>52</sup>

- 3.5.3. Blatant misuse of Section 124A of the Indian Penal Code (IPC), which is the sedition law, against protesters was observed. A study has found that six cases of sedition were registered during the farm protests; 25 during anti-CAA protests; 22 after the protest calling for justice in an incident gang-rape and brutal murder of a Dalit girl in Hathras.<sup>53</sup>
- 3.5.4. Pathalgadi movement<sup>54</sup>, a non-violent movement by the indigenous tribal community resisting specific policies of the government, especially changes in the land laws, has been subjected to repression and criminal action by the Jharkhand government. A fact-finding team found that the police charged around 100-150 persons and 14,000 unnamed people under abetment, obstruction to public servants while discharging their duty, creation of public nuisance, criminal intimidation and even sedition for standing in solidarity with the Pathalgadi movement and raising their voice against the attacks on indigenous rights by the government policies;<sup>55</sup> 10,000 persons were charged with sedition.<sup>56</sup>
- 3.5.5. Members of the Delhi Protest Support Group (DPSG), an online group on social media application WhatsApp, which coordinated anti-CAA protests in 24 sites in Delhi were targeted and accused of criminal conspiracy leading to the Delhi riots.<sup>57</sup>
- 3.5.6. The Delhi police registered cases and arrested 34 persons in 2020 under the UAPA. Whereas the government refused to disclose further details, media reports find that these cases were registered against persons for their role in protests against the CAA.<sup>58</sup> Several persons arrested concerning these cases continue to languish in jail despite the passing of two years.<sup>59</sup>

### **3.6. *COVID-19 and the right to protest***

3.6.1. COVID-19 pandemic was used as an excuse to silence the rising wave of protests in the country. Epidemic Diseases Act, 1897, a colonial legislation and the Disaster Management Act, 2005 were used to enforce lockdown norms during the COVID-19 pandemic. However, these laws were abused and applied in a selective manner to restrict protest assemblies.

- a. The government of Uttar Pradesh invoked the Epidemic Diseases Act 1897, and arrested Dr. Ashish Mittal, general secretary of the trade union All India Kisan Mazdoor Sabha, in a bid to stop the anti-CAA protest assembly led by women in Mansoor Park area of Prayagraj.<sup>60</sup>
- b. Criminal cases were filed against hundreds of Accredited Social Health Activists (Asha) workers who protested in Delhi<sup>61</sup> demanding better working conditions.
- c. Cases were reportedly lodged invoking the Epidemic Diseases Act against some youth organisation members for holding a peaceful protest against the killing of two persons due to police firing in Assam.<sup>62</sup>

3.6.2. Whereas the State claims that it has no data on police excesses in enforcing lockdowns that led to harassment, injury or death of individuals,<sup>63</sup> a study by Commonwealth Human Rights Initiative (CHRI) tracked that 15 persons had died after police beating or in police custody for alleged violation of lockdown restrictions during the first five weeks of the lockdown from March 25, 2020 to April 30, 2020.<sup>64</sup>

## **4. Status of Right to Freedom of Association**

### **4.1. Challenges to associations**

4.1.1. Popular Front of India (PFI), a political organisation was banned in Jharkhand for its alleged links with Islamic State.<sup>65</sup> This decision was

taken months after the High Court set aside the ban on the organisation as violative of natural justice and freedoms under Article 19.<sup>66</sup> It is reported that the Central government and other States, including Uttar Pradesh are in the process of considering banning PFI.<sup>67</sup>

4.1.2. The Kashmir High Court Bar Association (KHCBA) was denied permission by the local government to conduct elections in November 2020. <sup>68</sup> The KHCBA is an influential body with over 1200 lawyers that had challenged the abrogation of Article 370 of the Constitution of India and the special status of Kashmir. <sup>69</sup>

4.1.3. The Kashmir Press Club (KPC), an association with 300 members, was forcibly taken over by a small group of journalists with alleged links to the BJP.<sup>70</sup> It is reported that this group physically entered the club premises escorted by armed forces, declared themselves as the interim body and took over the management of the KPC. The body was preparing for its annual elections when this ‘coup’ took place. The government has responded by closing the club and cancelling the allotment of its office premises. <sup>71</sup>

## ***4.2. Freedom of Association and Labour Laws***

4.2.1. The Parliament has enacted new labour codes in 2019<sup>72</sup> intended to consolidate and simplify existing labour laws. The new laws, particularly the Industrial Relations Code, 2020 (“IR Code”), significantly impact the right to association and collective bargaining of workers and undo developments in labour rights and jurisprudence.<sup>73</sup>

4.2.2. The IR Code makes going on strikes extremely onerous procedurally and has the effect of virtually prohibiting them. Strikes in violation of this process are regarded as ‘illegal’, attracting fine and potentially imprisonment.<sup>74</sup>

4.2.3. The IR Code provides the Registrar of Trade Unions has the authority to deregister the union for violation of the Code. In light of the fact that the

right to strike is so severely restricted, any trade union that decides to exercise their right to collective bargaining vide strike without notice or in violation of the procedure in the Code is deemed to engage in an ‘illegal’ strike and the trade union itself can be deregistered for this violation.

### ***4.3. Suspension of labour laws***

4.3.1. In light of COVID-19, States such as Madhya Pradesh and Uttar Pradesh enacted notifications and ordinances suspending central labour laws, including the Trade Unions Act, 1926. These labour laws were suspended for the ease of doing business, for greater ‘labour flexibility’ and to revive economic activity.<sup>75</sup> The fundamental right to association cannot be suspended on grounds of COVID-19 emergency or revival of economic activity.<sup>76</sup> The notifications and ordinances suspending central labour laws, including suspension of the Trade Unions Act, have been challenged before the Supreme Court and is pending.<sup>77</sup>

### ***4.4. Non-ratification of essential labour conventions***

4.4.1. India has not ratified the core/fundamental International Labour Organisation (ILO) Conventions Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The government has claimed that the main reason for non-ratification of ILO Conventions No.87 & 98 is due to certain restrictions imposed on the Government servants.<sup>78</sup>

