



**REPORT OF THE PANEL OF INDEPENDENT  
INTERNATIONAL EXPERTS TO EXAMINE INFORMATION  
ABOUT ALLEGED VIOLATIONS OF INTERNATIONAL LAW  
COMMITTED AGAINST MUSLIMS IN INDIA SINCE JULY 2019**



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**2022**



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*Report of the Panel of Independent International Experts (PIIE) to examine information about alleged violations of international law committed against Muslims in India since July 2019*

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The Amsterdam International Law Clinic, that is part of the Amsterdam Law Clinics (ALCs), substantially contributed in research and drafting of Annexure I of this Report. The ALCs is part of the Law Faculty at the University of Amsterdam (UvA) in the Netherlands. The ALCs' primary mission is to provide law students with an opportunity to participate in real cases on legal questions in the public interest under the supervision of professionals and other academics of the law faculty at the UvA.

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## FOREWORD

Despite ample warnings, including discernible patterns of human rights violations over time and their escalation, the international community has been slow to heed the alerts, and take urgent action to prevent massive violations of human rights. This pattern must be broken and civil society organisations are taking the initiative to break through barriers. This report, on alleged serious human rights violations against minority Muslim communities in India, provides them an opportunity to do that.

I wish to congratulate the three members of the 'Panel of Independent International Experts (The Panel) to examine information about alleged violations of international law committed against Muslims in India since 2019'- Sonja Biserko, Marzuki Darusman and Stephen Rapp-for initiating and writing this comprehensive report on the alleged violations, and alerting the international community to a situation that seems to have deteriorated rapidly, and about which the international community is not sufficiently informed. The report builds on the documentation undertaken by international and domestic civil society groups, and various organs of the United Nations, as well as the reports in the media

The report makes compelling reading and highlights significant areas of discrimination targeted against Muslim Indians.

The scale and pattern of human rights violations against Muslims across India since mid- 2019 are alarming. The acts of physical violence perpetrated on Muslims, including by state actors, combined with anti-Muslim hate speech and incitement disseminated through several platforms in the country, pose a serious threat to the survival of the religious minority.

As noted in the report, in some cases, particularly in the state of Uttar Pradesh and in the Jammu and Kashmir region, the alleged violations have potentially reached the threshold of crimes under international law.

At the same time, it is also evident that such violations are not isolated region-specific incidents, as they appear to be unfolding rather systematically in much of the country indicating likely further deterioration of the situation.

It is particularly concerning that Muslim women and girls have been subjected to threats and acts of sexual violence, while some of them have been deprived of education for choosing to manifest their religious identity. It is clear from the report that underpinning the acts of violence is also an attempt by the authorities to undermine the equal rights of Muslims guaranteed by the Indian constitution to all its citizens. The Citizenship Amendment Act, its nexus with the National Register of Citizens in Assam, and other discriminatory laws and policies being rolled out across India, in effect, downgrade Muslims as a separate category. They normalise unequal treatment, enable further exclusion, stigmatisation and violence against this group, thus creating the grounds for mass atrocity crimes against the targeted Muslim community.

It is unacceptable that the authorities use the legal framework, including counter-terrorism and national security laws to clamp down on civil society and silence human rights defenders who speak out on behalf of the minority community. Administrative detentions, denial of citizenship, bad-faith prosecutions, withdrawal of licences, and threats and reprisals against human rights groups, human rights defenders and activists and journalists, all have a direct impact on the safety and protections available to targeted communities. This widespread attack on basic freedoms and the shrinking civic space, bring shame to a once proud democracy.

The report notes that the situation risks deterioration because of the absence of an accountability framework. The Indian legal system provides a wide range of laws and institutions that are designed to combat religious discrimination. However, the Panel found sufficient grounds to conclude that the ideological and religious prejudices of the current government appear to be permeating all independent institutions, resulting in the lack of effective and adequate accountability initiatives.

At the international level, despite India's commitment to the contrary, it has neither acceded to the individual complaints mechanisms nor is it a state party to the Rome statute of the International Criminal Court. The report also highlights that India's engagement with the Treaty bodies and independent mandate holders has been passive and inadequate. As a consequence, the current milieu does not provide victims of systematic human rights violations any avenues to seek relief and remedies.

I endorse the two goals emphasised in the report, namely, accountability for past crimes and prevention of future atrocity crimes. The report makes a timely call to the international community to act on the early-warning signs emerging in India by invoking the wide range of measures at their disposal to protect the rights of the Muslim minority.

I reaffirm the recommendations made by the expert Panel members, not only to India and its public institutions but also to the UN Human Rights Council as well as the wider UN system. I hope that international values and the responsibility to protect will prevail over political considerations and that the international community will deliver on its promise of "Never again" to gross human rights violations. Ultimately, however, it is the Indian leaders and the country's independent institutions that must rise to the occasion, recommit themselves to the inclusive values of the Indian constitution, and defend and protect all Indians equally.

**Judge Navi Pillay**  
**6th June 2022**

# EXECUTIVE SUMMARY

## A. Introduction

The authors of this report are three individuals who have led efforts to investigate serious human rights violations and to achieve justice for the victims and survivors of these violations in multiple country situations around the world. They have become deeply alarmed by reports of increasingly serious human rights violations against Muslim communities in India, especially since 2019, and the hardening of the toxic environment against them as well as by the absence of the kind of independent investigations that have been undertaken domestically or internationally in similar situations. Therefore, they have joined together as a Panel of Independent International Experts ('Panel' or 'PIIE') to review available reports from reputable sources to determine whether there is sufficient credible information to require that an independent international investigation be mandated in order to fulfil the victims' and survivors' rights under international human rights law. The authors' names and nationalities are **Sonja Biserko (Serbia), Marzuki Darusman (Indonesia) and Stephen Rapp (USA)**<sup>1</sup>. The authors have, after considering the evidence, agreed unanimously on the existence of credible information, the application of international human rights law and international criminal law, and the legal necessity of formal investigation.

## B. Standard of Proof

On factual standards the authors have used the threshold standard that generally justifies the commencement of formal investigations throughout the world: the existence of credible information of violations of law. Of course, this a lesser standard than that required in formal investigations such as "reasonable grounds to believe" to assert a breach of state responsibility for violation of human rights law, or "reasonable" or "substantial" grounds for the arrest or confirmation of criminal charges against a person. It is also much less than the standards required at trial, such as "preponderance of evidence" or "guilt beyond reasonable doubt" to reach final civil or criminal judgements. The authors intend their review of the information to be comparable to a "preliminary examination" conducted by the Prosecutor of the International Criminal Court before the commencement of formal investigations. They have not had direct access to the victims of the alleged violations in India or to scenes where violations may have occurred but have turned to reputable sources that have such access. These include UN special procedure mandate-holders, independent media, civil society organisations (CSOs) and academic institutions. Based on their own experience in comparable situations and with similar sources they have evaluated credibility and then made findings as to whether the credibly reported incidents, if true, would constitute violations of international human rights law and international criminal law. This executive summary extracts portions from the full-length report and its annexes, with a specific focus on major alleged violations in Assam, Delhi, Jammu & Kashmir and Uttar Pradesh.

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1. Fatou Bensouda (The Gambia) in her personal capacity supported the Panel at crucial stages, especially on international criminal law analysis.

## C. Background

India is the world's largest democracy. According to the latest census (2011), India is home to 172 million persons identifying as Muslims, making up 14.2 per cent of its population. Since its independence, India has been torn between an aspiration to be a secular state, as determined by the 1950 Constitution, and a claim by the powerful Hindu nationalist movement (Hindutva) that India should be first and foremost the motherland of Hindus. Since 2014, a party affiliated with this movement, the Bharatiya Janata Party (BJP), controls the majority of Parliament. The Hindu nationalist movement is made up of a conglomerate of organisations and individuals, spanning different sectors of society, that consider India to essentially be a Hindu nation where other religious groups, especially Muslims and Christians, are outsiders. According to this belief, Muslims and Christians threaten Indian nationhood and need to be excluded or assimilated as Hindus.

Re-elected in 2019 with an enhanced majority, the BJP administration has made legislative changes in line with the Hindutva ideology of transforming India into a Hindu majoritarian state, to the exclusion of religious minorities, in particular Muslims. Since then, Islamophobic rhetoric has been ramped up by the BJP and the wider Hindutva network and amplified by state-aligned media and social media platforms, creating a toxic environment that degrades Muslims. There have been several direct calls by public leaders to kill Muslims, rape Muslim women and wipe out Islam. Physical attacks, including lynchings, many resulting in death, have become a part of the landscape.

The accelerating trend of violence and discriminatory legislative and administrative measures against Muslims is a reversal of the inclusionary gains of the Indian republic, set

in motion by the Indian national movement led by M K Gandhi and other anti-colonial leaders. This is forcing a crisis that threatens the foundations of constitutional secularism enabled by the Indian Constitution and erodes Indian traditions of religious and cultural pluralism. The Constitution – crafted to serve a post-colonial India that would exemplify democracy and liberty in a world emerging from fascism and colonialism – guarantees fundamental rights to, among others, equality, freedom, life, liberty, protection against exploitation, freedom of religion, cultural and educational rights, and a remedy. Many of these commitments are increasingly being tested and in some cases, repudiated, for India's vast population of religious minorities, creating a situation where the constitutional promise seems no longer a viable reassurance for them.

In provinces ruled by the BJP, or where the national government has a commanding role, such as Assam, Delhi, Jammu & Kashmir, Karnataka, Madhya Pradesh, Uttarakhand and Uttar Pradesh, the consequences of the Hindu majoritarian turn for Muslims are especially serious. Not only is this situation increasingly precarious for Indian Muslims, it can also have a wider impact on the South Asian region as a whole. Rohingya Muslim refugees escaping persecution in Myanmar and seeking safety in India have been vilified, with some also deported back to Myanmar. Given the history of regional conflicts and conflagrations along ethno-religious lines, and the nuclear arsenals of India and Pakistan, the accelerating trend of violence and discrimination against Muslims in India could imperil the peace of this volatile region.

In such an environment, reports of human rights violations or crimes targeting Muslim minorities because of their religion must be

carefully examined to identify potential risk factors that could turn a minority into a persecuted group, besides destabilising the wider region. If found to exist and if necessary, these could require India and the international community to take effective measures to ensure accountability for past crimes and prevention of future atrocities.

## D. Findings on violations of international law

The Panel focussed on alleged violations in the period from 2019 to date. The Panel's findings are not intended to be exhaustive, or to suggest that other human rights violations or abuses did not also occur during this period, as it was possible only to examine a limited number of sources.

### I. International human rights law

The information examined by the Panel showed that federal and state-level authorities adopted during this period a wide range of laws, policies and conduct that target Muslims directly or affect them disproportionately. Most of these actions were undertaken by state actors. Where non-state actors were allegedly responsible, the state failed to take the necessary measures to prevent or effectively investigate and prosecute them. The Panel notes with concern that the underlying motivation that cuts across this conduct stems from the Hindu nationalist goal of excluding Muslims to build a Hindu-dominated state. The Panel finds that **there is credible evidence to suggest that the following human rights enshrined in treaty law and customary international law may have been violated**, and warrant further investigation and, where necessary, reparation.

### I.I Arbitrary deprivation of life

The practice of extrajudicial killings (so-called "encounter killings") to combat crime has been widely used by the police across India. In Jammu & Kashmir, extrajudicial killings are used to eliminate suspected militants and, in Uttar Pradesh and Assam, alleged criminals. Despite the police's claims that these killings are justified as self-defence, various sources, including autopsy reports, witness/victim testimony and inconsistencies in police reports, indicate that they are in fact executions. In all these situations where state authorities have deployed extrajudicial killings, Muslims have been specifically targeted or have disproportionately fallen victim to such execution.

Between December 2019 and February 2020, this pattern of unjustified police killings was extended to peaceful protesters or unarmed bystanders who opposed the controversial Citizenship Amendment Act in Uttar Pradesh, Assam and Karnataka. This law, passed in December 2019, expressly discriminates against Muslims by providing an expedited pathway to Indian citizenship for migrants from neighbouring countries of all faiths, except Islam. In Delhi, state actors are alleged to be complicit through acts of commission as well as omission in targeted violence against Muslims, resulting in killings in February 2020.

From 2019 onwards, mob lynching and other forms of hate crimes committed by private individuals against Muslims, which rose dramatically after the BJP came to power in 2014, have continued. In many of these cases, authorities either failed to intervene or did little to investigate and prosecute the persons responsible. Hate crimes against Muslims have often been fuelled by laws that directly or indirectly criminalise Muslims, by, for example, prohibiting conversion to Islam for the purpose of marriage or prohibiting

cow slaughter. The latter affects the large number of Muslims who work in the cattle and meat industries in different capacities. In so doing, these laws give vigilantes a justification to attack Muslims.

## **1.2 Arbitrary detentions**

Arbitrary detentions are a common tool used by authorities to quell opposition to legislative and policy changes that are criticised for their discriminatory nature. Muslims, being the ones voicing their opposition have been particularly targeted. Since December 2019, scores of peaceful protesters, students, NGO staff, lawyers, artists and other human rights defenders have been detained in Delhi and Uttar Pradesh, with the intention to suppress any protests against the Citizenship Amendment Act and punish those who did protest. In Muslim-majority Jammu & Kashmir, the same method was used to prevent people from voicing their discontent with the abrogation of the autonomous status of that region, under Article 370 of the Constitution in August 2019. The panel has also seen allegations of children being so detained. Reports show that the majority of these arrests and detentions were arbitrary, because they lack a legal basis, violate due process rights or lack a reasonable factual basis for arrest. For example, arrests in Delhi after the violence in February 2020 allegedly did not follow basic procedures mandated by the Indian Code of Criminal Procedure such as, among others, producing an arrest warrant, informing the person's family of the arrest and providing them with a copy of the First Information Report; or ensuring that those arrested had access to legal counsel, including during interrogation.

## **1.3 Torture and cruel, inhuman or degrading treatment**

Frequently, torture and cruel, inhuman or degrading treatment against dissident voices, mostly coming from the Muslim community, accompany arbitrary detentions. The materials reviewed show credible allegations of physical and mental abuse by police officials, such as beating with fists or batons, slapping, and kicking different parts of the body, resulting in severe physical and mental pain or suffering, including broken limbs, loss of consciousness and other serious injuries. In Delhi, Uttar Pradesh and Assam, this treatment was meted out to people protesting or opposing the Citizenship Amendment Act. Most alleged victims were in police custody at the time. Some were children as young as nine. Often, these abuses were combined with abusive language against the religious identity of the victims, indicating a discriminatory purpose. In Kashmir, civilians, including minors, have been subjected to similar abuse by the police and armed forces, both as means to suppress dissent to the abrogation of the special status of the region and a tool to combat separatist militants. The Panel notes with concern the sexualised forms of torture employed against men and boys in Kashmir.

## **1.4 Gender-based violence and discrimination**

The Panel notes with concern that Muslim women and girls have been singled out for gender-specific targeting. Certain laws adopted recently have a detrimental effect, such as in Karnataka, where Muslim girls wearing a headscarf (hijab) have recently been barred from entering educational institutions.

During the National Register of Citizens process in Assam, 2.25 million Bengali-speaking married women, mostly Muslim, were disproportionately disadvantaged when their citizenship was being verified, because their identity documents from their husband's place of residence were put through an additional and more rigorous two-step verification process as compared to men. State authorities also routinely fail to protect Muslim women and girls from violence. For example, hundreds of prominent Muslim women were auctioned for sale on online platforms. In addition, inciteful speeches by prominent leaders threatening sexual violence against Muslim women have been reported. Sometimes, state agents do not only fail to protect women from violence but are actually responsible for such violence, such as during the crackdown on protests against the Citizenship Amendment Act in Delhi, where reports of sexual assault against women students and forcible stripping of women protesters surfaced.

### **1.5 Incitement to discrimination, hostility and violence**

Since 2019, the number of incendiary speeches by BJP members, government officials, influential Hindu clerics, and private individuals against Muslims has increased in public spaces as well as on social media platforms, creating a toxic environment. Many of these speeches brand Muslims as 'infiltrators', 'anti-nationals', traitors and terrorists, reflective of a wider Hindu nationalist ideology. Some have openly called for violence against Muslims or for Hindus to arm themselves. For example, Kapil Mishra, a BJP politician and former Member of the Legislative Assembly of Delhi, popularised the incendiary and violent slogan: "Shoot dead the bastards, traitors to the nation!" ("Desh ke ghaddaron ko, goli maaron saalon ko!") at large public rallies and through tweets shared by millions.

In Uttarakhand, Hindu religious leaders, all with strong links to the ruling BJP, recently called for a "cleanliness drive" against Muslims. One such Hindutva leader, Sadhvi Annapurna, urged "100 of us [referring to Hindus]" to kill "at least 2 million of them [referring to Muslims]", to make India a "Hindu nation". The numbers in this call to violence are not a coincidence; India's Muslim population stands at approximately 200 million. Some have reportedly called upon Hindus to "rape and impregnate" Muslim women. As a result of such speeches incidents of physical violence against Muslims by Hindutva mobs and militant groups have been rising, reported from several provinces over the past months, adding to the sense of fear among Muslim communities. The Panel finds that India has not taken any steps to counter these recurring and, indeed, escalating incidents of incitement to discrimination, hostility and violence, for instance by enforcing provisions under the Indian Penal Code that criminalise unlawful speech.

### **1.6 Discriminatory laws and policies**

Hate speech, which entrenches marginalisation and stigmatisation of Muslims within wider society, has been coupled with what appears to be a concerted effort to build a domestic legal framework that excludes Muslims from enjoying the status of full citizens in recent years. Following re-election in 2019 with a bigger majority, the BJP administration introduced or strengthened a number of laws that directly or indirectly discriminate against Muslims. In August 2019, the BJP government in Assam adopted the National Register for Citizens, putting almost 2 million inhabitants of Assam at risk of statelessness in one fell swoop. That the Supreme Court of India directed the entire NRC process, resulting in the worrying outcome, is itself noteworthy.

c The majority of those excluded are feared to be Muslims. In the same month, the central government unilaterally revoked Article 370 of the Indian Constitution, stripping the state of Jammu & Kashmir (India's only Muslim-majority province) of its special autonomous status, and removed guarantees that provided special protection to residents including the Muslim community in the Kashmir valley. In December 2019, the Indian Parliament passed the Citizenship Amendment Act, discussed above. At the state level, several BJP-ruled states passed new laws or strengthened existing laws that prohibit conduct specific to the identity of Muslims, including laws that criminalise cow slaughter, conversion to Islam and inter-faith relationships, as well as incentivising socio-economic segregation and exclusion, including education for girls.

### **1.7 Violations of freedom of religion**

Some of the state actions described above are specifically designed to restrict the freedom of Muslims to hold their beliefs and practice and manifest their religion. The anti-conversion laws enacted in several states make it a crime to convert from one religion to another by use of force, fraud, inducement or allurement. However, in practice they are used against anyone converting from Hinduism to Islam, even if they are not coerced, and against couples in consensual inter-faith relationships. Muslim missionaries have been targeted in fabricated prosecutions, and restrictions placed on foreign Muslim missionaries. In the same vein, banning Muslim girls and women who choose to wear the hijab from entering educational institutions restricts their religious practice without justification.

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Reflecting the deep contempt for Islam as a religion that lies at the core of the Hindutva ideology are also the rising instances of attacks against Muslim places of worship, of Muslims being denied the opportunity to offer prayers, and of Muslim places of worship taken away from them.

### **1.8 Violation of freedom of expression, association, assembly**

Shrinking civic space for Muslims and political dissidents has become characteristic of the current BJP administration. Blanket disproportionate prohibitions on assemblies, such as the ban issued in Uttar Pradesh after the adoption of the Citizenship Amendment Act in December 2019, are a common means to silence protesters. At the same time, journalists reporting on attacks against Muslims and media houses from Muslim communities have been raided without any evidence of alleged crimes. These tactics culminated in the complete communication shutdown which blocked internet access, all mobile and landline phones, and all television channels in Jammu & Kashmir between August 2019 and January 2020, to pre-empt protests following the removal of the state's special autonomous status. Across India, CSOs highlighting human rights violations have been denied registration under the Foreign Contribution (Regulation) Act, which undermines their ability to receive foreign funding and sustain their work.

### **1.9 Violations of right to fair trial**

Shrinking civic space has also been enabled by draconian national security laws and the sweeping and disproportionate application of these laws. The Unlawful Activities (Prevention) Act (UAPA), the National Security Act (NSA), the Public Safety Act (PSA), among others, all allow for prolonged detention without charge or trial for vaguely

defined activities. These laws in themselves arguably contravene due process rights. In addition, reports suggest that these laws are being used to intimidate members of the Muslim community and human rights defenders, and frame them as a threat to national security, in line with the Hindutva belief that Muslims threaten Indian nationhood.

### **1.10 Economic, social and cultural rights**

In addition to civil and political rights, the current environment in India also produces inequalities in accessing livelihood opportunities, education, housing and health services. The above-mentioned prohibition on cow slaughter has deprived mostly Muslims of an important source of income from meat shops and slaughterhouses. In Karnataka, Madhya Pradesh and other states, there has been a campaign of economic boycott of Muslim businesses, often with state support. Muslim families have felt compelled to leave their homes in various parts of the country, owing to their religious identity, in some cases through forced eviction, further pauperising the families. Authorities across several states are also resorting to demolition of Muslim homes and properties that is in effect collective punishment impacting life and livelihoods. Poorer Muslims, many from 'backward' sections are disproportionate victims of these discriminations. In 2021, at least one-third of Muslims reported they had been discriminated on the grounds of religion in hospitals or by a healthcare professional. Muslims, who constitute nearly 14.2 per cent of the population, represent a mere 5.5 per cent of the student population in higher education. Despite this, places of education tailored for Muslims that are principal avenues for primary-level education for poor Muslims in rural areas are being restricted, and Muslim-majority universities are syste-

matically being vilified by BJP politicians for being dens of anti-nationalism. Furthermore, Muslims continue to be grossly under-represented in political institutions such as the national Parliament and state legislatures, as well as in the police force and wider public sector, with the exclusion sharpening since the BJP assumed power.

## **2. International criminal law**

For the international criminal law analysis, the Panel used the definitions and concepts codified in the Rome Statute of the International Criminal Court. It came to the following conclusions.

### **2.1 Uttar Pradesh: Crimes against humanity**

The crackdown on protest against the Citizenship Amendment Act between December 2019 and June 2020 in Uttar Pradesh may potentially amount to crimes against humanity. There is credible evidence to suggest that the crimes of murder, torture, unlawful imprisonment and persecution may have been committed by the police. It is likely that these acts were carried out pursuant to a state or organisational policy to prevent the Muslim community and supporters from protesting against the CAA and punishing those who did. There are indications that the acts were committed in a widespread manner due to the significant number of victims and locations across the state, and in a systematic manner due to their organised and coordinated planning and implementation.

### **2.2 Jammu & Kashmir: Crimes against humanity**

The repressive actions by the government against human rights defenders, journalists

and activists in Jammu & Kashmir following the change of its special autonomous status in August 2019 may potentially be characterised as crimes against humanity. The Panel has reviewed credible evidence to suggest that the crimes of murder, torture, unlawful imprisonment, sexual violence and persecution may have been committed by the police and military. They were arguably carried out pursuant to a state policy to suppress any opposition to the legislative change. There are indications that the acts were committed in a widespread manner due to the number of victims, and in a systematic manner in light of the planning and coordination.

In addition, the Panel considered the commission of the war crime of murder and torture of civilians. Civil society reports find the existence of an ongoing non-international armed conflict in Jammu & Kashmir between the Indian government and separatist armed groups. There is credible evidence to suggest that civilians who are wrongly suspected of being militants have been killed and tortured thus providing the necessary nexus to the conflict for determination that the violations were war crimes.

### 2.3 Incitement to commit genocide

Prominent political or religious leaders in Delhi, Chhattisgarh, Uttarakhand and Uttar Pradesh have between December 2019 and April 2022 in public speeches directly called on their Hindu audience to kill Muslims or to rape or impregnate Muslim women and girls.

The Panel has reviewed the following speeches made by a) political and religious leaders in Delhi, in the lead up to the targeted violence against Muslims in February 2020 and b) religious leaders in various religious congregations across the country: Kapil Mishra and Anurag Thakur: “Desh ke ghaddaron ko, goli maaron saalon ko” (Shoot

dead the bastard traitors to the nation!); Yati Narsinghanand in several speeches calling for ‘destruction of Islam and Muslims’; Sadhvi Annapurna: “If only a 100 of us become soldiers and each of us kills 20 lakhs (a lakh is 100,000) of them, we will be victorious and then we are ready to go to jail.”; Swami Prabodhanand Giri: “This is why, like in Myanmar, the police here, the politicians here, the army and every Hindu must pick up weapons and we will have to conduct this cleanliness drive (safai abhiyan)”; Bajrang Muni Udasin: “I will publicly drag your daughters-in-law and daughters out of your homes and rape them if any Hindu girl is molested”; and Sadhvi Vibhanand Giri exhorting Hindu men to “rape and impregnate Muslim women if Muslim men cast even a glance at Hindu girls”.

These speeches were made in public while addressing an audience and then widely broadcasted through several mainstream and social media channels. While they are direct in nature insofar as they call for acts of violence, the Panel engaged in a contextual assessment for each of them to analyse if they were understood by their audience as a direct call to violence against the intended community. Moreover, there are indicators to suggest that special intent to destroy Muslims as a group, in whole or in part, may be attributed to the above individuals for making these speeches. Thus, the Panel believes there is sufficient information to suggest that these speeches may amount to direct and public incitement to genocide.

## 3. Right to an effective remedy and reparation

Most of the abuses and violations the Panel examined have remained unaddressed by domestic institutions, leaving victims with no effective remedy. Law enforcement authorities tasked with investigations of possible crimes against Muslims, as described above, rarely take action.

In cases where suspects are police officers, victims have been rebuffed or harassed when registering criminal complaints. The Panel is also not aware of any form of reparation provided to victims of serious human rights abuses. Some ex gratia payments were made to a few victims of violence in Delhi in 2020 by the Aam Aadmi party state government but these appear to fall short of international standards for adequate reparations.

Notwithstanding strong powers to intervene when fundamental rights are being violated, the Indian judiciary has remained relatively passive. The Indian Supreme Court, in particular, has failed to adequately deploy its considerable constitutional powers to query or restrain rapidly unfolding abuse by delaying hearings and denying requests for interim relief despite the urgent need for intervention. For example, the over 150 petitions challenging the Citizenship Amendment Act have been waiting for a hearing date for over two years. Similarly, several challenges to the change of autonomous status of Jammu & Kashmir have been pending since late-2019. Several applications against hate speech have not progressed despite the rising frequency of serious incitement against minorities. Petitions challenging the Karnataka government's order banning hijab from educational institutions have not been heard by the Supreme Court for over two months despite pleas for an urgent hearing and the damaging consequences for children and young people whose educations have already been destabilised by the Covid-19 pandemic. The response of the National Human Rights Commission too has been inadequate, and in some instances, worryingly partisan and aligned with the BJP government.

## E. Conclusions

There is credible evidence to suggest that a wide range of international human rights - both civil and political, and economic, social and cultural rights - have been violated by the Indian authorities across the entire country. In addition, some episodes of violence may amount to crimes against humanity and war crimes, while some hate speech may amount to incitement to commit genocide.

These violations are the outcome of and themselves contribute to the hostile environment that exists against Muslims in public spaces, with state authorities and Hindu nationalist groups often working in concert to make life precarious for Muslims. Discrimination and dehumanisation are at the heart of this systematic conduct. All these violations were targeted, disproportionately affecting Muslims, which shows the ideological driver behind these actions. Taken together, the situation shows a state-led, systemic targeting and marginalising of Muslims because of their religion and their status as a minority. It is also evident that India is failing in its obligation to provide judicial redress. In light of this, the authors of the report are seriously concerned that Muslims have become a persecuted minority in India, especially in BJP-ruled or controlled states of Assam, Jammu & Kashmir and Uttar Pradesh.

Since domestic-level remedies have so far been ineffective, inadequate or inaccessible, the authors believe that the credible information we received justifies the initiation of formal investigations by a competent, independent and impartial body, mandated by the UN, which would conduct in-depth investigations into the allegations we uncovered in this report with a view to ensuring accountability in the future.

The authors are also concerned that the previous conduct of Indian authorities combined with the lack of accountability bodes ill for the future. We have seen credible information that abuses against Muslims have not ceased. Instead, they have continued and are now taking more serious forms on the back of a majority whose emotions have been mobilised and primed over legacy and social media to ‘other’ the Muslim. History shows us, time and time again that systemic discrimination and hostility against minorities, in the hands of a mobilised majority, often escalates to mass atrocity crimes, even genocide. India is obligated to act to prevent genocide under the Genocide Convention and to protect its citizens from genocide, crimes against humanity, war crimes and atrocity crimes under the first pillar of the Responsibility to Protect unanimously adopted by the UN General Assembly in 2005. India must live up to these obligations to prevent the commission of even greater atrocities against Indian Muslims which beyond their horrendous human cost also threaten to further destabilise the region.

## F. Recommendations

Based on the above findings, the Panel makes the following recommendations.

### *To the Human Rights Council*

- Mandate an independent fact-finding body to investigate past and ongoing human rights violations against Muslims in India.
- Mandate an international mechanism to preserve information on serious human rights violations against minorities gathered by the fact-finding and documentation processes, for future accountability proceedings.
- Establish a territorial mandate of a Special Rapporteur on religious minorities in India.

- Promote and advance UN resolutions condemning the abuses and the named perpetrators.

### *To the High Commissioner for Human Rights; Special Advisers on the Prevention of Genocide and the Responsibility to Protect; and UN Special Procedures Mandate Holders*

- Actively and visibly monitor serious human rights violations against Muslims and other vulnerable religious minorities in India.
- Request and conduct in-country visits to gather information on serious human rights violations against Muslims and other vulnerable religious minorities.
- Publicly express concerns at the treatment of Muslims in India.

### *To the Government of India*

- Amend the Citizenship Amendment Act 2019, to remove discriminatory provisions based on religious criteria, and bring it in line with international human rights and humanitarian law standards.
- Urgently commence the Assam NRC appeals process, while ensuring that the Foreigners Tribunals follow robust procedures and protocols for hearing appeals and weighing the evidence.
- Restore the special status of Jammu & Kashmir, including those contained in the erstwhile Article 370 and Article 35A of the Constitution, and protect rights of indigenous communities, including to effective participation.
- Immediately cease, prevent, punish and remedy ongoing human rights violations against Muslims committed by Indian government agents.
- Develop and implement measures at all levels of the state and in the general public to prevent future human rights violations and marginalisation of Muslims.

- Conduct effective, independent and impartial investigations, and where it is merited, prosecutions of international crimes and any serious human rights violation that amounts to a criminal offence under the domestic laws.
- Provide adequate, accessible and effective reparation to victims of serious human rights violations, including interim measures to alleviate immediate needs.
- Implement measures to promote equal access to socio-economic rights for Muslims.

#### ***To the Supreme Court of India***

- Ensure independent, effective and expedient resolution of cases challenging the constitutional validity of laws impacting Muslims as a religious minority.
- Monitor and review actions of investigating authorities in cases involving serious violations of international human rights law.
- Provide effective remedies to victims of serious human rights violations.

#### ***To the governments of other States***

- Monitor the human rights situation in India.
- Use available diplomatic or economic leverage to urge India to protect Muslim minorities.
- Exercise your extra-territorial jurisdiction in accordance with the national legal framework to hold perpetrators of international crimes to account.
- Impose targeted sanctions against perpetrators of serious human rights violations, where warranted under the national legal framework.

#### ***To social media companies***

- Take proactive ‘zero tolerance’ steps against hate speech.
  - Launch early warning system to protect vulnerable minorities.
- 

- Be transparent on page and post takedowns.
- Launch human rights audits of the impact of your operations on minorities.
- Establish and enforce content moderation systems, oversight mechanisms and community standards that are able effectively to protect minorities.
- Abide by the UN Guiding Principles on Business and Human Rights.

#### ***To Indian and international civil society***

- Document and report violations against Muslims and other religious minorities.
  - Enable Indian authorities and international stakeholders to improve commitment to minority rights.
  - Equip frontline minority and human rights activists and networks to raise and demand rights and justice, without fear of reprisal.
-

## ACKNOWLEDGEMENTS

The Panel of Independent International Experts (PIIE) requested a team of professionals – including Indian and international NGOs, legal practitioners and activists – as well as academics, to gather information on the range of the reported abuses and discriminations by state and non-state actors against Muslims in India since especially 2019. This group of researchers worked with the Amsterdam Law Clinics, part of the Law Faculty at the University of Amsterdam, Netherlands and the Centre for Human Rights at the University of the Free State, Bloemfontein, South Africa, to assist the PIIE.

To protect the members of the research team from any form of reprisals as a result of their contribution to this report, their names will not be disclosed.

The PIIE expresses its gratitude to the research team, including the Amsterdam Law Clinic and the Free State Centre for Human Rights, for their painstaking work.

## LIST OF ABBREVIATIONS

AAGSP	All Assam Gana Sangram Parishad
AAP	Aam Aadmi Party
AASU	All Assam Students' Union
ABHM	Akhil Bharatiya Hindu Mahasabha
ADG	Additional Director General (of Police)
AFAD	Asian Federation Against Involuntary Disappearances
AFSPA	Armed Forces (Special Powers) Act, 1958
AIMIM	All India Majlise Ittehadul Muslimin
AMU	Aligarh Muslim University
APHC	All Party Hurriyat Conference
ATM	Automated Teller Machine
ATS	Anti-Terrorism Squad
BJP	Bharatiya Janata Party
BJYM	Bharatiya Janata Yuva Morcha
BSF	Border Security Forces
CAA	Citizenship (Amendment) Act, 2019
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBI	Central Bureau of Investigation
CCTV	Closed-circuit television
CEDAW	Convention on the Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CM	Chief Minister
CPED	Convention for the Protection of All Persons from Enforced Disappearance
CPJ	Committee to Protect Journalists
CRC	Convention on the Rights of the Child
CrPC	Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CRPF	Central Reserve Police Force
CSO	Civil Society Organisation
D-voter	Doubtful voter
DC	Deputy Commissioner
DCP	Deputy Commissioner of Police
DCW	Delhi Commission for Women
DGP	Director-General of Police
DIG	Deputy Inspector General (of Police)
DM	District Magistrates
DVR	Digital Video Recorder
ED	Enforcement Directorate
EJK	Extra-judicial killings
FCRA	Foreign Contribution Registration Act, 2010
FIR	First Information Report
FT	Foreigners' Tribunals
GER	Gross Enrolment Ratio
GOC	General Officer Commanding (of the Indian Army)
GTB	Guru Teg Bahadur Hospital
HC	High Court

HM	Home Minister
HRC	Human Rights Council
HRD	Human Rights Defender
HRS	Hindu Raksha Sena
HYV	Hindu Yuva Vahini
IAS	Indian Administrative Service
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHR	Indian Council for Historical Research
ICJ	International Commission of Jurists
ICSSR	Indian Council for Social Science Research
IG	Inspector General (of Police)
IHRL	International human Rights Law
INC	Indian National Congress
IPC	Indian Penal Code
IPS	Indian Police Service
ISI	Inter-Services Intelligence
J&K	Jammu and Kashmir
JKHCBA	Jammu & Kashmir High Court Bar Association
JKLF	Jammu Kashmir Liberation Front
JNU	Jawaharlal Nehru University
LeT	Lashkar-e-Toiba
LOC	Line of Control
MLA	Member of Legislative Assembly
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act, 2005
MUF	Muslim United Front
NBSA	News Broadcasting Standards Authority
NCT	National Capital Territory
NEP	National Education Policy, 2020
NFIW	National Federation of Indian Women
NGO	Non-Government Organisation
NHRC	National Human Rights Commission
NIA	National Investigation Agency
NIOS	National Institute of Open Schooling
NPR	National Population Register
NRC	National Register of Citizens
NRIC	National Register of Indian Citizens
NSA	National Security Act, 1980
OCI	Overseas Citizen of India
OHCHR	Office of the High Commissioner of Human Rights
PAFF	People's Anti-Fascist Force
PDP	People's Democratic Party
PFI	Popular Front of India
PIIE	Panel of Independent International Experts
PS	Police Station
PSA	Public Safety Act, 1978
RAW	Research and Analysis Wing
RGCR	Registrar General of Citizens Registration
RGI	Registrar General of India
RSS	Rashtriya Swayamsevak Sangh
RTI	Right to Information Act, 2005
SC	Scheduled Castes

SHO	Station House Officer
SI	Sub-Inspector (of Police)
SIT	Special Investigation Team
SOG	Special Operations Group
SP	Superintendent of Police
SSB	Sashastra Seema Bal
SSP	Senior Superintendent of Police
ST	Scheduled Tribes
STF	Special Task Force
SWAT	Special Weapons and Tactics
TRF	The Resistance Force
UAPA	Unlawful Activities (Prevention) Act, 1967
UDHR	Universal Declaration of Human Rights
ULB	United Liberation for Bodoland
ULFK	United Liberation Front of Kashmir
UN	United Nations
UNCIP	United Nations Commission for India and Pakistan
UNCIF	United Nations' Children's Fund
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNSC	United Nations Security Council
UP	Uttar Pradesh
UPSC	Union Public Service Commission
UT	Union Territory
VHP	Vishwa Hindu Parishad
WGAD	UN Working Group on Arbitrary Detention
WSJ	Wall Street Journal

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# GLOSSARY

<b>Booked:</b>	Colloquially, the process of a criminal suspect being taken into police custody in connection with a reported offence. It refers to the stage before formal framing of charges against the person accused.
<b>Central Government:</b>	The Government of India, also referred to as the Union or Central Government, is the federal governing authority of the Republic of India.
<b>Chargesheet:</b>	A report made by the police or investigative officers after completion of the final investigation which is submitted before the trial court.
<b>Closure Report:</b>	A report submitted by the police or the investigating officers stating that after conducting the investigation against an accused person, no evidence or reasonable grounds for suspicion were found to connect them with the crime under investigation.
<b>Creore:</b>	A crore is a unit in the Indian numbering system and denotes ten million or 100 lakh.
<b>Encounter Killings:</b>	Term used to describe extrajudicial killings by the police or the armed forces, allegedly in self-defence, when they encounter suspected criminals in a shootout situation.
<b>First Information Report (FIR):</b>	A written document prepared by the police when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time.
<b>Habeas Corpus:</b>	A writ remedy available in cases involving unlawful detention or imprisonment where the court orders the custodian of the person, usually a prison official, to bring the detained individual to court, to determine whether the detention is lawful.
<b>Judicial Inquiry:</b>	A formal investigation led by a judge.
<b>Lakh:</b>	A lakh is a unit in the Indian numbering system equal to one hundred thousand.
<b>Lok Sabha:</b>	The House of the People or the lower house is the directly elected chamber of bicameral Parliament of India.
<b>Magisterial Inquiry:</b>	In cases involving death of an individual, a magistrate is empowered to conduct an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officers.
<b>PIL:</b>	Public Interest Litigation is a legal action initiated before a constitutional court intended to protect the interests of public at large. Such litigation is characterized by liberalization of the rules of standing before the court, procedural and remedial flexibility.

- Post-mortem Report:** Report of a medical examination carried out on the body after death. Also referred to as an autopsy.
- Preventive Detention:** Detention of a person on a mere suspicion or apprehension of them engaging in an activity prejudicial to public order and security. The person is detained without a charge of a criminal offence or a trial.
- Rajya Sabha:** The Council of States is the upper house of the bicameral Parliament of India where members are elected by legislatures of states and union territories of India.
- Section 144 Order:** Section 144 of the Criminal Procedure Code (CrPC) of 1973 empowers a district magistrate, a sub-divisional magistrate, or any other executive magistrate empowered by the state government, to issue orders to prevent and address urgent cases of apprehended danger or nuisance, prohibiting the citizens to assemble at one place.
- SHO:** Station house officer is the officer in charge of a police station.
- Special Investigation Team (SIT):** A special team appointed for investigation of serious crimes when the existing force is insufficient for the probe. The Supreme Court of India, Central Government of India and state governments have the authority to setup such teams.
- States (federal states):** India is a federal union divided into states and union territories. Each state has its own government, distinct from the Central/Union Government, and has a separate legislative assembly. The state is further subdivided into districts and smaller administrative divisions.
- Superintendent of Police (SP):** The district police is headed by the Superintendent of Police, a high-ranking officer of the Indian Police Services. In some cases, the districts with a large population may be headed by an higher-ranking police officer designated as Senior Superintendent of Police (SSP).
- Supreme Court vis-à-vis High Courts:** The Supreme Court of India is the supreme judicial body of India. It is the highest constitutional court that exercises powers of judicial review over executive, administrative and legislative actions. It has appellate jurisdiction over decisions of the High Courts which are the highest courts in each state and union territory of India.
- Union Territory:** An administrative division in the federal structure of India. Unlike the states of India, which have their own governments, union territories are federal territories governed, in part or in whole, by the Government of India.
- Writ petition:** A petition seeking enforcement or protection of fundamental rights guaranteed by the Constitution before any High Court or the Supreme Court of India. Writ is an instrument or order of the Court by which the Court directs an official or an authority to do an act or abstain from doing an act.

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## I. Introduction

The authors of this report are three individuals who have led efforts to investigate serious human rights violations and to achieve justice for the victims and survivors of these violations in multiple country situations around the world. They have become deeply alarmed by reports of increasingly serious human rights violations against Muslim communities in India and the hardening of the toxic environment against them as well as by the absence of the kind of independent investigations that have been undertaken domestically or internationally in similar situations. Therefore, they have joined together as a Panel of Independent International Experts ('Panel' or 'PIIE') to review available reports from reputable sources to determine whether there is sufficient credible information to require that an independent international investigation be mandated in order to fulfil the victims' and survivors' rights under international human rights law.

The authors are<sup>1</sup>:

- i. **Sonja Biserko** (Serbia), Member, Helsinki Committee for Human Rights in Serbia, and member of UN Human Rights Investigation into North Korea (2014).
- ii. **Marzuki Darusman** (Indonesia), Ex Prosecutor General of Indonesia, Chair of the UN Panel of Experts on Sri Lanka, and Chair of the UN Fact Finding Mission on Myanmar.
- iii. **Stephen Rapp** (USA), Former Chief of Prosecutions, International Criminal Tribunal for Rwanda; Chief Prosecutor, Special Court for Sierra Leone; former US Ambassador-at-Large for War Crimes Issues.

The authors have, after considering the evidence, agreed unanimously as to the existence of credible information, the application of international human rights law and international criminal law, and the legal necessity of a formal investigation.

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1. Fatou Bensouda (former Chief Prosecutor of the International Criminal Court; Chair, UN Commission of Human Rights Experts on Ethiopia), in her personal capacity, kindly supported the Panel at crucial stages, especially on international criminal law analysis. We are grateful to her.

## 1.1 Initiation of the Panel of Independent International Experts

Recently, there have been reports of genocidal calls by Hindu religious leaders to, 'like Myanmar', undertake a 'cleanliness drive' against Muslims and kill 'at least 2 million' of them.<sup>2</sup> These calls have been repeated in different forms and language since.<sup>3</sup> Hindu clerics have also been reported as calling for the rape and impregnation of Muslim women.<sup>4</sup> In addition, hundreds of Muslim women have reportedly been 'auctioned off' repeatedly on social media apps.<sup>5</sup> Reports of physical attacks against Muslims have been common,<sup>6</sup> including those targeting religious practices,<sup>7</sup> religious symbols/freedoms,<sup>8</sup> and the livelihoods of families.<sup>9,10</sup>

In May 2020, the UN Special Advisor on Prevention of Genocide had taken note of growing anti-Muslim hate and

discrimination in India,<sup>11</sup> a concern repeated by UN mandate holders in their communication to Indian authorities in October 2020.<sup>12</sup> In March 2022, the UN High Commissioner for Human Rights flagged concerns about statements and actions expressing hatred towards and violence against religious minorities.<sup>13</sup>

International human rights groups have also reported the rise in anti-Muslim bigotry in India,<sup>14</sup> including alongside the onset of Covid-19 in 2020.<sup>15</sup> Analysts are now warning that calls for anti-Muslim violence have moved from the fringe to mainstream,<sup>16</sup> due to political leaders remaining silent,<sup>17</sup> sounding alarm bells.<sup>18</sup> Experts are drawing the attention of the UN and other international bodies to intervene for the protection of Indian minorities.<sup>19</sup>

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We have also seen reports of alleged abuses against Muslims carried out directly by state forces. These have included extrajudicial killings,<sup>20</sup> including killings of protesters in Assam, Kashmir and Uttar Pradesh,<sup>21</sup> besides those in Delhi, together with Hindu extremist groups;<sup>22</sup> detentions, including allegedly of children, in Assam, Delhi, Jammu and Kashmir (J&K), and Uttar Pradesh;<sup>23</sup> and allegations of torture, including against children – in J&K,<sup>24</sup> and Uttar Pradesh.<sup>25</sup> Recently, authorities across several states have been reported to be demolishing houses and properties of Muslims in the wake of sectarian clashes.<sup>26</sup>

More recently, against civilians protesting Islamophobic remarks by top BJP leaders,<sup>27</sup> demanding legal action against them, state forces in Jharkhand killed two protesters in capital Ranchi,<sup>28</sup> and those in Uttar Pradesh are reported to have resorted to excessive force, arbitrary arrests including custodial torture, and demolitions of houses of those the police claim led the protests.<sup>29</sup> We share the sentiment of several UN mandate holders who have repeatedly written communications to Indian authorities, expressing serious concern and seeking information about human rights violations.<sup>30</sup>

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27. AlJazeera. 'Analysis: Islamophobia is the norm in Modi's India', 10 June 2022. <<https://www.aljazeera.com/features/2022/6/10/analysis-islamophobia-is-the-norm-in-modis-india>>  
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29. NDTV. '109 Arrested in UP after Arrests over BJP Leader's Comments on Prophet'. 10 June 2022. <<https://www.ndtv.com/india-news/prayagraj-protests-109-arrested-in-up-after-protests-over-bjp-leader-nupur-sharmas-comments-on-prophet-3056838>>; <<https://www.youtube.com/watch?v=nWu-pODTZHU>>  
NDTV YouTube. Demolitions by Civic Body, Cops not Involved. UP Top Cop on Bulldozer Action. 12 June 2022. <<https://www.youtube.com/watch?v=SKvo5RssTec>>  
30. On Delhi and Uttar Pradesh see: #IND 15/2020, 9 October 2020 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25603>>  
# IND 3/2020, 28 February 2020 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25080>>  
# IND 10/2020, 10 June 2020 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25343>>  
on Kashmir see: # IND 16/2019, 16 August 2019. <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24803>>  
# IND 4/2020, 27 February 2020. <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25083>>  
# IND 5/2019, 27 March 2020 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24373>>  
# IND 6/2020, 4 May 2020 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25208>>  
# IND 8/2020, 12 May 2020 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25237>>  
# IND 11/2020, 1 July 2020

The Panel is also aware of concerns raised by human rights bodies and experts regarding laws and policies that potentially discriminate against Muslims, including the Citizenship (Amendment) Act (CAA),<sup>31</sup> the National Register of Citizens (NRC) in Assam,<sup>32</sup> as well as anti-conversion/‘love jihad’ laws, and those banning hijab in classrooms.<sup>33</sup> It is noteworthy that the UN High Commissioner for Human Rights has called the CAA ‘fundamentally discriminatory’<sup>34</sup> and has sought to intervene in the domestic proceedings challenging its constitutionality before the Supreme Court of India,<sup>35</sup> and that the European Parliament has debated a resolution against the CAA.<sup>36</sup> The UN High Commissioner for Refugees has warned that NRC could leave ‘large numbers of people without a nationality’ and be an ‘enormous blow to global efforts to eradicate statelessness’.<sup>37</sup> UN mandate holders have raised concerns that the abolition of J&K constitutional autonomy under Article 370 and the implementation of Domicile Rules and other legislations poses possible

negative consequences for the indigenous Muslim population of the territory.<sup>38</sup>

Victim groups, and Indian and international NGOs that have been documenting these violations, have been assisting victims to seek justice and raising these issues in public fora. We have been informed that they are increasingly concerned about the lack of effective remedy and denial of due process rights for victims. For instance, it has been reported that over two years since the killings, allegedly by police bullets, of anti-CAA protesters and bystanders in Uttar Pradesh, cases have not been registered against responsible officers nor investigations conducted in several cases.<sup>39</sup> In Delhi, analysts conclude that anti-Muslim bias has tainted investigations into the tens of killings and mass destruction of property, mostly of Muslims during the targeted violence in February 2020,<sup>40</sup> while anti-CAA activists continue to be detained under anti-terror laws and denied bail.<sup>41</sup>

31. Ellis-Petersen (n 21).

United States Commission on International Religious Freedom, ‘USCIRF Releases New Factsheet on India’s Citizenship (Amendment) Act’ (USCIRF, 19 February 2020) <<https://www.uscifr.gov/news-room/releases-statements/uscifr-releases-new-factsheet-indias-citizenship-amendment-act>>

Michelle Foster & Adil Hasan Khan, ‘Citizenship (Amendment) Act 2019 and International Law’ (1 April 2021)

<[https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0005/3769484/Citizenship-Amendment-Act-and-International-Law.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0005/3769484/Citizenship-Amendment-Act-and-International-Law.pdf)>

# IND 2/2019, 13 February 2019

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24333>>

32. Amnesty International: NRC report

# IND 13/2018, 11 June 2018 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23884>>

# IND 29/2018, 13 December 2018

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24247>>

# IND 11/2019, 27 May 2019

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24614>> UNHCR, ‘UN High Commissioner for Refugees Expresses Alarm at Statelessness Risk in India’s Assam’ (UNHCR, 1 September 2019) <<https://www.unhcr.org/news/press/2019/9/5d6a24ba4/un-high-commissioner-refugees-expresses-alarm-statelessness-risk-indias.html>>

United Nations General Assembly, ‘Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities’ (UN General Assembly, 15 July 2019) <[https://ap.ohchr.org/documents/E/GA/report/A\\_74\\_160.pdf](https://ap.ohchr.org/documents/E/GA/report/A_74_160.pdf)>

33. USCIRF, ‘Annual Report India: Recommended for Countries Of Particular Concern (CPC)’ (USCIRF, 2021) <<https://www.uscifr.gov/sites/default/files/2021-05/India%20Chapter%20AR2021.pdf>>

Human Rights Watch (n. 20)

34. United Nations, ‘New Citizenship Law in India ‘Fundamentally Discriminatory’: UN Human Rights Office’ (UN, 13 December 2019)

<<https://news.un.org/en/story/2019/12/1053511>>

35. [https://www.thehinducentre.com/resources/article30979486.ece/binary/pdf\\_upload-370845.pdf](https://www.thehinducentre.com/resources/article30979486.ece/binary/pdf_upload-370845.pdf)

36. European Parliament Resolution on India’s Citizenship (Amendment) Act, 2019, RSP 2020/2519 <[https://www.europarl.europa.eu/doceo/document/RC-9-2020-0077\\_EN.html](https://www.europarl.europa.eu/doceo/document/RC-9-2020-0077_EN.html)>

37. United Nations, ‘UN High Commissioner for Refugees Expresses Alarm at Statelessness Risk in India’s Assam’ (UN, 1 September 2019)

<<https://www.unhcr.org/news/press/2019/9/5d6a24ba4/un-high-commissioner-refugees-expresses-alarm-statelessness-risk-indias.html>>

38. # IND 21/2020, (10 February 2021)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25807>>

39. Muhammad Tahir, ‘24 Months After 5 Killed In Meerut In Police Crackdown On Anti-CAA Protests, No Probe & No Answers’ (Article 14, 20 January 2022)

<<https://article-14.com/post/24-months-after-5-killed-in-meerut-in-police-crackdown-on-anti-caa-protests-no-probe-no-answers-61e8ce841aeef>>

Aishwarya S Iyer, ‘They Shot Him’: Kin of Three Deceased Blame UP Police, Seek FIR’ (The Quint World, 12 December 2020)

<<https://www.thequint.com/news/india/up-anti-caa-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir>>

Shadab Moizee, ‘Who Killed Shafiq, Harun, Abrar? Year After CAA, Kin Await Justice’ (The Quint World, 7 January 2021) <<https://www.thequint.com/videos/news-videos/no-one-killed-shafiq-harun-abrar-a-year-after-anti-caa-protests-kin-await-justice>>

Aishwarya S Iyer, ‘Who Killed Shafiq, Harun, Abrar? Year After CAA, Kin Await Justice’ (The Quint World, 27 December 2019)

<<https://www.thequint.com/news/india/family-of-2-killed-in-uttar-pradesh-bijnor-anti-caa-violence>>

Aishwarya, S Iyer, ‘Made to Say Cops Didn’t Torture Boys: Bijnor Parents, A Year Since’ (The Quint World, 12 December 2020)

<<https://www.thequint.com/news/india/bijnor-uttar-pradesh-minor-boys-police-torture-during-anti-caa-protests#read-more>>

40. Human Rights Watch, ‘India: Government Policies, Actions Target Minorities’ (HRW, 19 February 2021) <<https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities>>

41. CIVICUS, ‘India: Ongoing Targeting Of Activists Under Anti-Terror Laws For Their Protests Against Citizenship Law’ (CIVICUS, 26 January 2022)

<<https://www.civicus.org/index.php/media-resources/news/5561-india-ongoing-targeting-of-18-human-rights-defenders-under-anti-terror-laws-in-reprisal-for-their-protest-against-the-citizenship-amendment-act-2019>>

In J&K, reports quoting government sources claim that only a fraction of the hundreds of habeas corpus applications filed before the High Court, on behalf of those detained since August 2019, have ever been heard.<sup>42</sup> In Assam, where some 1.9 million persons have been excluded from the NRC, Foreigners Tribunals, that will sit in judgement on their citizenship case, have been assessed as having ‘many serious procedural concerns’,<sup>43</sup> prompting human rights groups to claim that the quasi-judicial bodies are ‘designed to exclude’.<sup>44</sup> Finally, it is reported that hate speech against Muslims, including incitement to direct violence, is hardly ever punished.<sup>45</sup>

The authors would like to note that concerns raised by international bodies and experts have not been responded to adequately by the Indian government. It is also reported that, despite several requests made by UN mandate holders, India has not allowed them access to its territory. The alleged lack of effective domestic remedy and absence of cooperation with international human rights institutions concerning the situation of Muslims in India, merits concentrated attention by relevant international stakeholders.

Deeply concerned and alarmed by these developments, with fears expressed in many quarters that Indian Muslims are fast becoming a persecuted minority, we have gathered together to form this Panel. It should be noted at the outset that the authors of the report have no history of involvement in the Indian context and have never, individually or as a group, been engaged on the situation of India, including of Muslims therein. Seeing the reports of what appear to be widespread abuses and discriminations against India’s large Muslim minority, the authors feel compelled to engage and contribute, as independent experts, in the interest of justice. The authors are particularly concerned about

the support that the violence appears to be receiving from the BJP-led government. Unfortunately, the alleged violations in India have not been on the international accountability agenda. The authors hope to change that through this initiative.

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## 1.2 Purpose

The Panel seeks to contribute by organising the gathering of credible information on alleged abuses and discriminations against Muslims in India based on applicable international law. One of the key objectives of this initiative is to lay the foundation for a formal international investigation, possibly under a mandate from the UN Human Rights Council into the situation of Muslims in India. The authors believe a comprehensive formal enquiry into the matter is important for two primary reasons:

42. Shreyas Narla & Shruti Rajagopalan, ‘The Judicial Abrogation of Rights & Liberties In Kashmir’ (Article 14, 25 September 2020) <<https://www.article-14.com/post/the-judicial-abrogation-of-rights-liberties-in-kashmir>>

43. Talha Abdul Rahman, ‘The Judicial Abrogation of Rights & Liberties In Kashmir’ (2020) 2(1) Statelessness & Citizenship Review <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3723694](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3723694)>

44. Amnesty International India, ‘Designed to Exclude: How India’s Courts are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (Amnesty International India, 2019) <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

45. Sharanya Hrishikesh, ‘Why People Get Away with Hate Speech in India’ (BBC, 14 April 2022) <<https://www.bbc.co.uk/news/world-asia-india-61090363>>

one, to hold those responsible for serious violations of human rights accountable, and two, to mobilise the international community to work towards prevention of future atrocities against Muslims in India.

The Panel sought to gather credible information and evidence to be able to raise international awareness about ongoing human rights violations in India and help achieve appropriate attention followed by formal investigation and action to remedy past violations and prevent new ones. To that end, the Panel:

- reviewed materials and draft language prepared by professionals and academics who have gathered information from victims, CSOs and journalists working in India – on incidents and allegations of serious human rights violations against Muslims in India;
- assessed such evidence in light of the applicable bodies of law, viz international human rights law and international criminal law;
- analysed the credible evidence with regard to the commission of serious human rights violations and, where possible, identified alleged perpetrators;
- examined if independent and effective domestic proceedings have been carried out to investigate and prosecute such crimes and violations, and whether effective remedies have been provided to victims.

### 1.3 Applicable Law

The Panel analysed the information gathered based on applicable rules and principles of international law. For *international human rights law*, the Panel considered relevant treaties that have been ratified by India, including the Universal Declaration of

Human Rights (UDHR, 1948)<sup>46</sup>, the International Covenant on Civil and Political Rights (ICCPR, ratified in 1979), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1979)<sup>47</sup>, the Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1968)<sup>48</sup>, the Convention on the Elimination of Discrimination Against Women (CEDAW, 1993) and the Convention on the Rights of the Child (CRC, 1992)<sup>49</sup>. In addition, norms of customary international law were taken into consideration where India has not ratified relevant treaties, such as the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention for the Protection of All Persons from Enforced Disappearance.<sup>50</sup>

The *international criminal law* analysis is based on the definition of crimes in the Rome Statute of the International Criminal Court,<sup>51</sup> including crimes against humanity, war crimes and incitement to genocide. The Panel notes that India is not a party to the Rome Statute.

### 1.4 Methodology and manner of working

The panel asked a team of professionals and academics to gather information on the range of the reported abuses and discriminations by state and non-state actors against Muslims in India, especially from July 2019, after the BJP government was voted back to power. Due care was taken to ensure that such collection was comprehensive, encompassing the range of applicable rights as defined by international law – thus including killings, arbitrary detention, torture, harmful speech and incitement; restrictions on freedom of

46. Adopted on 10 December 1948 <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>

47. Adopted on 16 December 1966, entered into force on 23 March 1976 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>

48. Adopted on 21 December 1965, entered into force on 4 January 1969 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>

49. Adopted on 20 November 1989, entered into force on 2 September 1990 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>

50. Adopted on 20 December 2006, entered into force on 23 December 2010 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>>

51. Rome Statute of the International Criminal Court, in force on 1 July 2002 <<https://treaties.un.org/doc/Treaties/1998/07/19980717%2006-33%20PM/English.pdf>>

religion or belief, violations of rights to freedom of peaceful assembly, expression, association and information; discriminatory laws as well as the discriminatory implementation of laws, including discriminatory access to work, education, health and other public services.

The Panel also relied on a limited amount of primary material, including (i) testimonies of victims and eye-witnesses (where victim/witness consent was available) collected by victim groups, (ii) information collected from national and state government sources, such as public statements, submissions in courts and court orders, as well as parliamentary debates and discussions, and (iii) social media content.

In its assessment of the information, the Panel considered the following questions for analysis:

#### *Factual analysis*

i. Is there credible evidence for the alleged events and/or violations?

#### *Legal analysis*

i. Do the events/violations constitute violations of international criminal law/international human rights law

ii. What provisions of international criminal law/international human rights law might have been breached?

iii. Which individuals or groups are responsible for these violations?

iv. Which measures were taken by India to remedy these violations?

### **1.5 Standard of Proof**

On factual standards, the Panel has used the threshold standard that generally justifies the commencement of formal investigations: the **existence of credible information of violations of law**. This is a lesser standard than that required in formal investigations such as ‘reasonable grounds to believe’ to

assert a breach of state responsibility for violation of human rights law, or ‘reasonable’ or ‘substantial’ grounds for the arrest or confirmation of criminal charges against a person. It is also much less than required at trial such as ‘preponderance of evidence’ or ‘guilt beyond reasonable doubt’ to reach final civil or criminal judgements. The authors intend their review of the information to be comparable to a ‘preliminary examination’ conducted by the Prosecutor of the International Criminal Court before the commencement of formal investigations.

The authors have not had direct access to the victims of the alleged violations in India or to scenes where violations may have occurred but have turned to reputable sources that have such access. These include UN special procedure mandate-holders, independent media, civil society organisations, and academic institutions. Based on their own experience in comparable situations and with similar sources, they have evaluated credibility, and then made findings as to whether the credibly reported incidents constituted violations of international human rights law and international criminal law.

The following pages report the findings on certain allegations where the Panel could determine that there is sufficient credible information to allege violations under applicable law. The Panel made no efforts to obtain response from the Indian government, and there has been no attempt made to weigh defensive material. The Panel’s sole purpose has been to gather and evaluate evidence and determine if, in its opinion, the alleged violations deserve a formal investigation.

### **1.6 Organisation of this report**

The rest of the report is organised as follows: Section 2 provides the political context for the systematic targeting of Muslims so as to offer a historical background and political

analysis of the drivers and enablers of the ongoing violations, while also locating it within the regional context. This is followed (in Section 3) by a report of the findings of the International Law analysis, by types of violations, firstly, using International Human Rights Law (Section 3.1) and thereafter, International Criminal Law (Section 3.2). These accounts are summarised from the detailed documents and analysis contained in the annexed chapters, including one on all-India trends on discrimination and violence, as well as the four emblematic situations of Assam, Delhi, J&K and Uttar Pradesh. Section 4 provides an analysis of the domestic remedies provided (or not) in light of India's obligations under international law. Section 5 summarises the Panel's conclusions. This includes delving into the UN's Responsibility to Protect framework, engaging the Prevention agenda, and exploring an appropriate response to the escalating atrocities against Muslims. Following this is a proposed set of recommendations for positive actions by the international community, especially the UN system, and Indian duty bearers. There are five chapters annexed to the report, providing detailed factual and legal analysis on all-India trends on discriminations and targeting, alongside those from the four 'emblematic' cases of Assam, Delhi, J&K and Uttar Pradesh.

## 2. The Historical Context

India is the world's largest democracy. According to the latest Census (2011), India is home to 172 million persons identifying as Muslims, making up 14.2 per cent of its population. Hindus account for 79.8 per cent of the population and Christians, Sikhs, Buddhists and Jains together account for most of the remaining 6 per cent.<sup>52</sup> Muslims are the majority in only two regions: Jammu and Kashmir (13 million), and the small western archipelago of Lakshadweep (population <100,000).<sup>53</sup>

Since its independence, India has been torn between the aspiration to be a secular state, as enshrined in the 1950 Constitution, and the reality of a powerful Hindu nationalist movement (Hindutva), which considers India to be an essentially Hindu nation where other religious groups, especially Muslims and Christians, are outsiders that threaten Indian nationhood and need to be either excluded or assimilated as Hindus. The above noted accelerating trend of violence and discriminatory legislative and administrative measures against Muslims in India is a reversal of the inclusionary gains of the Indian republic, set in motion by the Indian national movement led by M K Gandhi and other anti-colonial leaders. Such actions appear to be in contravention of the foundations of constitutional secularism and Indian traditions of religious and cultural pluralism. The Indian Constitution – crafted to serve a post-colonial India that was imagined as an exemplifier of democracy and liberty in a world emerging from fascism and colonialism – guarantees fundamental rights to, inter alia, equality, freedom, life, liberty, protection against exploitation, freedom of religion, cultural and educational rights, and the right to a remedy. In 2014, the Bharatiya Janata Party (BJP), a party affiliated with the Hindutva movement, was voted to power, a majority it successfully expanded in the 2019 national elections. As we will see, many of the commitments to freedoms and equality are, since, being tested, and in some cases, repudiated, for India's vast population of religious minorities, creating a situation where the constitutional promise no longer seems a viable reassurance for them.

### 2.1 The slow burn of Hindu Nationalism

The BJP was voted to power nationally in 2014 with an absolute majority, on an ostensibly developmental agenda. Observers note, however, that the campaign also harnessed the Hindu sense of vulnerability and

52. Stephanie Kramer, 'Key findings about the religious composition of India' (Pew Research Centre, 21 September 2021) <[www.pewresearch.org/fact-tank/2021/09/21/key-findings-about-the-religious-composition-of-india/](http://www.pewresearch.org/fact-tank/2021/09/21/key-findings-about-the-religious-composition-of-india/)>

53. Stephanie Kramer, 'Key findings'..

manufactured fear of the ‘Muslim Other’ to craft outrage and anger, and ‘promote social majoritarianism in such a way as to permanently Hinduise the country by delegitimising minority culture and secularism’.<sup>54</sup> The face of the BJP campaign and its driver was Narendra Modi, then Chief Minister of Gujarat, since 2002. Modi has been accused by human rights groups as well as survivor families of allowing an anti-Muslim pogrom in the state, on his watch in 2002, that left at least 1,000 dead and resulted in mass destruction, rape and displacements.<sup>55</sup> Although the US State Department sanctioned Modi in 2005, denying him a visa,<sup>56</sup> Modi’s stubborn refusal to show remorse for Muslim suffering and his unabashed Hindu nationalism manifested in his embracing the epithet of ‘The Emperor of Hindu Hearts’ after the violence. Arguably, this served as the subtext of BJP’s spectacular political victory in the 2014 national elections.<sup>57</sup>

BJP is the political arm of the aforementioned Hindu nationalist movement, also called Hindutva. Codified as Hindu nationalist ideology by its chief ideologue, VD Savarkar, in ‘Hindutva: Who is a Hindu?’, *Hindutva* defines Hindus as a chosen people, as an ethno-racial trait, who constitute a unified nation, having Hindu culture and religion, and speaking a common language.<sup>58</sup> According to this understanding, the Hindu nation is geographically inseparable from India, and Hindu civilisation epitomises Indian identity. Muslims and Christians are outside this nation, their contribution to Indian culture thus mostly erased. Hindu nationalists consider Muslims and Christians threats to the nation, since, it claims, both have their

spiritual pole in lands outside India, thus making their allegiance to India questionable. The nation stands weakened by their presence, and Savarkar argues that the vulnerable majority, Hindus, must organise themselves against Muslims.<sup>59</sup>

MS Golwalkar, Hindutva’s chief ideologue and its architect,<sup>60</sup> built on this ethnic definition of Indian nationhood to declare that Muslims had to either submit or leave. According to Golwalkar,

“They must either adopt the Hindu culture or language, must learn to respect and hold in reverence Hindu religion, must entertain no other idea but those of glorification of Hindu race and culture or may stay in the country wholly subordinated to the Hindu nation, claiming nothing, deserving no privilege, far less any preferential treatment – not even citizen rights.”<sup>61</sup>

Golwalkar - who admired race theories of fascist Germany and Italy in his writings<sup>62</sup> - considered India to be special as it offered something nobody else could, and that was Hindu thought.<sup>63</sup> This unique offering, Golwalkar believed, was under threat because Hindus were abandoning their ancient wisdom because of the presence of non-Hindus.<sup>64</sup>

With a view to reverse that trend, in 1925, KB Hedgewar, an associate of Golwalkar, set up the Rashtriya Swayamsevak Sangh (RSS), a social movement to translate Hindutva’s goals of defending Hinduism and dominating the Indian nation into reality. RSS seeks to ‘reform minds to make each Hindu aware of his or her history, the threats to its

54. Christophe Jaffrelot, *Modi’s India: Hindu Nationalism and the Rise of Ethnic Democracy* (Princeton University Press 2021) 82.

55. Human Rights Watch, “‘We have no orders to save you’: State participation and complicity in communal violence in Gujarat” (HRW, 30 April 2022) <<https://www.hrw.org/report/2002/04/30/we-have-no-orders-save-you/state-participation-and-complicity-communal-violence>>

56. Under Sec. 212 of the Immigration and Nationality Act, any foreign government official who was responsible for, at any time, or who directly carried out, particularly severe violations of religious freedom, is ineligible for a visa”.

57. Jaffrelot (2021), p88.

58. For Hindu nationalism’s pre-Savarkar origins, see Chetan Bhat, *Hindu Nationalism: Origins, ideologies and Modern Myths* (Routledge 2001).

59. Vinayak Damodar Savarkar, *Hindutva: Who is a Hindu?* (first published 1923, Hindi Sahitya Sadan 2017).

60. Revathi Krishnan, ‘MS Golwalkar, the RSS Chief Who Remains ‘Guruji’ to Some, a ‘Bigot’ to Others’ (The Print, 5 June 2019) <<https://theprint.in/theprint-profile/ms-golwalkar-the-rss-chief-who-remains-guruji-to-some-a-bigot-to-others/245534/>>

61. Madhav Sadashiv Golwalkar, *We, or, Our Nationhood Defined* (Bharat Publications 1939) p16.

62. Golwalkar (1939), pp35 - 36.

63. Golwalkar (1939), p 41.

64. MS Golwalkar, in Aakar Patel, *Our Hindu Rashtra: What it is. How We Got Here* (Westland 2020) 93.

civilization, and the need to shape a united social and political body – the Hindu Rashtra [Nation] – to resist the Other, principally Muslims'.<sup>65</sup>

RSS was opposed to the partition of India and blamed the Indian National Congress, that led the freedom movement and won India its independence in 1947, for the creation of Pakistan as a homeland for the region's Muslims. This, according to RSS, was the worst ever defeat of Hindus and brought an ignoble end to the 1,000 year-long 'noble struggle for national freedom against Muslim invaders'.<sup>66</sup>

An RSS member assassinated MK Gandhi in January 1948, blaming him for this loss and for being soft on Pakistan.<sup>67</sup> Acknowledged as 'probably the best organised para-military group'<sup>68</sup> in the mass atrocities that shook the sub-continent in 1947-48,<sup>69</sup> RSS was reported playing a frequent role in the mass violence that accompanied the India-Pakistan partition – with widespread attacks against Muslims in Delhi, Punjab,<sup>70</sup> Jammu,<sup>71</sup> and in the princely states of Bharatpur and Alwar<sup>72</sup> in today's Rajasthan.<sup>73</sup> In western Uttar Pradesh,

then United Province, Golwalkar was reported as having played a direct role in planning and executing mass violence.<sup>74</sup> Golwalkar led the RSS from 1940 to 1973, until his death, and left an indelible mark on the organisation as well as Hindutva thought, characterised by anti-Muslim contempt and hostility.<sup>75</sup> Vilifying Muslims in literature and school textbooks was one of the first ways in which this animus was operationalised.<sup>76</sup>

Hindu nationalists and the RSS continue to see India as an inherently Hindu nation.<sup>77</sup> RSS sees its final goal as the consolidation of what it calls Akhand Bharat (unbroken Bharat or India), that not only includes undivided India – Pakistan and Bangladesh – but also Afghanistan and other south Asian states, as the historical Hindu land that must be reintegrated, by force if necessary.<sup>78</sup> Until that vision is realised, RSS seeks to fashion India as a natural home for the region's Hindus.

Along with its affiliates, of which BJP is the political wing,<sup>79</sup> RSS makes up the Sangh Parivar (family of the Sangh) network.

65. Jaffrelot (2021), p29.

66. Patel (2020), p93.

67. A.G Noorani, *The RSS: A Menace to India* (LeftWord Books 2019) 124.

68. Walter Andersen & Shridhar Damle, *The Brotherhood in Saffron: The Rashtriya Swayamsevak Sangh and Hindu Revivalism* (Penguin 2019) 48.

69. 1 million are estimated to have died and some 15 million displaced, across the India-Pakistan border on both sides.

<[https://www.1947partitionarchive.org/web\\_resources](https://www.1947partitionarchive.org/web_resources)>

70. Noorani (2019), p109.

71. Noorani, (2019), p110.

72. Kaur, Kanwaljit. *Communal Violence in Princely States During Partition (1947)*. *Proceedings of the Indian History Congress*. Vol 72, Part I (2011).

<<https://www.jstor.org/stable/44146784>>

73. Noorani (2019), p112.

74. Rajeshwar Dayal, *A Life of Our Times* (Orient Longman 1998) pp93 - 94.

75. He saw Muslims as congenitally villainous, having little or no individual agency, programmed for treason, and existing only to spite the Hindus. Pushing for Hindu Muslim unity in India, he felt, was humbug nationalism, unnatural and unscientific. Rather, he felt there should be no compromise with the Muslims, scores had to be settled with them [Patel (2020), p100, 103].

Pradip Kumar Datta. 'Dying Hindus': The Production of Hindu Communal Common Sense in Early 20th Century Bengal' *Economic and Political Weekly*, (1993) 28(25), 1305 - 1319.

76. Nandini Sunder, 'Teaching to Hate' (2004) 39(16), *Economic and Political Weekly*, 1605-1612.

77. Press Trust of India, 'India is a Hindu Rashtra, It is Non-Negotiable: RSS Chief Mohan Bhagwat (India Today, 1 October 2019)

<<https://www.indiatoday.in/india/story/india-is-a-hindu-rashtra-it-is-non-negotiable-rss-chief-mohan-bhagwat-1605313-2019-10-01>> Shyam Lal Yadav, 'RSS and the idea of Akhand Bharat' (The Indian Express, 4 January 2016) <<https://indianexpress.com/article/explained/rss-akhand-bharat/>>

78. This is a claim that is often voiced by RSS leaders, most recently by its chief, Mohan Bhagwat on 15 April, 2022, at a meeting of prominent Hindu clerics in Haridwar.

Sheo S Jaiswal, 'Akhand Bharat will be a reality soon: RSS chief Mohan Bhagwat' (The Times of India, 15 April 2022)

<<https://timesofindia.indiatimes.com/india/akhand-bharat-will-be-a-reality-soon-bhagwat/articleshow/90855519.cms>>

Earlier, more direct references to merging Pakistan too have been made.

Press Trust of India, 'RSS leader talks of 'Akhand Bharat', sees Pak merger by 2025' (Business Standard, 17 March 2019) [https://www.business-standard.com/article/pti-stories/rss-leader-talks-of-akhand-bharat-sees-pak-merger-by-2025-119031700555\\_1.html](https://www.business-standard.com/article/pti-stories/rss-leader-talks-of-akhand-bharat-sees-pak-merger-by-2025-119031700555_1.html)>

Yadav (n 74). Historically, the Congress and later Jan Sangh leader, KM Munshi was a chief votary of the Akhand Bharat idea. See Manu Bhargava, *Princely States and the Hindu Imaginary: Exploring the Cartography of Hindu Nationalism in Colonial India*. *The Journal of Asian Studies*. Vol 67, Number 3. August 2008 (881-915)

79. Including Akhil Bharatiya Vidhyarthi Parishad (student wing, established in 1948), Bharatiya Mazdoor Sangh (trade union, in 1955), and Vanavasi Kalyan Ashram (to check proselytization, in 1952), Vishwa Hindu Parishad (World Hindu Congress, 1964s), Saraswati Sishu Mandir (network of schools), Bajrang Dal (militant youth group, the largest affiliate, 1980s), and BJP as the political arm in 1980.

Cadres across its many affiliate organisations are seconded from the RSS, rotated between organisations (and regions),<sup>80</sup> ensuring uniformity of purpose across the Sangh Parivar. Together, the Sangh Parivar has promoted RSS's nationalist projects, most with negative consequences for Muslims and other religious minorities.<sup>81</sup>

The inauguration of the BJP government in 2014 saw Hindutva becoming the article of faith of the national government, in its discourse and decisions, and RSS penetrating state apparatus nationally, allowing for what an observer has described as the 'osmosis between the state's repressive apparatus and private vigilante armies conducive to the emergence of a de facto Hindu Rashtra'.<sup>82</sup>

Religious minorities, Muslims principally, and secularists, have been the specific focus of Hindu nationalists' targeting in campaigns of hate and physical attacks since. The impact of this targeting on the livelihoods and wellbeing of Muslim communities has been severe. These attacks have been accompanied and facilitated by changes in laws that, in effect, have empowered militant Hindu groups to target Muslims and other

minorities. Hindu vigilante groups - including Bajrang Dal<sup>83</sup> and a host of others, such as Gau Raksha Dal, Hindu Yuva Vahini, and Hindu Raksha Sena<sup>84</sup> in Uttar Pradesh, Hindu Shakti Sangathan<sup>85</sup> and Hindu Raksha Dal in Delhi,<sup>86</sup> Sri Ram Sena and Hindu Jagran Vedike in Karnataka, and Arya Samaj,<sup>87</sup> Hindu Mahasabha<sup>88</sup> and Vishwa Hindu Parishad, nationally - are reported to enjoy much state patronage and impunity,<sup>89</sup> enabling them to lead campaigns against those they consider 'deviants'.<sup>90</sup> This coordination between state apparatus and private armies is visible in its most pure form in Uttar Pradesh province, with the head of provincial government, Chief Minister Yogi Adityanath, also being a Hindu religious leader and former chief of a paramilitary group.<sup>91</sup>

In May 2019, the BJP was re-elected to power with an enhanced majority, on the back of a hyper-nationalist Islamophobic campaign.<sup>92</sup> This victory signalled the public endorsement of the BJP's policies and practices. The BJP has, since, taken several actions in line with RSS's programme of making India a Hindu majoritarian state in law, not just practice, and the exclusion of its minorities, especially Muslims.<sup>93</sup>

80. Jaffrelot (2021), pp16 - 17.

81. Hindu nationalists' principal campaigns have been the abrogation of the autonomy of Jammu & Kashmir province, adoption of the Uniform Civil Code, and building of the Ram Temple in place of the Babri Masjid in Ayodhya. [Jaffrelot (2021), pp17 - 22].

82. Jaffrelot (2021), p212.

83. Tripura violence: Subir Bhaumik, 'Tripura: Anti-Muslim Violence Flares up in Indian state' (BBC, 28 October 2021) <<https://www.bbc.co.uk/news/world-asia-india-59047517>>

84. The Wire, 'Hindutva Leaders at Haridwar Event Call for Muslim Genocide' (The Wire, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

85. Delhi Dwarka Haj House protests: Ismat Ara, 'Hindutva Groups Target Haj House in Dwarka, Call it 'Terrorism in Our Peaceful Area'' (The Wire, 6 August 2021) <<https://thewire.in/communalism/haj-house-dwarka-construction-delhi>>

86. Delhi Jantar Mantar anti-Muslim meet. Zafar Aafaq & Alishan Jafri, 'Event Calling For Genocide Against Muslims In India's Capital Latest In An Unhindered Spiral Of Hate Speech' (Article 14, 13 August 2021) <<https://article-14.com/post/event-calling-for-genocide-against-muslims-in-india-s-capital-latest-in-an-unhindered-spiral-of-hate-speech--6115dc826c952>>

87. Mandeep Punia, 'The RSS's Endeavour to Subsume the Arya Samaj is Reaching Fruition' (The Caravan, 30 June 2019) <<https://caravanmagazine.in/politics/rss-attempt-takeover-arya-samaj-english>>

88. Express Web Desk, 'Everything you Need to Know About the Hindu Mahasabha' (The Indian Express, 2 February 2019)

<<https://indianexpress.com/article/india/hindu-mahasabha-the-waning-fringe-outfit-shouting-to-stay-politically-relevant-5563082/>>

89. Jaffrelot (2021), pp212 - 216.

90. Jaffrelot (2021), p157. Refer also to Annexure V: Uttar Pradesh

91. BBC, 'Yogi Adityanath: 'Muslims Did No Favour to India by Staying Here'' (BBC, 7 February 2020) <<https://www.bbc.co.uk/news/world-asia-india-51382414>> Dharendra K Jha, 'Priest of Violence:

Adityanath's Reign of Terror' (The Caravan, 31 December 2021) <<https://caravanmagazine.in/politics/adityanath-reign-of-terror>>

92. Nazneen Mohsina, 'Political Opportunism in India: Exploiting Islamophobia' (The Diplomat, 10 May 2019) <<https://thediplomat.com/2019/05/political-opportunism-in-india-exploiting-islamophobia/>>

93. Including NRC Assam, BBC, 'Assam NRC: What next for 1.9 million 'Stateless' Indians?' (BBC, 31 August 2019) <<https://www.bbc.co.uk/news/world-asia-india-49520593>>

Abrogations in Kashmir, BBC, 'Article 370: What Happened With Kashmir and Why it Matters' (BBC, 6 August 2019) <<https://www.bbc.co.uk/news/world-asia-india-49234708>>

Babri Masjid judgement, BBC, 'Ayodhya Verdict: Indian Top Court Gives Holy Site to Hindus' (BBC, 9 November 2019) <<https://www.bbc.co.uk/news/world-asia-india-50355775>>

Modi's second term, from 2019 onward, has also seen increasing instances of attacks by state forces against minority Muslims, with killings, detentions and custodial torture often reported.<sup>94</sup> Anti-Muslim incitement, hostility and violence by non-state actors, too, have increased in scope since, with severe consequences for Muslims across the range of outcomes. Observers have demonstrated that with a stable majority in Parliament, and national institutions, including the judiciary and press increasingly appearing to be in thrall of the executive,<sup>95</sup> the BJP seems confident in being able to begin to operationalise its vision of India where religious minorities – Muslims particularly – do not find a place as equal citizens.<sup>96</sup>

The BJP's recent re-election in March 2022, in Uttar Pradesh<sup>97</sup> – India's largest and most politically significant state – against the backdrop of widespread suffering due to Covid-19 mismanagement,<sup>98</sup> and economic anxieties due to rising unemployment and prices,<sup>99</sup> is a validation of the continued appeal of the BJP's Hindutva ideology among the masses.<sup>100</sup>

## 2.2 Interrogating the Idea of India

The overwhelming of the nation by religion and religious animus is relatively new to India as compared to other states in the 'Global South'.<sup>101</sup> The adoption, at independence, by Indian leaders of a secular Constitution that provided all its citizens, irrespective of their religion, freedom and

equality, undergirded this Indian exceptionalism. And yet the path seems to be increasingly converging. How did this come about? Despite the formality of secular constitutionalism, the prior accommodation of Hinduism by a world of lay officials and intellectuals, observers argue, was one of the enabling conditions that eventually led to religion becoming the vocabulary of politics in India too, and the constitutional values of freedom, equality and rule of law being compromised.<sup>102</sup>

An appraisal of the India story will benefit from interrogating the "idea of India" itself. That is, the mainstream discourse of the liberal state, the media and the intelligentsia, which celebrates the democratic stability, multicultural unity and impartial secularity of the (pre-BJP) Indian state, as a national miracle. Each of these claims, it turns out on closer examination, has infirmities. As we will see, these vulnerabilities allowed majoritarian interests to, in the final analysis, undermine the constitutional promise.

### *Democratic stability?*

Democracy has indeed seeded in India, an outcome of the actions and practices of the 'founding fathers', including Jawaharlal Nehru, India's first and longest-serving Prime Minister. Tutored by him for a good 17 years until his death in 1964, electoral democracy found its feet in India and has endured since. But for Nehru and the Indian National Congress leadership that retained

94. Human Rights Watch Annual Report 2020, 2021, Amnesty International Annual Report, 2020, 2021. USCIRF Annual Report, 2020, 2021.