### ***4.5. NHRCI and Freedom of Association***

4.5.1. The NHRCI in the year 2016, when they were about to go for their re-accreditation process before the Global Alliance of National Human Rights Institutions (GANHRI), it took suo-moto cognizance of the case on alleged FCRA violations of Centre for Promotion of Social Concerns (CPSC), as they considered it as an attack on the freedom of association. The NHRCI issued a notice to the Ministry of Home Affairs (MHA) to submit responses on various queries from them.<sup>79</sup> The first response from the MHA was found undetailed as well as vague by the NHRCI. Further, the second response from the Under Secretary MHA was submitted which was also found unsatisfactory by the NHRCI and asked the Home Secretary of Government of India to submit response to their queries in more detail. However, once the NHRCI was reaccredited with 'A' status back in November 2017 by the Sub Committee of Accreditation (SCA) of GANHRI, they displayed a change in their 'tone' to the case and made a stand that the Commission does not want to interfere in a case which is "pending adjudication before the High Court of Delhi" and thus awaits the final order from the Delhi High Court (DHC). Whereas the Protection of Human Rights Act (PHRA), empowers NHRCI to both – intervene independently and intervene in the said matter in the DHC, the NHRCI officially closed the case<sup>80</sup> in January 2021, letting down not only CPSC but also all the human rights defenders across the country fighting for the right to access resource. By acting into the case, instead of closing it, the NHRCI would have made its jurisprudence clear on the cases of HRDs right to association and thus would have reasserted its powers provided to them as per the PHRA.

4.5.2. The Central Bureau of Investigation (CBI) conducted raid on the premises of CPSC's programme unit, People's Watch on January 08, 2022 after registering a case on January 06, 2022<sup>81</sup> alleging violations under FCRA. HRDA sent an urgent appeal<sup>82</sup> to the NHRCI soon after the said raid, on January 21, 2022 raising four points for their re-

examination and action. However, the NHRCI dismissed it in limini (dismissed without considering the merits of the case) and stated that as per the Regulation 9 (xii) of the National Human Rights Commission (Procedure) Amendment Regulations, 1997 “the Commission may dismiss in limini complaints of the following nature: matter is covered by a judicial verdict/ decision of the Commission. Therefore, the complaints are filed and the cases are closed”.<sup>83</sup> The NHRCI has again shown total hesitancy to perform as per its mandate and fulfil its function.

#### **4.6. *Right to Association and Foreign Contribution (Regulation) Act 2010 (“FCRA”)***

4.6.1. FCRA is a draconian legislation that seeks to control the functioning of civil society organisations. Whilst all foreign funding was completely transparent and were reported to the government, through amendments to FCRA in 2010 and 2020, arbitrary provisions were brought in which effectively choke the working of NGOs.<sup>84</sup> The State has misused provisions of the FCRA to either deny license or suspend, cancel and not renew existing licenses for the CSOs. Prominent organisations, particularly, In the domains of civil liberties and social justice, have been subjected to arbitrary actions under the FCRA.<sup>85</sup> FCRA does not provide for a grievance redressal system, appellate processes and lacks oversight mechanisms and safeguards.

4.6.2. Analyses by former UN Special Rapporteur on freedom of assembly and association, Mr. Maina Kiai,<sup>86</sup> International Commission of Jurists<sup>87</sup> and International Center for Non-Profit Law<sup>88</sup> have revealed that FCRA 2010 and the 2020 amendments are not consistent with international law and hinder the exercise of the right to association.

4.6.3. Between 2016-2020, 8,353 FCRA licenses were not renewed.<sup>89</sup> Between 2017-2021, 6,678 NGOs’ licenses were cancelled.<sup>90</sup> Around 29,000



NGOs' FCRA license either not renewed or cancelled since 2011.<sup>91</sup>

4.6.4. Reputed organisations including Lawyers Collective<sup>92</sup>, Anhad<sup>93</sup>, Sabrang Trust<sup>94</sup>, Centre for Promotion of Social Concerns<sup>95</sup>, Navsarjan Trust<sup>96</sup>, Commonwealth Human Rights Initiative<sup>97</sup>, Oxfam India<sup>98</sup>, Greenpeace India<sup>99</sup>, Amnesty International India<sup>100</sup> and others, have been targeted through provisions of FCRA.

4.6.5. The Supreme Court in the case of '*Indian Social Action Forum (INSAF) v Union of India*' categorically stated that the central government cannot brand an organisation 'political' and deprive it of its right to receive foreign funds for using "legitimate forms of dissent" like *bandh*, *hartal*, (strike) *road roko* (road closure), *jail bharo* (mass arrests) to aid a public cause.<sup>101</sup> There are several other challenges faced by NGOs, whose FCRA licenses have been either suspended, refused or not renewed, pending in various high courts. Most of these petitions have been pending since 2016 and continue to wait for appropriate relief. These challenges to government actions under FCRA are not treated as a priority by the courts and they continue to be pending for over five years. During this prolonged pendency period, several of these organisations have either scaled down their operations or ceased to exist.<sup>102</sup>

4.6.6. Investigating agencies including the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), National Investigating Agency (NIA), are being used against human rights defenders and civil society organisations, opposition political parties, especially during elections<sup>103</sup> to intimidate them.<sup>104</sup> Prominent HRDs associated with CSOs such as Harsh Mander<sup>105</sup>, Khurram Parvez<sup>106</sup> and others involved with protests against farm laws and CAA have been subjected to raids and other harassment from law enforcement authorities.<sup>107</sup>

## **5. Recommendations:**

- 5.1. Repeal the Foreign Contribution (Regulation) Act to ensure the right to freedom of association, which includes the right to access resources for civil society organizations including foreign funding.
- 5.2. Amend provisions in Criminal Procedure Code and other criminal laws that restricts freedom of assembly, in compliance with international standards
- 5.3. Ratify International Labour Organisation (ILO) Conventions on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- 5.4. Amend the Industrial Relations Code 2020 in line with international standards
- 5.5. Ensure that law enforcement officials and security forces abide by the United Nations basic principles on the use of force and firearms and in accordance with other international standards
- 5.6. Ban the use of indiscriminate and lethal means to curb peaceful protests

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<sup>1</sup> “Report of the Working Group on the Universal Periodic Review India”, A/HRC/36/10, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/193/56/PDF/G1719356.pdf?OpenElement> and page 29-30 at [http://wghr.org/assets/publications/doc/\\_zqej7.pdf](http://wghr.org/assets/publications/doc/_zqej7.pdf).

<sup>2</sup> Article 19(1)(b), Constitution of India 1950.

<sup>3</sup> Article 19(1)(c), Constitution of India 1950.