95. Jaffrelot (2021), Chapter 8: Deinstitutionalising India, pp255-309).

Steve Coll, 'In India, Narendra Modi's Government Is Using the Courts to Attack Civil Rights' (The New Yorker, 19 April 2021) <<https://www.newyorker.com/news/daily-comment/in-india-narendra-modis-government-is-using-the-courts-to-attack-civil-rights>>

Grant Wyeth, 'Is the Indian Judiciary Independent Anymore?' (Australian Institute of International Affairs, 2022)

<<https://www.internationalaffairs.org.au/australianoutlook/is-the-indian-judiciary-independent-anymore/>>

96. Ajay Mahaprashasta, 'History Was Accelerated in the Wake of BJP's 2019 Victory': The Wire Interviews Christophe Jaffrelot' (The Wire, 24 January 2020)

<<https://thewire.in/politics/christophe-jaffrelot-bjp-india-cao-part-one>>

97. CBS News, 'Why India's Election Results May Worry the Country's 200 Million Muslims' (CBS News, 10 March 2022) <<https://www.cbsnews.com/news/india-election-results-may-worry-200-million-muslims-country/>>

98. Geeta Pandey, 'Covid-19: India's Holiest River is Swollen with Bodies' (BBC, 19 May 2021) <<https://www.bbc.co.uk/news/world-asia-india-57154564>>

99. Asad Rizvi, 'UP: Youth Organisations Protest Against Unemployment, Demand CM Fill Up Vacant Posts' (The Wire, 25 September 2021)

<<https://thewire.in/rights/uttar-pradesh-unemployment-youth-students-protest-adityanath-vacant-jobs>>

Anjana Pasricha, 'Violent Protests Highlight India's Grim Unemployment Situation' (VOA, 30 January 2022) <<https://www.voanews.com/a/violent-protests-highlight-india-s-grim-unemployment-situation/6418660.html>>

100. Soutik Biswas, 'Uttar Pradesh Elections: What a Historic Poll Win Says About Modi's India' (BBC, 11 March 2022) <<https://www.bbc.co.uk/news/world-asia-india-60688428>>

101. This section draws heavily on Perry Anderson *The Indian Ideology*. (Expanded edn, Verso 2015).

102. Anderson, (2015), p151.

power after independence, an equally important priority seemed to be stability and order. The machinery of administration and coercion that they chose to adopt was fashioned on the colonial example. The Indian Civil Service, the Imperial Police and Indian Army were all retained, with their make-up and character unreformed.<sup>103</sup> The new state's tradition of representation was also borrowed from the colonial. The Constituent Assembly that gave India its constitution was not elected by universal franchise, and after Partition, it was controlled overwhelmingly by the Congress (95 per cent). As a consequence, it was inherently a socially narrow body, dominated by upper caste and brahmin elite,<sup>104</sup> that was not representative of the Indian population.

The Constitution adopted in 1950 drew most of its provisions from the Government of India Act of 1935, with its attendant colonial undertones. Most critically, the provisions laid down that the victors would be those first past the post in every constituency.<sup>105</sup> Additionally, any demand for proportionate representation by Muslims (and other minorities) in the Constituent Assembly was ignored, and an undiluted Westminster system was adopted for the Lok Sabha (Lower House of a bicameral Parliament).<sup>106</sup>

Between 1951 and 1971, Congress never won a majority of votes in the Parliament. But the first-past-the-post system ensured that the average 45 per cent of votes it took was enough to give it commanding majorities in

the Lok Sabha, with some 70 per cent of the seats. In the first 20 years of independence, Congress had no political opposition at the national level. At the local level, Congress deployed many colonial tools that it chose to retain and perpetuate,<sup>107</sup> to ward off dissent<sup>108</sup> and counter political opposition.<sup>109</sup> As a result, in the first 20 years, Congress enjoyed majority in Parliament, and controlled every provincial government with no opposition. What in effect was one party rule, then allowed the Congress - and its leadership - to be the democratic party in power, maintaining democratic stability, without the need for authoritarian means, common to other post-colonial polities.<sup>110</sup>

### *Multicultural unity?*

The real test of the strength of Indian democracy in these formative years was however in the peripheries, and that is where we come to interrogate the second element of the 'Idea of India', its multicultural unity. Early Congress leadership believed in the unity of India, and its leaders were, first and foremost, Indian nationalists, who brooked no challenge to that claim, going to great lengths to ensure the integration of all areas that formed part of British India, including using overwhelming force to retain the union.<sup>111</sup> The amalgamation of areas in the North East - that had remained outside the Indian cultural sphere, with only tenuous historical links to the rest of the Raj - is a case in point. As an example, to integrate the princely state of Manipur, in 1949, its

103. The Indian Civil Service (ICS), the 'steel frame' of colonial administrators, was adopted by independent India, unreformed. The Imperial Police and Indian Army - the former, the Colonial power's instrument of domestic repression, and the latter of overseas aggression - were also adopted unquestioningly.

104. Sunil Khilnani, *The Idea of India* (Penguin 1998).

105. Anderson (2015), p107.

106. Zoya Hassan, E Sridharan, & R Sudarsharan, *India's Living Constitution: Ideas, Practices, Controversies* (Anthem Press 2002).

107. Notably the preventive detention provisions dating back to Bengal State Prisoners Regulation, 1818, and Sec 93 of the Government of India Act 1935, authorising Viceroy's to override the elected governments in the provinces, retained as Art 356 in the Constitution, with President, acting on behalf of the Council of Ministers given the power.

108. First used against peasant rebellion in the Telangana region, 1946 - 1951.

Rohan Mathews, 'The Telengana Movement: Peasant Protests in India, 1946-51' (Ritimo, 1 July 2011) <<https://www.ritimo.org/The-Telengana-Movement-Peasant-Protests-in-India-1946-51>>

109. Used just after adoption of the Constitution, against Punjab, Andhra and Kerala state governments. Shoaib Daniyal, 'A Short History of the Colonial Origins of President's Rule and its Misuse in Independent India' (Scroll.in, 1 February 2016) <<https://scroll.in/article/802736/a-short-history-of-the-colonial-origins-of-presidents-rule-and-its-misuse-in-independent-india>>

110. A point also made by Rajaji when he warned of keeping a watch against such tendencies in Congress. Ramachandra Guha, 'What India Can Learn From Rajaji's Warnings About One-Party Dominance in the 1950s' (Scroll.in, 24 April 2022) <<https://scroll.in/article/1022459/ramachandra-guha-what-india-can-learn-from-rajajis-warnings-about-congress-dominance-in-the-1950s>>

111. Alam, Javeed, Centre for English and Foreign Languages, Hyderabad, 'The Nation and the State in India: A Difficult Bond' in Zoya Hasan, E. Sridharan and R. Sudarshan (eds), *India's Living Constitution: Ideas, Practices, Controversies* (New Delhi: Permanent Black (2002, 2004) and London: Anthem Press (2005), 83 - 104.

dithering Maharaja was kidnapped, forced to sign off his kingdom, and the state assembly, elected the previous year on the basis of universal franchise, was disbanded.<sup>112</sup> The administration was handed over to a bureaucrat who reported directly to Delhi, an arrangement that only changed in 1972, when an elected assembly was reintroduced.<sup>113</sup>

In the neighbouring Naga district of Assam, an area that colonial government had kept outside of the control of the Assam state administration, the Army was deployed in 1956 when the Naga National Council resisted integration.<sup>114</sup> The full-scale war concluded when Nagas agreed a ceasefire and a political settlement within the Indian union.<sup>115</sup> Helping subdue the Nagas was the Armed Forces Special Powers Act (AFSPA), enacted by the Congress government in 1958. Observers have described the statute as ‘perhaps the most sanguinary single piece of repressive legislation in the annals of liberal democracy’.<sup>116</sup> AFSPA authorises the armed forces to attack or kill civilians under a mere suspicion of violence, while forbidding any legal action against any official for any act. This is effectively a licence to murder, with troops guaranteed immunity.<sup>117</sup> It is a sad commentary on the state of democracy in India’s peripheries and its claim of multicultural unity that AFSPA is still in force in the region, invoked to retain order. Over

the years, AFSPA has been extended to the rest of the North East<sup>118</sup> and to Kashmir in 1989. J&K in the West had proved more of a challenge to integrate. A Muslim-majority princely state ruled by a Hindu Maharaja, Kashmir was secured to the Indian union, in October 1947, through a combination of a document of accession from its ruler and the promise of referendum to its people. It did not take too long for the centre to detain, on charges of sedition, the popular leader of the state who secured the support of the people – Shaikh Abdullah – and for the referendum to be renounced.<sup>119</sup>

It took many years of political mismanagement by New Delhi for the situation in Manipur and J&K to break down into conflict. But, when it did, it was repressive tools such as AFSPA (alongside other measures such as the J&K Public Safety Act, 1978 and the National Security Act, 1980) that the democratic state relied on to keep order and control. What has followed is a saga of gross and unending abuses of human rights and social dislocations of citizens.<sup>120</sup> A closer look reveals how communities distanced from mainstream Indian culture suffered some of the worst forms of control.<sup>121</sup>

With Congress monopoly breaking up after Nehru died, and governance breaking down,<sup>122</sup> armed rebellions also broke out in the rest of

112. VB Patel, the Home Minister, is reported to have exclaimed, when faced with the Maharaja who was unwilling to oblige, “Isn’t there a brigadier in Shillong?” Sanjib Baruah, *Durable Disorder: Understanding the Politics of Northeast India* (Oxford University Press 2005) 59 - 60.

113. Manipur was made a state with an elected assembly only in 1972.

114. In meeting with the Naga leader, Phizo, in Delhi in 1952, JL Nehru, is reported to have declared, “Whether heaven falls, or India goes into pieces and blood runs red in the country, whether I am here or anyone else, Nagas will not be allowed to be independent”. Nirmal Nibedon, *North East India: The ethnic explosion* (Lancers Publishers 1981) 25.

115. The Peace mission helped broker a ceasefire in 1964. As a concession, the Naga Hills district was carved out of Assam province and made a Union Territory.

116. Anderson, (n 98).

117. Anderson, (n 98). 123

118. Introduced in Naga Hills district of Manipur and in Nagaland in 1958 and extended to Assam in 1990 and subsequently in Arunachal Pradesh districts of Changlang and Tirap.

119. “We have gambled at the international stage on Kashmir, and we cannot afford to lose it. At the moment, we are there at the point of a bayonet. Till things improve, democracy and morality can wait”. Balraj Puri, *Kashmir towards Insurgency* (Orient Longman 1995) 119 – 120. The noted constitutional expert AG Noorani described the take-over thus: “a monstrous wrong demands a monstrous effort to cover it up, and a monstrous falsehood to justify it.” A.G. Noorani, ‘The legacy of 1953’ (Frontline, 29 August 2008) 16-29 <<https://frontline.thehindu.com/the-nation/article30197423.ece>>

120. Human Rights Watch, ‘Getting Away With Murder: 50 Years of the Armed Forces (Special Powers) Act’ <<https://www.hrw.org/legacy/backgrounder/2008/india0808/india0808.htm>>

For an account of the violation in Manipur, see Anubha Bhonsle, *Mother, where’s my Country? Looking for Light in the Darkness of Manipur* (Speaking Tiger 2016). For Kashmir see Ather Zia and Javid Iqbal Bhat, *A Desolation called Peace: Voices from Kashmir*. (Harper Collins 2019). Ifrah Butt, Essar Batool, Natasha Rather, Samreena Mushtaq and Munaza Rashid, *Do you Remember Kunan Poshpora?: The Story of a Mass Rape* (Zubaan 2016). Basharat Peer, *Curfewed Night* (Random House 2008).

121. Anderson argues, “what is perfectly obvious but never spoken is that the hand of AFSPA has fallen where the reach of Hinduism has stopped.” (2015), p144.

122. Atul Kohli, *Democracy and Discontent: India’s growing crisis of governmentality* (Cambridge University Press 1991).

North East India – especially Mizoram<sup>123</sup> and Assam,<sup>124</sup> Punjab,<sup>125</sup> and later in central India.<sup>126</sup> To counter these, the national government deployed multiple repressive laws, all at the cost of freedoms and rule of law. This included, besides AFSPA, Preventive Detention provisions (Art. 22 of Constitution); Criminal Law Amendment Act, 1961;<sup>127</sup> Unlawful Activities Prevention Act, 1967; Prevention of Insults to National Honour Act, 1971; Maintenance of Internal Security Act, 1971; J&K Public Safety Act, 1978; National Security Act, 1980; Terrorist and Disruptive Activities (Prevention) Act, 1985; Prevention of Terrorist Activities Act, 2002; Unlawful Activities (Prevention) Amendment Act, 2004; and Unlawful Activities (Prevention) Amendment Act, 2019.

The use of force to unify the nation not only fell on the peripheries, but also on those considered aberrant within. The case of the integration of Hyderabad<sup>128</sup> and the mass atrocities against its Muslim population that followed is emblematic.<sup>129</sup> A mission sent by Prime Minister Nehru found evidence of mass killings (between 27,000 – 40,000 people lost their lives during and after the police action, the mission found); widespread instances of rape and abduction of women

and girls; desecration of mosques; and loot, arson and seizure of property.<sup>130</sup> The report noted that forcible conversion ‘was a universal factor’,<sup>131</sup> and ‘in a greater part of the state the entire Muslim economic life has been smashed’.<sup>132</sup> The mission found Hindu organisations, such as Arya Samaj and Hindu Mahasabha,<sup>133</sup> complicit in committing atrocities, as were army and police personnel<sup>134</sup> and, notably, members of State Congress who it claimed played a leading role.<sup>135</sup>

The report of the mission was not made public by the government, and Vallabhbhai Patel, then home minister and credited with the successful ‘integration’ of princely states,<sup>136</sup> repudiated the report.<sup>137</sup> As a result, not many know about this mass atrocity, and even historians of riots and massacres make no reference to this episode.

It is only recently that scholarship is unearthing how the so-called Police Action in Hyderabad, more than a year after independence, was integral to and illustrative of the violent incorporation of India’s Muslims into the postcolonial order, as the coercive institutions inherited from the colonial regime were deployed<sup>138</sup> as instruments of popular will and liberation.

123. M Sajjad Hassan, *Building Legitimacy: Exploring State Society Relations in Northeast India* (Oxford University Press 2008) 90 – 91. Counter-insurgency operations included air strikes and mass relocation of villages to camps run by the army.

124. Sanjib Baruah, ‘The State and Separatist Militancy in Assam: Winning a Battle, Losing the War?’ (1994) 34(10) *Asian Survey* 863 – 877 <<https://www.jstor.org/stable/2644966>>

125. Gurharpal Singh, ‘Understanding the “Punjab Problem”’ (1987) 27(12) *Asian Survey* 1268 – 1277 <[https://eprints.soas.ac.uk/22961/1/Singh\\_Understanding%20the%20%27Punjab%20Problem%27.pdf](https://eprints.soas.ac.uk/22961/1/Singh_Understanding%20the%20%27Punjab%20Problem%27.pdf)>

126. Nandini Sunder, *The Burning Forest: India’s War in Bastar* (Juggernaut 2016).

Chakravarti, Sudeep Chakravarti, *Red Sun: Travels in Naxalite Country* (Penguin Books 2008).

127. Making it a crime to question the territorial integrity of India in writing or speech, punishable with three years’ imprisonment.

128. What is called ‘Police Action’ but was in fact a full-fledged military invasion led by the Indian Army, with air force used for support, was launched on 13 September 1948, when the Muslim ruler of the princely state Hyderabad refused to accede to the Indian union, and instead appealed for United Nations’ intervention. The pretext was depredations of the Razakars – Hyderabad militia – against the Hindu population of the state.

Hyderabad state forces were no match for the Indian Army, and Nizam surrendered on 17 September 1948, with the state placed under a military administration, with a military governor at the helm.

129. The noted expert AG Noorani has noted, “the deceptively titled ‘police action’ was much more than conquest of a rebel state. It was an annihilation of a certain way of life, the uprooting of a people, and the sweeping away of a culture, swiftly and almost completely. None of this was necessary in the interest of India’s security or national integrity”. AG Noorani, *The Destruction of Hyderabad* (Tulika Books 2013) 24

130. Sunderlal Committee, 29 November to 21 December 1948, made up of Pandit Sunderlal, Kazi Abdul Ghaffar and Moulana Abdulla Misri.

131. Noorani (2013), p362, 274.

132. Noorani (2013), p373.

133. Noorani (2013), p374.

134. Noorani (2013), p363.

135. The most important Congress leader to emerge from the events, that entailed, in the words of the scholar S. Purushottam, “the manufacturing of disorder” by Congress workers together with Hindu Mahasabha and RSS cadres, and that provided a key pretext for the invasion, was PV Narasimha Rao, who later became Prime Minister. Sunil Purushotham, ‘Destroying Hyderabad and Making the Nation. Book Review: The Destruction of Hyderabad, AG Noorani’ (*Economic and Political weekly* 2014) <<https://www.epw.in/journal/2014/22/book-reviews/destroying-hyderabad-and-making-nation.html>>

136. VP Menon, *Integration of the Indian States* (Orient Blackswan 2014).

137. Mike Thomson, ‘Hyderabad 1948: India’s hidden massacre’ (BBC, 24 September 2013) <<https://www.bbc.co.uk/news/magazine-24159594>>

In June 1949, under Patel’s instruction, the Hyderabad administration granted amnesty to “Hindus involved in the retaliatory action just after the Police Action”, and the military governor ordered that “no publicity should be given to it”, meaning the amnesty. Purushottam (2014), p31.

138. Sunil Purushottam, ‘Internal Violence: The “Police Action” in Hyderabad’ (2015) 57(2) *Comparative Studies in Society and History* 435 – 466.

The observer, Sunil Purushottam, argues that the destruction of Hyderabad signified an important milestone in the transformation of Indian Muslims as a 'national' political community to a religious minority, marked by Muslims generally withdrawing from the political sphere.<sup>139</sup> Indian Muslim leaders maintained a studied silence about the Police Action, the silence borne not only out of fear, the author points out, but also an effort on behalf of India's Muslims to enter into a relationship with the very state responsible, at once, for both their persecution and protection.<sup>140</sup>

The Hyderabad atrocities would become a template for mass anti-minority violence (and the collusion of political and administrative elites with anti-minority groups in it) in the years that followed. The first half of the 1960s saw repeated mass violence, often mischaracterised as 'riots' in India, but that were, in fact, targeted violence against Muslims. 1961 was a turning point, with a major conflagration in Jabalpur, in central India, and later in the north, in Aligarh and Meerut.<sup>141</sup> Anti-Muslim violence was unleashed again in March 1964 across a string of sites in eastern India, resulting in scores of deaths.<sup>142</sup> Mass anti-minority violence in India has been attributed to political instability<sup>143</sup> among other reasons. It is remarkable, then, that these repeated instances of mass violence were taking place at a time when Congress still monopolised power at the Centre and in all provinces, including where the violence<sup>144</sup>

occurred. It showed how the RSS and affiliated groups had begun to resurrect themselves after the short ban in 1948 and to develop their organisational capacity for anti-Muslim violence. This may partly have been aided by support that sympathetic elements within the Congress party itself, as well as within the police and bureaucratic hierarchy, provided RSS and other Hindutva groups.<sup>145</sup> This was a trend that would strengthen later.

### *Impartial secularism?*

Let us come to the third element of the 'idea of India', impartial secularism and its vicissitudes in the formative years of the Republic. In the struggle for independence, the legitimising ideology of Congress was secular nationalism. Post-colonial India was not sectarian, a matter of much genuine pride, and Muslims and Christians enjoyed rights and protection. On closer examination, however, it is clear that guarantees were qualified. The Constitution did not describe India as a secular state, nor did it institute equality before the law. Instead, different faith communities continued to be subject to the respective customs of their faith that governed their family life.<sup>146</sup> Religious hierarchies too were not disturbed. Untouchability was banned, but caste itself was left untouched. The protection of cows and prohibition of alcohol were enjoined. In addition, seats were reserved in parliament for two minorities – Scheduled Castes and Scheduled Tribes – but not for Muslims or other religious minorities.

139. Sunil Purushottam (2015), p.463

140. Purushottam (2015), p 463

141. 55 persons were killed in Jabalpur (1961), according to the official count, with the actual number reported to be closer to 200. This was followed by violence in Aligarh, in the United Provinces, in October 1961, where 14 were reportedly killed, and in neighbouring Meerut, during the same months, where the official count was 17. Intelligence reports and commissions of inquiry noted the role of RSS, or its affiliate organisation, ABVP, Jan Sangh, in all of these incidents. Violette Graff & Juliette Galonnier, 'Hindu-Muslim Communal Riots In India I (1947-1986)' (SciencesPo, 15 July 2013) <<https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/hindu-muslim-communal-riots-india-i-1947-1986.html>>

142. Starting with Calcutta (in west Bengal), where 104 persons died, 39 in police firing; followed by that in Jamshedpur (in the, then, united Bihar), with 51 dead, and concluding with Rourkela (Orissa), where the official count was 71, but the actual number was much higher. The official enquiry reported that the intelligence report quoted a figure of 2,000. Indian Commission of Jurists, 'Recurrent Exodus of Minorities from East Pakistan and Disturbances in India' (International Commission of Jurists, 1 January 1965). Graff & Galonnier (n 139).

143. Paul Brass, *The Production of Hindu-Muslim Violence in Contemporary India* (University of Washington Press 2003).

Steven I Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India* (Cambridge University Press 2004).

144. Brass (2003).

145. AG Noorani, 'Review: Communal 'Riots': Some Harsh Truths' (2004) *Economic and Political Weekly* 39(3) 252 – 254 <<https://www.jstor.org/stable/4414523>> Also see for an insightful historical analysis, Manu Bhagavan, *The Hindutva Underground: Hindu Nationalism and the Indian National Congress in Late Colonial and Early Post-Colonial India*. *Economic and Political Weekly*. Vol. 43, No. 37 (sept. 13-19 2008), 39-48.

146. The Hindu Code Bill was introduced in 1951, drawing much opposition from conservative elements. Only in 1956 and later were watered-down revisions to Hindu marriage, inheritance and family laws passed by Parliament. The personal laws of religious minorities were not touched.

Congress leaders often dabbled in communal politics, striking examples being in the state rebuilding of Somnath temple in Gujarat,<sup>147</sup> and its enabling of the installation of the Hindu idol in the Babri Masjid in Ayodhya, Uttar Pradesh,<sup>148</sup> that sowed the seeds for the eventual destruction of the mosque in 1992.

Observers point out<sup>149</sup> that a discourse has developed to rationalise the gap between claim and reality, arguing that secularism in India did not mean separation of state and religion, but rather that the Indian state maintains 'equidistance' from the many faiths and is therefore impartial. The findings of the Sachar report on the conditions of India's Muslims are a good litmus test of the genuineness of the claim.<sup>150</sup> The high-level committee tasked by the then Congress Prime Minister, Manmohan Singh, in 2006, found that Muslims constituted the poorest sections of India's population, along with Scheduled Castes (SC) and Scheduled Tribes (ST), especially in areas of their concentration.<sup>151</sup> Employment too was found to be poor among Muslims, with most Muslims found to be engaged in the unorganised sector, without any security or protection.<sup>152</sup> In the public sector, according to Sachar Committee data, Muslims represented only 4.9 per cent of all employees (in central and state governments). Other official accounts provide further proof of the dismal

developmental performance. According to the 2001 Census, Muslims were the least literate among all religious communities, while Muslim women were among the most illiterate sections of society (47.3 per cent illiterate). The incidence of 'out-of-school' children is highest among Muslims,<sup>153</sup> this correlating with the high incidence of child labour among Muslims (at 3 per cent, higher than the national average at 2.4 per cent).<sup>154</sup>

The picture that emerges is grim: except for a thin elite layer of upper-class origin, most Muslims are much worse off than the rest of the population. This must be explained as the result of bias and discrimination, some in letter, others in practice. The discrimination begins with the constitution itself, which accorded rights of representation to minorities, including SCs and STs in constituencies and seats in Lok Sabha, and then in public employment.<sup>155</sup> These were denied to Muslims on the grounds that conceding them would violate the precept of secularism by introducing religion into matters of the state, a circular argument, given the evident facts.<sup>156</sup> To add to the denial, Muslims along with Christians, from the lowest strata of society, are excluded by law from the Scheduled Caste category, depriving them of preferential benefits in education, jobs, welfare programmes and protection against violence that Dalits are entitled to.<sup>157</sup>

147. The Somnath temple in Gujarat, attacked several times and destroyed by the Afghan ruler Mahmud of Ghazni, around 1025 AD, was rebuilt with government funds. Its foundation stone was laid by the then President of India, Rajendra Prasad. KM Munshi is credited with campaigning for state support for its rebuilding. Munshi started his political career with the Swaraj Party, moved on to the Indian National Congress, and then the right-wing Swatantra Party, before finally settling with Jan Sangh, the predecessor of the BJP. Makkhan Lal, 'On KM Munshi's Birth Anniversary, Remembering His Fight to Rebuild Somnath Temple' (The Print, 30 December 2018) <<https://theprint.in/opinion/on-km-munshis-birth-anniversary-remembering-his-fight-to-rebuild-somnath-temple/25283/>>

148. Krishna Jha & Dharendra K Jha, 'The Untold Story of How the Rama Idol Surfaced Inside Babri Masjid' (The Wire, 6 December 2021) <<https://thewire.in/communalism/untold-story-rama-idol-surfaced-inside-babri-masjid>>

Historians have documented the suspect role of the Congress Chief Minister of the then United Province, GB Pant, in this and other incidents.

149. Mohammed Ayoob, 'The Irrelevance of Secularism' (The Hindu, 30 March 2019) <<https://www.thehindu.com/opinion/op-ed/the-irrelevance-of-secularism/article62110031.ece>>

150. Ministry of Minority Affairs, 'Sachar Committee Report' (Minority Affairs, 8 August 2019) <<http://www.minorityaffairs.gov.in/reports/sachar-committee-report>>

151. In Uttar Pradesh, Bihar, Assam, and West Bengal.

According to the report, while in rural areas, poverty among Muslims (33%) was comparable to that among SC and ST, in urban areas, it was more pronounced, with nearly half of all Muslims (44%) counted among the poorest (national average: 29%).

152. Government of India. 2007. Report on Conditions of work and promotion of livelihoods in the unorganized sector. New Delhi: National Commission for Enterprises in the Unorganized Sector, 2007.

153. Fazal, Tanweer. 2013. Millennium Development Goals and Muslims of India. Oxfam India Working Paper Series XIII. P6.

154. Government of India 2011: India Human Development Report 2011: Towards Social Inclusion. New Delhi: Institute of Applied Manpower Research, p229

155. Mehul Joshi, 'Article 330: Reservation of Seats for SC & ST in House of People' (The Indian Constitution, 24 September 2021)

<<https://theindianconstitution.com/article-330-sc-st-reservation-in-loksabha/>>

156. Zoya Hassan, 'Reservation for Muslims' (India Seminar, nd) <<https://www.india-seminar.com/2005/549/549%20zoya%20hassan.htm>>

For a historical account, see Sanjeer Alam Affirmative Action for Muslims?: Arguments, Contentions, and Alternatives (2014) Studies in Indian Politics 2(2) 215 – 229 <[https://www.csds.in/uploads/custom\\_files/1526551748\\_Affirmative%20Action%20for%20Muslims.pdf](https://www.csds.in/uploads/custom_files/1526551748_Affirmative%20Action%20for%20Muslims.pdf)>

157. Presidential Order, 1950. <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99649/119024/F1418240846/IND99649.pdf>>

A direct consequence of the absence of any affirmative action for religious minorities is that Muslims have remained very underrepresented in state structures since independence, with no improvement registered throughout the 75 years. Muslims make up 14.2 per cent of the national population (2011 Census). The Sachar report noted that Muslims made up only 7.6 per cent of India's police forces, only 2.7 per cent if counting direct recruits to the officer cadre Indian Police Service (IPS); and a mere 3 per cent in the elite Indian Administrative Service (IAS).<sup>158</sup> As data shows, these figures have either remained stable in the past decades or have worsened. Only 2.7 per cent of the successful entrants to the central civil service in 2016 were Muslim.<sup>159</sup>

As a result, none of the 28 state police chiefs and state chief secretaries, the senior-most province-level civil servants, currently, is Muslim. And only one of the 33 judges of the Supreme Court is Muslim, with equally poor representation in High Courts.<sup>160</sup> In security agencies, the situation is worse. Information on representation of minorities in security services is not publicly available,<sup>161</sup> but anecdotal evidence is a pointer. It is an unstated fact that no Muslims are recruited to the country's top spy agency – the Research and Analysis Wing (RAW).<sup>162</sup> A former Defence Minister revealed however, in 1999 that Muslims make up only 1 per cent of the regular Army (of about 1.1 million).<sup>163</sup> Another defence minister explained why: “The Muslim is not wanted in the Armed forces, because he is always suspect”.<sup>164</sup>

With the BJP becoming the dominant party at

the Centre, representation of Muslims in elected bodies has further dwindled. Muslim representation in the lower house of the parliament is currently 4.5 per cent, a further drop, especially from 1980. Researchers have shown how this is down to the reluctance of the BJP to endorse Muslim candidates, to such an extent that for the first time in Indian history, the winning party has no Muslim in its Parliamentary group.<sup>165</sup> This is also having an impact on Congress (and other secular parties), increasingly shying away from endorsing Muslim candidates and fielding fewer candidates. Muslim exclusion from the power structure also extends to the provinces. Aside from the fact that there is no longer a Muslim Chief Minister anywhere among the 28 provinces, the presence of Muslim MLAs and ministers is also on the wane. In December 2020, of the 10 states which account for 80 per cent of the Muslim population, out of 281 government ministers, only 16 were Muslims (5.7 per cent).<sup>166</sup> By denying Muslim representation in national parliament and state assemblies, Muslims have been denied any possibility of acting collectively to better their community and are rather forced to rely on the largesse of so-called secular parties. Data also show this reduced representation of Muslims in elected bodies is having an impact on questions raised concerning Muslims, thereby further marginalising Muslim concerns.<sup>167</sup>

Despite making much of its secular ideals, Congress – and the state it presided over – was, in composition and practice,<sup>168</sup> less than inclusive. Had the party or state been truly secular, improving the social or political position of the Muslim minority would have been a priority.

158. Zeeshan Shaikh, 'Ten years after Sachar Report' (The Indian Express, 26 December 2016) <<https://indianexpress.com/article/explained/ten-years-after-sachar-report-no-major-change-in-the-condition-of-indias-muslims-4444809/>>

159. Jaffrelot, (2021), p411. In 2017, this figure went up to 5.1%, partly because of the effort of an NGO, Zakat Foundation, that has been investing resources in training Muslim graduates to sit civil service entrance exams – and triggering calls by Hindutva groups, accusing Muslims of waging 'UPSC Jihad'. Pooja Chaudhuri, 'A List of All the False Claims Made in Sudarshan TV's 'UPSC Jihad' Show' (The Wire, 24 September 2020) <<https://thewire.in/communalism/sudarshan-news-tv-show-upsc-jihad-suresh-chavhanke-fact-check>>

160. Jaffrelot, (2021), pp 412 - 413.

161. Sachar commission reported that agencies had regularly argued that this information was too sensitive to share (with a PM appointed committee, headed by a retired SC judge).

162. Omar Khalidi, *Khaki and Ethnic Violence in India: Army, Police and Paramilitary Forces During Communal Riots* (2nd edn, Three Essays Collectives 2010) 143.

163. Attributable to Mulayam S Yadav, quoted in Jaffrelot (2021), p 410. This was below the 2% figure in 1953.

164. Attributable to George Fernandes (1985), quoted in Jaffrelot (2021), p410.

165. Jaffrelot (2021), p414. Also see The Indian Express. 'The Invisible Citizen: Why the absence of Muslims MPs and MLA in BJP is disturbing?' 10 June 2022. <[https://indianexpress.com/article/opinion/mahua-moitra-writes-muslim-mps-mlas-bjp-7960555/?pnespid=H\\_lz6EVb4CUOKVqX\\_preCBgW\\_AM9xLFtrAcSTPgOLYrK\\_8gYPqALfkHIYbqVpzfyVFFQVuU-](https://indianexpress.com/article/opinion/mahua-moitra-writes-muslim-mps-mlas-bjp-7960555/?pnespid=H_lz6EVb4CUOKVqX_preCBgW_AM9xLFtrAcSTPgOLYrK_8gYPqALfkHIYbqVpzfyVFFQVuU-)>

166. In general, when the BJP conquers a new state the proportion of Muslim MLAs falls – a dramatic example being Uttar Pradesh in 2017, where the Muslim proportion in the Legislative Assembly decreased from 17% to 6%. Jaffrelot (2021), p417.

167. Saloni Bhogle, 'Querying the Indian Parliament: What can the Question Hour tell us about Muslim Representation in India?' (Ideas for India, 13 January 2020) <<https://www.ideasforindia.in/topics/social-identity/what-can-question-hour-tell-us-about-representation-in-the-indian-parliament.html>>

168. There is equally poor representation in academia and the private sector. There are no Muslim members on the board of governors of India's top professional colleges (Indian Institutes of Technology, Indian Institutes of Management, and All India Institute of Medical Sciences). There is zero Muslim representation on the board of top corporations, banks, public sector enterprises, or media houses (print as well as TV). 'Muslim Representation in Governing Body of Prominent Institutes of India: 14 Years of Sachar Committee' (Ars Longa, Vita Brevis, 29 May 2020) <<https://rajatdutta3.blogspot.com/2020/05/muslim-representation-in-governing-body.html?m=1>>

## 2.3 The Hindu nationalist takeover

Political historians have shown how, with Congress' monopoly over electoral power breaking down from the 1970s, and worsening in the 1980s, Congress leaders increasingly began to appeal to sectarian politics to retain power.<sup>169</sup> As a result they were never able to tackle the legacy of sectarianism head on. It took successive stages in the decay of Congress for it to be outflanked by a more extreme rival - in the form of the BJP - that had fewer inhibitions about appealing directly to Hindu concerns and sensibilities and articulating openly what had been latent in the national movement, but neither candidly acknowledged, nor consistently repudiated.<sup>170</sup>

By the 1990s, the conditions for the BJP's ascent, as a credible alternative to Congress, had crystallised.<sup>171</sup> The BJP's breakthrough came with the national campaign to demolish the medieval era mosque at Ayodhya in Uttar Pradesh in 1992. Soon, by accommodating lower castes within its ranks, it was able to launch itself to national power. Thomas Hansen has demonstrated how the BJP could finally enter centre stage once three conditions had been met:<sup>172</sup> (i) the building of a disciplined cadre, in the form of

the RSS; (ii) the political upsurge among the lower castes, creating vulnerabilities in Hindu middle and upper caste circles, galvanising them to enlarge the base of the BJP; and (iii) the appeal among the middle classes of a muscular image of India, as a great power, and their craving for international recognition.

Helping the BJP take centre stage has been the heightened Hindu sense of vulnerability harnessed by Hindu nationalists, to create fear of Muslims and others. This acquired urgency in the early 2000s due to a series of terrorist attacks across India, attributable to Islamist groups.<sup>173</sup> The discourse, repeated often by the Hindu nationalist press and leaders in a coordinated fashion, ensured that the majority community's sense of insecurity and vulnerability continued to have a resonance many years after this violence had ceased.<sup>174</sup> But there are other subjects too with a more perennial appeal that are exploited by Hindu nationalists, a prime one being the bogey of demographic change,<sup>175</sup> besides several others. Narendra Modi, who had, as the unapologetic Hindu nationalist, demonstrated in Gujarat that he could transform this fear into outrage and anger was, thus, the perfect candidate to lead the BJP in 2014.

169. Rajiv Gandhi thought it fit to appeal to conservative sections among Muslims to overturn an SC order on patrimony to divorcees, and then, to balance the act in favour of Hindu parties, he ordered the opening of the locks to the Babri Masjid, allowing for the shilanyas (or ground consecration ceremonies) to be performed that would pave the way for the eventual taking over of the mosque as a temple.

Zoya Hassan, 'Ayodhya: How Rajiv Gandhi's Plan to Use The Ram Temple for the Congress Party Came Undone' (Scroll.in, 21 October 2019)

<<https://scroll.in/article/941140/ayodhya-how-rajiv-gandhis-plan-to-use-the-ram-temple-for-the-congress-party-came-undone>>

Besides Rajiv Gandhi, another Congress Prime Minister, PV Narasimha Rao, figures prominently in the process that led to the destruction of the mosque in 1992.

Madhu Trehan, 'Congress Party's Hidden Role in Demolition of Babri Masjid' (News Laundry, 27 April 2017) <<https://www.newslandry.com/2017/04/27/congress-partys-hidden-role-in-demolition-of-babri-masjid>>

Nilanjan Mukhopadhyay, 'Every Political Party in India Was Complicit in the Babri Masjid Demolition' (The Wire, 8 November 2018)

<<https://thewire.in/history/babri-masjid-demolition-political-parties-complicit>>

<sup>170</sup> Anderson (2015) 147.

<sup>171</sup> This was also the time when Indian secularism had come under attack from neo-nativist thinkers as an alienated elitism. See Vanaik, Achin. *The Furies of Indian Communalism: Religion, Modernity and Secularisation*. (Verso Books. 1997. Much more widespread, claims Anderson, was and is another discourse, "embellishing Hinduism as pre-eminently a faith of tolerant pluralism and peaceable harmony, its teeming multiplicity of different deities, beliefs and rituals a template for modern multi-culturalism". "In this version", argues Anderson, "secularism cannot be at odds with a Hinduism whose values are close to its own", the claim being: India is secular because it is Hindu". A blurring of the lines between the BJP and Congress, the former appropriating the language of secularism and the latter espousing soft Hindutva is the upshot. Anderson (2015) pp151-152, quoting G Balachandran in 'Religion and Nationalism in modern India', in Kaushik Basu and S Subrahmayam eds. *Unravelling the Nation: Sectarian conflict and India's secular identity* (Penguin Books 1996) 83, 126.

<sup>172</sup> Thomas Blom Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India* (Princeton University Press 1999) 221.

<sup>173</sup> Attributed, by Indian authorities, to Pakistan-based operatives as well as, notably, Indian actors – ostensibly to avenge the Babri Masjid demolition and Gujarat pogroms between 2001-2008.

<sup>174</sup> A Pew opinion poll in 2017 revealed that 76% of Indians considered terrorism the most important problem facing India, and ISIS topped the threat facing the country for 66% of respondents, despite ISIS never having stuck in India. [Jaffrelott (2015) p78].

<sup>175</sup> For example, Subrahmanyam Swamy, in his "Hindus under Siege: The way out" (Har Anand, 2006) claims that "Hindus are facing a terrible pincer: Islamic fast population growth and illegal migration, in conjunction with Christian money induced conversion activity". This is, however, despite no proof of the claims, and data proving the contrary. The misinformation continues to animate BJP policies targeting Muslims.

Nikhil Rampal, 'Fact vs fiction: National Family Health Survey Busts Some Myths about Muslims in India' (The Print, 23 May 2022) <[https://theprint.in/india/fact-vs-fiction-national-family-health-survey-busts-some-myths-about-muslims-in-india/966513/?utm\\_source=substack&utm\\_medium=email](https://theprint.in/india/fact-vs-fiction-national-family-health-survey-busts-some-myths-about-muslims-in-india/966513/?utm_source=substack&utm_medium=email)>

Sunetra Choudhury, 'Interview: SY Quraishi 'The Population Myth: Islam, Family Planning and Politics in India' (Hindustan Times, 19 February 2021)

<[www.hindustantimes.com/books/interviews-sy-quraishi-author-the-population-myth-islam-family-planning-and-politics-in-india-101613741759641.html](http://www.hindustantimes.com/books/interviews-sy-quraishi-author-the-population-myth-islam-family-planning-and-politics-in-india-101613741759641.html)>;

Ismat Ara, 'Why UP's Population Control Bill May Be Dangerous' (Science The Wire, 17 July 2021) <<https://science.thewire.in/health/why-ups-population-control-bill-may-be-dangerous/>>

The current government's resort to authoritarianism has helped the BJP and, in turn, the Hindu nationalist agenda. This includes its successful neutralising of the political opposition and of institutional power centres. The former has been possible through building a dense network of grassroots cadres that overlap with the RSS, the creative deployment of social media and war rooms,<sup>176</sup> and, importantly, the monopolising of campaign finances.<sup>177</sup> Co-optation and intimidation have helped subdue institutions that could have posed a challenge.<sup>178</sup> Alongside this, the concentration of ownership of media channels in the hands of BJP-friendly individuals and corporates has resulted in a barrage of sensationalised, pro-BJP and often anti-minority content on the national airwaves.<sup>179</sup> Online social networking platforms such as Facebook and Twitter, and instant messaging services such as WhatsApp, all of which have hundreds of millions of Indian users, have also become important channels through which anti-minority hate content is spread.<sup>180</sup>

## 2.4 Hindutva's regional fall outs

The BJP's actions, following RSS's policies and programmes, also have regional implications. The BJP's manifesto for the 2014 elections promised 'India shall remain a natural home for persecuted Hindus and they shall be welcome to seek refuge here'.<sup>181</sup> This was driven home by the Home Minister, Amit Shah, when he argued for changes to citizenship laws (the Citizenship

(Amendment) Act – CAA, 2019) in Parliament, claiming that Hindus in the neighbouring states who were persecuted minorities had nowhere to go but India, 'which is their natural, civilizational and ancestral home'.<sup>182</sup> Given the centrality and size of India in the South Asia region, CAA threatens to irreparably rip apart the precarious balance in the region, where majoritarianism holds sway; a majority in one country is often the minority in another, therefore violations in one country have negative consequences elsewhere too. Bangladesh expressed worries that the law, along with the NRC process, would hit '(the) golden chapter in Delhi-Dhaka ties'.<sup>183</sup> Afghanistan took exception to Indian accusations of state persecution of minorities;<sup>184</sup> and Pakistan claimed that CAA 'violates all relevant international conventions and norms'.<sup>185</sup>

Importantly, while seeking to open India's doors to persecuted groups from the region, CAA excludes Muslims from its ambit, thus denying the benefit to groups such as Rohingya refugees fleeing persecution in Myanmar. This has followed a trend of India denying Muslim refugees any humanitarian consideration, despite the generally favourable attitude of Indian governments and courts to refugees from the region. In a direct violation of the principle of non-refoulement, in September 2018, Home Minister Rajnath Singh declared that all Rohingya in India were 'illegal immigrants' and ordered that they be deported, arguing that they posed a threat to national security.<sup>186</sup>

176. Soutik Biswas, 'The secret behind success of India's ruling party BJP' (BBC, 2 December 2020) <<https://www.bbc.co.uk/news/world-asia-india-55049627>>

177. BusinessShala, 'Electoral Bonds: Political parties received Rs 3,400 crore in donations in FY 2020, 87.29% to just four parties, 7 times the donations to BJP compared to Congress' (Association for Democratic Reform, 21 March 2022) <<https://adrindia.org/content/electoral-bonds-political-parties-received-rs-3400-crore-donations-fy-2020-8729-just-four>>

178. This includes the Election Commission of India, the Central Bureau of Investigation, The National Investigating Agency, and the higher Judiciary. See Jaffrelot (2015) 'Deinstitutionalising India' pp 255 – 309.

179. 'Media Ownership Monitor: Who owns the media in India?' (Reporters without Borders, 31 May 2019) <<https://rsf.org/en/news/media-ownership-monitor-who-owns-media-india>>

180. BBC, 'Nationalism a Driving Force behind Fake News in India, Research Shows,' (BBC News, November 12 2018) <<https://www.bbc.com/news/world-46146877>>

181. 'Full text: BJP manifesto for 2014 Election' (News18, 7 April 2014) <<https://www.news18.com/news/politics/full-text-bjp-manifesto-for-2014-lok-sabha-elections-679304.html>>. Following the section is that on 'cultural heritage', with the following entries: Ram Mandir, Ram Setu, Ganga, Cow and its progeny.

182. Sreemoy Talukdar, 'Amit Shah Wins Round One of CAB Debate in LS by Blunting Opposition's Attack, but Deft Touch Will Be Required in RS' (FirstPost, 10 December 2019)

<<https://www.firstpost.com/politics/amit-shah-wins-round-one-of-cab-debate-in-ls-by-blunting-oppositions-attack-but-deft-touch-will-be-required-in-rs-7760221.html>>

183. Rezaul Hasan Laskar, 'Bangladesh Worried CAB-NRC Will Hit Golden Chapter in Delhi-Dhaka Ties' (Hindustan Times, 4 August 2020) <<https://www.hindustantimes.com/india-news/bangladesh-worried-cab-nrc-will-end-golden-chapter-in-delhi-dhaka-ties/story-4jnC04ABmgjvZQdZV850PK.html>>

184. M.K. Bhadrakumar, 'CAB: India's Relations with Neighbours Run into Stormy Headwinds' (The Citizen, 12 December 2019) <<https://www.thecitizen.in/index.php/en/newsdetail/index/4/17998/cab---indias-relations-with-neighbours-run-into-stormy-headwinds>>

185. Sajjad Hussain, 'India's Attempt to Interfere. Pakistan Condemns Citizenship Amendment Bill' (The Wire, 11 December 2019) <<https://thewire.in/government/pakistan-citizenship-amendment-bill>>

186. 'Obtain Particulars of Rohingya for Deportation', Rajnath Singh Tells States' (The Indian Express, 27 September 2018) <<https://indianexpress.com/article/india/obtain-particulars-of-rohingya-for-deportation-rajnath-singh-tells-states-5377088/>>

A week later, the Indian Supreme Court refused to intervene in a plea by seven Rohingya Muslims to stop their deportation to Myanmar.<sup>187</sup> The subsequent announcement of a systematic biometric data collection exercise stoked fears among the Rohingyas in India that the government intended to follow through with its threat.<sup>188</sup> A second round of deportations followed in January 2019, and hundreds of Rohingya have since been returning to Bangladesh. An amicus brief by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Indian Supreme Court in July 2019, seeking to withdraw the order of deportation on grounds that ‘the decision to collectively expel some 40,000 Rohingyas is inconsistent with India’s international human rights law obligations’,<sup>189</sup> failed to cut much ice with the court.<sup>190</sup> Deportations have continued, with the most recent being in March 2022.<sup>191</sup> As experts note, the Indian government views the Rohingya ‘from a single obsessive prism – that they’re Muslim’.<sup>192</sup>

Living a harsh life in refugee camps, Rohingya in India have, with the rise of anti-Muslim rhetoric across the country since the assumption of power by the BJP, also been suffering increased hostility. In Jammu, where most Rohingya refugees live, the Chamber of Commerce and Industry was reported as threatening to launch an

‘identify and kill movement’ against illegal foreign settlers.<sup>193</sup> Rohingya refugee camps in Delhi and elsewhere are routinely set on fire,<sup>194</sup> and Rohingyas are subjected to frequent hate and incitement.<sup>195</sup>

## Conclusion

India goes to the national polls again in 2024. Several large states have re-elected the BJP to power in recently concluded provincial-level elections, bolstering the BJP’s plans of retaining power in 2024, in order to cement its ideological hold over the Indian nation. This would arguably come at a cost to India’s sizeable population of Muslims and other religious minorities. There is currently much anti-Muslim hostility and disinformation in the air, including by senior ruling party members and their affiliates, all with real-world consequences for the minorities. Commentators have noted how incessant anti-Muslim mobilisation, besides serving instrumental electoral purposes, also serves the Hindu nationalist aim of delegitimising Muslims from the body politic of the nation as a step towards their effective purging.<sup>196</sup> As a consequence, risk factors for atrocity crimes against Muslims are gaining in strength.<sup>197</sup> If not checked, India could, over the coming months and years, experience an acceleration of atrocity crimes against Muslims, especially in regions where Muslims are particularly vulnerable. Given the history of regional conflicts and conflagrations along ethno-religious lines,

187. Krishnadas Rajagopal, ‘SC Throws out Plea to Restrain Govt from Deporting 7 Rohingya to Myanmar’ (The Hindu 4 October 2018)

<<https://www.thehindu.com/news/national/sc-allows-deportation-of-seven-rohingya-from-assam-to-myanmar/article61527094.ece>>

188. ‘Govt Tells States to Collect Biometrics of Rohingyas,’ (Hindustan Times, 1 October 2018) <<https://www.hindustantimes.com/india-news/govt-tells-states-to-collect-biometrics-of-rohingyas/story-PyRqAljw9JbPfqivAMo4rJ.html>>

Sadanand Dhume, ‘Fear of Islam Leads India to Snub Refugees,’ (The Wallstreet Journal, 31 May 2018) <<https://www.wsj.com/articles/fear-of-islam-leads-india-to-snob-refugees-1527807807>>

189. The UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance ‘Legal Opinion on India’s

Obligations Under International Law to Not Deport Rohingyas’ (12 July 2019) <<https://www.ohchr.org/sites/default/files/AmicusBrieftoIndianSupremeCourt.pdf>>

190. ‘Rohingya Deportation Case: UN Special Rapporteur Seeks to Aid SC’ (The Wire, 13 January 2020) <<https://thewire.in/law/un-special-rapporteur-tendayi-achume-supreme-court-application-rohingya-deportation>>

191. Human Rights Watch, ‘India: Rohingya Deported to Myanmar Face Danger’ (HRW, 31 March 2022) <<https://www.hrw.org/news/2022/03/31/india-rohingya-deported-myanmar-face-danger>>

192. Bansari Kamdar, ‘Indian Refugee Policy and the Rohingyas’ (The Diplomat, 4 October 2018) <<https://thediplomat.com/2018/10/indian-refugee-policy-and-the-rohingyas/>>

193. ‘Jammu Commerce Chamber Says It Will Identify and Kill Rohingya Muslims If State Does Not Deport Them,’ (Scroll.in, 16 March 2018)

<<https://scroll.in/latest/834067/jammu-commerce-chamber-says-it-will-identify-and-kill-rohingya-muslims-if-state-does-not-deport-them>>

194. Pavneet Singh Chadha, ‘We lost everything’: Fire guts Rohingya refugee camp at Haryana’s Nuh’ (The Indian Express, 17 December 2021)

<<https://indianexpress.com/article/cities/delhi/rohingya-refugee-camp-nuh-fire-7676799/>>

195. The New York Times, <https://www.nytimes.com/2019/06/14/technology/facebook-hate-speech-rohingya-india.html>

196. Dharendra K Jha, ‘Has the RSS Revived Golwalkar’s Plan for Muslims?’ (The Caravan, 30 March 2022) <<https://caravanmagazine.in/politics/has-the-rss-revived-golwalkars-plan-for-muslims>>

197. UN Office of Special Advisor on Genocide Prevention and the office to Protect. UN Framework for Atrocity Prevention. New York: United Nations.

and the nuclear arsenals of India and Pakistan, such an eventuality could have South Asia-wide repercussions, imperilling peace and threatening further conflagration in this volatile region. It is important then, as individuals who have seen how failures of accountability at earlier stages have led to the deaths of hundreds of thousands of men, women and children, that we sound the alarm before it is too late. This report is our contribution to this mission.

### 3. Findings on violations of international law

In the following section, we report the findings of the international law analysis by types of violations, firstly using international human rights law, followed by international criminal law. The accounts are ordered by rights corresponding to key covenants that make up the body of international human rights law and international criminal law. This account is summarised from the detailed documents and analysis presented in the chapters annexed to the report, including on the four emblematic situations of Assam, Delhi, J&K and Uttar Pradesh, as well as the one covering country-wide discriminations and violations. This section is the core of our report.

#### 3.1 International Human Rights Law\*<sup>198</sup>

##### a) Arbitrary deprivation of life in Assam, Delhi, J&K and Uttar Pradesh

The panel was made aware of several instances of physical attacks against Muslims resulting in deaths by state as well as private actors. Reports indicate that state authorities may have directly carried out or been complicit in acts of violence resulting in unlawful killings of civilians, disproportionately targeting members of the Muslim community. The Panel was also made aware of numerous allegations of state

#### Applicable Law: Article 3 UDHR and Article 6(1) ICCPR.

Arbitrary deprivation of life is understood as an action that lacks a legal basis or is otherwise inconsistent with protecting laws and procedures, including when it is not strictly necessary in view of the threat posed by the attacker or disproportionate to the threat. The notion of “arbitrariness” includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>200</sup> The obligation entails taking all necessary measures to prevent arbitrary deprivations of life.<sup>201</sup> The use of force by law enforcement officials should be exceptional,<sup>202</sup> and assemblies should ordinarily be managed with no resort to force. States’ parties must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State.<sup>203</sup>

authorities failing to prevent, investigate and prosecute arbitrary deprivations of life by non-state actors.

#### State Actors

In Uttar Pradesh, since 2017, the police have reportedly killed over 140 young men, innocent or with minor criminal records, in so-called ‘encounters’ where police claim that the victim was shot dead in self-defence, but credible sources indicate that the victims did not pose any threat, thus these in fact are extrajudicial killings. These killings have been a result of the state’s Chief Minister (CM) Yogi Adityanath’s policy of ‘knocking down’ criminals.<sup>204</sup> According to data released by the police, some 37 per cent of those killed between March 2017 and March 2021 were Muslims, hinting at a religious bias –

198. United Nations Office of the High Commissioner, ‘International Human Rights Law’ (UN, nd)

<<https://www.ohchr.org/en/professionalinterest/pages/internationalallaw.aspx>>

199. UN Human Rights Committee (HRC), General comment No. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/36, [11] and [12].

200. UN Human Rights Committee, [10].

201. UN Human Rights Committee, [13].

202. See the commentary on Article 3 of the Code of Conduct for Law Enforcement Officials.

203. HRC (n 196) <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)>

204. Arunabh Saikia, “Thok Do’: Adityanath Government’s ‘Zero Tolerance’ of Crime Leaves a Trail of Victims’ (Scroll.in, 16 September 2021)

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

\*The authors would like to thank Margaux Willems for her contributions to the research on international human rights law.

something that a group of UN experts also alluded to in their communication to the Government of India on the subject in December 2018.<sup>205</sup> Muslims make up more than 20 per cent of Uttar Pradesh's population. Similarly in Assam, since incumbent Chief Minister Himanta Biswa Sarma assumed power in May 2021, the police forces have carried out a series of extrajudicial killings resulting in at least 31 deaths, mostly targeted against Muslims and ethnic minorities.<sup>206</sup> The concerted policy of extrajudicial killings as a law enforcement measure has been explicitly voiced and encouraged by leaders of both state governments.<sup>207</sup>

In December 2019, in response to peaceful protests against the Citizenship (Amendment) Act, 2019, **22 protestors and bystanders were shot dead** by police in Uttar Pradesh, all of whom were Muslims.<sup>208</sup> Various videos have emerged – some seen by the panel – of police directly firing live bullets at protesters, contradicting police claims that the deaths were the result of cross-firing by protesters using illegal firearms.<sup>209</sup> In addition,

many media accounts and witness testimonies seen by the panel rebut the police claims and hint at the possibility that it was the police who first provoked the crowd and later used excessive force resulting in the killings.<sup>210</sup> Similarly, in Assam five deaths were reported in December 2019 in connection with the anti-CAA protests, including three where the government admitted the cause as police firing.<sup>211</sup> In 2021, the police in Assam were reported to have used excessive force against those protesting forced mass evictions of Muslims from their homes, resulting in at least two killings and over 20 injured.<sup>212</sup>

In February 2020, the district of Northeast Delhi witnessed four days of targeted violence against Muslims, which led to 53 dead, including 40 Muslims, and scores grievously injured.<sup>213</sup> It has been reported that the Delhi Police not only failed to act to prevent the violence, despite foreseeable threats against the Muslim community in preceding days, but was in fact reported to be actively complicit in at least three killings of Muslims.<sup>214</sup> UN experts, too, on 9 October 2020,

205. Communication by UN mandate holders to the Government of India, 'UA IND 27/2018' (11 December 2018)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24240>>; Human Rights Watch (n 14). For more details see Annexure V – Uttar Pradesh

206. Rokibuz Zaman, 'In BJP Rule, 31 Killed in Assam's Alleged Encounters – Most Belong to Ethnic or Religious Minorities' (Scroll.in, 16 December 2021)

<<https://scroll.in/article/1012903/framed-most-people-killed-in-assams-alleged-encounters-belong-to-ethnic-or-religious-minorities>>; 'Shoot Criminals If They Try to Escape: Assam CM Justifies Encounter Killings' (Outlook, 6 July 2021) <<https://www.outlookindia.com/website/story/india-news-shooting-should-be-the-pattern-if-criminals-try-to-escape-assam-cm/387188>>; Assam CM Tweets – Himanta Biswa Sarma (Twitter, 1 December 2021)

<<https://twitter.com/himantabiswa/status/146593552868347904>> and GP Singh (Twitter, 30 November 2021)

<<https://twitter.com/gpsinghips/status/1465787595216982017>>

For more details see Annexure II – Assam.

207. Subhashini Ali, 'UP: Yogi Adityanath's War on Crime Excluded Powerful, Connected Criminals Like Vikas Dubey' (The Wire, 9 July 2020)

<<https://thewire.in/government/yogi-adityanath-vikas-dubey-war-on-crime>> accessed 4 November 2021;

Jamshed Khan, Sushant Pathak & Amit Chaudhary, 'Exposed: Uttar Pradesh's Cash-For-Encounter Raj' (India Today, 16 August 2021)

<<https://www.indiatoday.in/india/story/exposed-uttar-pradesh-s-cash-for-encounter-raj-1306730-2018-08-06>>; Outlook (n 203); Himant Biswa Sarma (n 203) and Singh (n 203).

208. Human Rights Watch, 'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy' (HRW, 9 April 2020)

<<https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>>

209. 'CAA protests: Video shows police firing at protesters, contrary to UP DGP claims' (Gulf News, 23 December 2019)

<<https://gulfnews.com/world/asia/india/caa-protests-video-shows-police-firing-at-protesters-contrary-to-up-dgp-claims-1.1577078324096>>; Alok Panday, 'Video Suggests UP Cop Opened Fire In Kanpur, Contrary To 'No Police Firing' Claim' (NDTV, 22 December 2019) <<https://www.ndtv.com/india-news/citizenship-amendment-act-protests-video-suggests-up-cop-opened-fire-in-kanpur-contrary-to-no-police-2152566?amp=1&akamai-rum=off>>

210. Supriya Sharma, 'Meet the "Friends" of the Uttar Pradesh Police who Wielded batons against Muslims a Month ago' (Scroll.in, 20 January 2020)

<<https://scroll.in/article/950489/meet-the-friends-of-the-uttar-pradesh-police-who-wielded-batons-against-muslims-a-month-ago>>; 'Video Contradicts UP Police's Claim of Not a 'Single Bullet' Fired at Anti-CAA Protesters' (The Wire, 22 December 2019) <<https://thewire.in/law/up-police-video-protests>>

For more details see Annexure V – Uttar Pradesh.

211. Ratnadip Choudhury, 'Not 5, 3 Anti-CAA Protesters Killed in Police Firing: Assam Government' (NDTV News, 3 March 2020) <<https://www.ndtv.com/india-news/assam-government-not-5-3-anti-kaa-protesters-killed-in-police-firing-2189223>>; Anupam Chakravarty, 'How Five People in Assam Were Killed During Anti-Citizenship Amendment Protests' (The Wire, 16 December 2019) <<https://thewire.in/rights/assam-anti-citizenship-amendment-act-protest-deaths>>

212. 'Assam: Police Open Fire at Locals Protesting Eviction Drive, Two Killed' (The Wire, 23 September 2021) <<https://thewire.in/rights/assam-police-open-fire-local-protesting-eviction-drive-darrang>>; 'Assam: Police Opened Fire On Mob Protesting Against Eviction, Two Killed' (Outlook, 23 September 2021)

<<https://www.outlookindia.com/website/story/india-news-assam-police-opened-fire-on-mob-protesting-against-eviction-two-killed/395573>>

213. Human Rights Watch (n 205); Delhi Minority Commission, 'Report of the DMC fact-finding Committee on North-East Delhi Riots of February 2020' (Delhi Minorities Commission, 27 June 2020) <[https://archive.org/stream/DMC-delhi-riots-fact-finding-2020/Delhi-riots-Fact-Finding-2020\\_djvu.txt](https://archive.org/stream/DMC-delhi-riots-fact-finding-2020/Delhi-riots-Fact-Finding-2020_djvu.txt)>; 'Delhi Riots Death Toll at 53, Here Are the Names of the Victims' (The Wire, 06 March 2020) <<https://thewire.in/communalism/delhi-riots-identities-deceased-confirmed>>

214. 'Three Eyewitnesses Accuse Delhi Police Official of Murder During Delhi Violence' (The Caravan, 12 February 2021) <<https://caravanmagazine.in/crime/three-eyewitnesses-accuse-delhi-police-official-murder-during-delhi-violence>>

For more details see Annexure III – Delhi.

raised concern about, among others, ‘violent attacks and harassment of peaceful anti CAA protesters, disproportionately targeting Muslim religious minority’, in Uttar Pradesh in December 2019 and in Delhi in February 2020.<sup>215</sup> Since August 2019, people in J&K, the only Muslim-majority territory in India, continue to experience violence. At least six deaths were reported between August and December 2019. The deaths in three of these cases were due to the use of tear gas by armed forces, while one person died after being in police custody for four days, and a school student succumbed to his injuries after being hit by pellet shots and tear gas shells used by police. Another student died after falling into a river while being chased by security forces.<sup>216</sup> In May 2020,<sup>217</sup> a youth was killed, and four others injured, by police who were firing at protesters. Indian security forces have been reported as continuing to use pellet-firing shotguns as a crowd-control weapon despite concerns as to excessive use of force and the large number of civilian deaths and injuries that have resulted from this.<sup>218</sup>

In none of the aforementioned cases could the requirements of necessity or proportionality be argued in order to justify the actions by state agents, thereby establishing direct responsibility on the state for the arbitrary deprivation of life.

### **Non-state Actors**

The panel was also made aware that since 2014, there has been a steady increase in the incidence of violent attacks targeted at civilians solely because of their religion-based identity. These numbers are to be

viewed in the wider context of anti-Muslim mob lynchings, killings of civilians, and the widespread incitement to discrimination and violence, also involving senior political leaders of the BJP ruling both in the Centre and in several states. The similarity in nature of these attacks across geographies and their large number indicates a discernible pattern in these incidents. There are two elements of state responsibility at play in the context of hate crimes against Muslims: one, police officials have been actively complicit in the commission of such hate crimes, for instance, in their failure to intervene when present on the scene and their working jointly with cow-protection and ‘love jihad’ vigilante groups;<sup>219</sup> and two, there is, as a consequence of this, an overall sense of prevailing impunity,<sup>220</sup> signalling tolerance of such crimes.

In October 2020, several UN mandate holders expressed their grave concern at the violent attacks targeting the Muslim religious minority and their places of worship as well as properties in Uttar Pradesh (UP) and in Delhi’s North-East district. The UN experts also noted that there has been a ‘persistent climate of impunity and serious lack of accountability by the authorities and police, including by disregarding procedures established under criminal code’.<sup>221</sup>

With there being no official counting of hate crimes against religious minorities in India, and collection of proxy data having also stopped in 2017,<sup>222</sup> it has been left to journalists and civil society to monitor atrocities.

215. AL/IND/15/2020 <spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25603>

216. Jammu Kashmir Coalition of Civil Society & Association of Parents of Disappeared Persons, ‘Annual Human Rights Review 2019: A Review of Human Rights situation in Jammu and Kashmir’ (Jammu Kashmir Coalition of Civil Society, 31 December 2019) <https://kashmirscholars.files.wordpress.com/2019/12/jkccs-2019-human-rights-report.pdf> For more details, see Annexure IV – Jammu and Kashmir

217. ‘Pulwama Gunfight: Civilian Shot Dead in Protests’ (The Kashmir Walla, 7 May 2020) <https://thekashmirwala.com/pulwama-gunfight-civilian-shot-dead-in-protests/>

218. Vijaita Singh, ‘36 Suffered Pellet Injuries Since August 5: Official’ (The Hindu, 28 August 2019) <https://www.thehindu.com/news/national/36-suffered-pellet-injuries-since-august-5-official/article61578761.ece>

219. Human Rights Watch, ‘Violent Cow Protection in India: Vigilante Groups Attacks Minorities’ (HRW, 18 February 2019) <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>

220. See Section 5.5 on lack of accountability

221. AL/IND/15/2020 (n 212); Aishwarya Iyer, ‘Pehlu Khan Case: What Followed A Year After Acquittal of Accused’ (The Quint, 20 August 2020)

<https://www.thequint.com/news/india/pehlu-khan-lynching-accused-acquitted-jaipur-high-court-appeal>; Aishwarya Iyer & Mohammad Alam, ‘Meat Seller Dies in UP, Wife Blames Police While They Deny Claims’ (The Quint, 30 May 2021) <https://www.thequint.com/news/india/butcher-in-bulandshahr-uttar-pradesh-dies-wife-blames-up-police>; Oishika Neogi, ‘3 Jharkhand Widows Struggle To Get By, Years After Cow Vigilantes Lynched Their Husbands’ (Article 14, 14 December 2021) <https://article-14.com/post/3-jharkhand-widows-struggle-to-get-by-years-after-cow-vigilantes-lynched-their-husbands-61b81c428a932>

222. Deepitam Tiwary, ‘NCRB Leaves Out Data on Lynchings, Khap and Religious Killings’ (The Indian Express, 22 October 2019)

<https://indianexpress.com/article/india/ncrb-leaves-out-data-on-lynchings-khap-and-religious-killings-6081188/>

Reportedly under pressure from authorities, several initiatives died a premature death.<sup>223</sup> One of the few reliable databases that exists, records 212 instances of hate crime between 2014 and 2020. Of these, more than 50 per cent were against Muslims. Almost 30 per cent of all cases resulted in death, over 80 per cent of which were Muslims. Over two-thirds of all cases occurred in states ruled by the BJP or BJP-led coalitions. Perpetrators in three-quarters of the cases in which information was available belonged to Vishwa Hindu Parishad, Bajrang Dal or Shiv Sena, all with close links to the BJP and part of the RSS family. And in a remarkable 71 per cent of the cases where information was available, police investigated victims for crimes, rather than the perpetrators.<sup>224</sup> An earlier dataset had shown that some 90 per cent of religious hate crimes in the past decade have occurred since the BJP took office in the Centre.<sup>225</sup>

The attacks by non-state actors take the form of mob lynchings (discussed above); physical violence not resulting in death; attacks on religious infrastructure; and damage to property and livelihoods.<sup>226</sup> The attacks accompanied by chants in the name of Hindu gods and slurs associated with Muslim identity are carried out on the pretext of cow vigilantism, inter-faith marriages or religious conversion. For instance, Mohammad Akhlaq was killed by cow-vigilantes in Dadri district (Uttar Pradesh), just outside Delhi in September 2015; Pehlu Khan, a dairy farmer, was lynched by a mob of over 200 people in

Alwar (Rajasthan) in April 2017; and Aquil Qureshi, a meat seller, was allegedly killed during a police raid in May 2021.<sup>227</sup> Extremist Hindu groups are able to carry out these acts of vigilantism against Muslims and other vulnerable minorities due to the authority they enjoy, de facto, but also on occasion, de jure, in close collusion with state actors.<sup>228</sup> In north-western states of UP, Haryana and Rajasthan (all governed by the BJP), cow vigilante groups, acting with powers derived from respective state legislations, yield considerable influence on police officials and work jointly with them in identifying, targeting and carrying out raids on alleged criminals for cattle-theft etc. Particularly in UP, vigilante groups such as Hindu Yuva Vahini, or the Hindu Youth Army (founded by state Chief Minister Yogi Adityanath),<sup>229</sup> exercise their political influence in order to interfere in law enforcement as well as in police investigations and prosecutions. Reports of delayed registration of First Information Reports (FIR) by the victims, failure to take witness testimonies and intimidation by authorities, among other things, have been well-documented.<sup>230</sup>

Similarly, in Assam, the return to power of the BJP in the state in 2021 has resulted in increased incidence of hate crimes, with instances of Muslim youths being forced to chant 'Jai Sri Ram' (Victory to Hindu Lord Ram), others being targeted for suspicions of cattle-theft, beaten up and forced to eat pork, and other incidents of cow-related violence, reported often.<sup>231</sup>

223. Factchecker Pulls Down Hate Crime Database, Indiaspend Editor Samar Halarnkar Resigns' (Scroll.in, 12 September 2019)

<<https://thewire.in/media/hindustan-times-hate-tracker>>; 'After Editor's Exit, Hindustan Times Pulls Down Controversial 'Hate Tracker'' (The Wire, 25 October 2015) <<https://scroll.in/latest/937076/factchecker-pulls-down-hate-crime-watch-database-sister-websites-editor-resigns>>

224. Rachel Chitra, 'How to Cover Hate Crimes When Government Sources Fail' (Reuters Institute, June 2021)

<[https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2022-01/RISJ\\_Final%20Report\\_Rachel\\_2021\\_Final.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2022-01/RISJ_Final%20Report_Rachel_2021_Final.pdf)>

225. 'New Hate Crime Tracker in India Finds Victims Are Predominantly Muslims, Perpetrators Hindus' (Scroll.in, 13 November 2018)

<<https://scroll.in/article/901206/new-hate-crime-tracker-in-india-finds-victims-are-predominantly-muslims-perpetrators-hindus>>

226. Human Rights Watch, 'India: Vigilante 'Cow Protection' Groups Attack Minorities' (HRW, 18 February 2019) <<https://www.hrw.org/news/2019/02/19/india-vigilante-cow-protection-groups-attack-minorities>>; Chitra (n 221).

227. Aishwarya Iyer, 'Dadri Lynching Trial Begins: How Akhlaq's Kin Waited for 5 Years' (The Quint, 26 March 2021) <<https://www.thequint.com/news/india/dadri-lynching-five-years-mohammad-akhlaq>>

228. Prashant Srivastava, 'Hindu Vahinis, Hindu Samaj, Hindu Army – How Vigilante Groups Are Thriving in Yogi's UP' (The Print, 2 January 2021)

<<https://theprint.in/politics/hindu-vahinis-hindu-samaj-hindu-army-how-vigilante-groups-are-thriving-in-yogis-up/566150/>>

229. Unnati Sharma, 'Hindu Yuva Vahini Helped Yogi into CM's Chair. Now Its Gorakhpur Office Lies Deserted' (The Print, 24 October 2021)

<<https://theprint.in/india/hindu-yuva-vahini-helped-yogi-into-cms-chair-now-its-gorakhpur-office-lies-deserted/754878/>>; Rajesh Kumar Singh, 'UP Elections: Hindu Yuva Vahini Enters Campaign Mode After 5 Years Of Dormancy' (The Hindustan Times, 20 January 2022) <<https://www.hindustantimes.com/india-news/uelections-hindu-yuva-vahini-enters-campaign-mode-after-5-years-of-dormancy-101642616843167.html>>

230. Human Rights Watch (n 223). For more details see Annexure V – Uttar Pradesh.

231. 'Assam: Man Allegedly Involved in Forcing Muslim Youths to Chant 'Jai Sri Ram' Arrested' (Scroll.in, 24 June 2019) <<https://scroll.in/latest/928195/assam-man-allegedly-involved-in-forcing-muslim-youths-to-chant-jai-sri-ram-arrested>>; 'Suspected Cattle Thief Lynched, Three Injured By Mob In Assam' (New Indian Express, 16 August 2018) <<https://www.newindianexpress.com/nation/2018/aug/16/suspected-cattle-thief-lynched-three-injured-by-mob-in-assam>>

Moreover, the Panel noted reports of police complicity in the Northeast Delhi violence in February 2020, ranging from attacks on mosques, against Muslim men and women, and authorities often shielding the violent perpetrators targeting the Muslim-dominated neighbourhoods in Delhi.<sup>232</sup>

In the broader context of religious intolerance and persecution, it may be argued that attacks by non-state actors were foreseeable and that the state failed to take adequate measures to prevent foreseeable arbitrary deprivations of life or prosecute these violations. Targeted attacks against Muslims in different regions point towards a broader pattern of violations of the right to life of the members of the Muslim community.

#### b) Arbitrary detentions in Assam, Delhi, J&K and Uttar Pradesh

The Panel reviewed reports of numerous cases of arbitrary detention from 2019, from across several states, many having resulted in torture. Cases from Delhi, Uttar Pradesh and J&K were most serious.

Anti-Muslim violence in Delhi in February 2020 was followed by large-scale arrests and detentions, including of students and anti-CAA activists. In June 2020, UN special Rapporteurs and the Working group on Arbitrary Detention highlighted 11 cases of **detention of anti-CAA protestors** in Delhi, noting that these arrests seemed to be attempts to silence dissent against the CAA, particularly from Muslim voices.<sup>236</sup> 18 students and activists, including 16 Muslims, who were part of the anti-CAA protests were later

#### Applicable Law: Art. 3 and 9, UDHR, 9(1) ICCPR, & Art. 37(b) of CRC.

Arbitrary detention is understood as any form of confinement that has no legal basis, violates domestic law or due process of law, or is unreasonable, unnecessary or disproportionate.<sup>233</sup> Deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is arbitrary.<sup>234</sup> The right of persons deprived of their liberty to be treated with humanity and with respect for their inherent dignity, as the State assumes responsibility to care for their lives while depriving them of liberty.<sup>235</sup> Due to this heightened duty of care, they must take all necessary measures to protect the lives of individuals deprived of their liberty. The duty to protect the life of all detained individuals includes providing them with necessary medical care and appropriate regular monitoring of their health.

detained under the false charges of instigating violence in Northeast Delhi district, where again most of the victims were Muslims. Thirteen have continued to be in arbitrary detention for over two years, denied bail, and all are charged under counter-terrorism laws, which itself violates standards of international law.<sup>237</sup> On 26 January 2022, several human rights groups demanded the immediate and unconditional release and dropping of all charges against the 18 Human Rights Defenders (HRDs).<sup>238</sup>

The case of Safoora Zargar, a student activist pregnant at the time of arrest, and who was reportedly held in solitary confinement for

1858578.html>; 'India Assam Mob Kills Two Muslim Men Over 'Cow Theft'' (BBC, 1 May 2017) <<https://www.bbc.com/news/world-asia-india-39769172>>; 'Muslim Man In Assam Forced To Eat Pork For Allegedly Selling Beef' (Mumbai Mirror, 9 April 2019) <[https://mumbaimirror.indiatimes.com/news/india/muslim-man-in-assam-forced-to-eat-pork-for-allegedly-selling-beef/articleshow/68791300.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://mumbaimirror.indiatimes.com/news/india/muslim-man-in-assam-forced-to-eat-pork-for-allegedly-selling-beef/articleshow/68791300.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)> For more details see Annexure II – Assam.

232. Amnesty International, 'India: Delhi Police Committed Multiple Human Rights Abuses During February Riots - New Briefing' (Amnesty International, 28 August 2020) <<https://www.amnesty.org.uk/press-releases/india-delhi-police-committed-multiple-human-rights-abuses-during-february-riots-new>>

For more details, see Annexure III – Delhi

233. HRC, General Comment 35: Article 9 (Liberty and Security of Person), UN doc. CCPR/C/GC/35 (16 December 2014).

234. General comment No. 35, Article 9 (Liberty and Security of Person), CCPR/C/GC/35.

235. HRC, General comment No. 36, Article 6 (Right to Life) CCPR/C/GC/35 (3 September 2019); Human Rights in the Administration of Justice - Report of the United Nations High Commissioner for Human Rights A/HRC/42/20.

236. Communication by UN Mandate Holders to the Government of India (11 June 2020) AL IND 10/2020.

237. CIVICUS, 'India: Ongoing Targeting of Activists Under Anti-Terror Laws for Their Protests Against Citizenship Law' (CIVICUS, 26 January 2022)

<<https://www.civicus.org/index.php/media-resources/news/5561-india-ongoing-targeting-of-18-human-rights-defenders-under-anti-terror-laws-in-reprisal-for-their-protest-against-the-citizenship-amendment-act-2019->>; National Campaign Against Torture, 'Unprovoked Police beatings, Unwarranted Deaths, and Uninterrupted Repression' (UNCAT, 17 June 2020) <<http://www.uncat.org/resources/indias-covid-19-lockdown-unprovoked-police-beating-unwarranted-deaths-uninterrupted-repression/>>

See section on misuse of counter-terrorism laws and for more factual details. See, Annexure III – Delhi.

238. CIVICUS (n 236).

38 days, even though the authorities knew her condition,<sup>239</sup> was examined in detail in the communication from UN mandate holders, which concluded that the detentions were arbitrary because the FIR was unnamed and without specific charges.<sup>240</sup> The matter was referred to the UN Working Group on Arbitrary Detention (WGAD) who, in their opinion, noted that the deprivation of liberty of Zargar was in contravention of Articles 2, 3, 7, 8, 9, 10, 11, 19, 20 and 21(1) of the Universal Declaration of Human Rights, and Articles 2(1), 2(3), 9, 14, 19, 25(a) and 26 of the Covenant, and was arbitrary, falling within categories I, II and V.<sup>241</sup> WGAD urged the Government of India to ensure a full and independent investigation into the matter, and recommended that Zargar be accorded the enforceable right to compensation and reparation.<sup>242</sup> Zargar was released on bail on humanitarian grounds after several months of custody.

In Uttar Pradesh, which also saw large-scale killings of Muslims in crackdowns against anti-CAA protesters, allegedly by police bullets, scores of anti-CAA protestors were detained, with the number ranging from 800 to 4,500 according to various statements made by the state authorities. Among those arrested were prominent human rights defenders, lawyers, environmental activists, academics, artists and a number of minors. In at least 187 cases, reports – a few emblematic examples of which the panel has seen – indicate that these arrests did not meet the necessary requirements of domestic criminal procedural law, e.g. minors were not presented to the Juvenile

Justice Board within the first 48 hours and some individuals were added to a FIR only after they were arrested, or there was no reasonable basis for the arrest. It is reported that scores of students at the Aligarh Muslim University, and activists in Lucknow were taken into custody without charge, beaten and humiliated. In Muzaffarnagar, students of the Sadaat Madrasa (residential Muslim seminary), many minors, were reportedly detained by the police, and the school principal and staff members forced to spend a night in custody, at great physical and mental harm to themselves and the students.<sup>243</sup> Mohammad Shoaib, a 76-year-old senior advocate, was put under house arrest on 18 December 2019 in Lucknow.<sup>244</sup> Shoaib has testified that on 19 December, police officers illegally entered his house and took him to the Hazratganj Police Station without informing anyone of his whereabouts, where the Circle Officer abused him and used communal slurs against him. Shoaib was not named in the first FIR originally registered against unknown persons in Lucknow and was added to it only later on.<sup>245</sup>

We have also been informed that in the lead up to the abrogation of J&K's autonomous status, several leading political figures were placed under house arrest and hundreds of journalists, civil society members and human rights defenders were held in preventive detention.<sup>246</sup> This included three former elected Chief Ministers (CMs), members of 'mainstream' and 'separatist' political parties, and heads of traders' associations, among others.<sup>247</sup>

239. 'I Kept Feeling it Was a Nightmare': Safoora Zargar on Surviving 38 Days in Solitary Confinement' (Scroll.in, 8 March 2021) <<https://scroll.in/article/988844/i-kept-feeling-it-was-a-nightmare-safoora-zargar-on-surviving-38-days-in-solitary-confinement>>

240. Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention at its Eighty-Ninth Session (23 – 27 November 2020) A/HRC/WGAD/2020/91.

241. WGAD, Opinion No. 91/2020 (India), adopted on 27 November 2020.

242. Mohit Sharma, 'Christian Michel and Safoora Zargar Were Arbitrarily Detained by Indian Authorities: UN report' (India Today, 22 September 2021) <<https://www.indiatoday.in/india/story/christian-michel-and-safoora-zargar-were-arbitrarily-detained-by-indian-authorities-un-report-1855751-2021-09-22>>

243. Fatima Khan, 'No Rectal Bleeding, But Police Thrashed Us and Said Drink Urine': UP Madrasa Students' (The Print, 4 January 2020)

<<https://theprint.in/india/no-rectal-bleeding-but-police-thrashed-us-and-said-drink-urine-up-madrasa-students/344634/>>

244. Citizens Against Hate, 'Everyone Has Been Silenced – Police Excess Against Anti-CAA Protesters in Uttar Pradesh, and Post-Violence Reprisal' (Citizens Against Hate, 2 March 2020) <<https://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

245. For more details see, Annexure V – Uttar Pradesh.

246. Devjyot Ghoshal & Alasdair Pal, 'Thousands detained in Indian Kashmir crackdown, official data reveals' (Reuters, 12 September 2019)

<<https://www.reuters.com/article/india-kashmir-detentions/thousands-detained-in-indian-kashmir-crackdown-official-data-reveals-idINKN1VX12W?edition=redirect=in>>

247. Human Rights Watch, 'India: Free Kashmiris Arbitrarily Detained' (HRW, 16 September 2019) <<https://www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained>>

Civil society groups have claimed that the number of those detained since August 2019 is close to 8,000.<sup>248</sup> Many arrested persons were booked under the Public Security Act<sup>249</sup> and a large number of detainees were transported to jails in mainland India, far away from their homes. The case of Mian Abdul Qayyoom, 76 years old, President of the State Bar Association, is emblematic. Qayyoom was detained on the night of 4 August 2019, and transferred to Agra, more than 1,000 km away and kept in detention for almost a year. The family only found out about his location when the Agra jail authorities called to inform them that he had suffered a heart attack in prison.<sup>250</sup> According to the National Federation of Indian Women, 13,000 children, too, were detained in J&K in the early months of the lockdown.<sup>251</sup> According to human rights groups, the youths detained from districts like Shopian and Pulwama (two southern districts of J&K) were kept behind bars without any formal charges against them.<sup>252</sup> Detentions, among other human rights violations<sup>253</sup> and the intimidation of journalists,<sup>254</sup> in post-August 2019 J&K, have been serious enough for UN experts to raise concerns and write to the Government of India.

There is sufficient credible information to argue that the detentions were arbitrary because they did not follow basic procedures mandated by domestic as well as international law, such as producing an arrest warrant, informing the person's family of the arrest, and providing them with a copy of the First Information Report, or ensuring that those arrested had access to legal counsel, including during interrogation. Given the scale and frequency of denial of

due process rights, and the lack of transparency of factual and legal grounds for these arrests, the Panel believes that there is credible evidence to suggest that the Government of India is engaging in arbitrary detention and denial of fair rights, frequently used as an intimidatory tactic to suppress dissent, also hinting at a pattern of targeting based on religion and political opinion, at least from 2019 onwards. This is in violation of international human rights law.

### c) Torture and cruel, inhuman or degrading treatment in Delhi, J&K and Uttar Pradesh

The panel also reviewed reports of alleged physical abuse by police and state forces in several instances. There are several serious allegations of custodial torture and cruel, inhuman or degrading treatment from the state of Uttar Pradesh. The majority of victims are Muslims, including human rights defenders, students and protesters.<sup>255</sup> There have been reports of illegal detention and custodial torture of children by police from various districts in the state.<sup>256</sup> In the aforementioned case of the Muslim seminary in Muzaffarnagar district, students as young as 15 years old were allegedly subjected to beatings in custody, resulting in bruises and broken limbs. They were deprived of sleep and water, and reportedly abused and humiliated.<sup>257</sup> The principal was released from custody with a broken arm and bruised legs.<sup>258</sup> Sadaf Jafar, social activist in custody in Lucknow, was kicked in the stomach, slapped repeatedly, had her hair pulled and was called Pakistani to mean anti-national. 'My Muslim identity is the only reason that such treatment was meted out to me,' she claimed.<sup>259</sup>

248. '609 People Currently Under Detention In J&K: Home Ministry' (India Today, 20 November 2019) <<https://www.indiatoday.in/india/story/609-people-currently-under-detention-in-j-k-home-ministry-1620884-2019-11-20>>

249. See section on misuse of counter-terrorism laws.

250. Communication by UN mandate holders to the Government of India UA IND 4/2020 (27 February 2020).

251. Joe Wallen, 'Young Boys Tortured in Kashmir Clampdown As New Figures Show 13,000 Teenagers Arrested' (The Telegraph, 25 September 2019) Kashmir Caged (NewsClick, 14 August 2019) <<https://www.telegraph.co.uk/news/2019/09/25/young-boys-tortured-kashmir-clampdown-new-figures-show-13000/>>

For more details see Annexure IV – Jammu & Kashmir.

252. International Federation for Human Rights, 'Update on Human Rights Violations in Indian-Administered Jammu & Kashmir Since August 2019' (FIDH, September 2019). <[https://www.fidh.org/IMG/pdf/20190926\\_india\\_j\\_k\\_bp\\_en.pdf](https://www.fidh.org/IMG/pdf/20190926_india_j_k_bp_en.pdf)>

253. IND 4/2021 UA IND (4.2021) (ohchr.org) dated 31 March 2021.

254. IND 9/2021 AL IND (9.2021) (ohchr.org) dated 3 June 2021.

255. Citizens Against Hate (March 2020). For more details see, Annexure V – Uttar Pradesh.

256. 'CAA: UP Police Tortured Children Swept Up In Citizenship Law Protests' (Huffington Post, 24 December 2019).

257. Khan (n 242).

258. Imran Ahmed Siddiqui, 'UP Police Accused of Stripping Cleric' (The Telegraph, 28 December 2019) <<https://www.telegraphindia.com/india/uttar-pradesh-police-accused-of-stripping-cleric/cid/1731127>>

259. P Nair, 'I Felt Like a Jew in Hitler's Germany' Sadaf Jafar on Police Detention (Outlook, 15 January 2020), quoted in Jaffrelot (n 51) 383.