<sup>4</sup> As per Article 19(3) of the Constitution, the right to assembly can be subjected to reasonable restrictions by law on the grounds of sovereignty and integrity of India or public order. As per Article 19(4) of the Constitution, the right to association can be subjected to reasonable restrictions by law only on the grounds of sovereignty and integrity of India, public order or morality.

<sup>5</sup> Article 21 of the ICCPR guarantees the right to peacefully assemble whereas Article 22 enshrines the freedom of association, both with reasonable restrictions “which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.

<sup>6</sup> For example, restrictions on the freedom to assembly are imposed predominantly citing ‘public order’ concerns even when the threshold of ‘public order’ is not breached and are further not applied in a proportionate manner.

<sup>7</sup> The Citizenship (Amendment) Act was enacted in 2019 enabling migrants who were religious minorities from Afghanistan, Bangladesh and Pakistan to be eligible for Indian citizenship but excluded Muslims and therefore overtly discriminatory on the basis of

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religion. See, Apurva Vishwanath, Kaunain Sheriff M, “Explained: What NRC+CAA means to you”, The Indian Express, December 25, 2019, Available at: <https://indianexpress.com/article/explained/explained-citizenship-amendment-act-nrc-cao-means-6180033/>

<sup>8</sup> Peaceful sit-in protest against the CAA at Shaheen Bagh, New Delhi lasted 101 days with numbers of protesters reaching as much as 150,000 according to some reports. Spearheaded by women, this protest inspired similar protests in several parts of the country. There has been brutal repression of anti-CAA protests with the police using “excessive force against demonstrators, including firing indiscriminately into crowds, using teargas and water cannons, beating bystanders and detaining and torturing protesters, including children”. It is reported that at least 31 persons were killed and were injured. No impartial and transparent investigations into the violence have been conducted to this day. See, “After a 101-Day Sit-In, Shaheen Bagh Protest Cleared Due to Coronavirus Lockdown”, The Wire, March 24, 2020, Available at: <https://thewire.in/rights/shaheen-bagh-cleared-coronavirus-lockdown>; Murali Krishnan, “India citizenship law protests spearheaded by women”, DW, January 22, 2020, Available at: <https://www.dw.com/en/india-citizenship-law-protests-spearheaded-by-women/a-52108903>; Debobrat Ghose, “Anti-CAA protest at Shaheen Bagh, powered by women, has become symbol of resistance and spawned replicas across country”, First Post, January 20, 2020, Available at: <https://www.firstpost.com/india/anti-caa-protest-at-shaheen-bagh-powered-by-women-has-become-symbol-of-resistance-and-spawned-replicas-across-country-7933071.html>. See also, “From Delhi to Hyderabad: How Shaheen Bagh-type protest has galvanised people”, Hindustan Times, January 23, 2020, Available at: <https://www.hindustantimes.com/india-news/from-delhi-to-hyderabad-how-shaheen-bagh-type-protest-has-galvanised-people/story-XBGLMRrXYTh4PkcV9hFaAI.html>; OMCT and International Commission of Jurists, “India: repression of protests violating freedom of association and assembly”, July 10, 2020, Available at: <https://www.icj.org/hrc44-india-foa/>

<sup>9</sup> The Parliament passed three laws (Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 and Essential Commodities (Amendment) Act, 2020) which deregulated government run agricultural markets to facilitate contract farming. These laws were resisted by farmers fearing that it would make marginal farmers vulnerable to exploitation by corporates especially if minimum floor price of agricultural products is removed.

<sup>10</sup> The government attempted to stop the farmers from entering Haryana and Delhi by using water canons, batons and tear gas. See, “Protesting farmers brave water cannons, tear gas shells: Key points”, Times of India, November 26, 2020, Available at: [http://timesofindia.indiatimes.com/articleshow/79430745.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpps](http://timesofindia.indiatimes.com/articleshow/79430745.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps)

<sup>11</sup> “Modi Orders 3-Week Total Lockdown for All 1.3 Billion Indians”, The New York Times, March 24, 2020, Available at: <https://www.nytimes.com/2020/03/24/world/asia/india-coronavirus-lockdown.html>

<sup>12</sup> “Article 370: What happened with Kashmir and why it matters”, BBC, August 5, 2019, Available at <https://www.bbc.com/news/world-asia-india-49234708>.

<sup>13</sup> The leaders who were under house arrests include the former Chief Ministers of Kashmir like Omar Abdullah, Farooq Abdullah and Mehbooba Mufti among many others. See, “Year since abrogation of Article 370, Mehbooba Mufti, other politicians still under detention as Centre claims normalcy”, First Post, February 17, 2021, Available at: <https://www.firstpost.com/india/year-since-abrogation-of-article-370-mehbooba-mufti-other-politicians-still-under-detention-as-centre-claims-normalcy-8667411.html>.

<sup>14</sup> ‘Delhi, UP Police use facial recognition tech at anti-CAA protests, others may soon catch up’, India Today, February 18, 2020, Available at: <https://www.indiatoday.in/india/story/delhi-up-police-use-facial-recognition-tech-at-anti-caa-protests-others-may-soon-catch-up-1647470-2020-02-18>

<sup>15</sup> ‘India is ramping up the use of facial recognition to track down individuals without any laws to keep track of how this technology is being used’, Business Insider India, February 10, 2021, Available at: <https://www.businessinsider.in/tech/news/what-is-facial-recognition->

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[technology-and-how-india-is-using-it-to-track-down-protestors-and-individuals/articleshow/80782606.cms](https://www.indiankanoon.org/doc/296985/)

<sup>16</sup> The Supreme Court further observed: “Indeed it may be argued that for some persons these places are the only possible arenas for the effective exercise of their freedom of speech and assembly.” See, *Himmat Lal K Shah v. Police Commissioner Ahmedabad* (Supreme Court of India, 1972) AIR 1973 SC 87, Available at: <https://indiankanoon.org/doc/296985/> /

<sup>17</sup> Article 19(2) does not permit restrictions on the ground of public inconvenience such as traffic congestion, difficulty to shopkeepers etc. When peaceful assemblies are prohibited in public spaces and sought to be restricted to designated zones only, for reasons and grounds such as public inconvenience that are not prescribed in the Constitution of India, the sanctity of the right to assembly stands considerably diminished. This in turn affects the right to free speech, right to life and the functioning of democracy itself.