### Applicable Law: Article 5 UDHR, Article 7 ICCPR, Article 2(1) CAT.

Torture is understood as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed,<sup>260</sup> or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.<sup>261</sup> Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts the established international legal principles on use of force by law enforcement of officials.<sup>262</sup> Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoid unnecessary, excessive or otherwise unlawful use of force contravenes the State's positive obligation to prevent acts of cruel, inhuman or degrading treatment within its jurisdiction.<sup>263</sup> This prohibition is recognized as *jus cogens*, meaning it applies in all circumstances, even if states, like India, have not ratified the CAT.<sup>264</sup>

Victim accounts seen by the Panel, media reports, and those by human rights groups, indicate that the common forms of physical abuse included beating with fists or batons, slapping, and kicking different parts of the body, often leading to severe injuries.<sup>265</sup> In most cases, the physical attacks were accompanied by verbal insults or slurs commonly used against Muslims in India. The physical abuse meted out on the victims resulted in severe physical and mental pain or suffering, including broken limbs, loss of consciousness and other serious injuries. All victims suffered abusive treatment after they were taken into custody for protesting or opposing the CAA which shows the intention of the police officers to punish the victims for their political views. For instance, in Sambhal district, police arrested a Muslim student (name unknown). When they found that he was a student of Jamia Millia Islamia – where large-scale anti-CAA protests had been ongoing – he was stripped naked and beaten with batons and belts, including on his genitals.<sup>266</sup> All these abuses were inflicted by the police as public officials.

In Delhi, three of the 18 students and activists detained following the anti-CAA protests, Khalid Saifi, Ishrat Jahan and Gulfisha Fatima, have reported custodial violence and torture by the Delhi police. There have been no effective investigations into these allegations or responsibility taken for their treatment.<sup>267</sup>

In Assam, the arrest of a peasant leader Akhil Gogoi in December 2019 for organising anti-CAA protests was reported widely.

260. Article 1 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT).

261. Article 1.

262. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report to the General Assembly, A/72/178, 20 July 2017, para. 62.

263. Note by the Secretary-General, Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, UN/A/72/178, para. 46.

264. CCPR, General Comment 29, CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11.

265. 'Aligarh Muslim University Students Allege They Were Tortured In Police Custody After Sunday Protest', (Scroll.in, 18 December 2019)

<<https://scroll.in/article/947178/aligarh-muslim-university-students-allege-they-were-tortured-in-police-custody-after-sunday-protests>>; Citizens Against Hate 'The Dismantling of Minority Education: Police Violence in Aligarh Muslim University & Jamila Millia Islam' (Citizens Against Hate, November 2020), 57

<<https://citizensagainsthate.org/wp-content/uploads/2020/12/Dismantling-of-Minority-Education-Violence-against-JMI-and-AMU.pdf>>

266. Karwan EMohabbat, 'A State at War with its People: Report on State Action in UP Targeting Dissent and Muslim Minorities' (February 2020)

<<http://karwanemohabbat.in/wp-content/uploads/2020/06/A-State-at-War-With-Its-People-KeM-Feb2020.pdf>>. For more details see Annexure III - Delhi

267. Aarefa Johari, 'Two Anti-CAA Activists Arrested By Delhi Police Were Tortured In Custody, Allege Family Members' (Scroll.in, 27 Feb 2020)

<<https://scroll.in/article/954538/two-anti-caa-activists-arrested-by-delhi-police-were-tortured-in-custody-allege-family-members>>; CIVICUS, 'India: Ongoing Targeting Of Activists Under Anti-Terror Laws For Their Protests Against Citizenship Law' (CIVICUS, 26 January 2022) <<https://www.civicus.org/index.php/media-resources/news/5561-india-ongoing-targeting-of-18-human-rights-defenders-under-anti-terror-laws-in-reprisal-for-their-protest-against-the-citizenship-amendment-act-2019>>

Later, Gogoi alleged that National Investigation Agency (NIA) interrogators tortured him in custody and offered him instant bail if he agreed to join the BJP.<sup>268</sup>

In Kashmir, several cases of torture and cruel or inhuman treatment have been reported, including those of minors, particularly from August 2019 onwards. The common forms of physical and mental abuse consisted of being held at sub-zero temperatures, deprived of sleep, kicked, slapped, punched, beaten with rods/canes/gun butts/batons/cable wire, stripped naked, hung upside down or from a pole, electric shocks to genitals or other parts of the body, and waterboarding. In some cases, the abuse took on a sexualised form where the victim's skin around the penis was pulled with a plier or several victims were piled on each other while naked. In one case, the victim suspects having been sexually assaulted while naked and unconscious. These abuses were inflicted by the officials of the Indian army, paramilitary forces, or the police. In some cases, the way in which the victims were gathered in a public place or when called to the army camps, and their screams broadcasted through loudspeakers, clearly shows that the abuse was inflicted with the intention to intimidate the residents of the valley and prevent them from initiating or participating in protests/movements against the revocation of the special status of Kashmir.<sup>269</sup> In other cases, victims were targeted because they were suspected of being separatist militants or were being coerced to become informers.<sup>270</sup> A case of death resulting from custodial torture has also emerged. Mr. Ahmad Dar, a 23-year-old shopkeeper from Sopore, was detained on

15 September 2020, and allegedly killed in custody. The police claimed that he was killed while trying to escape from custody, but the family found extensive injuries on his body pointing to torture. A probe was ordered, but no one was finally held accountable for his killing.<sup>271</sup> Similarly, in another such incident in 2019, 19-year-old Naseer Ahmad Wani's house was raided by 44 Rashtriya Rifles (a unit of the Indian Army) and he was taken to a police station. Since then his whereabouts have never been traced.<sup>272</sup>

Reports of extra-custodial torture or inhuman treatment against protestors have also been brought to the Panel's notice. In December 2019, the students of Jamia Millia Islamia University were attacked by tear gas shells in their libraries and hostels, beaten by batons, and sexually harassed by the Delhi Police as punishment for taking part in the anti-CAA protests.<sup>273</sup> More than 100 wounded students were admitted to the hospitals in the area. Serious allegations made by female students of being sexually assaulted by police officers in February 2020 need to be effectively investigated further.<sup>274</sup>

The Panel notes in conclusion that there are credible allegations of physical abuse by police officials, armed forces, and paramilitary units in different contexts, resulting in severe physical and mental pain or suffering, including broken limbs, loss of consciousness and other serious injuries. Often, these beatings are combined with abusive language, including language aimed at the religious identity of the victims, thus religiously motivated. Such custodial and extra-custodial force by police that does not

268. 'Akhil Gogoi Alleges Torture in Custody, Claims NIA Offered Bail If He Joined RSS, BJP' (Indian Express, 23 March 2021)

<<https://indianexpress.com/article/north-east-india/assam/akhil-gogoi-jail-torture-nia-7241629/>>. For more details see Annexure II - Assam.

269. For more details, see Annexure IV - Jammu & Kashmir.

270. See Case List B in Annexure IV - Jammu & Kashmir.

271. 'Family Accuse J&K Police of Killing Sopore Man in Custody, Question 'Escape' Story' (The Wire, 17 September 2020) <<https://thewire.in/rights/jammu-and-kashmir-sopore-custody-death-irfan-ahmad-dar>>; 'J&K Police Deny Post-Mortem Report to Family of Slain Man Saying it Would 'Impede Probe'' (The Wire, 24 March 2021) <<https://thewire.in/government/jk-police-deny-post-mortem-report-to-family-of-slain-man-saying-it-would-impede-probe>>

272. 'UN Experts Ask India for Clarifications on Human Rights Violations Against 3 Kashmiri Men' (The Wire, 1 June 2021) <<https://thewire.in/rights/kashmir-human-rights-united-nations-expert>>

For more details see Annexure IV - Jammu & Kashmir.

273. Communication by UN mandate holders to the Government of India AL IND 3/2020 (pg. 3); Human Rights Watch (n 205) 32; 'Night of Horrors': Inside the Indian University Stormed By Police (Reuters, 17 December 2019) <<https://www.reuters.com/article/india-citizenship-protests-university-idINKBN1YLOJP>>

274. Citizens Against Hate (n 264), 'We Heard Gunfire': Jamia Students Detail Police Attack on Campus' (Al-Jazeera, 18 December 2019)

<<https://www.aljazeera.com/news/2019/12/18/we-heard-gunfire-jamia-students-detail-police-attack-on-campus>> For more details see Annexure III - Delhi.

pursue a lawful purpose or is unnecessary and inflicts excessive harm amounts to cruel, inhuman or degrading treatment. Impunity of police officials subjected to such serious allegations would amount to a violation of India's obligations under international human rights law.

#### d) Gender-based violence and discrimination

The Panel was also made aware of the disproportionate targeting of Muslim women and girls, resulting in physical, sexual and psychological harm owing to their religious identity as well as their gender.

**Discrimination on wearing Hijab:** In January 2022, reports surfaced about a group of Muslim girls at a government college in Karnataka, a state also ruled by the BJP, who were reportedly denied entry into their classroom for weeks because of their headscarves.<sup>275</sup> The girls also reported being taunted and humiliated for wearing hijab. The girls' protest led other schools and colleges in the state to implement the rule and deny entry of girls wearing hijab into educational institutions and even their exams.<sup>276</sup> The denial of education to young women has an added multiplying effect in patriarchal societies. The ban was upheld by the Karnataka High Court and is currently pending review before the Supreme Court. In the meantime, many girls have been forced to pause their education.<sup>277</sup>

State authorities also routinely fail to protect Muslim women and girls from violence.

#### Applicable Law: Article 1 and 2 CEDAW<sup>278</sup>

The prohibition of discrimination against women encompasses any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms.<sup>279</sup> Gender-based violence is a form of discrimination against women because it is directed towards a woman because she is a woman or that affects women disproportionately.<sup>280</sup> It is understood as any act that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.<sup>281</sup>

**Online abuse:** On 1 January 2022, Muslim women were reported to be put on 'auction' via an app called 'Bull Bai – your deal of the day'. This was the second instance in the past year where pictures of prominent Muslim women surfaced on an auctioning app. The names of the apps, Bulli Bai and Sulli Bai, are derogatory terms used for Muslim women.<sup>282</sup> These incidents are signs of the organised nature of virtual bullying, with threats of sexualised violence aimed at silencing the outspoken women.<sup>283</sup> No arrests or prosecutions followed the first incident in July 2021. The second one, after being reported widely, led to the initiation of investigations and arrests.<sup>284</sup>

275. Rushda Fathima Khan, 'Muslim Girls Wearing Hijab Barred from Classes at Indian College' (Al-Jazeera, 18 Jan 2022) <<https://www.aljazeera.com/news/2022/1/18/india-karnataka-muslim-college-students-hijab-ban-udupi>>

276. Imran Qureshi, 'Hijab Row: The India Woman Who Is The Face of The Fight to Wear Headscarf' (BBC, 10 February 2022) <<https://www.bbc.com/news/world-asia-india-60328864>>

277. For more details, see Annexure I – All-India.

278. Declaration on the Elimination of Violence Against Women, General Assembly Resolution 48/104 of 20 December 1993 <[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.21\\_declaration%20elimination%20vaw.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.21_declaration%20elimination%20vaw.pdf)>

279. Article 1 CEDAW.

280. General Recommendation adopted by the Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women (1992) <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3731\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf)>

281. Article 1, Declaration on the Elimination of Violence against Women (n 274).

282. Srishti Jaswal, 'Bulli Bai: India's Muslim Women Again Listed On App For 'Auction' (Al-Jazeera, 2 January 2022) <<https://www.aljazeera.com/news/2022/1/2/bulli-bai-muslim-women-auction-online-india>>

283. Naomi Barton, 'Clubhouse and the Fantasy of Sexual Violence Against Muslim Women' (The Wire, 20 January 2022) <<https://thewire.in/rights/clubhouse-and-the-fantasy-of-sexual-violence-against-muslim-women->>; 'Sulli Deals: Indian Muslim Women Offered for Sale in 'Auction'', (Al-Jazeera, 12 July 2022) <<https://www.aljazeera.com/news/2021/7/12/sulli-deals-a-virtual-auction-of-indian-muslim-women>>

284. Alleged Creator of App 'Selling' Muslim Women Arrested in India (Al-Jazeera, 7 January 2022) <<https://www.aljazeera.com/news/2022/1/7/india-police-arrest-alleged-creator-bulli-bai-app-muslim-women>>

For more information, see Annexure I – All-India.

**Inciteful speeches:** Several inciteful speeches by prominent leaders threatening sexual violence against Muslim women have been reported. In a religious congregation in Raipur, Chattisgarh, Vibhanand Giri was reported to have called on Hindu men to ‘rape and impregnate’ Muslim women.<sup>285</sup> On 2 April 2022, outside a mosque in Khairabad, Sitapur, Uttar Pradesh, Bajrang Muni Udasin, a Hindu priest, is reported as threatening ‘Agar koi ek Hindu ladki tumne chedi, toh main khule aam tumhare ghar se tumhari bahu betiyon ko utha k laake balatkar kar dunga’ (I will publicly drag your daughters-in-law and daughters out of your homes and rape them if any Hindu girl is molested).<sup>286</sup> The perpetrators have not faced consequences.<sup>287</sup>

**Sexual harassment:** Sometimes, state agents do not only fail to protect women from violence but are actually responsible for such violence. In the cases of brutal crackdowns on protests discussed above, on several occasions women have reported being sexually harassed by the police or private actors. The National Federation of Indian Women (NFIW) released a fact-finding report on the attacks, detailing sexual assaults of 15 female students of Jamia Millia Islamia University by police personnel during the anti-CAA protests in Delhi.<sup>288</sup> Similar incidents were recorded by Delhi Minorities Commission in their report on the targeted violence in Northeast Delhi in February 2020, where anti-CAA protestors were allegedly disrobed by the police.<sup>289</sup> Disturbing reports of a pregnant Muslim woman being beaten up in Northeast Delhi were also brought to our attention.<sup>290 291</sup>

**Indirect victimisation:** As highlighted above, in the cases of extrajudicial executions, lynchings, hate crimes, etc. resulting in loss of life and disability, the targets are mostly young Muslim men. While accounting for the violation of rights of direct victims, it is important to take into account that women, in this case mostly Muslim women, indirectly bear the economic, physical and psychological brunt of these violations. Moreover, as a result of processes that affect the Muslim community at large, women end up undergoing exaggerated suffering owing to their vulnerable status in the society. For instance, women who traditionally move to the husband’s place of residence find themselves additionally discriminated against. During the NRC process in Assam, around 2.25 million Bengali and Nepali-speaking married women who submitted local village certificates as proof of residence were put through an additional, discriminatory and more rigorous two-step verification process after they were identified as ‘non-original inhabitants’ of Assam.<sup>292</sup> The bulk of the families excluded from the final NRC, a total of 1.9 million persons, belonged to this category.

The reports reviewed by the Panel indicate that there is sufficient credible information to suggest that the Indian state has failed in its duty to take positive action to prevent and protect women from violence, punish perpetrators of violent acts, and compensate victims of violence.

285. Alishan Jafri, Twitter, 2 Feb. 2022 <[https://twitter.com/alishan\\_jafri/status/1488875434783608833](https://twitter.com/alishan_jafri/status/1488875434783608833)>

NC Asthana, ‘Sadhvi Vibhanand’s Call to ‘Rape’ Muslim Women With Impunity Shows Hindutva’s Politics of Fear’ (The Wire, 12 February 2022) <<https://m.thewire.in/article/communalism/sadhvi-vibhanands-call-to-rape-muslim-women-with-impunity-shows-indutvas-politics-of-fear/amp>>

286. Piyush Srivastava, ‘On Video: Rape Threat By Sadhu During Navaratri Procession’ (The Telegraph, 9 April 2022) <<https://www.telegraphindia.com/india/on-video-rape-threat-by-sadhu-during-navaratri-procession-in-sitapur/cid/1859794>>

287. For more details, see Annexure I – All-India.

288. National Federation for Indian Women, ‘Targeted Violence in Jamia: Fact Finding Report on the Events of 10 February 2020’

<<https://nfiw.files.wordpress.com/2020/08/for-press-corrected-final-fact-finding-report-jamia.pdf>>; ‘Cops Kicked Us in Stomach’: 16 Anti-CAA Protesters Injured After Clash With Delhi Police in Jamia Nagar’ (Indian Express, 10 February 2020) <<https://indianexpress.com/article/cities/delhi/delhi-anti-cao-nrc-npr-protesters-jamia-police-clash-6261139/>>; ‘Delhi: More Than 10 Jamia Students Injured As Police Stop CAA Protest March To Parliament’ (Scroll.in, 10 February 2020) <<https://scroll.in/latest/952754/delhi-more-than-10-jamia-students-injured-as-police-stop-cao-protest-march-to-parliament>> For more information, see Annexure III – Delhi.

289. Delhi Minorities Commission, ‘Report of the Fact-Finding Committee on Northeast Delhi Riots’ (July 2020) <<https://ia601906.us.archive.org/1l/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>>

290. Citizens Against Hate, ‘Darkness at Noon: Incitement to Violence, Obfuscation and Perversion of Justice in Delhi’ (Citizens Against Hate, August 2020) <<https://citizensagainsthate.org/wp-content/uploads/2021/03/Darkness-at-Noon.pdf>> 18.

291. Delhi Minorities Commission (n 288).

292. OL IND 29/2018 (3); Also see Amnesty, ‘Designed to Exclude’ (30) for profiles of women affected by the NRC process, and Human Rights Watch, ‘Shoot the Traitors’ (26) For more details, see Annexure II – Assam.

### e) Incitement to discrimination, hostility and violence

Several state ministers and individuals associated with the BJP and their ideological front, RSS, have reportedly been engaging in incitement to discrimination, hostility and violence against the Muslim community in public spaces as well as through online platforms such as Twitter, Facebook etc. These widely broadcasted incendiary speeches, when analysed collectively, echo the predominant sentiment of the othering of the Muslim community, equating them as infiltrating outsiders, anti-national and traitors, terrorists and much more, in addition to directly calling for their violent targeting.

Following the anti-CAA movement, from December 2019 to February 2020, Delhi witnessed a campaign of inciteful speeches by the BJP electoral candidates, party leaders and senior ministers of the central government which were targeted at Muslims and the anti-CAA protestors.<sup>293</sup> A notable example is Kapil Mishra, a senior BJP politician and a former Member of the Legislative Assembly (MLA) in Delhi. He popularised an incendiary and violent slogan, 'Desh ke ghaddaron ko, goli maaron saalon ko' (Shoot dead the bastards, traitors to the nation) in Delhi through large public rallies, tweets (shared by millions), and physically leading Hindu mobs in Northeast Delhi, sparking the violence that would leave more than 53 dead in February 2020.<sup>294</sup>

Public speeches inciting violence against the Muslim community by Kapil Mishra are seen in the broader pattern of similar calls being issued by a range of senior political leaders and local Hindutva leaders (Hindu monks in

### Applicable Law: Article 20 ICCPR

Article 20 ICCPR requires states to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence by law. Speeches that meet the high threshold of strict interpretation of ICCPR Article 20 and 19(3), based on a contextual assessment as identified by the Rabat Plan of Action, should be prohibited and when it occurs, it requires a robust response by the State.

allegiance with the ideology of RSS). The scale of these speeches led the Special Adviser on the Prevention of Genocide, Adama Dieng, in May 2020, to express his concern over reports of increased hate speech and discrimination against Muslims in India.<sup>295</sup> This was followed by a group of UN experts, in October 2020, raising concern about 'hate speech, violent attacks and harassment of peaceful anti CAA protesters, disproportionately targeting Muslim religious minority', in Uttar Pradesh in December 2019 and in Delhi in February 2020.

It is alarming to note that these incidents of hate speech and incitement to violence were not limited to the anti-CAA movement but are instead continuing in many forms. With the onset of Covid-19 in March 2020, Muslims across India became the target of hate, vilification and incitement, with orchestrated campaigns<sup>296</sup> by BJP leaders and pro-BJP TV channels,<sup>297</sup> together with social media platforms, blaming Muslims for spreading the virus, and calling for direct action against them. This anti-Muslim targeting spilled over into real-world violence, economic boycotts and denial of public services.<sup>298</sup>

293. Narendra Modi, Amit Shah, Subramanian Swamy, Anurag Thakur, Giriraj Singh, Yogi Adityanath, Tarun Chugh, Kapil Mishra, Parvesh Verma, Abhay Verma, Tajinder Bagga, Somasekhar Reddy.

294. 'The Roots of the Delhi Riots: A Fiery Speech and an Ultimatum' (New York Times, 28 February 2020) <<https://www.nytimes.com/2020/02/26/world/asia/delhi-riots-kapil-mishra.html>>

AL IND 15/2020 (2); "Goli Maaro Saalo Ko": BJP's Kapil Mishra Posts Video Of His 'Peaceful' March Supporting The CAA' (Scroll.in, 21 December 2019)

<<https://scroll.in/video/947491/goli-maaro-saalo-ko-bjps-kapil-mishra-posts-video-of-his-peaceful-march-supporting-the-caa>>; Citizens Against Hate (n 289). For more details, see Annexure III – Delhi.

295. United Nations, 'Note to Media on India by Under-Secretary-General Adama Dieng, United Nations Special Adviser on the Prevention of Genocide' (UN, 18 May 2020) <[www.un.org/en/genocideprevention/documents/18052020\\_SA%20note%20to%20media%20on%20India\\_final.pdf](http://www.un.org/en/genocideprevention/documents/18052020_SA%20note%20to%20media%20on%20India_final.pdf)>

296. 'Coronavirus: Islamophobia Concerns After India Mosque Outbreak' (BBC, 3 April 2020) <<https://www.bbc.co.uk/news/world-asia-india-52147260>>

297. Ayan Sharma & Chahak Gupta, 'Audit Of Bigotry: How Indian Media Vilified Tablighi Jamaat Over Coronavirus Outbreak' (NewsLaundry, 27 April 2020) <<https://www.newslaundry.com/2020/04/27/audit-of-bigotry-how-indian-media-vilified-tablighi-jamaat-over-coronavirus-outbreak>>

298. '#CoronaJihad: COVID-19, Misinformation, and Anti-Muslim Violence in India' (Strong Cities, 26 May 2020) <<https://strongcitiesnetwork.org/en/coronajihad-covid-19-misinformation-and-anti-muslim-violence-in-india/>>; For more details, see Annexure I – All India.

In Assam, during the state legislative assembly elections in 2021, the BJP candidates were reported to have repeatedly made incendiary speeches against the Bengali-speaking Muslims in the state, equating them with ‘termites’ or illegal migrants, or encroachers.<sup>299</sup> Bengali-speaking Muslims, referred to as ‘Mia’ or ‘Miya’, a term used in a derogatory manner to indicate their migration history from Bengal, have continued to be dehumanised as ‘illegal migrants’.<sup>300</sup> In response to the killings of Muslims in Darrang district Assam, the state CM was seen encouraging similar attacks, labelling them as a ‘drive against encroachers’ which he insisted must continue.<sup>301</sup> These statements are particularly concerning given the NRC process in Assam, under way since 2019, and its implications, which were identified by international organisations as early warning signs that a genocidal process may be occurring in Assam.<sup>302</sup>

Most recently, a group of Hindutva leaders organised a three-day convention in Uttar Pradesh where Hindu religious leaders were seen pledging the destruction of the Muslim community.<sup>303</sup> These dharam sansads (religious parliaments) have since been reported from across India, with calls for a ‘cleanliness drive’ against Muslims and to kill ‘at least 2

million’ of them, repeated by some of the most prominent religious faces, all with strong links to the ruling BJP. Some have been reported calling to ‘rape and impregnate’ Muslim women. These calls have continued to be repeated, with impunity.<sup>304</sup> Additionally, as mentioned previously, hundreds of prominent Muslim women are ‘auctioned’ on social media in an obvious attempt to dehumanise them.<sup>305</sup> (see Section 3.1d)

The Panel finds that India has not taken any steps to counter hate speech and incitement to violence against the targeted community, including the enforcement of provisions under Indian Penal Code that criminalise unlawful speech acts.<sup>307</sup> There have been no reports of an effective and thorough enquiry, action or sanction against members who engaged in incitement to attack the Muslim community in Northeast Delhi in 2020 or in Assam.<sup>308</sup> There has only been a reluctant response against the most recent calls to mass violence, while political leaders have maintained complete silence.<sup>309</sup> The Panel suggests that such violations of obligations under international human rights law must be particularly noted in order to prevent further escalation of violence in the country.

299. ‘Stress on Hindu Identity’: BJP Hate Campaign in Poll-Bound Assam (Al-Jazeera, 25 March 2021) <<https://www.aljazeera.com/news/2021/3/25/stress-on-hindu-identity-bjp-hate-campaign-in-poll-bound-assam>>

300. ‘Bangladeshi Migrants Are ‘Termites’, Will Be Removed From Voter List, Says Amit Shah’ (Hindustan Times, 22 September 2018)

<<https://www.hindustantimes.com/india-news/bangladeshi-migrants-are-termites-will-be-removed-from-voter-list-says-amit-shah/story-Z8BAAJiNd5MVa2Kr0bt6iJ.html>>; ‘Miyas Are A Threat To Assam’s Culture And Identity: BJP’s Himanta Biswa Sarma’ (India Today, 4 April 2021)

<<https://www.indiatoday.in/india-today-insight/story/miyas-are-a-threat-to-assam-s-culture-and-identity-bjp-s-himanta-biswa-sarma-1787104-2021-04-04>>

301. ‘Dismissing Communal Hatred as ‘Only’ an Electoral Tool Is to Miss the Big Picture’ (The Wire, 2 Jan 2022) <<https://thewire.in/communalism/communal-hatred-assam-bjp-elections>>

302. ‘Genocide Watch for Assam, India - Renewed’ (Genocide Watch, 18 August 2019) <<https://www.genocidewatch.com/single-post/2019/08/18/genocide-watch-for-assam-india-renewed>>

For more details see Annexure II – Assam.

303. ‘Hindutva Leaders at Haridwar Event Call for Muslim Genocide’ (The Wire, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

304. Alishan Jafri, Twitter, 2 Feb. 2022 <[https://twitter.com/alishan\\_jafri/status/1488875434783608833](https://twitter.com/alishan_jafri/status/1488875434783608833)>

NC Asthana, ‘Sadhvi Vibhanand’s Call to ‘Rape’ Muslim Women With Impunity Shows Hindutva’s Politics of Fear’ (The Wire, 10 February 2022)

<<https://m.thewire.in/article/communalism/sadhvi-vibhanands-call-to-rape-muslim-women-with-impunity-shows-hindutvas-politics-of-fear/amp>>

305. Hannah Ellis-Petersen & Aakash Hassan, ‘Hatred, Bigotry And Untruth’: Communal Violence Grips India’ (The Guardian, 18 April 2022)

<<https://www.theguardian.com/world/2022/apr/18/hatred-bigotry-and-untruth-communal-violence-grips-india>>. For more details, see Annexure I – All India.

306. Ismat Ara, ‘What It Feels Like to Be a Muslim Woman Auctioned Online by India’s Right Wing’ (Time, 26 January 2022) <<https://time.com/6140574/muslim-women-india/>>

307. Indian Penal Code under Sections 153A, 153B, 295A, 298, 505(1) and 505(2).

308. The only arrests have been made on the recent Hindu monks gathering calling for genocide. Arrests Finally In India For Hate Speeches Against Muslims (South Asia Monitor, 16 January 2022) <<https://www.southasiamonitor.org/index.php/india/arrests-finally-india-hate-speeches-against-muslims>>.

309. Rana Ayyub, ‘In India, Calls for Muslim Genocide Grow Louder. Modi’s Silence Is An Endorsement.’ (The Washington Post, 29 December 2021) <<https://www.washingtonpost.com/opinions/2021/12/29/india-muslims-hindus-genocide-elections-modi/>>

## f) Violations of prohibition of discrimination

**Applicable Law: Art. 7 UDHR, Article 2(1) and 26 ICCPR; Article 2(2) and 18 ICESCR; Art. 2(1) of CRC.**

The prohibition of discrimination is one of the cornerstones of the human rights framework, and emphasises the idea that the equal fulfilment of fundamental human rights is crucial to a sense of human dignity and self-worth.<sup>310</sup> This equal entitlement to rights further requires that states refrain from applying laws, policies and programmes targeting individuals and groups in a discriminatory or arbitrary manner, seeking to privilege any individual or group to the exclusion of others and thereby nullifying their entitlement to equal treatment.<sup>311</sup> The principle of non-discrimination therefore ensures that rights cannot be circumvented or denied on the grounds of factors such as race, sex, status, religion, language, disabilities, etc.<sup>312</sup> However, not all differential treatment amounts to discrimination; states must also take into account individuals or groups which require ‘reasonable and objective’ additional support from the state to target structural inequality barriers, in order to fulfil ‘legitimate purposes’ which are aimed at understanding equality in terms of outcomes as well as opportunities.<sup>313</sup>

The panel was made aware of a series of legislations at national level and in BJP-ruled

states that prima facie discriminate against religious minorities, especially Muslims. In 2019, the government introduced laws on citizenship, including the National Register of Citizens (NRC) and amendments to Citizenship Act (CAA).

Administered by the Registrar General of India, a central agency, and under close supervision of the Supreme Court of India, NRC was published in the state of Assam in August 2019, excluding 1,906,657 Assam residents – around 6 per cent of the state’s population – as of doubtful nationality.<sup>314</sup> Despite fundamental concerns about poor and discriminatory procedures that excluded religious and linguistic minorities, especially women and children among them, and an arbitrary appeals process highlighted by victim groups,<sup>315</sup> as well as human rights bodies,<sup>316</sup> authorities have confirmed the finality of the NRC,<sup>317</sup> while remaining silent about the appeals process.<sup>318</sup> This was despite warnings by the UN High Commissioner for Refugees that the NRC could leave ‘large numbers of people without a nationality’ and be an ‘enormous blow to global efforts to eradicate statelessness’.<sup>319</sup> The Special Rapporteur on minority issues too described the situation as ‘grave’, with the potential to create a ‘massive humanitarian crisis’ and destabilise the whole region.<sup>320</sup> The ongoing processes and resulting marginalisation are not only violations of India’s obligations under international human rights law, but there is also a major concern that the Indian government plans to duplicate the NRC processes in the rest of the country.<sup>321</sup>

310. Charter of the United Nations (24 October 1965) 1 UNTS XVI, preamble; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 1.

311. UN Human Rights Committee (HRC) CCPR General Comment No. 18: Non-Discrimination (10 December 1989) UN Doc HRI/GEN/1/Rev.6 at 146 (2003) para. 7.

312. See Article 2(1) ICCPR.

313. UN Human Rights Committee (HRC) CCPR General Comment No. 18: Non-Discrimination (10 December 1989) UN Doc HRI/GEN/1/Rev.6 at 146 (2003) para. 13.

314. Office of State Coordinator NRC, Publication of Final List 2019 (31 August 2019) <<http://nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf>>

315. ‘Aamsu to Move SC Against Order To Delete ‘Ineligible’ Names From NRC (Times of India, 28 October 2020)

<<https://timesofindia.indiatimes.com/city/guwahati/aamsu-to-move-sc-against-order-to-delete-ineligible-names-from-nrc/articleshow/78908630.cms>>

316. Human Rights Watch (n 2015). See OHCHR, OL IND 13/2018 (June 2018); OHCHR, OL IND 29/2018 (December 2018).

317. Biswa Kalyan Purkayastha, ‘Assam Foreigners’ Tribunal Says NRC is Final’ (Hindustan Times, 21 September 2020) <<https://www.hindustantimes.com/india-news/assam-foreigners-tribunal-says-nrc-is-final-101632222612470.html>>

318. Rahul Karmakar, ‘Assam’s NRC-Excluded Wait Anxiously Six Months After Publication of Final List (The Hindu, 1 March 2020)

<<https://www.thehindu.com/news/national/assams-nrc-excluded-wait-anxiously-six-months-after-publication-of-final-list/article30957931.ece>>

319. United Nations, ‘UN High Commissioner for Refugees Expresses Alarm at Statelessness Risk in India’s Assam’ (UN, 1 September 2019)

<<https://www.unhcr.org/news/press/2019/9/5d6a24ba4/un-high-commissioner-refugees-expresses-alarm-statelessness-risk-indias.html>>

320. United Nations General Assembly, ‘Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Note by the Secretary-General’ (UN, 15 July 2019) <[https://ap.ohchr.org/documents/E/GA/report/A\\_74\\_160.pdf](https://ap.ohchr.org/documents/E/GA/report/A_74_160.pdf)>

321. ‘Lok Sabha Elections 2019: BJP Promises NRC Replication Across India in Poll Manifesto’ (The New Indian Express, 9 April 2019)

<<https://www.newindianexpress.com/nation/2019/apr/09/lok-sabha-elections-2019-bjp-promises-nrc-replication-across-india-in-poll-manifesto-1962037.html>>; ‘NRC Necessary for National Security, Will Be Implemented: Amit Shah in Kolkata’ (The Wire, 1 October 2019) <<https://thewire.in/government/nrc-necessary-for-national-security-amit-shah>>

<<https://thewire.in/government/nrc-necessary-for-national-security-amit-shah>>

Close on the heels of the Assam NRC, in December 2019, Indian Parliament passed the Citizenship Amendment Act, 2019, that in effect opens up a route to expedited nationality for migrants from any faith, except Muslims.<sup>322</sup> Discriminating explicitly on grounds of religion and nationality, the CAA is violative of domestic and international law. By dividing people on the basis of religion, and providing expedited citizenship to all but Muslims, the CAA, 2019, exacerbates, immediately, the divisive dynamics of the NRC process in Assam. Of the 1.9 million persons identified by the NRC as being of ‘doubtful citizenship’, those from identities included in the CAA, 2019, will potentially have a pathway to acquiring Indian citizenship, while Muslims particularly, similarly left off the NRC, will have no such option. Media reports reveal that some 700,000 persons might find themselves facing possible statelessness.<sup>323</sup>

However, as the US Commission for International Religious Freedom warns, the dangers of CAA go far beyond Assam. With the CAA in place, Muslims would primarily bear the punitive consequences of exclusion from the all-India NRC that it is reported the BJP government seeks to finalise.<sup>324</sup>

In February 2019, UN experts raised concern about the discriminatory nature of the Citizenship Amendment Act (then a bill).<sup>325</sup> Just after the law was passed, the UN High Commissioner for Human Rights called the CAA ‘fundamentally discriminatory’<sup>326</sup> and later sought to intervene in the legal challenge against the legislation in the Supreme Court

of India, ‘to assist the court to examine the compatibility of the legislation with India’s Constitution, in light of India’s obligations under international human rights law’.<sup>327 328</sup> The Government of India was reported to have refused the offer.<sup>329</sup> Earlier, on 22 January 2020, a motion was tabled in the European Parliament against the legislation, arguing that the ‘CAA is explicitly discriminatory in nature as it specifically excludes Muslims from access to the same provisions as other religious groups’.<sup>330</sup> The motion was suspended, reportedly after India’s lobbying MEPs claimed that the CAA was being reviewed by India’s Supreme Court. Despite the over 150 challenges against the CAA in the Supreme Court, including by several state governments, and the passage of over two years, the CAA has not been struck down by the Court.<sup>331</sup>

From the material available to the Panel, it is clear that the CAA is not the only discriminatory law in play today. Several state laws violating fundamental rights of minorities have been enacted in Uttar Pradesh, Assam, Madhya Pradesh and Karnataka, all states ruled by the BJP. For instance, stricter laws that make *cow slaughter* a cognisable, non-bailable offence, and putting the burden of proof on the accused in violation of the right to be presumed innocent, have been enacted in UP, Karnataka and Assam.<sup>332</sup> Cows are sacred to Hindus, and cow protection finds mention in the Indian Constitution as a Directive Principle of State Policy. This provision has been used by state legislatures to enact these laws and was also the enabling provision for

322. United Nations, ‘New Citizenship Law In India ‘Fundamentally Discriminatory’’ (UN Human Rights Office, 13 December 2019)

<<https://news.un.org/en/story/2019/12/1053511>>; OHCHR Amicus Brief on CAA before the Indian Supreme Court (The Wire, 3 March 2020) <<https://thewire.in/diplomacy/un-human-rights-chief-intervention-application-supreme-court-cao>>. For more details see Annexure II – Assam.

323. Prabin Kalita, ‘Five Lakh Bengali Hindu NRC Rejects Will Get Citizenship’ (The Times of India, 11 December 2019)

<<https://timesofindia.indiatimes.com/india/five-lakh-bengali-hindu-nrc-rejects-will-get-citizenship/articleshow/72465093.cms>>

324. USCIRF, ‘USCIRF Releases New Factsheet on India’s Citizenship (Amendment) Act’ (USCIRF, 19 February 2020) <<https://www.uscifr.gov/news-room/releases-statements/uscifr-releases-new-factsheet-indias-citizenship-amendment-act>>

325. AL IND 2/2019 (13 February 2019) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24333>>

326. United Nations (n 330).

327. The Wire (n 330).

328. Mukharji v. Union of India (2019) <[https://www.thehinducentre.com/resources/article30979486.ece/binary/pdf\\_upload-370845.pdf](https://www.thehinducentre.com/resources/article30979486.ece/binary/pdf_upload-370845.pdf)>. For more details, see Annexure I – All India.

329. Apoorva Mandhani, ‘UN Human Rights Body Moves Supreme Court Over CAA, Govt Says It’s Internal Matter’ (The Print, 3 March 2020) <<https://theprint.in/india/un-human-rights-body-moves-supreme-court-over-cao-govt-says-its-internal-matter/374703/>>

330. European Parliament, ‘Joint Motion for a Resolution on India’s Citizenship (Amendment) Act, 2019 (2020/2519(RSP))’ (28 January 2020) <[https://www.europarl.europa.eu/doceo/document/RC-9-2020-0077\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/RC-9-2020-0077_EN.pdf)>

331. ‘CAA Case Comes Up Just Thrice In 1 Year In SC Despite 140 Pleas, Including From UN Body

’ (The Print, 6 January 2021) <<https://theprint.in/judiciary/cao-case-comes-up-just-thrice-in-1-year-in-sc-despite-140-pleas-including-from-un-body/579837/>>

332. Human Rights Watch, ‘India: Government Policies, Actions Target Minorities’ (HRW, 19 February 2021) <<https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities>>

the central BJP government to attempt, in 2017, an all-India cow protection statute, an attempt that failed.<sup>333</sup>

In practice, state cow protection laws have been used by Hindu extremists to attack Muslims (and sometimes Dalit individuals) engaged in animal husbandry and in lawful meat trade, and for authorities to criminalise meat and dairying professions – both dominated by poorer Muslims. These laws also empower the police to arrest suspects without a warrant, or to enter, search and seize vehicles that are suspected of carrying banned items. Over time the penal provisions of the cow protection laws are being fortified to the detriment of Muslims and Dalits. The Uttar Pradesh state cabinet passed an ordinance in 2020 seeking to strengthen the provisions of the 1955 law banning cow slaughter, by prescribing a punishment of rigorous imprisonment of up to 10 years.<sup>334</sup> In October 2020, UP's High Court warned that the state's Cow Protection Act 'is being misused against innocent persons'.<sup>335</sup> The Assam version of the legislation, enacted in August 2021, prescribes a jail term of a maximum of eight years.<sup>336</sup> Observers have noted that cow protection laws serve a two-fold purpose in the context of religion: firstly, upholding the supremacy of Hindu beliefs (cows as sacred) through a legislative act; and, secondly, targeting Muslims who have traditionally been involved in the dairying and meat industry.

Another contentious set of laws is that against **religious conversion**, ironically called Freedom of Religion. These are legislations that aim to prevent coercive or fraudulent conversions from one religion to the other. In practice, however, the legislations have been used by Hindu extremists to discourage or prevent conversion from Hinduism to other religions, and to criminalise and attack Muslims and Christians.<sup>337</sup> In November 2020, the UP government enacted an ordinance seeking to regulate 'conversions' through marriage, in what has been described as 'love jihad',<sup>338</sup> in effect aiming to criminalise interfaith relationships.<sup>339</sup> Media accounts from a month after the enactment of the ordinance reported a string of criminal cases filed by state police against Muslim youth accusing them of violating the law, with several, on close scrutiny, turning out to be in violation of the provisions of the ordinance themselves, yet landing the accused in detention for protracted periods. As of July 2021, a total of 162 people had reportedly been arrested under such laws in the state of Uttar Pradesh alone, and 101 jailed.<sup>341</sup> The offence is punishable by up to a maximum of 10 years' imprisonment in specific cases. Following UP's example, several BJP-ruled states have enacted similar legislations.<sup>342 343</sup> Despite infringing on the religious freedom of minorities, and further on the rights of choice and to privacy, and thus potentially unconstitutional, these laws have not yet been struck down by the judiciary.<sup>344</sup>

333. For more details, see Annexure I – All India.

334. 'UP Cabinet Passes Ordinance: 10 Years' Rigorous Punishment for Cow Slaughter' (The Wire, 10 June 2020) <<https://thewire.in/government/uttar-pradesh-cabinet-ordinance-punishment-cow-slaughter>>

335. 'UP cow slaughter law is being misused against innocent: Allahabad HC' (Indian Express, 27 October 2020) <<https://indianexpress.com/article/india/up-cow-slaughter-law-is-being-misused-against-innocent-allahabad-hc-6889785/>>

336. 'Explained: What Is Assam Cattle Preservation Bill, 2021, Its Provisions, Punishment and Why the Opposition Is against It' (The Financial Express, 14 August 2021) <<https://www.financialexpress.com/india-news/explained-what-is-assam-cattle-preservation-bill-2021-its-provisions-punishment-and-why-the-opposition-is-against-it/2310669/>>

337. Centre for Study of Society and Secularism & Minority Rights Group International, 'A Narrowing Space: Violence and discrimination against India's religious minorities' (Centre for Study of Society and Secularism & Minority Rights Group International, June 2017) <[https://minorityrights.org/wp-content/uploads/2017/06/MRG\\_Rep\\_India\\_Jun17-2.pdf](https://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_India_Jun17-2.pdf)>

338. A Hindu right-wing conspiracy theory that accuses a larger plot by Muslim men to feign love to non-Muslim women and convert them to Islam.

339. Hannah Ellis-Petersen, 'Muslims targeted Under Indian State's 'Love Jihad' Law' (The Guardian, 14 December 2020) <<https://www.theguardian.com/world/2020/dec/14/muslims-targeted-under-indian-states-love-jihad-law>>

340. Manish Sahu, '1 Month Of UP 'Love Jihad' Law: 14 Cases, 49 in Jail, Woman 'Victim' Complainant in Only Two' (The Indian Express, 9 January 2021) <<https://indianexpress.com/article/india/love-jihad-law-up-police-7124001/>>

341. Piyush Rai, '7 Months of UP's Anti-Conversion Law: 162 People Booked in 63 Cases' (The Quint, 8 July 2021) <<https://www.thequint.com/news/india/7-months-of-ups-anti-conversion-law-162-people-booked-in-63-cases>>

342. Apoorvanand, 'India's 'Love Jihad' Laws: Another Attempt to Subjugate Muslims' (Al-Jazeera, 15 January 2021) <<https://www.aljazeera.com/opinions/2021/1/15/indias-love-jihad-laws-another-attempt-to-subjugate-muslims>>

343. Apurva Vishwanath, '3 States, 3 Anti-Conversion Laws: What's Similar, What's Different' (Indian Express, 3 January 2021) <<https://indianexpress.com/article/explained/religion-conversion-bill-bjp-7129285/>>

344. Mariyam Alavi, 'UP's Anti-Conversion Law 'Unconstitutional', Say 4 Former Judges' (NDTV, 18 December 2020) <<https://www.ndtv.com/india-news/love-jihad-ups-anti-conversion-law-unconstitutional-say-4-former-judges-2340694>>. For more details see Annexure V – UP.

In Gujarat, also ruled by the BJP, a law introduced in the 1980s to prevent the distress sale of property, including between religious groups in areas affected by sectarian polarisations – deemed ‘disturbed areas’, has been used, according to reports, to drive Muslims away from mixed areas.<sup>345</sup> The law has recently been amended, giving more powers to local authorities to regulate such transfer, thereby potentially increasing the space for discrimination and the gradual ejection of Muslims from public spaces.<sup>346</sup>

The **Revocation of Article 370** of the Indian Constitution, that in one go abrogated the quasi-autonomy that the state of J&K enjoyed within the Indian Union, while also providing protections to its local communities, especially in the Muslim-majority Kashmir Valley, is another legislative act that experts believe is discriminatory. On 5 August 2019, the BJP-ruled central government unilaterally revoked Article 370, stripping the state of its special autonomous status, and removed Article 35A, taking away guarantees for the state’s indigenous population.<sup>347</sup> In October 2020, the Government of India enacted regulations to open up the region for purchase of land by those from outside the region, and made it easier for the armed forces to mark any area as ‘strategic’ thus preventing access to the public.<sup>348</sup> Five UN mandate-holders, in their letter to the Government of India, noted that ‘while other states have been allowed to preserve their special autonomy status under the Constitution with protections for their native ethno-linguistic groups, the former state of Jammu and Kashmir, as the only state in

India where Muslims form the greater part of the population, may have been singled out because of this’.<sup>349</sup> They raised concern that the abolition of J&K’s constitutional autonomy under Article 370 and the implementation of Domicile Rules and other legislations ‘may lead to reduced levels of political representation and participation of native groups’, aside from this, it may also ‘cause demographic changes, and risk undermining the linguistic and cultural rights and the freedom of religion or belief of the people of Jammu and Kashmir’.<sup>350</sup>

From the reports seen by the Panel, the BJP government seems to have increasingly instrumentalised laws, centrally and in key states, to discriminate against and criminalise minorities, especially Muslims. BJP has held absolute majority in the Indian Parliament (the legislative branch of the state) since 2014. It also has similar majorities in key states, including Assam, Gujarat, Madhya Pradesh, Uttarakhand and Uttar Pradesh. The central government also rules the, now, Union Territory of J&K directly, without any locally-elected representation (since 2018). These laws and legislative actions serve to legitimise discrimination on the basis of religion, clearly violate India’s Constitution and India’s obligations under international human rights law that prohibit discrimination based on race, ethnicity or religion, and require the governments to provide residents with equal protection of the law. Moreover, these steps are in clear violation of India’s positive obligation to protect persons belonging to ethnic, linguistic and religious minorities.

345. Damayantee Dhar, ‘Disturbed Areas Act in Gujarat: A Tool to Discriminate Against Muslims’ (The Wire, 26 June 2018) <<https://thewire.in/rights/disturbed-areas-act-in-gujarat-a-tool-to-discriminate-against-muslims>>

346. Parimal Dabhi, ‘Explained: What has changed in Gujarat’s Disturbed Areas Act’ (The Indian Express, 19 October 2020) <<https://indianexpress.com/article/explained/gujarats-disturbed-areas-act-amendments-6723215/>>. For more details see Annexure I – All India.

347. ‘Full Text Of Document On Govt.’s Rationale Behind Removal Of Special Status To J&K’ (The Hindu, 5 August 2019) <<https://www.thehindu.com/news/national/full-text-of-document-on-govts-rationale-behind-removal-of-special-status-to-jk/article28821368.ece>>; ‘Jammu & Kashmir After Article 370 is Revoked’ Archived - last accessed 28 January 2022.

348. Naveel Iqbal, ‘Explained: What Land Laws Have Changed in J&K? How Have Parties Responded?’ (The Indian Express, 18 November 2020) <<https://indianexpress.com/article/explained/jammu-kashmir-land-laws-changes-7047920/>>; Muhammad Mutahhar Amin, ‘Material Consequences and Political Ramifications: Land Laws of Jammu and Kashmir’ (Economic and Political Weekly, 23 January 2021) <<https://www.epw.in/journal/2021/4/commentary/land-laws-jammu-and-kashmir.html>>

349. AL IND 21/2020 (10 February 2021) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25807>>. For more details see Annexure IV – Jammu & Kashmir.

350. AL IND 21/2020 (10 February 2021)

## g) Violations of freedom of religion

### Applicable Law: Article 18 UDHR, Article 18 ICCPR

The right to freedom of religion encompasses the right to have or adopt a religion or belief of one's choice which is protected unconditionally, as well as the freedom to manifest them through worship, practice, teaching, etc., which can be restricted but only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or fundamental rights and freedoms of others.<sup>351</sup> The right to adopt a religion also includes the right to change one's religion and bars compelling believers to adhere to a certain religion through coercive measures, including penal sanctions.<sup>352</sup> Religion can be a basis for discrimination in violation of international human rights law.<sup>353</sup>

The Panel was informed that several Indian states have enacted anti-conversion legislations, called Freedom of Religion Acts. These include Odisha (in 1967), Madhya Pradesh (1968, 2021), Arunachal Pradesh (1978), Chhattisgarh (2000), Gujarat (2003), Himachal Pradesh (2006), Jharkhand (2017), Uttarakhand (2018) and Uttar Pradesh (2020). In 2021, the state of Madhya Pradesh modified its anti-conversion law and made it much more stringent. It now carries prison sentences of up to 10 years for any person found guilty of leading 'illegal conversions'. Karnataka and Haryana are also reportedly considering anti-conversion laws. These laws

criminalise conversion on the basis of force, fraud, inducement or allurement. Recent enactments or amendments, including in Madhya Pradesh, includes interfaith 'marriage' as an illegal means of conversion. Similarly, Karnataka's proposed law makes 'a promise of marriage' a means of unlawful conversion. In practice, the legislations have been used by Hindu extremists, in collusion with authorities, to discourage or prevent conversion from Hinduism to other religions,<sup>354</sup> and to criminalise and attack Muslims and Christians. Such laws are typically not applied to a change of faith to Hinduism, regarded as 'original' to India and hence unduly favoured.<sup>355</sup> In spite of infringing on the religious freedom of minorities and being unconstitutional, these laws have not yet been struck down by the judiciary with the Allahabad High Court<sup>356</sup> and the Supreme Court<sup>357</sup> dismissing challenges filed against these laws.<sup>358</sup>

In March 2008, the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, wrote: 'The laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular because of the use of vague or overbroad terminology and discriminatory provisions.'<sup>360</sup>

Another instance of potential violation of freedom of religion involved the Indian Supreme Court's Ayodhya judgement of November 2019, granting the title to the 16th century mosque to Hindu parties that the court acknowledged were complicit in its destruction in 1992.

351. Human Rights Committee, 'CCPR General Comment No. 22: The Right To Freedom Of Thought, Conscience And Religion (Art. 18), CCPR/CR/21/Rev.1/Add.4' (30 July 1993) <<https://www.refworld.org/pdfid/453883fb22.pdf>>

352. UN Special Rapporteur On Freedom Of Religion Or Belief, 'Rapporteur's Digest on Freedom of Religion or Belief' (10 March 2011) <<https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>>.

353. UN Special Rapporteur.

354. Centre for Study of Society and Secularism & Minority Rights Group International (n 336).

355. Iqtidar Cheema 'Constitutional and Legal Challenges Facing Religious Minorities in India' (USCIRF, February 2017)

<<https://www.uscirf.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf>>

356. Mariyam Alavi, 'UP's Anti-Conversion Law "Unconstitutional", Say 4 Former Judges' (NDTV, 18 December 2020) <<https://www.ndtv.com/india-news/love-jihad-ups-anti-conversion-law-unconstitutional-say-4-former-judges-2340694>>

357. Qazi Faraz Ahmad, 'Raising Doubts of 'Political Misuse' of UP's 'Love Jihad' Law, 3rd PIL Filed in Allahabad HC' (News18, 14 September 2021)

<<https://www.news18.com/news/india/raising-doubts-of-political-misuse-of-ups-love-jihad-law-3rd-pil-filed-in-allahabad-hc-4200692.html>>

358. 'Love Jihad: SC Refuses To Entertain PIL Against MP Law On Religious Conversions' (The Tribune, 19 February 2021)

<<https://www.tribuneindia.com/news/nation/love-jihad-sc-refuses-to-entertain-pil-against-mp-law-on-religious-conversions-214753>>

359. For more details, see Annexure I – All India.

360. A/HRC/10/8/Add.3 <<https://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.8.Add.3AEV.pdf>>

The judgement has been criticised as bad in law by experts, for applying a differential standard of proof for majority Hindus and minority Muslims.<sup>361</sup> Scholars note how ‘the extrajudicial purge (of the historical monument) that Hindu extremist mobs enacted in December 1992, the Supreme Court finished, through judicial opinion.’<sup>362</sup> And in seeking to ‘bring peace through an unequal compromise’, the judgement has, in the opinion of observers, tried to ‘strike an uneasy detente with a pernicious political ideology that resists substantive justice, reparations for past wrongs and mutual tolerance’.<sup>363</sup> Recently, the courts including the highest, have been accused of setting in motion similar processes concerning other controversial claims by Hindu groups on religious buildings of minorities.<sup>364</sup>

Additionally, the recent proscribing of the wearing of hijab or Muslim headscarf by students in schools in Karnataka, and now reportedly also in Madhya Pradesh, threatens to violate the right to freedom of religion, among other rights (see section 3.1 d). The Karnataka High Court has upheld the ban and the matter is pending appeal before the Supreme Court of India. As previously discussed, this has also excluded the affected girls from accessing education. Hijab bans in schools violate religious freedom and stigmatise and marginalise women and girls.<sup>365</sup> Alongside this, there has been a rise in recent weeks of attacks against mosques and places of worship<sup>366</sup> by Hindu nationalist vigilantes, creating an atmosphere of fear.<sup>367</sup> Muslim missionaries have been targeted in fabricated prosecutions, and restrictions

placed against foreign Muslim (and Christian) missionaries.<sup>368</sup> While it is clear that a ban on conversion or ban on hijab is a restriction on the right to freedom of religion, the ban imposed by the state of Karnataka also does not meet the legality, necessity and proportionality justifications of restricting the right to freedom of religion. These discriminatory legislative and executive acts directly attributable to the state appear to obstruct the freedom to adopt a religion of choice, and freedom, either individually or in community with others and in public or private, to manifest religion or belief in worship, observance, practice and teaching, and are thus violative of the obligations of India under international human rights law.

#### **h) Violations of freedom of expression, association and assembly**

The panel has been made aware that there have been large-scale attempts to suppress association and assembly of Muslims as well as citizens at large, in the form of blanket bans on protests, internet shutdowns, surveillance and other suppression measures. At the same time, human rights organisations, journalists as well as media houses that voice the concerns of the Muslim community, besides minority and human rights more broadly, have been subjected to physical, financial and social reprisals. The unnecessary and disproportionate measures taken by the state to silence media and civil society amount to violations of rights to expression, assembly and association protected under international human rights law.

361. Karan Thapar, ‘Parts of Ayodhya Judgment Laughable, Different Standards of Proof Unfair’ (The Wire, 19 November 2019) <<https://thewire.in/law/watch-parts-of-ayodhya-judgment-laughable-different-standards-of-proof-unfair>>

362. Audrey Truschke, ‘Historical Right: The Ayodhya verdict is a cornerstone of the Hindu Rashtra’ (The Caravan, 6 December 2019) <<https://caravanmagazine.in/religion/ayodhya-babri-masjid-ram-mandir-supreme-court-audrey-truschke>>

363. ‘Peace Bought By An Unequal Compromise’ (The Hindu, 14 April 2021) <<https://www.thehindu.com/opinion/lead/peace-bought-by-an-unequal-compromise/article62106425.ece>>

364. ‘Hindu Extremists Target Muslim Sites in India, Even Taj Mahal’ (France24, 20 May 2022) <<https://www.france24.com/en/live-news/20220520-hindu-extremists-target-muslim-sites-in-india-even-taj-mahal>>

Uman Poddar, ‘From Babri to Gyanvapi, How India’s Courts Have Helped Escalate Hindutva Claims On Mosques’ (Scroll.in, 18 May 2022)

<<https://scroll.in/article/1024134/from-babri-to-benaras-how-indias-courts-have-helped-to-escalate-hindutva-cases-about-mosques>>

365. ‘Hijab Ban In Indian State Violates Religious Freedom: US Official’ (Al-Jazeera, 12 February 2022) <<https://www.aljazeera.com/news/2022/2/12/us-expresses-concern-over-india-hijab-row>>

366. ‘Himmatnagar, Khambhat: One Dead As Groups Clash During Religious Processions, Say Police’ (The Indian Express, 11 April 2022) <[https://indianexpress.com/article/cities/ahmedabad/clashes-arson-erupt-in-gujarat-one-killed-7863151/?utm\\_source=Taboola\\_Recirculation&utm\\_medium=RC&utm\\_campaign=IE](https://indianexpress.com/article/cities/ahmedabad/clashes-arson-erupt-in-gujarat-one-killed-7863151/?utm_source=Taboola_Recirculation&utm_medium=RC&utm_campaign=IE)>

367. ‘Never-Before-Seen Majoritarian Aggression’: English Editorials Call Out BJP-Aided Hatred’ (The Wire, 13 April 2022) <<https://thewire.in/media/never-before-seen-majoritarian-aggression-english-editorials-call-out-bjp-aided-hatred>>

368. Bismee Taskin, ‘5 Lakh ‘Forced’ Into Islam, Funds From Gulf, UK: What UP ATS Found In ‘Conversion Racket’ Probe’ (The Print, 14 October 2021) <<https://theprint.in/india/5-lakh-forced-into-islam-funds-from-gulf-uk-what-up-ats-found-in-conversion-racket-probe/750310/>>

### Applicable Law: Article 19 and 20 UDHR, Article 19, Articles 21 and 22 of the ICCPR.

Everyone has the right to hold opinions and to freely express themselves.<sup>369</sup> Any restriction on the exercise of the right must be provided by law and be necessary and proportionate to the aim pursued.<sup>370</sup> Certain types of expression should never be subject to restrictions, for instance discussion of government policies and political debate; reporting on human rights and/or government activities; and engaging in peaceful demonstrations or political activities.<sup>371</sup> All forms of opinion are protected, including opinions of a political, scientific, historical, moral or religious nature.<sup>372</sup> The right to participate in an assembly includes the organisation and presence in gatherings in person or remotely for the purpose of expressing oneself, conveying a position or exchanging ideas.<sup>373</sup> Only peaceful assemblies which do not entail the use of physical force by the participants that is likely to result in injury or death or serious property damage are protected.<sup>374</sup> Any limitations on assemblies and associations should be in conformity with the law and must be necessary in the pursuit of legitimate interests.<sup>375</sup>

In December 2019, state authorities imposed blanket curfews banning any assembly of more than four people across three regions in India (Uttar Pradesh, Delhi, Assam), ahead of anticipated protests against the enactment of the CAA.<sup>376</sup>

The Indian Criminal Procedure Code (section 144) allows the authorities to place curfews when there are clear indications of incitement to violence and riots.<sup>377</sup> In UP, the areas most affected were those with concentrated Muslim-majority populations, such as western and central districts of Bijnor, Firozabad, Kanpur, Meerut, Sambhal and Lucknow.<sup>378</sup> The police also instructed cellular companies to cut communications in key areas where they anticipated large-scale protests. Reports reviewed by the Panel show that areas under curfew were mostly areas with large concentrations of Muslims.<sup>379</sup> The curfews deprived the Muslim populations of their legitimate democratic right to protest against a law that was seen as being fundamentally discriminatory.<sup>380</sup> It has been pointed out to the panel that such blanket restrictions on assembly and imposition of bans to prevent protests had also taken place a few months earlier, in November 2019 in UP. At the time, the Babri Masjid judgment was delivered by the Indian Supreme Court, granting title of the disputed site to Hindu parties. The Hindu parties were granted title without regard to the long-documented history of Muslim worship at the disputed site. These same Hindu parties were the ones that the court held responsible for destroying the historical mosque that stood on the land in 1992.<sup>381</sup> It can be surmised that it was another attempt by authorities to restrict by law expression of dissent against a patently unjust action.

369. International Covenant on Civil and Political Rights [ICCPR], 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976), Arts. 19(1) and (2).

370. ICCPR (n 368) Art. 19(3).

371. UN Human Rights Council, Freedom of opinion and expression: resolution adopted by the Human Rights Council [HRC Resoln], 12 October 2009, A/HRC/RES/12/16, para. 5(p) (i), <<https://www.refworld.org/docid/4dc128a2.html>>

372. U.N. Human Rights Committee, General Comment No. 34 (Article 19: Freedom of opinion and expression) ¶25,

U.N. Doc. CCPR/C/GC/34 (12 September 2011) [General Comment No. 34] HRC General Comment No. 34 (2011); See also 'Mandate of the Special Rapporteur on the situation of human rights defenders', UN Doc A/HRC/Res/25/18 (28 March 2014) (Particularly in the case of human rights defenders).

373. Human Rights Committee, General Comment No. 37, The Right of Peaceful Assembly (Article 21), UN Doc. CCPR/C/GC/37, 27 July 2020, <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_37\\_9233\\_E.docx](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_37_9233_E.docx)>

374. Human Rights Committee, General Comment No. 37.

375. ICCPR (n 368) Art. 21.

376. For details on how the protests were dealt with in each of these regions, see Annexures – II, III, and V.

377. 'Citizenship Act protests: How a colonial-era law is being used in India' BBC (20 December 2019) <<https://www.bbc.com/news/world-asia-india-50849909>>

378. 'Anti-CAA Protests: 1,113 Arrests, 5,558 Preventive Detentions, 19 Dead in UP' The Hindu (26 December 2019), <<https://timesofindia.indiatimes.com/india/anti-caa-protests-1113-arrests-5558-preventive-detentions-19-dead-in-up/articleshow/72980374.cms>>; Karwan-e-Mohabbat, 'A State at War with its People: Report on State Action in UP Targeting Dissent and Muslim Minorities' [February 2020] 8 <<http://karwanemohabbat.in/wp-content/uploads/2020/06/A-State-at-War-With-Its-People-KeM-Feb2020.pdf>>

379. See 'India muzzles citizenship law protests, detaining thousands and shutting down Internet in several cities' The Washington Post (19 December 2019) <<https://payalmohta.com/india-muzzles-citizenship-law-protests-detaining-thousands-and-shutting-down-internet-in-parts-of-the-capital/>> (concerning a police order tweeted by ANI).

380. The UN had already issued a statement sharing concerns over the discriminatory law. 'New citizenship law in India "fundamentally discriminatory"' UN human rights office (13 December 2019) <<https://news.un.org/en/story/2019/12/1053511>>

381. 'Section 144 imposed in Ayodhya till Dec 10 in anticipation of verdict in land dispute case' Indian Express (13 October 2019)

<<https://indianexpress.com/article/india/ayodhya-land-dispute-case-section-144-imposed-6067570/>>; See also Annexure V – Uttar Pradesh.

The Panel is also aware of reports about attacks against journalists and media houses, from Muslim communities or those reporting attacks against Muslims. Journalists who were reporting on the CAA movement were repeatedly attacked and harassed. In several high-profile incidents, ‘raids’ were carried out at the offices of news outlets critical of government, without any evidence of alleged crimes. These raids were typically carried out by Enforcement Directorate, a central agency for investigating financial crimes, and the Central Bureau of Investigation, the country’s premier criminal investigative agency. Sometimes, raids are also carried out by the National Investigation Agency, the central agency responsible for anti-terror investigations. These intimidatory tactics raise the financial, physical and psychological stakes for those helming critical media outlets or the journalists themselves.<sup>382</sup> In Assam, police forces were reported to have barged into the offices of a private news channel and assaulted its staff with batons for reporting anti-CAA protests.<sup>383</sup> These raids are often carried out without arrest warrants, meaning they lack any legal basis.

In Kashmir, authorities imposed a severely restrictive communication shutdown from August 2019 to January 2020, effectively blocking all means of communication. Internet access, mobile phone networks, landline phones, cable and Kashmiri television channels were cut off, completely alienating Kashmiris from the wider world.<sup>384</sup> The shutdown was the longest ever blackout in a country that calls itself a democracy.<sup>385</sup> UN

mandate holders have characterised the shutdown as ‘inconsistent with the fundamental norms of necessity and proportionality’; violating the right to assembly, amounting to ‘a form of collective punishment of the Kashmiri people...without even the pretext of a precipitating offence’.<sup>386</sup> To this day, authorities are reportedly continuing to impose excessive restrictions on the use of social media.<sup>387</sup> In August 2019, Section 144 of the Code of Criminal Procedure was used to put a curfew in place in the whole of the Kashmir Valley and in some places in Ladakh, including Kargil. The curfew prohibited any gatherings of more than four people and amounted to a blanket ban on peaceful assembly.<sup>388</sup>

The panel was informed that in October 2020, nine simultaneous ‘raids’ were conducted by the National Investigation Agency (NIA) on the houses and offices of several human rights defenders, non-governmental organisations and newspapers in Srinagar and Bandipora districts in Kashmir Valley.<sup>389</sup> The raids reportedly came a day after the government enacted a series of new laws and amendments allowing Indian nationals from outside Kashmir to buy land there, suggesting an attempt to silence vocal critics.<sup>390</sup> The Panel is also aware that journalists have also been repeatedly targeted and charged under the anti-terrorism UAPA. UN mandate holders have termed this targeting of journalists as a ‘broader pattern of silencing independent reporting in Jammu and Kashmir, which may ultimately deter other journalists and civil society groups from reporting on issues of

382. ‘Persecution of Activists, Raids in Kashmir and Increasing Restrictions on Foreign Funding in India’ Civicus (January 2021)

<<https://monitor.civicus.org/updates/2021/01/12/persecution-activists-raids-kashmir-and-increasing-restrictions-foreign-funding-india/>>

383. ‘Guwahati: Assam Police Beat up Local TV News Channel’s Staff’ (The Wire, 13 December 2019) <<https://thewire.in/rights/assam-guwahati-police-tv-channel>>

384. ‘Kashmir Has Become an Open Air Prison, Says Iltija Mufti, Mehbooba Mufti’s Daughter’ Gulf News (3 October 2019)

<<https://gulfnews.com/world/asia/india/kashmir-has-become-an-open-air-prison-says-iltija-mufti-mehbooba-muftis-daughter-1.66880000->; Software Freedom Law Centre, ‘Internet Shutdown Tracker’ <<https://internetshutdowns.in.>>

385. Niha Masih, Shams Irfan and Joanna Slater, ‘India’s Internet shutdown in Kashmir is the longest ever in a democracy’ The Washington Post (16 December 2019) <[https://www.washingtonpost.com/world/asia\\_pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da\\_story.html](https://www.washingtonpost.com/world/asia_pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da_story.html)>

386. ‘UN rights experts urge India to end communications shutdown in Kashmir’ United Nations Office of the High Commissioner for Human Rights (22 August 2019) <<https://www.ohchr.org/en/press-releases/2019/08/un-rights-experts-urge-india-end-communications-shutdown-kashmir>>

387. ‘UN Rights Chief Highlights Concern Over CAA, Anti-Muslim Violence, Police Force’ The Wire (27 February 2020) <<https://thewire.in/rights/caa-kashmir-violence-unchr>>. For more details see Annexure IV – Jammu & Kashmir.

388. ‘[Communication on the situation of human rights defenders]’ (16 August 2019)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24803>>

389. ‘India: Simultaneous NIA raids on human rights defenders’ home, NGOs and newspaper’s offices’ FIDH (28 October 2020)

<<https://www.fidh.org/en/issues/human-rights-defenders/india-simultaneous-nia-raids-on-human-rights-defenders-home-ngos-and>>

390. Safwat Zargar, ‘Explainer: What exactly are the changes to land laws in Jammu and Kashmir?’ Scroll.in (29 October 2020)

<<https://scroll.in/article/977057/explainer-what-exactly-are-the-changes-to-land-laws-in-jammu-and-kashmir>>

public interest and human rights in the region.<sup>391</sup>

On 22 Dec 2020, UN experts wrote to India voicing concerns about intimidations, searches and confiscations by national security agents in J&K against HRDs and journalists, under the pretext of enforcing counterterrorism measures.<sup>392</sup> In March 2021, the UN experts noted the continuing pattern of detentions, extrajudicial killings and other violations in Kashmir.<sup>393</sup> In August 2021, again, UN experts raised concerns regarding ‘severe restrictions on freedom of expression and freedom of peaceful assembly and of association ..., as well as the arbitrary arrests and detention of political figures, journalists, members of civil society and human rights defenders in the state, and violations to the right to life’.<sup>394</sup> The future of press freedom in Kashmir was thrown into further question recently, when pro-Government journalists and police forcibly took over the independent press club in Srinagar, and authorities later shut down the club.<sup>395</sup>

The panel has also been provided information on the working of the **Foreign Contribution Registration Act (FCRA)**, that is reportedly used by authorities to target dissenters and human rights-oriented NGOs and civil society groups.<sup>396</sup> FCRA is legislation that regulates foreign donor funding of the non-profit sector in India. It has recently been amended to require registrations of NGOs to be renewed every five years, thus making NGO operations contingent on periodic state approval. This requirement

has contributed to curtailing the rights of citizens to association, especially of human rights groups. Problems with the FCRA have been serious enough for the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association to review the legislation and to conclude that FCRA was ‘not in conformity with international law, principles and standards’ because its broad provisions make the law disproportionate to its purported goals.<sup>397</sup> Through arbitrary application, this regulatory framework is reportedly used as a tool to identify, target and restrict the work of NGOs working with (or for) Muslims and other vulnerable groups. In September 2021, Amnesty International had to shut down its India office after the Indian government froze its bank accounts.<sup>398</sup> Amnesty had, ahead of this ban, repeatedly been targeted by authorities for reporting on human rights violations in Kashmir and for reporting on anti-Muslim hate and violence across India. In December 2021, Oxfam India reportedly had its FCRA registration cancelled, as have thousands of other NGOs that have criticised government policy and practice. Currently over 6,000 NGOs wait in a state of limbo, as their FCRA registration hangs in the balance.<sup>399</sup>

These acts do not meet the requirements of necessity and proportionality that authorities are supposed to rely on to justify any restrictions on freedom of speech, expression and assembly.<sup>400</sup> Blanket bans on the right to freedom of peaceful assembly are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.

391. United Nations Office of the High Commissioner for Human Rights [UN OHCHR] Communication Report (AL IND 9/2021, 3 June 2021)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26390>>

392. UN OHCHR Communication Report (IND 20/2020, 22 December 2020)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25773>>

393. UN OHCHR Communication Report (IND 4/2021, 31 March 2021) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26181>>

394. UN OHCHR Communication Report (IND 16/2019, 16 August 2019) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24803>>

395. Hannah Ellis-Petersen, ‘Kashmir independent press club shut down in media crackdown’ (Delhi, 17 January 2022)

<<https://www.theguardian.com/world/2022/jan/17/kashmir-independent-press-club-shut-down-in-media-crackdown>>

396. Originally enacted in 1976 to curb foreign funding in domestic politics. For more on its implications on civil society, see G. Sampat, ‘Time to repeal FCRA’ *The Hindu* (27 December 2016) <<https://www.thehindu.com/opinion/lead/Time-to-repeal-the-FCRA/article16946222.ece>>

397. ‘PUNISHED FOR SPEAKING UP: The ongoing use of restrictive laws to stifle dissent in India’ *Civicus* (2020) <<https://www.civicus.org/documents/reports-and-publications/India.PunishedForSpeakingup.pdf>>

398. Yogita Limaye, ‘Amnesty International to halt India operations’ *BBC* (Mumbai, 29 September 2020) <<https://www.bbc.com/news/world-asia-india-54277329>>. For more details see Annexure I – All India.

399. ‘India Should Stop Using Abusive Foreign Funding Law’ (18 January 2022) <<https://www.hrw.org/news/2022/01/18/india-should-stop-using-abusive-foreign-funding-law>>.

400. ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’ UN Human Rights Council (A/HRC/23/39, 24 April 2013) para. 63 <[https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf)>

Cases of reprisals against journalists, newspapers and NGOs appear to constitute a broader pattern of silencing dissent and criticism. These reprisals ultimately aim to deter other journalists and civil society groups from reporting on issues of public interest and human rights in the region.

### i) Violations of the right to a fair trial

#### Applicable Law: II UDHR, Article 14 and 15 ICCPR

The right to a fair trial encompasses a range of procedural and substantive rights, including equality before courts, public hearings, a competent/ independent/ impartial court, presumption of innocence, legal representation, and other procedural due process rights, most of which do not allow for exceptions.<sup>401</sup> States must respect these rights regardless of their legal tradition and domestic laws.<sup>402</sup> Criminal laws must be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequences of committing such an offence – to prevent arbitrary application and abuse.

In Delhi, after the anti-Muslim violence of February 2020, the police arrested and charged 18 students, leaders and activists of the anti-CAA movement, including 16 Muslims. The police and authorities accused them of having been involved in instigating the violence to defame the country in the international arena. They were arrested

under provisions of Unlawful Activities Prevention Act, 1967 (UAPA). Thirteen of them remain in detention.<sup>403</sup> The UAPA, India's principal anti-terror legislation, was amended in 2019 to allow authorities to categorise not only organisations, but also individuals as terrorists. UAPA has several repressive procedural provisions, including extended police and judicial custody, without the right to bail, and a reversal of the burden of proof. These repressive procedural provisions indicate that UAPA itself violates international guidelines concerning counter-terrorism legal frameworks.<sup>404</sup>

In Uttar Pradesh, the authorities' reliance on UAPA has increased significantly since 2017 after CM Yogi Adityanath assumed power, with over 100 cases being reported every year.<sup>405</sup> Detentions under the UAPA in Uttar Pradesh have disproportionately targeted Muslims. A widely reported incident was the recent arrest of Siddique Kappan, a Muslim journalist, along with three other Muslims in October 2020. The Muslims were arrested while on their way to interview the family of a Dalit woman who had been gang raped and murdered by 'upper' caste men in Hathras, Uttar Pradesh.<sup>406</sup>

Assam too has witnessed a similar pattern of abuse of counter-terrorism laws against Muslims. Fifteen Muslims were arrested from different parts of the state in August 2021 and charged under UAPA for posting or sharing social media messages that 'favoured the Taliban' and were 'harmful for the national security'. Fourteen of them were later released on bail for lack of sufficient grounds<sup>407</sup>

401. Human Rights Committee, 'General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial' (CCPR/C/GC/32, 23 August 2007) <<https://www.refworld.org/docid/478b2b2f2.html>>

402. Human Rights Committee, 'General Comment No. 32, Article 14.'

403. Human Rights Watch, "End Bias in Prosecuting Delhi Violence"; Communication by UN mandate holders to the Government of India (AL IND 10/2020, 11 June 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25343>>

404. 'India: Terrorism charges are pretext to silence human rights defenders, say UN experts' UN OHCHR (5 October 2018) <<https://www.ohchr.org/en/press-releases/2018/10/india-terrorism-charges-are-pretext-silence-human-rights-defenders-say-un>> For more details, see Annexure III - Delhi.

Human Rights Watch, 'Back to the Future: India's 2008 Counterterrorism Laws' (2010) <<https://www.loc.gov/item/2010671350/>>

405. National Crime Records Bureau, <<https://pqars.nic.in/annex/253/AU1830.pdf>>

Daily Global Times. 'UP has the highest number of arrests under UAPA, J&K ranks second'. 4 December 2021. <<https://dailyglobaltimes.com/up-has-the-highest-number-of-arrests-under-uapa-jk-ranks-second/>>

406. '5,000-Page UAPA Charge Sheet Filed Against Journalist Siddique Kappan' THE QUINT (4 April 2021) <<https://www.thequint.com/news/india/hathras-case-siddique-kappan-kerala-journalist-chargesheet-uapa#read-more>>

407. Tora Agarwala, 'UAPA slapped, 15 held in Assam for 'pro-Taliban' posts' Indian Express (22 August 2021) <[indianexpress.com/article/north-east-india/assam/uapa-slapped-15-held-in-assam-for-pro-taliban-posts-7464904/](https://indianexpress.com/article/north-east-india/assam/uapa-slapped-15-held-in-assam-for-pro-taliban-posts-7464904/)>

Recently, UAPA was invoked by authorities in eastern Tripura state against 102 persons, including journalists and advocates. Those arrested had reported on their social media accounts the October 2021 violence in Assam against Muslims.<sup>408</sup>

**The National Security Act, 1980 (NSA)**, a preventive detention legislation, has also reportedly been invoked disproportionately in Uttar Pradesh and other states, against Muslims. The NSA is often invoked for minor offences without any reasonable security implications, such as cow slaughter. NSA, a key component of India's security architecture, allows preventive detention for up to 12 months.<sup>409</sup> In 2020, Awanish Awasthi, a top state government official revealed that the NSA was invoked against 139 people until August that year, of whom 88 were Muslims (Muslims make up about 20 per cent of the state's population). Of the 88 Muslims, 76 were sanctioned under the NSA for cow slaughter and 12 for anti-CAA protests.<sup>410</sup> NSA has also been repeatedly invoked against dissidents and political opponents, who are often arrested for offences under the Act after they have obtained bail in cases relating to other charges.<sup>411</sup> An investigation revealed that of the 120 NSA cases brought before the Uttar Pradesh High Court in habeas corpus applications from January 2018 - December 2020 which resulted in a court ruling, 94 cases were quashed because the court found no case. The analysis also found that the court had, in several separate rulings on the applications, red flagged the

systemic abuse of law and due process to target Muslims in the state.<sup>412</sup> In Kashmir, the panel was informed of the frequent invocation of draconian laws against human rights defenders, journalists, civil society members and sometimes minors. In the first half of 2020, charges under UAPA were initiated against four Kashmiri journalists, reportedly due to their coverage of the post-5 August situation in Kashmir.<sup>413</sup> Prominent rights defenders who lobby with UN and other international stakeholders on the situation of human rights in Kashmir, such as Waheed Para and Khurram Parvez, have also been arrested under UAPA on charges of terrorism.<sup>414</sup>

Other laws frequently used against dissenters in Kashmir, and that run afoul of due process and fair trial rights, is the Public Safety Act 1978 (PSA). PSA allows for detention without charge or trial for up to two years, for a wide range of vaguely defined activities, and is often used by administrative authorities to evade judicial oversight. UN's Human Rights Committee noted in its Concluding Observations on the 'Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant' that PSA contravenes the rights enshrined in the International Covenant on Civil and Political Rights, such as the rights to liberty and to a free and fair trial.<sup>415</sup> PSA, along with other security laws, is frequently misused and has led to concerns and criticism from multiple international and national bodies.<sup>416</sup>

408. 'Editors Guild says 'deeply shocked' by UAPA against journalists reporting Tripura communal violence', Press Trust of India (7 November 2021) <<https://www.firstpost.com/india/editors-guild-says-deeply-shocked-by-uapa-against-journalists-reporting-tripura-communal-violence-10118511.html>>

409. With authorities empowered to determine whether the accused are a threat to national security or law and order, no formal charge is required, and with only limited judicial intervention.

410. Saurabh Sharma, 'Indian state uses draconian law to detain those accused of killing cows' Reuters (11 September 2020) <<https://www.reuters.com/article/uk-india-crime-idUKKBN2621GY>>

411. Mahtab Alam, 'India's 'Extraordinary' Laws Need to Be Revoked, Not Revamped' The Wire (16 Feb 2020) <<https://thewire.in/rights/uapa-sedition-psa-nsa-extraordinary-laws>>; 'Punished For Speaking Up The ongoing use of restrictive laws to stifle dissent in India' Civicus (2020)

<<https://www.civicus.org/documents/reports-and-publications/India.PunishedForSpeakingup.pdf>>. For more details see Annexure V - Uttar Pradesh.

412. Kaunain Sheriff M, '94 out of 120 orders quashed: Allahabad High Court calls out abuse of NSA in Uttar Pradesh' (New Delhi, 7 April 2021)

<<https://indianexpress.com/article/express-exclusive/national-security-act-uttar-pradesh-police-detentions-cow-slaughter-ban-7260425/>>; 'Allahabad HC Quashed All 20 'Communal Incident' NSA Orders Between 2018 and 2020: Report' The Wire (7 April 2021) <<https://thewire.in/law/allahabad-high-court-national-security-act-uttar-pradesh>>

413. Communication by UN mandate holders to the Government of India (AL IND 8/2020, 12 May 2020)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25237>>

414. Communication by UN mandate holders to the Government of India (UA IND 4/2021, 31 March 2021)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26181>>; Comment by UN Human Rights Office Spokesperson, OHCHR (1 December 2021). For more details see Annexure IV - Jammu & Kashmir.

415. United Nations Human Rights Committee, 'Consideration Of Reports Submitted By States Parties Under Article 40 Of The Covenant: Concluding observations of the Human Rights Committee' (4 August 1997) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/79/Add.81&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/79/Add.81&Lang=En)>

416. UN OHCHR, 'Report on the Situation of Human Rights in Kashmir' (14 June 2018).

<<https://www.ohchr.org/sites/default/files/Documents/Countries/PK/DevelopmentsInKashmirJune2016ToApril2018.pdf>>

The Panel has reviewed reports on the use of counter-terrorism and other national security laws to restrict legitimate exercise of freedom of expression and opinion by state authorities in UP, Assam, Kashmir and Delhi. The reports suggest that charges under the Unlawful Activities (Prevention) Act, 1967 (UAPA), as well as National Security Act and Public Safety Act, and sedition provisions of the Indian Penal Code, are being used to intimidate victims from the Muslim community and to label human rights defenders as terrorists, thus violating their rights to expression, equal treatment before law, and fair trial. The accused are denied bail for extended periods and typically languish in pre-trial detention for years. These disproportionate laws are used as a form of reprisal for dissent, particularly targeting people based on their religious identities or political opinions. Frequent invocation of counter-terrorism or other national security and preventive detention laws in situations with no demonstrable risk to national security is itself a violation of international human rights law. The use of overly broad provisions of counter-terrorism laws violates the principle of legal certainty under international law. Further, the discriminatory misuse of these laws as a tool of reprisal amounts to a violation of the right to fair trial of Muslims and human rights defenders.

#### **j) Discrimination in access to economic, social and cultural rights**

In addition to the aforementioned civil and political rights violations against the members of the Muslim community, the panel was informed of allegations of discrimination in the access of some Muslim communities to the right to livelihood, education, health and housing. In some cases, the discriminatory access is an outcome of other civil and political rights violations. However, in others, reports highlight acts of discrimination to prevent

**Applicable Law: Article 6(1), Article 11(1), Article 12, Article 13, Article 15 of ICESCR, Article 24 CRC, Article 5 (e) (iv) ICERD, Articles 17, 23 and 27 ICCPR and Article 27 (3) CRC, Article 27 UDHR. Art 4.2, 4.2, UN Minorities Declaration, 1992.**

Economic, social and cultural rights encompass a range of rights, in particular the right to work and livelihood, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts; the right to health imposing on States the obligation to respect, protect and fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the right to education; the right to adequate housing and not to be subjected to forced eviction; and the right to identity and culture. Non-discrimination is an immediate and cross-cutting obligation for all of these rights (Article 2(1) ICESCR). Discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.<sup>417</sup>

Muslims their right to socio-economic wellbeing.