See, Vrinda Grover, “Assessing India’s Legal Framework on the Right to Peaceful Assembly”, December 2021, Available at: <https://www.icnl.org/wp-content/uploads/India-freedom-of-assembly-report-2021-final.pdf>

<sup>18</sup> “To better understand the Shaheen Bagh protest, we must understand the locality itself” , The Caravan, January 20, 2020, Available at: <https://caravanmagazine.in/politics/shaheen-bagh-locality-cao-protest>.

<sup>19</sup> “Supreme Court’s Shaheen Bagh judgment is well meaning judicial anguish, not binding law”, The Print, November 22, 2020, Available at: <https://theprint.in/opinion/supreme-courts-shaheen-bagh-judgment-is-well-meaning-judicial-anguish-not-binding-law/548468/>

<sup>20</sup> Residents of Jantar Mantar Road argued that the processions and protests “violate their right to live in a peaceful and healthy environment, right to silence, right to sleep and right to life with dignity”. The NGT upheld the claims of the residents and directed that all protests should be shut down in light of the residents’ right to live peacefully and comfortably without noise or other pollution. See, Gaurav Vivek Bhatnagar, “NGT Ban on Jantar Mantar Protests a Blow for Democracy, Say Activists”, The Wire, October 6, 2017, Available at : <https://thewire.in/politics/ngt-ban-on-jantar-mantar-protests-a-blow-for-democracy-ay-activists>

<sup>21</sup> *Mazdoor Kisan Shakti Sangathan vs Union Of India* (Supreme Court of India, Order dated July 23, 2018), Available at: <https://indiankanoon.org/doc/80616728/>. See also, “No blanket ban on protests at Delhi’s Jantar Mantar, Boat Club: Supreme Court”, Hindustan Times, July 23, 2018, Available at: <https://www.hindustantimes.com/delhi-news/supreme-court-lifts-ban-on-protests-at-delhi-s-jantar-mantar-boat-club/story-ZXCxMVn14gkw2mL9aKCrPK.html>.

<sup>22</sup> As per the guidelines framed by the Delhi police, protesters should apply for permission to hold assembly seven days in advance. There is a complete ban on burning effigies and documents; loud speakers and public announcements are not allowed in the protest unless received the prior written permission from the Deputy Commissioner of Police and if permission granted, it can be used only between 11 AM and 4 PM. The guidelines also hold that “spontaneous, leaderless and directionless” protests resulting out of “tragic incidents” might lead to wide damage and hence are not allowed. if the organisers bring “protesters in huge excess”, protesters will be “blacklisted and will not be allowed to protest in the jurisdiction of Delhi”. See, “1,000 Protesters at a time, Prior Permissions to be Taken for using Loudspeakers, Public Address Systems at Jantar Mantar: Delhi Police”, India.com, September 13, 2018, Available at: <https://www.india.com/news/india/1000-protesters-at-a-time-prior-permission-to-be-taken-for-using-loudspeakers-public-address-systems-at-jantar-mantar-say-delhi-police-guidelines-3322697/>

<sup>23</sup> General Comment No.37 adopted by the Human Rights Committee on the freedom of peaceful assembly states that “the regulation of the time, place and manner of assemblies is generally content neutral, and while there is some scope for restrictions that regulate these elements, the onus remains on the authorities to justify any such restriction on a case-by-case basis”. CCPR/C/GC/37

<sup>24</sup> “Tribals from villages around Statue of Unity stage protest”, Deccan Herald, September 13, 2020, Available at: <https://www.deccanherald.com/national/west/tribals-from-villages-around-statue-of-unity-stage-protest-887048.html>. In June 2021, 11 Adivasi protesters were arrested for staging peaceful protest near the Statue of Unity and FIR was registered against

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20 persons. “Gujarat: 11 Adivasis arrested for protesting against proposed parking lot near Statue of Unity”, Scroll.in, June 9, 2021, Available at:

<https://scroll.in/latest/997052/gujarat-11-ativasis-arrested-for-protesting-against-proposed-parking-lot-near-statue-of-unity>

<sup>25</sup> “Excessive use of force by Chhattisgarh Police including firing on peaceful Adivasi protestors – Urgent Appeal”, June 8, 2021, Available at:

<https://hrdaindia.org/excessive-use-of-force-by-chhattisgarh-police-including-firing-on-peaceful-ativasi-protestors>.

<sup>26</sup> “Threat, intimidation, assault and fabricated charges against HRDs for peaceful protests against Jindal Steel Plant”, December 8, 2021, Available at: <https://hrdaindia.org/threat-intimidation-assault-and-fabricated-charges-against-hrds-for-peaceful-protests-against-jindal-steel-plant>

<sup>27</sup> It may be noted that most Police Acts are colonial legislations, or enacted after independence but modeled on the colonial laws. They were enacted to crush dissent and hamper the peoples’ movement for independence and self-determination. These laws are inappropriate in a democracy and need reform. Commonwealth Human Rights Initiative, ‘Police Act, 1861: Why we need to replace it?’ July 2005, Available at: [https://www.humanrightsinitiative.org/programs/aj/police/papers/advocacy\\_paper\\_police\\_act\\_1861.pdf](https://www.humanrightsinitiative.org/programs/aj/police/papers/advocacy_paper_police_act_1861.pdf)

<sup>28</sup> Vrinda Grover, *ibid*.

<sup>29</sup> Armed Forces (Special Powers) Act 1958 grants special powers to the armed forces to maintain “public order” in notified “disturbed areas” in the North East states of Assam, Manipur, Nagaland and Arunachal Pradesh including restricting public assemblies or gatherings. A similar legislation, the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 applies in Kashmir.

<sup>30</sup> Jammu and Kashmir Public Safety Act 1978 enables designation of certain areas in Kashmir as “prohibited” and restrict access thereto and allows preventive detention for maintenance of public order.

<sup>31</sup> Anuradha Bhasin v. Union of India, Order of the Supreme Court of India, Available at: [https://main.sci.gov.in/supremecourt/2019/28817/28817\\_2019\\_2\\_1501\\_19350\\_Judgement\\_10-Jan-2020.pdf](https://main.sci.gov.in/supremecourt/2019/28817/28817_2019_2_1501_19350_Judgement_10-Jan-2020.pdf)

<sup>32</sup> ‘Mobile internet shutdowns in Lucknow, Ghaziabad, Mangalore amid anti-CAA protests’, The Indian Express, December 20, 2019, Available at:

<https://indianexpress.com/article/technology/tech-news-technology/anti-citizenship-act-protests-mobile-internet-shutdown-in-parts-of-delhi-confirm-airtel-and-vodafone>.

<sup>33</sup> “UN rights experts urge India to end communications shutdown in Kashmir”, August 22, 2019, Available at: <https://www.ohchr.org/en/press-releases/2019/08/un-rights-experts-urge-india-end-communications-shutdown-kashmir?LangID=E&NewsID=24909>

<sup>34</sup> Tribune India News Service, ‘Omar, Mufti likely to be shifted to houses’, Available at <https://www.tribuneindia.com/news/j-k/omar-mufti-likely-to-be-shifted-to-houses-36475>

<sup>35</sup> Detenus were further constrained to deposit money as surety and undertake to pay Rs.40,000/- as further surety for violation of the commitment.

“In Kashmir, Freedom at a Price: Go Back to Jail if you speak or comment on Article 370”, The Wire, October 21, 2019, Available at: <https://thewire.in/rights/kashmir-freedom-at-a-price-go-back-to-jail-if-you-speak-or-comment-on-article-370>

<sup>36</sup> Citizens Against Hate, “Everyone has been silenced: Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-violence Reprisal”, March 2020, Available at: <https://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>

<sup>37</sup> See, Anupam Chakravartty, “How Five People in Assam were killed during Anti-Citizenship Amendment Protests”, The Wire, December 16, 2019, Available at: <https://thewire.in/rights/assam-anti-citizenship-amendment-act-protest-deaths>

<sup>38</sup> ‘Police use force to disperse anti-CAA protesters in Chennai’, Deccan Chronicle, February 15, 2020, Available at: <https://www.deccanchronicle.com/nation/current-affairs/150220/police-use-force-to-disperse-anti-caa-protesters-in-chennai.html>

<sup>39</sup> Harsh Mander, 'In Aligarh, police used stun grenades against students – and university officials justified this', Scroll.in, December 20, 2019, Available at: <https://scroll.in/article/947335/in-aligarh-police-used-stun-grenades-against-students-and-university-officials-justified-this>

<sup>40</sup> Nikita Khaitan, 'One Year On, No Accountability for Delhi Police's Terrifying Impunity at Jamia', The Wire, December 15, 2020, Available at: <https://thewire.in/rights/jamia-millia-islamia-violence-delhi-police>

<sup>41</sup> 'Anti-CAA protests: Police use force after students protest in Srinagar', The Hindu, December 17, 2019, Available at: <https://www.thehindu.com/news/national/anti-cao-protests-police-use-force-after-students-protest-in-srinagar/article30332392.ece>

<sup>42</sup> "Protesting farmers brave water cannons, tear gas shells: Key points", Times of India, November 26, 2020, Available at: [http://timesofindia.indiatimes.com/articleshow/79430745.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/79430745.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>43</sup> A number of borders were closed by erecting metal barricades and cement walls to stop farmers from entering Delhi. Barbed fences and roads studded with nails were put up to stop protesters entering Delhi by foot. In protest, farmers blocked some of the highways and continued peaceful sit-in assembly. See, "Protest sites turn fortresses: Barricades strengthened, roads studded with nails", Times of India, February 1, 2021, Available at: [http://timesofindia.indiatimes.com/articleshow/80636363.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/80636363.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>44</sup> Priscilla Jebaraj, "Farmers vow to come to Delhi for protest despite police refusing permission", The Hindu, November 11, 2020, Available at: <https://www.thehindu.com/news/cities/Delhi/farmers-vow-to-come-to-delhi-for-protest-despite-police-refusing-permission/article33076199.ece>

<sup>45</sup> Omar Rashid, Vijaita Singh, "Four farmers killed as car in Union Minister's convoy runs amok in Uttar Pradesh", The Hindu, October 3, 2021, Available at: <https://www.thehindu.com/news/national/other-states/farmers-killed-as-car-in-union-ministers-convoy-runs-amok/article36807735.ece>

<sup>46</sup> 'PM Modi says three farm laws to be repealed; BJP calls it in 'national interest', The Indian Express, November 20, 2021 Available at: <https://indianexpress.com/article/india/pm-modi-bjp-on-farm-laws-repeal-7632045/>

<sup>47</sup> "Thoothukudi firing victims killed by shots to head, chest; half from behind: Post-mortem reports", The New Indian Express, December 22, 2018, Available at: <https://www.newindianexpress.com/states/tamil-nadu/2018/dec/22/thoothukudi-firing-victims-killed-by-shots-to-head-chest-half-from-behind-postmortem-reports-1915164.html>

<sup>48</sup> "Police firing on anti-Sterlite protestors in Thoothukudi is a 'scar on democracy', says Madras HC", Scroll.in, September 13, 2021, Available at: <https://scroll.in/latest/1005296/police-firing-on-anti-sterlite-protestors-in-thoothukudi-is-a-scar-on-democracy-says-madras-hc#:~:text=The%20police%20firing%20on%20citizens,incident%20must%20not%20be%20forgotten..>

<sup>49</sup> Citizens Against Hate, "Everyone has been silenced: Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-violence Reprisal", March 2020, Available at: <https://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf%20>

<sup>50</sup> The High Court struck down the action of the State government in erecting hoardings and banners as a means to recover damages. See, In red Banners Placed on the Roadside in the City of Lucknow v. State of Uttar Pradesh, Order of the Allahabad High Court dated March 9, 2020, Available at: <https://indiankanoon.org/doc/145043097/>

<sup>51</sup> This included around 1500 cases registered against anti-CAA protesters under charges of causing damage to public property and preventing police from working. See, "Tamil Nadu to withdraw cases against anti-CAA protesters, lockdown violators", The News Minute, February 19, 2021, Available at: <https://www.thenewsminute.com/article/tamil-nadu-withdraw-cases-against-anti-cao-protesters-lockdown-violators-143759>

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<sup>52</sup> “Tamil Nadu withdraws 5,570 cases against protesters”, The Hindu, September 14, 2021,

Available at: <https://www.thehindu.com/news/national/tamil-nadu/tn-government-withdraws-5570-cases-against-protestors-of-controversial-projects-cao/article36446419.ece>

<sup>53</sup> ‘Our new database reveals rise in sedition cases in the Modi era- Article 14’, Available at: <https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era>.