**Livelihood:** In 2017, after the BJP assumed power in Uttar Pradesh, Chief Minister Yogi Adityanath launched a crackdown on slaughterhouses and meat shops, mostly run by Muslims. Reports indicate that closures affecting the livelihoods of thousands of families were implemented without any due process or right to hearing, or avenue to challenge the closure orders. Cow protection laws that were invoked in the closures are in place in 24 of 29 states, affecting primarily

417. United Nations Committee on Economic, Cultural and Social Rights, 'General Comment No. 20' (E/C.12/GC/20, 2 July 2009) (para. 7) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?key=92g0+9Fnl5fX/ePqHxWObPpm//kusKEXT+B4cp/uCKo3nffHrBLzv7eEhjZdFcf4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?key=92g0+9Fnl5fX/ePqHxWObPpm//kusKEXT+B4cp/uCKo3nffHrBLzv7eEhjZdFcf4&Lang=en)>

Muslim communities, traditionally dominating the meat industry in India.<sup>418</sup> Given that no other professional sector was subjected to such systematic ‘clean up’ indicates a bias against Muslims. Stringent laws combined with cow-related attacks resulting in deaths, disability and confiscation of vehicles, has had a chilling effect, with Muslims exiting the animal husbandry, dairying and meat and leather sectors in large concentrations in the states of Haryana, UP, Gujarat and Madhya Pradesh.<sup>419</sup> A prolonged lockdown in Kashmir in 2019, as well as later, was reported to have affected livelihoods and incomes.<sup>420</sup> Recently in Karnataka and other states, there has been a campaign of economic boycott of Muslim businesses, often with state support.<sup>421</sup> Muslim families have felt compelled to leave their homes in various parts of the country, sometimes being forcefully evicted because of their religious identity. This has further impoverished Muslim families.<sup>422</sup>

**Health:** In 2021, according to a survey by Oxfam India, at least one-third of Muslims reported that they had been discriminated against in hospitals or by healthcare professionals on religious grounds.<sup>423</sup> During the Covid-19 pandemic, discriminatory access to health facilities risked increasing the alienation of religious minorities. Human rights defenders and political prisoners, including Muslims, were held in detention at the peak of Covid-19 waves despite warnings of overcrowded prisons. Some of them have also been held in solitary detention, as

mentioned above, deeply impacting their mental health.<sup>424</sup> According to reports, the long shutdowns and curfews had a significant impact on the physical and mental health of people living in the Kashmir Valley. Travel restrictions and prolonged curfews impeded people’s access to healthcare, which was particularly difficult for the elderly and women.<sup>425</sup>

**Education:** The Gross Enrolment Ratio (GER) in higher education for Muslims, who constitute nearly 14.2 per cent of the population, is a mere 5.5 per cent of the student population, which is comparatively less than other marginalised groups.<sup>426</sup> Reports indicate that Muslims are being discriminated against in their access to education in primarily two ways: first, through an overall attack against madrasas and traditional Islamic schools that, often, are the principal avenues for literacy and numeracy skills at the primary level for the bulk of the poorest Muslims in rural areas; and second, through an attack on large higher educational institutions, such as Aligarh Muslim University and Jamia Millia University, historically catering to Muslim students. The large institutions are systematically being vilified by BJP politicians for being dens of anti-national elements<sup>427</sup> and deprived of their ‘minority status’, thereby restricting their ability to continue to serve Muslims and other minorities, as guaranteed by the Constitution.<sup>428</sup> For example, in February 2021,

418. ‘India crackdown on slaughterhouses stirs Muslim unease’ Al-Jazeera (29 March 2017) <<https://www.aljazeera.com/news/2017/3/29/india-crackdown-on-slaughterhouses-stirs-muslim-unease>>; more details see Annexure I – All India.

419. Alison Saldanha, ‘Incomes Shrink as cow-related violence scuttles beef, leather exports’ New Report (19 February 2019) <<https://www.indiaspend.com/incomes-shrink-as-cow-related-violence-scuttles-beef-leather-exports-new-report/>>; Jitendra, ‘India’s Cow Crisis Part 4: The stigma of Mewat’ Down to Earth (10 January 2019) <<https://www.downtoearth.org.in/news/agriculture/india-s-cow-crisis-part-4-the-stigma-of-mewat-62782>>

420. Ejaz Ayoub, ‘With One Lockdown After Another, J&K’s Economy is Shattered and Shattered’ The Wire (27 May 2020) <<https://thewire.in/economy/with-one-lockdown-after-another-jks-economy-is-shattered-and-shattered>>. For more details see Annexure IV – J&K.

421. G VISHNU, ‘How Hindu Extremists, Aided By The Govt, Are Tearing Apart Ancient Ties Between Muslims & Hindus’ (01 April 2022) <<https://article-14.com/post/how-hindu-extremists-aided-by-the-govt-are-tearing-apart-ancient-ties-between-muslims-hindus-62469bec708e0>>

422. Hannah Ellis-Petersen and Aakash Hassan, ‘Hatred, bigotry and untruth’: communal violence grips India’ (Delhi, 18 April 2022) <<https://www.theguardian.com/world/2022/apr/18/hatred-bigotry-and-untruth-communal-violence-grips-india>>; The New York Times <<https://www.nytimes.com/2021/10/17/world/asia/india-assam-muslim-evictions.html>>

423. OXFAM, ‘Securing Rights of Patients In India’ (18 November 2021) <<https://www.oxfamindia.org/knowledgehub/oxfaminaction/securing-rights-patients-india>>

424. Abid Faheem, ‘Ignored and Discriminated Against, Muslims Have Lost Their Faith in the Healthcare System’ The Wire (24 April 2020) <<https://thewire.in/communalism/coronavirus-muslims-communal-healthcare>>. For more details see Annexure I – All India.

425. U. Misgar, ‘Kashmir: Surviving COVID-19 under the military boot,’ Al Jazeera (June 8, 2021) <<https://www.aljazeera.com/opinions/2021/6/8/kashmir-surviving-covid-19-under-the-military-boot>>. For more details see Annexure IV – Jammu & Kashmir.

426. Ministry of Education, Department of Higher Education, ‘All India Survey on Higher Education 2019-20’ (2020) <[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/aishe\\_eng.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/aishe_eng.pdf)>

427. ‘Minister gives ‘only solution’ to end ‘anti-national protests in JNU, Jamia’ Hindustan Times (31 August 2020) <<https://www.hindustantimes.com/india-news/union-minister-s-only-solution-to-end-anti-national-protests-in-jnu-jamia/story-z5B6M40ZBQwriNbhYJU63K.html>>

428. Satya Prakash, ‘Minority status to AMU: SC refers issue to 7-judge bench’ The Tribune (New Delhi, 12 February 2019) <<https://www.tribuneindia.com/news/archive/nation/minority-status-to-amu-sc-refers-issue-to-7-judge-bench-727915>>

when current Assam Chief Minister Sarma was the education minister, the Assam government enforced an Act to abolish all 620 government-funded madrassas functioning in the state and to convert them to general schools that would not teach theological courses. The closure of madrassas, which was scheduled to come into effect in April 2022, was expected to affect around 98,000 students, of whom nearly half are girls. Experts and activists have warned of a mass dropout of Assam's female Muslim students, as a very real consequence of the intended state action.<sup>429</sup> The students in Kashmir were disproportionately affected because of the shutdown after the revocation of special status of the region, leading to long disruptions in their access to education and later, lack of access to high-speed internet during the pandemic further made it difficult for them to switch to virtual schooling.<sup>430</sup>

**Housing:** According to reports reviewed by the Panel, Muslim families have been forced to leave their homes in various parts of the country owing to their religious identity. For instance, in Delhi and Uttar Pradesh, attacks against Muslims led to mass migration to safer havens in close and distant locations.<sup>431</sup> On the contrary, Assam has pursued a policy of systematic forced eviction of Bengali-speaking Muslims to further weaken their claim of belonging to the state. Between 2019 and 2021, over 2,500 Muslim families were reported to have been forcefully evicted from their homes in Hojai, Sonitpur and Darrang districts.<sup>432</sup> Deaths too have been reported in these eviction operations. Recently, Muslims have suffered demolition of their homes and

properties across states, as collective punishment and without due process. They have often been accused of involvement in sectarian clashes.<sup>433</sup> In a different model, Gujarat's property laws are being used to disincentivise property transactions with Muslims, causing spatial segregation along religious lines, thereby resulting in large numbers of Muslims forced to live in ghettos with dismal civic services.<sup>434</sup> As a result, these Muslims' access to property, housing and public spaces is being restricted on the basis of religion.

**Identity and Culture:** Since coming to power in 2014 and especially since 2019, the central government and states ruled by the BJP have pursued a concerted effort to homogenise, privileging Hindus and those close to the Hindu fold, in their belief, culture and lifestyle. This has been done at the great expense of minorities, especially the many Muslim communities in India. The rewriting of history has been one of the key aspects of this Hindutva pursuit, of Hindu supremacism, over Muslims. Experts point to how Hindu nationalists have turned their attention to broader perceptions of history in primary and secondary school textbooks. They have sought to erase Muslim historical figures from textbooks and to replace them with historical individuals they imagine (falsely) to have been seeking to establish a Hindu Rashtra in premodernity. The rewriting has also taken the form of a renaming spree – of names of towns and cities that have a Muslim touch to them, for eg. Allahabad to Prayagraj, Faizabad to Ayodhya and Mughalsarai to Deen Dyal Upadhyaya nagar.<sup>436</sup>

429. Makepeace Sitlhou, 'In Assam, ban on state-run madrassas may force girls to drop out' (Al-Jazeera, (Barpeta, India, 11 March 2021)

<<https://www.aljazeera.com/features/2021/3/11/shut-down-of-madrasas-in-indias-assam-could-see-girls-drop-out>>; For more details see Annexure II – Assam.

430. Rifat Fareed 'Kashmir lockdowns, slow internet rob students of their education' (17 March 2021) <<https://www.dw.com/en/kashmir-lockdowns-hurt-students/a-56904725>> accessed 5 June 2022; 'KASHMIR SCHOOLS, COLLEGES SAW LESS THAN 100 ACADEMIC DAYS IN 2019' (2 January 2020)

<<http://valleyonline.in/kashmir-schools-colleges-saw-less-than-100-academic-days-in-2019/>>

431. Soutik Biswas, 'Delhi riots: How Muslims' homes were targeted and burnt' BBC (4 March 2020) <<https://www.bbc.com/news/world-asia-india-51719204>>; Bilal

Kuchay and Manoj Singh, 'Muslims near India's Hindu temple allege pressure to vacate homes' Al Jazeera (4 June 2021)

<<https://www.aljazeera.com/news/2021/6/4/muslims-near-india-hindu-temple-allege-pressure-to-vacate-homes>>; See Annexures II and V respectively.

432. In India's Assam, Muslim families evicted weeks before elections (Al Jazeera, 25 March 2019); Muslims in India's Assam in shock after deadly eviction drive (Al Jazeera, Sep 2021); A month and half after Dhalpur violence, Assam evicts 562 families from reserve (Hindustan Times, November 2021) For more details see Annexure II – Assam.

433. Amnesty International India, 'India: Authorities must stop apparent unlawful demolitions of largely Muslim-owned property' (14 April 2022)

<<https://www.amnesty.org/en/latest/news/2022/04/india-authorities-must-stop-apparent-unlawful-demolitions-of-largely-muslim-owned-property/>>; Ratna Singh & AreebUddin Ahmed, 'Demolitions As Collective, Illegal Punishment, With Mainly Muslim Properties Destroyed After Riots' (25 April 2022)

<<https://www.article-14.com/post/demolitions-as-collective-illegal-punishment-with-mainly-muslim-properties-destroyed-after-riots-6265a9ad591d8>>. For more details, see Annexure – All-India.

434. NILEENA MS, 'The Gujarat government is enforcing communal segregation and criminalising property transfers' The Caravan (20 August 2019)

<<https://caravanmagazine.in/policy/the-gujarat-state-is-enforcing-communal-segregation-and-criminalising-property-transfers>>

435. Audrey Truschke, 'Hindutva's Dangerous Rewriting of History' (2020) <<https://journals.openedition.org/samaj/6636>>

436. For more details, see Annexure – All-India.

There have been other attempts to deny or restrict cultural and linguistic practices of Muslim communities, including against diet (meat), dress (religious attire of both Muslim women and men) and language (against Urdu in North India as well as in Assam, against Bengali-speaking Muslims, or Miya), among others.

These and other acts potentially get in the way of Muslim communities' abilities to 'express their characteristics and develop their culture, language, religion, traditions and customs',<sup>437</sup> and to 'develop and disseminate knowledge of the history, traditions, language and culture of minorities'.<sup>438</sup> Potentially, they also violate Muslim communities' rights to enjoy their own culture and language contained in ICCPR (Article 27) and CRC (Art 30).

Non-discrimination is an immediate and cross-cutting obligation in the ICESCR. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.<sup>439</sup> The aforementioned cases suggest that members of the Muslim community have been discriminated against in preventing their access to livelihood, health, education, housing, identity and culture.

437. UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art. 4.2 (A/RES/47/135, 3 February 1992)

<<https://www.refworld.org/docid/3ae6b38d0.html>>

438. UN Minorities Declaration. 1992; Art 4.4; OHCHR, 'Fact Sheet No.18 (Rev.1), Minority Rights' (February 1998)

<<https://www.ohchr.org/Documents/Publications/FactSheet18rev.1en.pdf>

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439. United Nations Committee on Economic, Cultural and Social Rights, 'General Comment No. 20' (E/C.12/GC/20, 2 July 2009) (para. 7).

440. UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147 <<https://www.refworld.org/docid/4721cb942.html>>

441. Human Rights Watch, "'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy' (9 April 2020)

<<https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>>

## k) Violations of the right to effective remedy

### Applicable Law: Article 2(3) ICCPR.

States must take appropriate legislative and administrative and other appropriate measures to prevent human rights violations; they must investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; and provide those who claim to be victims of a human rights violation with equal and effective access to justice and reparation.<sup>440</sup>

Irregularities in the judicial processes concerning most of the aforementioned violations have been brought to the attention of the Panel. On analysis of several such reports, the Panel notes that, on many occasions, victims have been subjected to reprisals for seeking remedy. When investigations do take place, procedural irregularities have been reported, indicating their ineffective nature. Lastly, the courts, in most cases, have either been prevented from intervening (for instance in UAPA detentions) or have not acted expeditiously in matters where judicial action was warranted, as in habeas corpus cases.

In the case of violence in Delhi in February 2020, according to Human Rights Watch, when acting against accused Muslims and anti-CAA protesters, investigation agencies did not follow procedures established under the criminal code. The Criminal Code has procedures such as producing an arrest warrant, informing the person's family of the arrest, and providing them with a copy of the First Information Report, or ensuring that those arrested have access to legal counsel, including during interrogation.<sup>441</sup>

A 35-year-old man who was shot and injured during the violence was detained without a warrant on April 7 according to his lawyer. His family went to three police stations to inquire of his whereabouts but were given no information. They were eventually informed that he had been arrested but were not given a copy of the First Information Report. His lawyer had to apply for his records through the courts and found out that the accused was charged with murder. The man remains in jail at the time of writing this report.<sup>442</sup>

In Uttar Pradesh, the families of those killed extrajudicially in the crackdown against anti-CAA protesters have, since the violence been subjected to harassment and intimidation, including refusal by authorities to hand over the dead bodies for burial, forcing burial at distant sites under the supervision of police; delaying and fabricating autopsy reports; refusal to register cases of murder even when family members have provided evidence; and threats of filing fabricated cases against family members when they have demanded action.<sup>443</sup> In cases where police registered cases of murder on behalf of families, the perfunctory investigations failed to identify the accused, leading in many cases to closure of proceedings, despite several attempts by victims to offer testimonies.<sup>444</sup> All these have also had a chilling effect, effectively forcing family members of the deceased to remain silent. The panel has been informed that no security or civilian officer or political leader, belonging to the BJP or their affiliates, has been charged, investigated or prosecuted despite the repeated and serious allegations listed above. This suggests an overall sense

of prevailing impunity. Presence of several laws that prevent accountability is partly to blame. A prime one here is the AFSPA, in effect in J&K and parts of north-eastern India. AFSPA grants broad powers to the security forces operating in J&K and effectively bestows immunity from prosecution in civilian courts for their conduct. The AFSPA effectively requires the central government to sanction all prospective prosecutions against security personnel prior to any prosecution being launched against them. For instance, Section 4 of AFSPA 1990 allows any personnel operating under the law to use lethal force, not only in cases of self-defence, but also against any person contravening laws or orders 'prohibiting the assembly of five or more persons'. There are other provisions that also immunise security personnel, including Article 311 of the Indian Constitution on protection of rights of civil servants; and Sec 197 of CrPC that shields public officials from prosecution when on 'official duty' and require prior sanction by government. PSA, 1978, NSA, 1980 and UAPA, 1967 all have these provisions.

Core international treaties on human rights to which India is a state party oblige India to provide effective remedy for these violations. In light of these reports, the Panel deems it imperative that the human rights situation in India, and particularly in the specific regions ruled by the BJP, needs to be investigated by an independent and impartial body to hold the responsible actors accountable and pave the way for an effective remedy for the victims.

442. Human Rights Watch, 'Shoot the Traitors'. For more details see Annexure III – Delhi.

443. MUHAMMAD TAHIR, '24 Months After 5 Killed In Meerut In Police Crackdown On Anti-CAA Protests, No Probe & No Answers' (20 January 2022) <<https://article-14.com/post/24-months-after-5-killed-in-meerut-in-police-crackdown-on-anti-cao-protests-no-probe-no-answers-61e8ce841aeef>> ; AISHWARYA S IYER, 'They Shot Him': Kin of Three Deceased Blame UP Police, Seek FIR' (12 December 2022) <<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-atab-alam-deaths-fir#read-more>> ; AISHWARYA S IYER, 'Beggd for His Body': Kin of 2 Killed in Bijnor 'Police Firing' (27 December 2019) <<https://www.thequint.com/news/india/family-of-2-killed-in-uttar-pradesh-bijnor-anti-cao-violence#read-more>> .

444. Youth for Human Rights Documentation, 'Extinguishing Law and Life' (October 2021) <<https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>> accessed 5 June 2022; Citizens Against Hate, Countering the Silence (May 2017) <<https://citizensagainsthate.org/wp-content/uploads/2020/03/Countering-The-Silence-Full-report.pdf>> .

## 3.2 International Criminal Law

### Applicable Law: Article 7(1) of the Rome Statute of the International Criminal Court

Crimes against humanity are defined as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collective on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

#### a) Uttar Pradesh: Crimes against humanity

The above-described acts committed by the UP police in the context of the CAA protests suggest to the Panel that they formed part of a widespread or systematic attack against

### Applicable Law: Article 8(2)(c) of the Rome Statute of the International Criminal Court; Article 3 of the Fourth Geneva Convention and Article 4(2) of Protocol I to the Fourth Geneva Convention

War crimes in a non-international armed conflict are defined as a list of actions that constitute serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949 against protected persons, i.e. persons taking no active part in the hostilities, in particular civilians. These include murder and cruel treatment and torture among others, which at the same time constitute violations of international humanitarian law.

### Applicable Law: Article 25(3)(e) and Article 6 of the Rome Statute of the International Criminal Court

Incitement to commit genocide requires that the perpetrator directly and publicly incites other to commit genocide which is understood as certain acts committed with “the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”. These include killing of members of the group and causing serious bodily or mental harm to the members of the group, among others.

the civilian population pursuant to a state policy, and thereby may potentially amount to crimes against humanity. They include the crimes of **murder, torture, unlawful imprisonment and persecution**, as defined by the Rome Statute.<sup>445</sup> The shooting of 22 victims without justification constitutes murder.<sup>446</sup>

445. UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010) ICC [Rome Statute], 17 July 1998, ISBN No. 92-9227-227-6 <<https://www.icc-epi.int/sites/default/files/RS-Eng.pdf>>.

446. UN General Assembly, Rome Statute of the International Criminal Court, Art. 7 (Arbitrary Deprivation of Life).

The physical and mental abuse inflicted on victims in police custody can be considered torture.<sup>447</sup> A number of human rights defenders and other victims were imprisoned in violation of domestic and international due process rights.<sup>448</sup> All these crimes were targeting Muslims because of their religion as well as opponents of the CAA because of their political views, and were committed in connection with other severe deprivations of fundamental rights, such as freedom of assembly.<sup>449</sup> This can arguably be classified as persecution.

### (i) Attack against civilian population pursuant to state policy

The combination of these crimes can be considered as an attack against the civilian population as all victims of the acts described above are civilians, including working-class Muslims, human rights defenders and students.

The Panel has found credible evidence to suggest that this attack was carried out pursuant to a state policy. The individuals that were targeted in this attack share a common element of their religion and political opposition to the CAA. The intention behind the attack was to prevent the Muslim community and supporters from protesting against the CAA and punishing those who did. In accordance with this intention, the perpetrators attacked persons participating in or organising protests against the CAA, but also bystanders who were returning from work or from congregational prayers on Friday or passing through locations with a large police presence, and generally

members of the Muslim community, with the knowledge and intent that their acts would result in intimidation of a wider community of Muslims in UP.

The Panel notes that the attack increased in intensity and scale between 13 and 19 December 2019 parallel to the increase in number of protests.<sup>450</sup> This course of conduct culminated on 20 December 2019 with the largest number of people assembled in marches across various districts. The police violence escalated in killings, which was preceded by intimidating measures in Muslim neighbourhoods and around mosques, including build-up of police presence and restrictions on assembly and movement.<sup>451</sup>

The use of arbitrary detention and torture against civilians, individual human rights defenders and activists continued after 20 December 2019, and on a smaller scale, as late as June 2020. The state took the measures in order to ensure that the Muslim community would not be mobilised for further protests.<sup>452</sup>

A number of indicators seen by the Panel point to the existence of a state policy: (1) all criminal acts were committed by officials of the UP state government, in particular UP police; (2) they were coordinated among different entities of the UP state government, including the executive branch, District Magistrates and the police; (3) there was a concerted effort by the state authorities to cover up the crimes by intimidating victims' families and withholding information; and (4) the organised nature of the attack.

447. UN General Assembly, Rome Statute of the International Criminal Court, Art. 7 (Torture and Other Inhuman Treatment).

448. UN General Assembly, Rome Statute of the International Criminal Court, Art. 7 (Arbitrary Detention).

449. UN General Assembly, Rome Statute of the International Criminal Court, Art. 7 (Arbitrary Deprivation of Life, Torture and Other Inhuman Treatment and Arbitrary Detention).

450. 'Protests against Citizenship Amendment Act Continue in UP' Hindustan Times (13 December 2019) <<https://www.hindustantimes.com/lucknow/protests-against-citizenship-amendment-act-continue-in-up/story-xFxDfPruuMjIVPrsjTo6L.html>>; 'Anti-Citizenship Act Protests on Dec. 19 | One Dies of Alleged Firearm Injury in Lucknow; Two Die in Police Firing in Mangaluru' The Hindu Net Desk (9 December 2019) <<https://www.thehindu.com/news/national/anti-caa-protests-live-updates-december-19/article30345949.ece>>; 'UP to Kerala, Bengal to Gujarat: How India Vented Out Anger Against Police Crackdown in Jamia, AMU' News18 (17 December 2019) <<https://www.news18.com/news/india/citizenship-amendment-bill-protests-live-updates-jamia-millia-islamia-citizenship-act-2019-amu-assam-west-bengal-2425443.html>>

451. Human Rights Watch, "'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy', 45 (2020) <[https://www.hrw.org/sites/default/files/report\\_pdf/india0420\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/india0420_web_0.pdf)>; International Commission of Jurists, 'Briefing Paper on the Unlawful Use of Force by Uttar Pradesh Police to Quell Anti-Citizenship Amendment Act Protests' (2020) <<https://www.icj.org/wp-content/uploads/2020/01/India-Police-Excessive-Force-UP-Briefing-Paper-2020-ENG.pdf>>

452. 'Rajasthan lawyer alleges torture by U.P. police' The Hindu (14 January 2021) <<https://www.thehindu.com/news/national/other-states/rajasthan-lawyer-alleges-torture-by-up-police/article30562548.ece>>; Soutik Biswas, 'Kafeel Khan: National threat or symbol of repression?' BBC News (3 September 2020) <<https://www.bbc.co.uk/news/world-asia-india-53995027>>; 'Crushing Dissent: NSA Slapped on Anti-CAA Protesters in UP's Mau' The Quint (9 September 2020) <<https://www.thequint.com/news/india/uttar-pradesh-mau-kaa-protest-december-2019-violence-nsa#read-more#read-more>>

## (ii) Widespread and systematic nature of attack

Information reviewed by the Panel demonstrates that the attack affected a significant number of victims in UP within a period of six months (December 2019 to June 2020), including a notable number of children (under the age of 18), and spanned across 13 districts out of 75, and therefore can be considered widespread. As set out above, 22 killings reportedly by police shooting were documented on 19 and 20 December 2019. As described above, 187 cases of arbitrary detention were documented by NGOs and independent media between 13 December 2019 and June 2020. In the same period, 118 cases of torture were reported in police custody. Notably, 35 of the 187 cases of arbitrary detention and 41 of the 118 cases of torture were minors, with the youngest reported victim being 8 years old.

It can be argued that the attack was systematic as it appears to have been planned and prepared, and then executed in a uniform manner against a common target, namely Muslim communities and other opponents or perceived opponents of the CAA. The execution was coordinated between different state authorities, with an overarching goal of preventing protests against the CAA, and, in the events protests occurred, to punish the wider community.

Credible evidence reviewed by the Panel suggests that the planning and preparation started on the day of the adoption of the CAA on 12 December 2019. On this date, the UP Home Department introduced the 'Riot Scheme', which equipped the police with riot

control weaponry, including tear gas, rubber bullets and anti-riot guns.<sup>453</sup> Another preparatory step taken by state authorities was the shutdown of the internet, starting on 13 December 2019.<sup>454</sup> Following the first set of protests on 13 and 15 December 2019, District Magistrates invoked Section 144 of the CrCP on 16 December 2019, prohibiting the gathering of more than four people, even though the requirements for issuing such an order were not met.<sup>455</sup>

The attack seems to have been executed in the same manner across the 13 districts. Where the police met with a peaceful protest or gatherings of Muslims after Friday congregational prayers, they charged the crowd with batons, tear gas and stun grenades, and physically assaulted protesters and Muslim bystanders in the vicinity, including children.<sup>456</sup> This was followed by the arbitrary detention of large numbers of protesters and Muslim bystanders who were then physically abused in custody, while using insults and slurs against them and their faith.<sup>457</sup> On 20 December 2019, this conduct escalated to firing live ammunition at protesters and bystanders, thereby killing 22 victims.<sup>458</sup>

Another indicator, in the opinion of the Panel, of the systematic nature of the attack is that the vast majority of victims were young male Muslims. A sub-group among those targeted consists of human rights defenders and activists in the state capital Lucknow and large towns. These human rights defenders were singled out for arbitrary detention and torture in custody, which confirms that the state policy was aimed at suppressing protests by eliminating potential protest leaders and organisers.<sup>459</sup>

453. 'Fear of nuisance, riot control scheme implemented in the district' *The Hindustan* (27 December 2019) <<https://www.livehindustan.com/uttar-pradesh/saharanpur/story-fear-of-disturbance-riot-control-scheme-implemented-in-the-district-2925724.html>>

454. 'Internet Services Shut down in Aligarh' *The Hindu* (13 December 2019) <<https://www.thehindu.com/news/national/other-states/internet-services-shut-down-in-aligarh/article30294816.ece>>; Shubhayan Bhattacharya, 'Week-long Internet Shutdown Ends In UP's Aligarh Amid Anti-CAA Agitation' *Republic Word* (22 December 2019) <<https://www.republicworld.com/india-news/general-news/week-long-internet-shutdown-ends-in-ups-aligarh-amid-anti-caa-agitati.html>>

455. 'Anti-CAA Protests: 1,113 Arrests, 5,558 Preventive Detentions, 19 Dead in UP' *The Hindu* (26 December 2019) <<https://www.thehindu.com/news/national/anti-caa-protests-1113-arrests-5558-preventive-detentions-19-dead-in-up/article30402858.ece>>; 'Anti-CAA Stir in Uttar Pradesh: Sec 144 Clamped, Internet Snapped in Five Districts, No Public Events on Thursday' *The Times of India* (17 December 2019) <<https://timesofindia.indiatimes.com/city/lucknow/sec-144-clamped-net-snapped-in-5-dists-no-public-events-on-thursday/articleshow/72789372.cms>>

456. 'UN voices concern over violence in India against CAA, urges respect for freedom of expression' *Press Trust of India* (18 December 2019) <<https://www.indiatoday.in/india/story/un-voices-concern-over-violence-in-india-against-caa-urges-respect-for-freedom-of-expression-1629399-2019-12-18>>; 'Outlook, Anti-CAA protests: UN chief concerned about violence, police action' (18 December 2019) <<https://www.outlookindia.com/newscroll/anticaa-protests-un-chief-concerned-about-violence-police-action/1688269>>

457. See ICC Rome Statute (n 446) Art 7 (section on Arbitrary Detention).

458. ICC Rome Statute (n 446) Art. 7 (section on Arbitrary Deprivation of Life).

459. ICC Rome Statute (n 446) Art. 7 (sections on Arbitrary Detention and Torture).

The coordination between different entities within the state apparatus also speaks to the systematic nature of the attack. The police took on the role of directly executing the attack whereas the administrative arm of the UP State Government, including District Magistrates, District Administration, and the UP Home Department, complemented these acts by shutting down the internet, prohibiting protests and equipping the police with riot control gear.

## **b) Jammu & Kashmir: Crimes against humanity and war crimes**

This section will deal with two distinct sets of facts: (1) the treatment of people opposing or perceived to oppose the abrogation of Article 370, and (2) the treatment of civilians suspected to be separatist militants in the confrontation between armed non-state separatist groups and India. These two sets of facts are assessed separately as they may give rise to different international crimes.

### **(i) Crimes against humanity**

This section will deal with two distinct sets of facts: (1) the treatment of people opposing or perceived to oppose the above-described acts committed by the police and military in J&K from 4 August 2019 onwards likely formed part of a widespread or systematic attack against the civilian population pursuant to a state policy, and thereby may potentially amount to crimes against humanity.

They include the crimes of **torture, unlawful imprisonment, sexual violence and persecution**, as defined by the Rome Statute. The physical and mental abuse inflicted on victims at the hands of the police, mostly in custody, can be considered torture.<sup>460</sup> In some cases, the abuse targeted sexual organs of the victim by electrocuting genitals, which can amount to sexual violence.<sup>461</sup> A number of political leaders, journalists, human rights defenders and other victims were

imprisoned in violation of domestic and international due process rights.<sup>462</sup> All these crimes targeted individuals who openly opposed the abrogation of Article 370 or were likely to do so. The victims were targeted for their political views, and the crimes were committed in connection with other severe deprivations of fundamental rights, such as freedom of assembly, association and expression.<sup>463</sup> This can arguably be classified as persecution.

### **Attack against civilian population**

The combination of these crimes can be considered an attack against the civilian population as all victims of the acts described above are civilians. The Panel has found credible evidence to suggest that this attack was carried out pursuant to a state policy. The individuals that were targeted in this attack share a common political view of opposing the abrogation of Article 370 due to its curtailment of the autonomy of J&K. The intention behind the attack was to suppress critical voices expressing dissent to the legislative change by violent means. In accordance with this intention, the perpetrators attacked high-profile leaders who had the potential to mobilise their followers for protests and, in addition, common members of the Muslim community, with the knowledge and intent that their acts will result in silencing critical voices. The indicators set out below on the systematic nature of the attack show the existence of a state policy.

### **Widespread and systematic nature of the attack**

The attack can be considered to be systematic in nature as it appears to have been planned and prepared, and then executed against a common target with coordination between different state authorities and directed at suppressing opposition to the abrogation of Article 370.

460. See section 3.1(c) above (Torture and cruel, inhuman or degrading treatment in Delhi, Kashmir and Uttar Pradesh).

461. See section 3.1(c) above.

462. See section 3.1(b) above (Arbitrary detentions in Assam, Delhi, Kashmir and Uttar Pradesh).

463. See section 3.1(h) above (Violations of freedom of expression, association, and assembly).

of Article 370, and (2) the treatment of civilians suspected to be separatist militants in the confrontation between armed non-state separatist groups and India. These two sets of facts are assessed separately as they may give rise to different international crimes.

To this end, various arms of the state machinery – police, armed forces and civilian administration at various levels – were reportedly mobilised and activated throughout the length and breadth of the state of J&K. The preparations for the attack began shortly before Article 370 was abrogated on 5 August 2019 with the deployment of additional paramilitary forces to J&K, the pre-emptive detention of political leaders and activists without reasonable grounds, the prohibition of gatherings and shutdown of all forms of communication.<sup>464</sup>

In the period when the crimes were committed, the central government deliberately and systematically suppressed independent monitoring and reporting. This was achieved by transferring political prisoners to remote detention centres to limit their contact with supporters in J&K, censoring media coverage and banning civil society organisations.<sup>465</sup> Investigations and prosecutions of the criminal acts were deliberately blocked by the central government using the AFPSA.<sup>466</sup>

The criminal acts appear to have been widespread with reports of between 8,000 to 13,000 cases of unlawful imprisonment.

## (ii) War Crimes

There is credible evidence to suggest that the war crime of murder was committed against nine civilians and the war crimes of torture against three civilians in connection with the non-international armed conflict between the Government of India and separatist armed groups. The number of victims could be higher but information on cases from 2019 onwards was difficult to obtain.

The information reviewed for this report does not allow an in-depth assessment as to the existence of an armed conflict. The analysis is rather based on the finding of a reputable international institution that a non-international armed conflict between India and armed non-state groups fighting for independence exists.<sup>467</sup> Any independent investigations would need to further look into this premise.

The Panel reviewed three cases of torture at the hands of the military where victims were attacked on an army base to punish them for their suspected links to separatist militants.<sup>468</sup> The victims were all male Muslim civilians who were taken from their homes and then beaten. Two victims were also hung upside down and stripped naked, while one was waterboarded.

The Panel also considered the killing of nine individuals by the military in tandem with the police where the authorities claim that the victims were militants engaged in a shoot-out (so-called ‘encounter killings’).<sup>469</sup> However, testimonies of witnesses, family members, and, in one case, a court inquiry, show that no shoot-out took place and that none of the victims were militants or had links to them. These testimonies indicate that all victims were civilians at the time of their death.

Both crimes can be linked to the non-international armed conflict: In the cases of torture of civilians, the victims were seen as potential informants for the army and/or suspected of ties with militants. The killing of civilians wrongly suspected to be militants were conducted with a goal to eliminate separatist armed groups. In addition, the abuses were committed by the armed forces.

464. See section 3.1 above (Prohibition of discrimination, Arbitrary detentions in Assam, Delhi, Kashmir and Uttar Pradesh, Violations of freedom of expression, association, and assembly).

465. See section 3.1 above (Arbitrary detentions in Assam, Delhi, Kashmir and Uttar Pradesh, Violations of freedom of expression, association, and assembly).

466. See section 3.1(k) above (Violations of the right to effective remedy).

467. ‘International armed conflict between India and Pakistan’ Geneva Academy (2 February 2022) <<https://www.rulac.org/browse/conflicts/international-armed-conflict-between-pakistan-and-india#collapse3accord>>

468. See Case List B in Annexure IV on Jammu & Kashmir.

469. See Case List D in Annexure IV on Jammu & Kashmir.

### c) Direct and Public Incitement to Genocide

This section will deal with two distinct sets of facts: (1) the treatment of people opposing or perceived to oppose the abrogation of Article 370, and (2) the direct and public incitement to genocide is an inchoate crime under international law as provided in Article III (c) of the Genocide Convention and Article 25(3)(e) of the Rome Statute. In other words, under international criminal law, the crime of incitement to genocide is punishable even if such incitement does not result in actual genocide.<sup>470</sup> It is not necessary for genocide to unfold in order to prosecute incitement to genocide as a crime under international law.

Having analysed the reports of hate speeches made against Muslims, the Panel believes that in two particular contexts, hate speeches made by influential political and religious leaders reach the threshold of direct and public incitement to genocide against Muslims. First were the speeches made between December 2019 and February 2020, before the targeted violence took place in Northeast Delhi. In this context, we particularly noted speeches made by Kapil Mishra, Anurag Thakur and Yati Narsinghanand. Second were speeches made by religious leaders at the so-called Dharam Sansad event in Uttarakhand and Chattisgarh, including those by Yati Narsinghanand, Sadhvi Annapurna, Swami Prabodhanand Giri and Sadhvi Vibhanand Giri, and in Sitapur (Uttar Pradesh) by Bajrang Muni Udasin.

Of the seven individuals listed above, two of them are political leaders, Kapil Mishra and Anurag Thakur, a member of the BJP party and Minister of the Union Government led by the BJP respectively. Both these political leaders wield significant political and

popular influence not only in their electoral constituencies, but also at regional (Delhi) and national level.<sup>471</sup> The other five named individuals are Hindu religious leaders and appointed chiefs of Hindu monastic orders (Yati Narsinghanand and Sadhvi Annapurna), a leader of an extremist group with a large membership (Swami Prabodhanand Giri serves as the President of Hindu Raksha Sena), a head priest of a temple (Bajrang Muni Udasin) and a lead manager of a religious Trust Fund (Sadhvi Vibhanand Giri).<sup>472</sup>

The speeches made by these individuals involve direct calls to commit genocidal acts such as shooting/killing, causing serious bodily injuries, sexual violence with some leaders making clear references to eradication or elimination or destruction of the religious community from the nation. The speech acts analysed by the Panel include the following:

**Sadhvi Annapurna:** “...hum jo chahte hain vo haasil hoga, ye Islamic Bharat nahi ye sanatan vedic Hindu rashtra bhut jaldi ghoshit hoga... Aap apne aap ko itna saksham banayein, apni aabaadi ko itna badhayein. Agar inki jan-sankhya ko khatam karna hai toh inhe maarne ko taiyar rahein, jail bhi jaane ko taiyar rahein. Agar hum 100 log bhi sainik ban gaye aur inke 20 lakh bhi maar diya humne, toh hum vijayi hain aur hum jail bhi jaane jo taiyar hain...”

(...We will achieve what we seek, it will not be an Islamic India but it will soon be declared as a Hindu nation...Make yourselves able, increase your population. And if you want to eliminate their population, then be ready to kill them and be ready to go to jail. If only a 100 of us become soldiers and each of us kills 20 lakhs (a lakh is 100,000) of them, we will be victorious and then we are ready to go to jail...)<sup>473</sup>

470. An inchoate crime penalises the commission of certain acts capable of constituting a step in the commission of another crime, even if that crime is not in fact committed. See Bryan A. Garner (ed.), *Black's Law Dictionary*, 8th ed. (Saint Paul, Minnesota: Thomson West Publishing Company, 2004) 399.

atment of civilians suspected to be separatist militants in the confrontation between armed non-state separatist groups and India. These two sets of facts are assessed separately as they may give rise to different international crimes.

471. For more details, see Annexure III – Delhi.

472. For more details on their personal profiles, see Annexure I on All - India.

473. Twitter post (22 December 2021) <[https://twitter.com/zoo\\_bear/status/1473581283242491904](https://twitter.com/zoo_bear/status/1473581283242491904)>

During the Dharam Sansad event held on 17-19 December 2021 in Haridwar, Uttarakhand.<sup>474</sup>

#### Yati Narsinghanand:

1. *“Aap sab log, dharam k liye ladne wale, ek ek sher, sawaa lakh suaron par bhari padega. Aur agar vo ye sapne dekh rahe hain ki vo desh ko kabja lenge toh ye bata do ki unki aankhein phod di jayeingi.”* (And all of you, you fighters for dharma, each one of you tigers is more than enough for 125,000 pigs (cheers). And if [the Muslims] are seeing dreams of taking over India, then tell them that we will gouge their eyes out.)<sup>475</sup>

On 25 December 2019 while addressing an anti-CAA protest rally in Delhi.<sup>476</sup>

2. *“Islam ko khatam kar ke hi manavata ko bachaya ja sakta hai”* (Humanity can only be saved if Islam is finished off). *“Hinduon, Mahabharat k saath geeta padho aur ladkar marna seekho”* (Hindus, read Geeta along with Mahabharat [Hindu mythological texts] and learn how to die fighting).

(Good people should live and let good people live but those who are our enemies, who are enemies of our religion, who want to wipe us out, until we finish them off, until we remove this evil from society known as Islam, how can we survive? Live and let live can only be for civilised people, not for uncivilised thieves, not for terrorists, not for jihadis. Such people cannot be given the right to live.)<sup>477</sup>

On 22 February 2020 through a YouTube video that went viral.<sup>478</sup>

3. *“Economic boycott won't work. Hindu groups need to update themselves. Swords look good on stage only. This battle will be won by those with better weapons”.*<sup>479</sup>

He led the Dharam Sansad congregation to take an oath, which said, “All of you raise your hands and repeat after me. I, \*your name\*, here on the banks of the Ganga, I take this vow, for Sanatan Dharam (endonym used by Hindus to refer to Hinduism) for my family, to keep my sisters and daughters protected. Anything in the world, whatever problems, whatever person, even thinks about causing loss to my religion, my family and my children, my women, I will not let him live. We will live for our religion. We will die for our religion. Islam's jihad will be finished. Long live Sanatan Dharm. May the enemies of Sanatan be destroyed.”<sup>480</sup>

During 17-19 December 2021 Dharam Sansad event co-organised by him in Haridwar, Uttarakhand.<sup>481</sup>

**Swami Prabodhanand Giri:** *“We have to make preparations. And I'll tell you what preparations those are. I will make myself clear, this is the solution, and if you follow this solution, then the path is made for you... in Myanmar, Hindus were being chased away. The politicians, government and police were just standing and watching. They started by killing them by cutting their necks, and not only this, but they began to cut them in the streets and eat them. The people watching thought we are going to die, we are not going to live.”*<sup>482</sup>

474. See Annexure I - All India.

475. Alishan Jafri, Shehlat Maknoon Wani and Siddharth Varadarajan, 'Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed' The Wire (New Delhi, 3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

476. See Annexure III - Delhi.

477. Aditya Menon 'Dasna Priest Called For 'War On Islam' in Run-Up to Delhi Violence' The Quint (5 March 2020)

<<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad>>

478. See Annexure III - Delhi.

479. YouTube video, 'Viral Hate Speech Videos From Haridwar Meet Spark Outrage, No Case Yet' (23 December 2021) <<https://www.youtube.com/watch?v=nEcmlC8pXdA>>

480. 'Yati Narsinghanand Offers Rs 1 Crore Award to Become 'Hindu Prabhakaran'' The Wire (22 December 2021) <<https://thewire.in/communalism/yati-narsinghanand-dharam-sansad-haridwar>>

481. See Annexure I - All India.

482. 'Hindutva Leaders at Haridwar Event Call for Muslim Genocide' The Wire (22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

*“This is our state now. You have seen this at the Delhi border, they killed Hindus and hung them. There is no more time, the case now is that either you prepare to die now, or get ready to kill, there’s no other way. This is why, like in Myanmar, the police here, the politicians here, the army and every Hindu must pick up weapons and we will have to conduct this cleanliness drive (safai abhiyan). There is no solution apart from this.”*<sup>483</sup>

During the Dharam Sansad event held on 17-19 December 2021 in Haridwar, Uttarakhand.<sup>484</sup>

#### **Bajrang Muni Udasin:**

1. *“Agar koi ek Hindu ladki tumne chedi, toh main khule aam tumhare ghar se tumhari bahu betiyon ko utha k laake balatkar kar dunga” (I will publicly drag your daughters-in-law and daughters out of your homes and rape them if any Hindu girl is molested.)*<sup>485</sup>

On 2 April 2022, outside a mosque in Khairabad, Sitapur, Uttar Pradesh while leading a rally on young men.