<sup>54</sup> The Wire, ‘The State’s Violence Response to Tribal Discontent is fuelling the Pathalgadi Movement’, June 29, 2018, Available at: <https://thewire.in/rights/jharkhand-pathalgadi-movement-abduction-violence>

<sup>55</sup> Ibid

<sup>56</sup> Supriya Sharma, “10,000 people charged with sedition in one Jharkhand district. What does democracy mean here?”, Scroll.in, November 19, 2019, Available at:

<https://scroll.in/article/944116/10000-people-charged-with-sedition-in-one-jharkhand-district-what-does-democracy-mean-here>. While the new government led by Chief Minister Hemant Soren promised to drop all cases of sedition, news reports state that they are yet to be formally withdrawn. Abhishek Angad, “Year on, withdrawal of Pathalgadi cases crawls; CM Soren says will look into it”, The Indian Express, December 21, 2020, Available at: <https://indianexpress.com/article/india/year-on-withdrawal-of-pathalgadi-cases-crawls-cm-soren-says-will-look-into-it-7112728/>

<sup>57</sup> Ajoy Ashirwad Mahaprashasta, “How Delhi Police Turned Anti-CAA Whatsapp Group Chats Into Riots Conspiracy”, August 3, 2020, Available at:

<https://thewire.in/communalism/delhi-riots-police-activists-whatsapp-group>

<sup>58</sup> Out of the 34 persons, 26 are Muslims, 21 Sikhs, one member of a Scheduled Tribe and two Hindus. The refusal to officially disclose names or details has substantiated doubts that the UAPA is used against persons belonging to minority communities, Dalits and adivasis. See, Gaurav Vivek Bhatnagar, “Delhi arrested 34 under UAPA in 2020. Here’s why the Home Ministry won’t list them out”, The Wire, August 16, 2021, Available at: <https://thewire.in/government/details-of-the-9-uapa-firs-that-the-union-govt-refused-to-share-in-parliament>

<sup>59</sup> Ishrat Jahan, one of the accused in FIR 59 of 2020 was released on bail on March 14, 2022 after her arrest on February 26, 2020. Available at: <https://www.thequint.com/news/law/uapa-accused-ishrat-jahan-gets-bail-in-delhi-riots-larger-conspiracy-case>

<sup>60</sup> Ajoy Ashirwad Mahaprashasta, ‘Outrage as Adityanath Govt Uses Epidemic Diseases Act to arrest CAA Dissenter’, The Wire, March 27, 2020, Available at: <https://thewire.in/rights/ashish-mittal-epidemic-act-uttar-pradesh>

<sup>61</sup> The demands of the protesters included provisions for protective gear and wage hike from Rs.4,000 to Rs.10,000 per month. These workers were slapped with criminal cases under various provisions of law including Section 188 (Disobedience to order duly promulgated by public servant) of the IPC, Section 3 of the Epidemic Disease Act and Section 51B of the Disaster Management Act. “FIR against 100 Asha Workers for Jantar Mantar protest”, Hindustan Times, August 11, 2020, Available at: <https://www.hindustantimes.com/cities/fir-against-100-asha-workers-for-jantar-mantar-protest/story-q2obOCJAwddgNEt0QeM7IL.html>.

<sup>62</sup> ‘UP body protesting Assam police firing booked under Pandemic Act’, Scroll.in, September 29, 2021, Available at: <https://scroll.in/latest/1006492/assam-evictions-fir-filed-against-up-youth-organisation-for-protesting-deaths-during-police-firing>

<sup>63</sup> “No data on police excesses during lockdown: MHA”, The Hindu, September 16, 2020, Available at: <https://www.thehindu.com/news/national/no-data-on-police-excesses-during-lockdown-mha/article32619432.ece>

<sup>64</sup> “NHRC Seeks Report From 8 States on 15 Deaths Due to Police Excesses in Lockdown”, The Wire, June 10, 2020, Available at: <https://thewire.in/rights/nhrc-police-brutality-deaths-lockdown>

<sup>65</sup> “UP Wants to Ban Popular Front of India, So Does Kerala. But There is a Complication”, News18.com, January 5, 2020, Available at: <https://www.news18.com/news/india/up-wants-to-ban-popular-front-of-india-so-does-kerala-but-there-is-a-complication-2446117.html>

<sup>66</sup> “Jharkhand HC decision to revoke PFI ban welcomed”, The Times of India, August 29, 2018, Available at: <https://timesofindia.indiatimes.com/city/kozhikode/jharkhand-hc-decision-to-revoke-pfi-ban-welcomed/articleshow/65584730.cms>

<sup>67</sup> “Centre in process of banning Popular Front of India, Supreme Court told”, Economic Times, April 28, 2021, Available at: [https://economictimes.indiatimes.com/news/india/centre-in-process-of-banning-popular-front-of-india-supreme-court-told/articleshow/82294287.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/india/centre-in-process-of-banning-popular-front-of-india-supreme-court-told/articleshow/82294287.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>68</sup> The KHCBA was asked to clarify its position on Kashmir on whether the Association considered Kashmir as a ‘disputed region’ or as an integral part of India and was denied permission to conduct elections. Zulfikar Majid, ‘Kashmir Bar defers polls after asked to clarify its stand on ties with India’, November 10, 2020. Available at: <https://www.deccanherald.com/national/kashmir-bar-defers-polls-after-asked-to-clarify-its-stand-on-ties-with-india-913913.html>

<sup>69</sup> The Hindu ‘Kashmir bar defers polls as admin fails to issue permission’ October 8, 2020), Available at <https://www.thehindu.com/news/national/other-states/kashmir-bar-defers-polls-as-admin-fails-to-issue-permission/article32805662.ece>. Further, its President Mian Qayoom was one of the lawyers arrested and detained in the crackdown launched around the abrogation of Article 370. Peerzada Ashiq, ‘Kashmir Bar defer polls after govt notice’, The Hindu, November 10, 2020, Available at: <https://www.thehindu.com/news/national/kashmir-bar-defers-polls-after-govt-notice/article33068893.ece>

<sup>70</sup> Jehangir Ali, “‘Illegal Coup’ at Kashmir Press Club: Editors Guild of India Condemns ‘Police Complicity’”, The Wire, January 16, 2022, Available at: <https://thewire.in/media/coup-kashmir-press-club-saleem-pandit-free-press>

<sup>71</sup> Bashaarat Masood, “J&K govt disbands, takes control of Kashmir Press Club: ‘bid to stifle voice’”, The Indian Express, January 18, 2022, Available at: <https://indianexpress.com/article/cities/srinagar/jammu-and-kashmir-government-takes-control-of-kashmir-press-club-premises-7727932/>

<sup>72</sup> ‘The Anti – Labour Codes’, Aug 2021, from [https://pudr.org/sites/default/files/2021-08/Anti-Labour%20Codes\\_PUDR\\_16Aug.pdf](https://pudr.org/sites/default/files/2021-08/Anti-Labour%20Codes_PUDR_16Aug.pdf).

<sup>73</sup> Freedom to associate was recognised in labour law much ahead of the International Bill of Human Rights. It was achieved primarily through the strike of workers of Buckingham and Carnatic Mills in the city of Madras as early as 1921. The Trade Union Act, 1926 afforded immunity from certain type of criminal proceedings, civil action and tortious action. As individual labourers have a weak bargaining position, collective bargaining through strikes or the threat to strike which can shut down production is an invaluable tool.

<sup>74</sup> The Industrial Disputes Act 1947 places certain restrictions on striking in industries that are ‘public utility services’, whereas strike can be proceeded with in non-public utility services in a fairly straightforward manner. The IR Code has removed the distinction between ‘public utility’ and ‘non public utility’. Accordingly, the concerned trade union will have to issue a strike notice before 14 days, which was previously applicable only to public utility. During the notice period, mandatory conciliation process is initiated during which there can be no strike. Further, there can be no strike when any adjudication is pending. Darren Lobo, ‘By prohibiting strikes, India’s new labour codes will make employees powerless’, The News Minute, January 8, 2021, Available at: <https://www.thenewsminute.com/article/prohibiting-strikes-india-s-new-labour-codes-will-make-employees-powerless-141083>

<sup>75</sup> Aayush Rathi and Sreyan Chatterjee, ‘Indian states’ decision to suspend labour law amid COVID-19 crisis is delirious policy-making not backed by empirical analysis’, FirstPost, May 21, 2020, Available at: <https://www.firstpost.com/india/indian-states-decision-to-suspend-labour-law-amid-covid-19-crisis-is-delirious-policy-making-not-backed-by-empirical-analysis-8391901.html>

<sup>76</sup> The Constitution in Article 19(4) prescribes that the right to form associations and unions can be restricted only in the interests of ‘sovereignty and integrity of India,’ ‘public order’ or ‘morality.’ Thulasi K Raj, “States’ labour law changes impact right to association”, The



Statesman, May 24, 2020, Available at: <https://www.thestatesman.com/opinion/states-labour-law-changes-impact-right-to-association-1502890957.html>

<sup>77</sup> Krishnadas Rajagopal, 'Plea in Supreme Court challenges changes in labour laws', The Hindu, May 20, 2020, Available at: <https://www.thehindu.com/news/national/plea-in-supreme-court-challenges-changes-in-labour-laws/article31622334.ece>

<sup>78</sup> As communicated by Department of Personnel & Training (DOPT), the ratification of these conventions would involve granting of certain rights that are prohibited under the statutory rules, for the Government employees, namely, to strike work, to openly criticize Government policies, to freely accept financial contribution, to freely join foreign organizations etc. Press Information Bureau, 'India ratified six out of the eight core/fundamental International Labour Organisation (ILO) Conventions', July 24, 2017, Available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=168889>

<sup>79</sup> The first response from the Under Secretary (FCRA), Foreign Division, MHA was found undetailed as well as vague by the NHRCI. Further, the second response from the Under Secretary, FCRA II, MHA was submitted which was also found unsatisfactory by the NHRCI and asked the Secretary (Home), MHA, Government of India to submit response to their queries in more detail. Available at: <https://rb.gy/bpqzai>

<sup>80</sup> NHRCI Closed Order on the CPSC Case, Available at: <https://rb.gy/bpqzai>

<sup>81</sup> CBI FIR registered on 06 Jan, 2022, Available at: <https://rb.gy/bm02to>

<sup>82</sup> HRDA Urgent Appeal, Available at: <https://rb.gy/5ezew3>

<sup>83</sup> NHRCI Response to the HRDA UA, Available at: <https://rb.gy/aelq8l>

<sup>84</sup> The amendments to FCRA notified by the Ministry of Law and Justice on 28 September, 2020 have brought in stringent restrictions and the major amendments are: inclusion of "public servants" in the list of persons who are prohibited to receive any foreign funding; the complete prevention on transfer of the funds from the receiver to any other person or organization; the mandatory requirement to have a State Bank of India (SBI) account in New Delhi in order to receive FCRA which will be designated as the "FCRA Account"; cancellation of FCRA certificate or registration for a period of 180 days in addition to the 180 days allowed at present and; the reduction to the upper limit of 20% from 50% on the percentages of the fund that could be utilized for administrative expenses. See, 'Recent amendments in the Foreign Contribution (Regulation) Act - Government, public sector – India', Oct 20<sup>th</sup>, 2020, Available at: <https://www.mondaq.com/india/government-contracts-procurement-ppp/994272/recent-amendments-in-the-foreign-contribution-regulation-act>. See further, HRDA-India, "Submission to 50th HRC session report – Access to Resources", February 18, 2022

<sup>85</sup> Id. UN High Commissioner for Human Rights Ms. Michelle Bachelet stated: "*The FCRA has been invoked over the years to justify an array of highly intrusive measures, ranging from official raids on NGO offices and freezing of bank accounts, to suspension or cancellation of registration, including of civil society organizations that have engaged with UN human rights bodies..... I am concerned that such actions based on the grounds of vaguely defined 'public interest' leave this law open to abuse, and that it is indeed actually being used to deter or punish NGOs for human rights reporting and advocacy that the authorities perceive as critical in nature. Constructive criticism is the lifeblood of democracy. Even if the authorities find it uncomfortable, it should never be criminalized or outlawed in this way.*" <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26398&LangID=E>

<sup>86</sup> <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>

<sup>87</sup> <https://www.icj.org/wp-content/uploads/2020/12/India-FCRA-Briefing-Paper-2020-ENG.pdf>

<sup>88</sup> <https://www.icnl.org/wp-content/uploads/FCRA-Amendments-Briefer-7-7-21.pdf>

<sup>89</sup> <http://164.100.24.220/loksabhaquestions/annex/175/AU1260.pdf>

<sup>90</sup> <http://164.100.24.220/loksabhaquestions/annex/175/AU1278.pdf>, <http://164.100.24.220/loksabhaquestions/annex/173/AU3748.pdf> and <http://164.100.24.220/loksabhaquestions/annex/178/AU1054.pdf>

<sup>91</sup> In 2014-2015, India had more than 40,000 NGOs with valid FCRA license. As on February 28, 2021, 22,489 NGOs had FCRA license, and 189 NGOs were granted prior permission

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over the past five years.

<sup>92</sup> FCRA registration of Lawyers Collective, an organisation that provides legal aid for the marginalized sections in the society, was cancelled in 2016. Appellate proceedings concerning FCRA was pending before the Bombay High Court. While so, criminal case was filed by the Central Bureau of Investigation in 2019 and the offices and residences of the organisation and its Trustees Indira Jaising and Anand Grover were raided. The organisation has challenged the criminal prosecution initiated as mala fide and vindictive since it is a prominent voice critical of the ruling dispensation. The High Court directed the CBI to not take any coercive action against Lawyers Collection. The CBI challenged this order and the case is pending before the Supreme Court. See, “Statement by the Lawyers Collective on CBI raids on its office and homes and offices of Ms. Indira Jaising and Mr. Anand Grover”, Available at: <https://lawyerscollective.org/>

<sup>93</sup> The FCRA license was renewed in March 2016 but was cancelled in December 2016. See, Gaurav Vivek Bhatnagar, “NGOs take to social media to slam FCRA license cancellation”, The Wire, December 16, 2016, Available at: <https://thewire.in/politics/ngos-take-social-media-slam-fcra-licence-cancellation>

<sup>94</sup> “Cancellation of FCRA of Sabrang Trust to stop public justice says Teesta Setalvad”, June 12, 2017, Available at: <https://cjp.org.in/cancellation-of-fcra-of-sabrang-trust-to-stop-public-justice-says-teesta-setalvad/>

<sup>95</sup> The CBI registered a case in January 2022 against the Centre for Promotion of Social Concerns (CPSC), an NGO, and its programme unit People’s Watch for allegedly violating provisions of the FCRA in the years 2011-13. The organisations have alleged that belated prosecution indicates that the intention of the investigative agencies is oblique, to stifle right to association and free speech. “People’s Watch and its parent NGO booked for alleged violation of foreign funding law”, The New Indian Express, January 10, 2022, Available at: <https://www.newindianexpress.com/states/tamil-nadu/2022/jan/10/peoples-watch-and-its-parent-ngo-booked-for-alleged-violation-of-foreign-funding-law-2405023.html>

<sup>96</sup> Syed Khalique Ahmed, “FCRA license cancelled, BGO Navsarjan lays off all staffers”, The Indian Express, December 27, 2016, Available at: <https://indianexpress.com/article/cities/ahmedabad/fcra-licence-cancelled-ngo-navsarjan-lays-off-all-staffers-4440969/>

<sup>97</sup> “Delhi High Court upholds suspension of FCRA nod for rights body”, The Hindu, February 16, 2022, Available at: <https://www.thehindu.com/news/national/delhi-high-court-upholds-suspension-of-fcra-nod-for-rights-body/article65053852.ece>

<sup>98</sup> <https://www.oxfamindia.org/press-release/fcra-renewal-denied>

<sup>99</sup> Aneesha Mathur, “Centre cancels Greenpeace India’s FCRA registration”, The Indian Express, September 4, 2015, Available at: <https://indianexpress.com/article/india/india-others/greenpeace-indias-fcra-registration-cancelled-govt/>

<sup>100</sup> “International NGO Amnesty shuts operations in India, alleges “witch-hunt” by Got, The Economic Times, September 29, 2020, Available at:

<https://m.economictimes.com/news/politics-and-nation/human-rights-group-amnesty-halts-india-operations-says-faces-harassment/articleshow/78379069.cms>

<sup>101</sup> <https://www.thehindu.com/news/national/centre-cant-brand-an-organisation-as-political-for-aiding-a-public-cause-supreme-court/article31003668.ece>

<sup>102</sup> The most recent order is that of the Delhi High Court in the case of the Commonwealth Human Rights Initiative, whose petition challenging FCRA suspension was dismissed. Available at: <https://www.thehindu.com/news/national/cbi-registers-criminal-case-against-lawyers-collective-names-anand-grover-in-fir/article28051166.ece>

<sup>103</sup> ThePrint, CBI, Ed, it probes against opposition politicians - on at election time, off after that, April 16, 2021, Available at <https://theprint.in/india/cbi-ed-it-probes-against-opposition-politicians-on-at-election-time-off-after-that/640596/>.

<sup>104</sup> “In the 2020 amendments, an additional provision on summary inquiry prior to renewal has been added. Misuse of this provision being played out is already witnessed and experienced, as majority of the NGOs with FCRA license were due for renewal in October 2021. NGOs, often those who are critical of the State actions, witnessed such inquiries conducted by local officials of the Intelligence Bureau (IB) and other officials associated with

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the MHA. These inquiries are not limited to financial audits but used as means to investigate work and beneficiaries of the NGOs, specifically to record work with religious minorities and contemporary issues witnessing public opposition.”. HRDA-India

<sup>105</sup> The ED conducted raids at the home and office of Harsh Mander, Director of Centre for Equity Studies (CES) and associated with the Kawan e Mohabbat (Caravan of Love), were carried out in September 2021 in connection with an alleged money laundering probe. Available at: <https://www.hindustantimes.com/cities/delhi-news/edraids-office-home-of-activist-harsh-mander-in-money-laundering-probe-101631781847302.html>

<sup>106</sup> The NIA conducted raids at the house of Khurram Parvez and office of Jammu and Kashmir Coalition of Civil Society in October 2020 and November 2021, and subsequently arrested Khurram Parvez, in an alleged terror funding case in November 2021. Shakir Mir, “Why J&K Activist Khurram Parvez is in NIA crosshairs again”, The Quint, November 23, 2021, Available at: <https://www.thequint.com/news/india/why-jk-activist-khurram-parvez-has-long-been-a-target-for-govt>

<sup>107</sup> <https://thewire.in/rights/bharatiya-kisan-union-ekta-ugrahan-farmers-protest-foreign-donationsafter-bank-seeks-details-of-foreign-donations-farmers-union-accuses-govt-of-intimidation>