2. *He raised the slogan “‘Jab Mulle kaate jayenge, Ram Ram chillaenge” (When Muslims will be slaughtered, they will call for Hindu Lord Ram.)*<sup>486</sup>

On 2 April 2022 while addressing a crowd of hundreds of supporters in Khairabad.

#### **Sadhvi Vibhanand Giri:**

*“Agar Hindu kanya par aankh utha kar bhi dekha, toh aaj se tumhari auratein Hinduon k bachche paida karenge, bina nikah k, bina kisi phere k...” (If you cast even a glance at Hindu girls, your women will be impregnated by Hindus, without any Muslim or Hindu marriage rituals...)*<sup>487</sup>

During Dharam Sansad event in Raipur, Chhattisgarh on 25-26 December 2021.

**Kapil Mishra:** raised the slogan “Desh ke ghaddaron ko, goli maaron saalon ko” (Shoot dead the bastard traitors to the nation!) On 20 December 2019 and on 23 February 2020 while leading rallies in Delhi.<sup>488</sup>

**Anurag Thakur:** raised the slogan “Desh ke ghaddaron ko, goli maaron saalon ko” (Shoot dead the bastard traitors to the nation!)

On 27 January 2020 while leading a public rally in Delhi.<sup>489</sup>

The Panel analysed these inciting speeches made by the aforementioned individuals according to applicable principles of international criminal law. All these speeches were made in public and then widely broadcast through several mainstream and social media channels. While these speeches are direct in nature insofar as they call for violence, we have engaged in a contextual assessment for each of them to analyse if they were understood by their audience as the direct call to violence against the intended community.

483. 'Hindutva Leaders'.

484. See Annexure I – All India

485. 'On video: Rape threat by sadhu during Navaratri procession' The Telegraph (9 April 2022) <<https://www.telegraphindia.com/india/on-video-rape-threat-by-sadhu-during-navaratri-procession-in-sitapur/cid/1859794>>

486. Pandit Ankit Pandey Facebook post (2 April 2022) <[https://m.facebook.com/story.php?story\\_fbid=264048805942766&id=100017434989332](https://m.facebook.com/story.php?story_fbid=264048805942766&id=100017434989332)>

487. Alishan Jafri Tweet (2 February 2022) <[https://twitter.com/alishan\\_jafri/status/1488875434783608833](https://twitter.com/alishan_jafri/status/1488875434783608833)>

488. See Annexure III - Delhi.

489. See Annexure III - Delhi.

Finally, as incitement to genocide is an inchoate crime, we have relied on the material made available to us to identify whether indicators exist in each of their respective cases to suggest that the speeches were made with a specific intent to destroy the community, in whole or in part. For example, the general context and surrounding circumstances in which the speeches were made; perpetration of other culpable acts systematically directed against the same group; the scale of atrocities committed; targeting of victims on account of their membership in a particular group; the repetition of destructive and discriminatory acts; and the existence of a genocidal plan or policy. (For this analysis, see Annexures I and III.)

We are of the opinion that credible information exists to suggest that the aforementioned speeches, which were made by identified individuals, constitute incitement to genocide and they warrant further investigation by an independent body. Urgent action is required to prevent repetition of such incidents.

## 4. The right to an effective remedy

### 4.1 Failure of India's international law obligation to ensure accountability

In this section, we assess the judicial response to the human rights violations and discrimination against Muslims, as outlined in section 3, to assess if the right to an effective remedy has been fulfilled. We

begin by enumerating international legal standards on the right to effective remedy and list the judicial powers that superior courts in India have in this regard. We then analyse the judicial response to human rights violations, as well as the working of grassroots justice machinery to offer effective remedies, including compensation across the range of emblematic cases discussed above. We finally assess judicial review of legislation and policies that have raised serious human rights concerns for Muslims, to see how superior Indian courts have lived up to their constitutional responsibility to serve as independent guardians of the rights of citizens and of the Indian Constitution.

### 4.2 International legal standards

The Universal Declaration of Human Rights (UDHR) recognises the right to an effective remedy for violations of rights.<sup>490</sup> The International Covenant on Civil and Political Rights (ICCPR) also recognises the right to an effective remedy<sup>491</sup> and establishes the right to equality before the law,<sup>492</sup> which has been interpreted to mandate substantive and procedural due process guarantees of non-discrimination to ensure a fair trial.<sup>493</sup> The Committee on Economic, Social and Cultural Rights (CESCR) has noted the applicability of the right to access justice to the rights contained in the ICESCR,<sup>494</sup> which are not self-executing and require the institution of remedies in order to be effective.<sup>495</sup> The right to remedies and equal treatment has also been reiterated in other human rights treaties to which India is a Party, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);<sup>496</sup>

490. UN General Assembly, International Bill of Human Rights [UDHR], Art. 8 (UNGA Res 217 A(III) (10 December 1948) <[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_217\(III\).pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_217(III).pdf)>

491. UN General Assembly, International Covenant on Civil and Political Rights [ICCPR], Art. 2(3) (999 UNTS 171, 16 December 1966), United Nations, Treaty Series, vol. 999, 171, <<https://www.refworld.org/docid/3ae6b3aa0.html>>

492. UN General Assembly, International Covenant on Civil and Political Rights [ICCPR], Art. 14.

493. UN OHCHR 'General Comment 18' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (1994) UN Doc HRI/GEN/1/Rev.1.

494. UN CESCR, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant) (14 December 1990) UN Doc E/1991/23 para. 5.

495. CESCR General Comment No. 9: The Domestic Application of the Covenant (3 December 1998) UN Doc E/C.12/1998/24 para. 9.

496. UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination [ICERD], Art. 5(a) (660 UNTS 195, 21 December 1965), United Nations, Treaty Series, vol. 660, 195, <<https://www.refworld.org/docid/3ae6b3940.html>>

the Convention on the Rights of the Child (CRC);<sup>497</sup> the Convention on the Rights of Persons with Disabilities (CRPD);<sup>498</sup> and the International Convention for the Protection of All Persons from Enforced Disappearance (CIPED).<sup>499</sup>

It has been accepted as a general principle of international law that the breach of an international obligation gives rise to a general duty upon the state to repair the harm caused.<sup>500</sup> The International Law Commission's Draft Articles on State Responsibility note that this duty occurs primarily in the form of restitution, compensation and satisfaction in order to end ongoing breaches as well as to ensure that the parties' dignity and rights are respected. The 2005 United Nations Basic Principles and Guidelines on the right to a remedy and reparations clarify that the state owes an obligation to the victim of 'gross violations of international human rights law and serious violations of international humanitarian law'.<sup>501</sup> The Basic Principles assert that persons who 'individually or collectively suffer harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights',<sup>503</sup> are entitled to domestic reparation mechanisms which guarantee effective and equal access to justice. The right to an effective remedy for individuals<sup>504</sup> requires the state to investigate

and punish violations of human rights as well as to establish independent frameworks for monitoring and providing reparations in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>505</sup>

### 4.3 Exhaustion of domestic remedies

It is well established under customary international law that persons whose rights have allegedly been violated must first attempt to make use of domestic judicial or administrative processes, as opposed to directly appealing to an international committee, court or tribunal.<sup>506</sup>

However, this requirement may be exempted in instances where domestic remedies are either unavailable entirely, due to legislative gaps, or administrative bodies lacking decisive authority to prosecute violations or provide redress.<sup>507</sup> Further, the obligation to exhaust domestic remedies is considered to be satisfied when the victim has made a good-faith attempt to avail of such remedies but domestic processes are prone to unreasonable delays.<sup>508 509</sup> Decisions by the United Nations Human Rights Committee indicate that the obligation to exhaust domestic remedies is also considered to be satisfied where institutional bias is prevalent or the principles of a fair trial are violated leading to unfair outcomes<sup>510</sup> or undermining the likelihood of success.<sup>511</sup>

497. UN General Assembly, Convention on the Rights of the Child [CRC], Arts. 37, 40 (1577 UNTS 3, 20 November 1989), United Nations, Treaty Series, vol. 1577, 3 <<https://www.refworld.org/docid/3ae6b38f0.html>>

498. UN General Assembly, Convention on the Rights of Persons with Disabilities [CRPD], Art. 13 (resolution adopted by the General Assembly, 24 January 2007, 2515 UNTS 3, A/RES/61/106) <<https://www.refworld.org/docid/45f973632.html>>

499. UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance [ICPPED], Arts. 20-24 (2716 UNTS 3, 20 December 2006) <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4)>

500. International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1 Art 1.

501. International Law Commission (ILC) 'Draft Articles', Art. 34.

502. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principles 4-5 (UNGA Res 60/147, UN Doc A/RES/60/147, 16 December 2005) <[https://legal.un.org/avl/pdf/ha/ga\\_60-147/ga\\_60-147\\_ph\\_e.pdf](https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf)>

503. UNGA Res 60/147, principle 8.

504. UNGA Res 60/147, principle 15.

505. UNGA Res 60/147, principles 19-23.

506. International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1, Art. 44(b).

507. Human Rights Committee, A.S. v. Nepal, Communication No. 2077/2011 (Views of 4 January 2016) U.N. Doc. CCPR/C/115/D/2077/2011, para. 6.6.

508. For example: Committee on the Elimination of Racial Discrimination, Quereshi v. Denmark, Communication 33/2003 (Views of 10 March 2004) U.N. Doc. CERD/C/66/D/33/2003, para. 6.4.

509. Committee on the Elimination of Discrimination against Women, Jallow v. Bulgaria, Communication No. 32/2011 (Views of 28 August 2012) U.N. Doc. CEDAW/C/52/D/32/2011, paras. 5.4, 7.3.

510. Human Rights Committee, Arzuaga Gilboa v. Uruguay, Communication No. 147/1983 (Views of 1 November 1985) U.N. Doc. CCPR/C/OP/2 at 176, para. 7.2. See also: Committee on the Elimination of Racial Discrimination, L. R. et al. v. Slovak Republic, Communication No. 31/2003 (Views of 3 October 2005) U.N. Doc. CERD/C/66/D/31/2003, para. 9.2.

511. Human Rights Committee, Earl Pratt and Ivan Morgan v. Jamaica, Communication No. 210/1986 and 225/1987 (Views of 6 April 1989) U.N. Doc. Supp. No. 40 (A/44/40) at 222, para. 12.3.

#### 4.4 Judicial powers

Section 3 of this report highlights a range of situations where credible evidence exists of human rights violations against Muslims in India. In considering whether the right to a remedy might also have been violated in relation to these violations, it is important to note briefly some of the powers enjoyed by the Indian judiciary. State High Courts and the national Supreme Court in India are empowered to review laws for compatibility with the national constitution, and to issue prerogative writs directing lower courts and public authorities to take or refrain from taking action, in order to ensure the enforcement of fundamental rights.<sup>512</sup> For instance, courts may issue a writ of habeas corpus (in instances of illegal detainment and imprisonment); mandamus (directing public authorities to fulfil their duty); prohibition (directing public authorities to refrain from exceeding their jurisdiction); certiorari (correcting wrongful orders passed by lower courts outside the scope of their authority to do so); and quo warranto (requiring subordinate authorities to show the authority by which they hold office). The Indian judiciary also enjoys a wide range of suo moto powers, enabling High Courts and the Supreme Court to take up cases on the Court's own accord even in the absence of a formal petition.<sup>513</sup>

#### 4.5 Criminal justice

We are extremely concerned about flaws in criminal justice processes related to the violations of human rights and international criminal law outlined in Sections 3.1 and 3.2.

The vast majority of victims of the human rights violations discussed in Section 3 are unlikely to be able to petition the senior judiciary. It is important, therefore, that the grassroots justice machinery that they

encounter be capable of offering effective remedies, in the form of criminal investigation and prosecution where appropriate, and compensation where appropriate. We note here the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, which clarify that the state must pursue 'prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and [take] appropriate measures in respect of the perpetrators, particularly in the area of criminal justice'.<sup>514</sup> This process must be victim-centric, by ensuring victims have access to knowledge regarding their rights and the progress of the proceedings that have been instituted; providing legal assistance; minimising inconvenience to victims, avoiding unnecessary delays in ensuring justice; and utilising informal or customary methods of dispute settlement where required.<sup>515</sup>

Therefore, it is with particular concern that we note serious dereliction and delay in investigating and prosecuting violent crimes against Muslims by private actors as well as the police, despite credible evidence of such crimes (see Section 3). Existing documentation as well as focus groups<sup>516</sup> conducted with victims of violence in Uttar Pradesh and Delhi indicate that victims have been rebuffed or harassed even when registering criminal complaints. Police officials have threatened or bribed victims who have tried to file complaints, and even outright refused to file complaints.<sup>517</sup> Victims and lawyers recount filing multiple applications to senior officials and the district courts simply to register their initial complaints.<sup>518</sup> In some cases, lawyers and human rights advocates have also been threatened by the police or third parties acting for the police.<sup>519</sup>

512. Constitution of India, Arts. 32, 226.

513. Constitution of India, Arts. 32, 131, 226, 227.

514. UN Economic and Social Council, Commission on Human Rights, Report on the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (8 February 2005) UN Doc E/CN.4/2005/102/Add.1, principle 19.

515. UNGA Res 40/34 (29 November 1985) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34.

516. Focus groups were conducted by an NGO in Uttar Pradesh and Delhi in December 2021. Here, we draw upon audio recordings and transcripts of these focus groups. The name of the NGO has been omitted due to security concerns. Records of these focus group discussions are on file with the authors.

517. Focus groups.

518. Focus groups.

519. Focus groups.

Some complainants say that the police have filed false cases against them as retaliation for refusing to withdraw their complaints. Other complainants discovered, on finally accessing copies of the reports filed by police, that crucial details had been omitted or changed. As one example, the family of a Muslim man who was lynched to death discovered that the police recorded that the victim had committed suicide. The risk of complaints being suppressed and complainants being intimidated was particularly high in Uttar Pradesh and Delhi, given that the police were themselves involved in serious violence against protestors. For example, during a focus group, a man shot by the police said that he was denied the chance to contact his family or a lawyer, and taken straight to the police station, to find that the senior official at the station was the person who had shot him.

In Uttar Pradesh, the families of those killed extrajudicially in the crackdown against anti-CAA protesters were allegedly subjected to harassment and intimidation in the aftermath of violence, including refusal to hand over bodies of the deceased for burial; enforcing burial at distant sites under the supervision of police; delaying and fabricating autopsy reports; refusal to register cases of murder even when family members provided evidence; and threats of filing fabricated cases against family members when they demanded action.<sup>520</sup> Focus groups conducted in Uttar Pradesh suggest that these experiences have had a chilling effect on family members of the deceased and on other potential witnesses. We note that the police appear to work closely with

Hindu-rights groups (for example, so-called cow-protection squads), not just in Uttar Pradesh and Delhi but in other parts of the country too. This heightens the risk that hate crimes perpetrated by members of such groups will not be investigated and prosecuted with the necessary urgency and seriousness.

The Hindu Yuva Vahini, a group headed by Uttar Pradesh Chief Minister Yogi Adityanath, organised an event in Delhi in December 2021 where hate speeches against Muslims were delivered by religious leaders and popular pro-BJP journalists. When a petition challenged police failure to apprehend the speakers, Delhi's Deputy Commissioner of Police filed an affidavit before the Supreme Court denying that the speeches vilified the Muslim community and described the speeches as words intended to 'save ethics of [the Hindu] community'.<sup>521</sup>

The police response to even more inflammatory hate speech at a three-day religious assembly in Haridwar from 17-19 December 2021 was similarly inadequate. Criminal complaints, or FIRs, were filed against the organisers and speakers in December 2021 and early January 2022. However, it was not until the Supreme Court, itself under public pressure,<sup>522</sup> demanded that the police explain their failure to arrest the (prominent and easily located) religious leaders, that two of the speakers were finally arrested. This did not include the persons identified as having made the main genocidal speeches.<sup>523</sup> Even then, Yati Narsinghanand, the organiser, was charged with a relatively minor offence before charges were re-framed to at least acknowledge hate speech.<sup>524</sup>

520. MUHAMMAD TAHIR, '24 Months After 5 Killed in Meerut In Police Crackdown On Anti-CAA Protests, No Probe & No Answers' (20 January 2022)

<<https://article-14.com/post/24-months-after-5-killed-in-meerut-in-police-crackdown-on-anti-cao-protests-no-probe-no-answers-61e8ce841aeef>>;

AISHWARYA S IYER, 'They Shot Him': Kin of Three Deceased Blame UP Police, Seek FIR' (12 December 2022) <<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir#read-more>>;

AISHWARYA S IYER, 'Beggared for His Body': Kin of 2 Killed in Bijnor 'Police Firing' (27 December 2019) <<https://www.thequint.com/news/india/family-of-2-killed-in-uttar-pradesh-bijnor-anti-cao-violence#read-more>>;

<<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir#read-more>>

521. Mehal Jain, 'File Better Affidavit', Supreme Court Expresses Dissatisfaction with Delhi Police Stand that No Hate Speeches Were Made at Hindu Yuva Vahini Event' LiveLaw (22 April 2022) <<https://www.livelaw.in/top-stories/supreme-court-expresses-dissatisfaction-at-delhi-police-stand-that-no-hate-speeches-were-made-at-hindu-yuva-vahini-event-197248>>

522. 'Dharam Sansad row: 76 Supreme Court lawyers write to CJI Ramana over calls for 'ethnic cleansing' India Today (New Delhi, 27 December 2021) <<https://www.indiatoday.in/india/story/dharam-sansad-76-supreme-court-lawyers-cji-ramana-calls-for-ethnic-cleansing-1892597-2021-12-27>>

523. 'Hindutva Leaders at Haridwar Event Call for Muslim Genocide' The Wire (22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

524. Aruvelial Mariyam Alavi, 'Haridwar Hatemonger Jailed for Hate Speech Too, Cops Now Say' NDTV (17 January 2022) <<https://www.ndtv.com/india-news/haridwar-hate-speech-hate-speech-charges-added-against-haridwar-hatemonger-yati-narsinghanand-2-days-after-arrest-2712363>>

Narsinghanand was granted bail (in marked contrast to leading anti-CAA protestors) and organised another religious assembly in Delhi on 3 April 2022 where he and other religious leaders made incendiary speeches. As of this writing, the police had taken no action against him for violating his bail conditions.<sup>525</sup>

Close concert between the police and Hindu-rights groups also heightens the risk of arbitrary and disproportionate responses to criminal complaints against Muslims and human rights defenders. In cases following the violence in Delhi in February 2020, Human Rights Watch has documented that public authorities investigating Muslims and anti-CAA protesters did not follow basic procedures mandated by the Indian Code of Criminal Procedure, such as producing an arrest warrant, informing the person's family of the arrest, and providing them a copy of the First Information Report, or ensuring that those arrested had access to legal counsel, including during interrogation.<sup>526</sup> In one of many such instances, a 35-year-old man who was shot and injured during the violence in Delhi in February was detained without a warrant on April 7. His family went to three police stations to inquire of his whereabouts but were given no information. They were eventually informed that he had been arrested but were not given a copy of the First Information Report. His lawyer had to apply for his records through the courts and found out that the accused was charged with murder. He remains in jail at the time of writing this report.<sup>527</sup>

This widespread failure to record complaints accurately, or at all, suggests that even the foundations of a criminal case, the basis for investigation and prosecution, are not being laid.

In cases where police registered cases of murder on behalf of families, such as in many cases registered in Delhi and Uttar Pradesh, the police allegedly conducted perfunctory investigations and failed to identify the accused. This was despite several attempts by victims to offer testimonies and sometimes in the face of widely available audio and video evidence. This in turn led to many cases being summarily closed instead of proceeding to trial.<sup>528</sup>

Where cases related to violence discussed in Section 3 have proceeded to trial, NGOs and lawyers that we consulted indicate that these trials have barely progressed over the past 18 months. Slow progress might be due in part to the overloading and delays that are a persistent feature of the criminal justice system in India. However, we reiterate our concern over reports of bias and hostility faced by victims. These reports suggest failures by the police, prosecution and other relevant authorities over and above the more quotidian, structural weaknesses of the criminal justice system. Victims have recounted being pressured by the police even outside the courtroom to change their testimony. Many victims also lack access to legal aid.

Bearing in mind the human rights violations discussed in Section 3, we also note certain salient gaps in Indian law that are likely to weaken access to remedies for these violations. India currently lacks legislation that defines or enhances penalties for religious hate crimes, i.e., crime motivated by hostility towards the actual or perceived religion of the victim. Penal provisions that can be used to prosecute hate speech or persecutory violence against religious minorities are grounded in public order rather than in a human rights framework.<sup>529</sup>

525. Alishan Jafri & Naomi Barton, 'With Call for Violence against Muslims at Burari, Yati Narsinghanand Violates Bail Conditions' *The Wire* (4 April 2022) <<https://thewire.in/communalism/yati-narsinghanand-burari-hate-speech-bail-conditions>>

526. Human Rights Watch, "'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy' (April 2020) <<https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>>

527. Human Rights Watch, 'Shoot the Traitors'. For more details see Annexure II – Delhi.

528. Youth for Human Rights Documentation, 'Extinguishing Law and Life' (October 2021) <<https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>> accessed 5 June 2022; Citizens Against Hate, Countering the Silence (May 2017) <<https://citizensagainsthate.org/wp-content/uploads/2020/03/Countering-The-Silence-Full-report.pdf>>

529. Indian Penal Code, 153A, 153B, 295A.

Thus, not only has violence of this nature been neglected by the police and prosecution, certain types of hate-fuelled violence might not be fully recognised as such under current Indian law.

#### 4.6 Compensation for victims

With regard to monetary compensation for lives, livelihoods and property lost during violence in north-east Delhi in 2020, reports by NGOs indicate that only some victims have received *ex gratia* payments from the government. While these payments help to defray medical expenses, they are very modest relative to the losses sustained.

Publicly available information suggests that victims of other violations discussed in Section 3 have not received any monetary compensation from the state.

#### 4.7 Judicial responses to human rights violations

Notwithstanding strong powers to intervene when fundamental rights are being violated, the Indian judiciary has remained relatively passive in the face of visible, serious human rights abuses against Muslims since 2019.

##### a) Hate speech against Muslims

The judicial response to provocative hate speech against Muslims has been characterised by a lack of urgency despite pressing circumstances, as well as protracted delays.

We note with concern that a judge who responded promptly to speech inciting violence was swiftly transferred to another court, potentially disincentivising judicial engagement with human rights violations against Muslims. In February 2020, the Delhi High Court, while hearing petitions about the riots, had questioned the Delhi police's decision to refrain from filing complaints

against, and investigating, BJP leaders for advocating violence, saying it sent the wrong message and perpetuated impunity. When the police submitted that they were unaware of hate speech by political leaders, the High Court directed the police to watch video clips of the speeches in court and ordered them to report within a day what action they had chosen to take. Instead of responding to court orders, the government fast-tracked orders transferring the presiding judge to another state, raising questions over the timing of the transfer. Under a new judge, the court accepted the submission of the government's attorney that the situation was not immediately 'conducive' for registering police complaints.<sup>530</sup> Almost two years later, publicly available information suggests that no criminal cases have been filed by the police against political leaders who urged violence against Muslims.<sup>531</sup>

We were encouraged by the Supreme Court's decision in the case of *Amish Devgan v. Union of India*<sup>532</sup> where the court declined to quash criminal complaints against a prominent news anchor who had referred to Islamic saintly figures as 'terrorists' on television. In making its decision, the court noted that persons of influence have a duty to be more responsible,<sup>533</sup> and directed the authorities to continue their investigation.

We note also that on 10 January 2022, the Supreme Court agreed to take up a public interest litigation petition regarding virulent hate speech by religious leaders at a conclave in Haridwar in mid-December. Notwithstanding the Supreme Court's overseeing the matter, the main figures who made hateful and vilifying speeches have yet to be arrested. The lead organiser of the conclave in Haridwar was arrested on 14 January 2022, but was granted bail shortly thereafter.<sup>534</sup>

530. 'Delhi HC Accepts Centre's Logic, Gives 4 Weeks to Respond to Plea Seeking Hate Speech FIR' *The Wire* (27 February 2020) <<https://thewire.in/law/delhi-high-court-hate-speech>>

531. These politicians have not been accused of hate-speech related offences in "chargesheets" related to violence in Delhi in February 2020. See for example, 'Politicians who addressed anti-CAA protests mentioned in Delhi riots charge sheet' *Hindustan Times* (24 September 2020) <<https://www.hindustantimes.com/delhi-news/politicians-who-addressed-anti-caa-protests-mentioned-in-delhi-riots-charge-sheet/story-Toem6NtYgoLqNXjdncYK.html>>

532. Text of the judgment, <[https://www.livelaw.in/pdf\\_upload/pdf\\_upload-385580.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-385580.pdf)>

533. *Amish Devgan v. Union of India*, paragraph 52.

534. Aruveetial Mariyam Alavi, 'Haridwar Hatemonger Jailed for Hate Speech Too, Cops Now Say' *NDTV* (17 January 2022) <<https://www.ndtv.com/india-news/haridwar-hate-speech-hate-speech-charges-added-against-haridwar-hatemonger-yati-narsinghanand-2-days-after-arrest-2712363>>

In April 2022, he publicly incited violence against Muslims at another event in Delhi.<sup>535</sup> Based on the information available at the time of writing, the Supreme Court has not queried police failures and delays in regard to this repeated, escalating hate speech and incitement, even though it has accepted a petition specifically raising this matter.

### b) Protests against the CAA

Section 3 discusses punitive action against anti-CAA protests, including imposition of curfews, internet shutdowns, and severe police crackdowns and arrests in different parts of India. When applicants petitioned for urgent suo motu intervention by the Supreme Court on police violence, the Court agreed in principle to hear the matter but said it would not conduct substantive hearings until violent protests ceased.<sup>536</sup> This was despite the fact that over 20 Muslim youths had been killed in police shootings up to that point and large numbers of protesters injured.<sup>537</sup> Proceedings related to such violence in district courts in Uttar Pradesh and the High Court of Uttar Pradesh remain pending.<sup>538</sup>

The Delhi High Court on 24 December 2019, dismissed a petition which challenged the police's orders implementing a mobile services shutdown in parts of New Delhi in the previous week.<sup>539</sup> In Uttar Pradesh, the High Court ordered the removal of public hoardings put up by the government naming protesters accused of violence during anti-CAA protests. The High Court called this attempt at public shaming an 'undemocratic' infringement of privacy and ordered the

removal of the hoardings. However, a few weeks later on 9 March 2020, the Supreme Court failed to uphold the High Court's order,<sup>540</sup> and postponed a substantive hearing of the matter. Almost two years later, the case remains pending. In another case, on 17 February 2020, the state of Karnataka's High Court granted bail to 21 Muslims accused of violence during anti-CAA protests on 19 December 2019. However, in March 2020, the Supreme Court stayed this bail order without providing reasons for its decision.<sup>541</sup> Several months later, on 9 September 2020, the Supreme Court allowed the accused to be released on bail, but never clarified why bail for relatively minor offences had been denied for several months.<sup>542</sup>

Even where the judiciary ruled in favour of exercising the right to freedom of peaceful assembly, it did so somewhat equivocally. On 22 December 2019, the High Court of the state of Tamil Nadu quashed the government's denial of permission to protest against the CAA, but ordered the police to videograph the demonstration, which would likely have inhibited participation in the protest and could potentially facilitate harassment of protesters.<sup>543</sup>

### c) Human rights violations in Jammu & Kashmir

Although habeas corpus, a legal action seeking judicial review of the lawfulness of detention, is recognised as a core human right in both Indian and international law, courts in J&K have delayed hearing habeas corpus petitions for over a year in the majority of such cases. Of the 554 habeas

535. 'Yati Narsinghanand, Others Booked for Hate Speech at Delhi's Hindu Mahapanchayat' The Quint (4 April 2022) <<https://www.thequint.com/news/india/yati-narsinghanand-others-booked-for-hate-speech-at-delhis-hindu-mahapanchayat>>

536. Supreme Court of India, Order dated 16 December 2019, <[https://main.sci.gov.in/supremecourt/2019/45158/45158\\_2019\\_1\\_803\\_19145\\_Order\\_16-Dec-2019.pdf](https://main.sci.gov.in/supremecourt/2019/45158/45158_2019_1_803_19145_Order_16-Dec-2019.pdf)> This was later clubbed under Writ Petition (Civil) No. 1470/2019 i.e. Indian Union of Muslim League v Union of India. Based on information available on the website of the Supreme Court of India, the matter does not appear to have been listed since early 2020.

537. 'Protests against CAA: SC Takes Serious Note of Violence, Says it Must Stop Immediately' Economic Times (16 December 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-to-hear-pleas-alleging-police-atrocities-on-students-protesting-against-CAA/articleshow/72739187.cms?from=mdr>>

538. Anuj Kumar, 'A Year On, Kin of Anti-CAA Protest Victims Await Justice' The Hindu (22 December 2020) <<https://www.thehindu.com/news/national/other-states/a-year-on-kin-of-anti-CAA-protest-victims-await-justice/article33389178.ece>>

539. Karan Tripathi, 'Delhi HC Dismisses Plea Challenging Internet Shutdown In Delhi Over CAA Protests' Live Law (24 December 2019) <<https://www.livelaw.in/news-updates/delhi-hc-dismisses-plea-challenging-internet-shutdown-in-delhi-over-CAA-protests-151063>>

540. 'SC Slams UP Govt Name & Shame Banners, But Refers to Larger Bench' The Quint (12 March 2020) <<https://www.thequint.com/news/india/sc-hears-up-govts-petition-challenging-hc-order-to-remove-banners>>

541. Sruthisagar Yamunan 'Supreme Court to Tiz Hazari: How the judiciary responded to CAA protests and police action' (December 24, 2019) <<https://scroll.in/article/947770/supreme-court-to-tiz-hazari-how-the-judiciary-responded-to-CAA-protests-and-police-action>>

542. 'SC Grants Bail to Mangaluru CAA Protesters, Lifts Stay on HC Order' The Quint (10 September 2020) <<https://www.thequint.com/news/law/supreme-court-grants-bail-to-mangaluru-anti-CAA-protesters-lifts-stay-on-karnataka-hc-order>>

543. Anjana Shekar 'Madras HC does not stay DMK's anti-CAA rally, allows cops to use drones to monitor' The News Minute (22 December 2019) <<https://www.thenewsminute.com/article/madras-hc-does-not-stay-dmks-anti-CAA-rally-allows-cops-use-drones-monitor-114599>>

corpus petitions filed in the Jammu and Kashmir High Court after 5 August 2019, the court had passed judgment in only 29 cases by September 2020. Over 30 per cent of the cases became moot because the government had released the detainee by the time their petition was heard in court, while 65 per cent of the cases remained pending a year later, in many cases a year after the person was detained.<sup>544</sup> Challenges to blanket internet shutdown have elicited little relief.<sup>545</sup> As have those against illegal incarceration of children by security forces<sup>546</sup> and, in the past, to ban the use of pellet-firing shotguns against unarmed protesters.<sup>547</sup>

#### d) NRC in Assam and Foreigners Tribunals

As discussed in Section 3 above, individuals excluded from the National Register of Citizens in Assam can appeal their exclusion before quasi-judicial Foreigners Tribunals that have the power to declare them 'foreigners' and order their confinement in detention centres. Experts have noted the 'serious procedural concerns'<sup>548</sup> with Foreigners Tribunals. An earlier report by the National Human Rights Commission had found that the detainees - victims of a system human rights groups have claimed is 'designed to exclude'<sup>549</sup> - are kept in sub-

standard, prison-like conditions, and that children are separated from their parents.<sup>550</sup> Taking note of the plight of the detainees, the Supreme Court<sup>551</sup> ordered the release, in May 2019, of individuals who had been detained for more than three years, subject to stringent conditions.<sup>552</sup> However, no further judicial action has been taken to address the lack of a stable and well-functioning appeals mechanism to challenge the orders of Foreigners Tribunals.

Given the large numbers of people declared to be foreign under the NRC in Assam (see Section 3), the lack of an accessible, system-wide remedy to challenge determinations of foreignness and challenge detention is extremely concerning. The remedy offered by the Supreme Court appears to fall well short of international standards. It imposes a high threshold for release on individuals who are accused of a lack of citizenship rather than any form of criminality. In any event, few detainees are likely to have the wherewithal to petition the apex court or the state High Court. This consigns to detention many individuals who have effectively been rendered stateless for extended, indeterminate periods of time, without an independent and accessible appeals mechanism.

544. SHREYAS NARLA & SHRUTI RAJAGOPALAN 'The Judicial Abrogation of Rights & Liberties In Kashmir' (New Delhi, 25 September 2020) <<https://www.article-14.com/post/the-judicial-abrogation-of-rights-liberties-in-kashmir>>

545. V Venkatesan, 'Verdict on Internet curbs in J&K in defence of free speech, but relief remains elusive' Frontline (11 January 2020) <<https://frontline.thehindu.com/dispatches/article30542427.ece>>

546. Mahtab Alam, 'J&K Police Denied Media Reports of Illegal Arrests of Minors. Its Own List Is Proof to Contrary' The Wire (6 November 2019) <<https://thewire.in/rights/kashmir-minors-2>>

547. Zulfikar Majid, 'J&K High Court refuses to ban use of pellet guns by security forces' Deccan Herald (11 March 2020) <[www.deccanherald.com/national/north-and-central/jk-high-court-refuses-to-ban-use-of-pellet-guns-by-security-forces-812797.html](http://www.deccanherald.com/national/north-and-central/jk-high-court-refuses-to-ban-use-of-pellet-guns-by-security-forces-812797.html)>. For more details see Annexure IV - Jammu & Kashmir.

548. Talha Abdul Rahman, 'Identifying the 'Outsider': An Assessment of Foreigner Tribunals in the Indian State of Assam' (29 June 2020) 2.1 Statelessness & Citizenship Review <<https://ssrn.com/abstract=3723694>>

549. Amnesty International, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

550. 'Report on NHRC Mission to Assam's Detention Centres

from 22 to 24 January, 2018' (2018) <<https://cjp.org.in/wp-content/uploads/2018/11/NHRC-Report-Assam-Detention-Centres-26-3-2018-1.pdf>>

551. Supreme Court Legal Services Committee v Union of India, Writ Petition (Civil) 1045/2018 [Supreme Court of India], order dated 19 February 2019.

552. The conditions included: execution of a bond with two sureties of Rs. 100,000 each; the provision of a verifiable address for stay; collection of biometric data; and weekly reports to the police station Supreme Court Legal Services Committee v Union of India, Writ Petition (Civil) 1045/2018 [Supreme Court of India], order dated 10 May 2019.

The UN High Commissioner for Human Rights' appeals to the Government of India to ensure due process during the NRC appeals process, and to prevent detention or deportation, does not seem to have elicited any serious engagement.<sup>553</sup>

The Supreme Court's role in enabling the failures of the NRC, in 'overlooking fair trial standards and entrenching discriminatory attitudes and practices on the ground'<sup>554</sup> during the NRC process has been noted by numerous international observers.<sup>555</sup> Examples cited include (i) reversing the burden of proof at Foreigners Tribunals, by the Supreme Court striking down in 2005, the Illegal Migrants (Determination by Tribunals) Act<sup>556</sup> and reviving administrative Foreigners Tribunals in Assam,<sup>557</sup> (ii) through the same order, legitimising the bogey of 'threats to national security' that according to experts 'sets the tone in terms of both rhetoric and legal doctrine to demonise immigration',<sup>558</sup> (iii) ordering expeditious updating of the NRC and then closely monitoring the government in this regard, all the while relying on an erroneous government estimate that 5 million illegal Bangladeshi immigrants were present in Assam,<sup>559</sup> and (iv) last, but not least, extending citizenship deprivation to children, through its decision in August 2019.<sup>560</sup>

### e) Due process for minors

The Supreme Court has also remained silent in matters concerning arrests and preventive detention of minors. In 2019, the Supreme Court responded to a petition raising unlawful preventive detention of minors in

Kashmir by ordering the High Court of Jammu & Kashmir to examine the situation. On receiving a report that 144 minors had been detained by the police between 5 August and 23 September 2019 under the Jammu & Kashmir Public Safety Act 1978,<sup>561</sup> and that some continued to be detained, the Supreme Court directed a further report in November 2019.<sup>562</sup> However, the Court took no immediate remedial action regarding the detained minors despite the fact that preventive detention of minors would, prima facie, violate the national Juvenile Justice Act 2015.<sup>563</sup> Similarly, in relation to detention centres in Assam, the Supreme Court has yet to address a petition asking for relief for children detained in very poor conditions and, in many cases, separated from their parents as a result of such detention.<sup>564</sup>

Thus, since 2019, the Indian judiciary's response to visible, often widespread, human rights abuse targeting Muslims has been inadequate in our view. Indian courts are constitutionally empowered to order investigation into human rights violations, and to contribute to the cessation of such violations. The Indian Supreme Court, in particular, has failed to adequately deploy its considerable constitutional powers to query or restrain rapidly unfolding abuse that warranted urgent intervention. In addition, extended, arguably unreasonable delays in hearing urgent petitions challenging, inter alia, violent police action, inflammatory hate speech, and detention, raise serious doubts about the adequacy of domestic judicial remedies in response to human rights violations against Muslims in India.

553. UN OHCHR, 'Global update at the 42nd session of the Human Rights Council' (9 September 2019)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E>>

554. Amnesty International, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019)

<[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

555. Amnesty International, 'Designed to Exclude'.

556. A previously existing legislation that had laid the burden of proof on the state to establish that an individual is not an Indian citizen; laid down specific procedures for the vetting and appointment of Tribunal members, and a mechanism of appeals against Tribunal opinions, etc.

557. Talha Abdul Rahman, 'Identifying the "Outsider": An Assessment of Foreigner Tribunals in the Indian State of Assam' (29 June 2020) 2.1 Statelessness & Citizenship Review <<https://ssrn.com/abstract=3723694>>

558. Amnesty International, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) (see section on Complicity of Courts) <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

559. Amnesty International, 'Designed to Exclude'.

560. For more see Annexure II – Assam.

561. A law that authorises preventive detention without trial or conviction.

562. Enakshi Ganguly & Anr. v. Union of India, Writ Petition (Civil) 1166/2019 (Supreme Court of India), order dated 5 November 2019.

563. Anjana Prakash, 'Jammu and Kashmir Police has Violated the JJ Act in Detaining Children' The Wire (7 October 2019) <<https://thewire.in/rights/jammu-and-kashmir-police-has-violated-the-jj-act-in-detaining-children>>

564. Assam Public Works v Union of India, Writ Petition (Civil) 274/2009 [Supreme Court of India], order dated 6 January 2020.

## f) Freedom of religion or belief

The Karnataka High Court upheld a prohibition on clothing with religious symbolism in educational institutions. The Supreme Court has declined to expedite the appeal against this judgment, despite its obvious ramifications for the right to freedom of religion or belief and for access to higher education.

As noted in Section 3, the government of Karnataka passed an order under the Karnataka Education Act 1983 requiring that students of all educational institutions must follow the dress code prescribed by the government or the private management, with clothes that would disturb ‘equality, unity, and public order’ to be banned.<sup>565</sup> A petition seeking recognition of a Muslim woman’s fundamental right to wear the hijab was filed at the Karnataka High Court on 31 January 2022. On 15 March 2022, the Karnataka High Court upheld the government order prohibiting religious clothing and prescribing a dress code, on the grounds that wearing the hijab was not an essential part of Islam.<sup>566</sup> The High Court judgment was challenged before the Supreme Court on the same day. However, on 24 March 2022, the Supreme Court refused an urgent hearing, claiming that the issue ‘had nothing to do with exams’ which were to commence shortly thereafter.<sup>567</sup> A few of the petitioners have therefore been unable to take their PU-II exams, as they are barred from entering classrooms wearing hijabs.<sup>568</sup>

### 4.8 Judicial review of legislation that raise, prima facie, serious human rights concerns

Despite robust powers to review legislation for compatibility with fundamental constitutional rights, the Indian judiciary’s engagement with laws that discriminate against Muslims and other religious minorities has been uneven and disappointing. In response to over 140 petitioners challenging the CAA, the Supreme Court declined on 22 January 2020 to pass an interim stay on the law until its constitutionality was conclusively resolved.<sup>569</sup> The Court then failed to list the petitions for a hearing for over a year, which is an unusually long delay for such a pressing constitutional dispute.<sup>570</sup> Two years after this law, which expressly excludes Muslims from an expedited pathway to Indian citizenship, was passed, the Supreme Court’s decision on its constitutional validity remains pending.

Laws criminalising religious conversation, discussed in Section 4 above, have been challenged before High Courts and the Supreme Court, with divergent results. The High Courts of Gujarat<sup>571</sup> and Uttar Pradesh stayed the application of provisions prohibiting conversions by marriage, with the High Court of Uttar Pradesh noting that state authorities could not intervene in the private lives of individuals.<sup>572</sup> On the other hand, the High Court of the state of Uttarakhand affirmed legal provisions that require individuals to inform local authorities before converting to another religion.<sup>573</sup> Challenges to anti-conversion laws in Uttar Pradesh, Uttarakhand, Himachal Pradesh, and Madhya Pradesh have been pending before the Supreme Court since February 2021.

565. The text of the order, <https://www.scobserver.in/journal/karnataka-government-order-on-dress-code-for-students/>.

566. Smt. Resham & Anr. v. State of Karnataka & Ors., Writ Petition No. 2347/2022 <<https://www.scobserver.in/wp-content/uploads/2022/02/karnataka-high-court-412148.pdf>>

567. Sukirti Dwivedi, ‘“Don’t Sensationalise”: Supreme Court Refuses Urgent Hearing on Hijab Ban’ NDTV (24 March 2022) <<https://www.ndtv.com/india-news/karnataka-hijab-ban-dont-sensationalise-supreme-court-refuses-early-hearing-on-karnataka-hijab-ban-2840067>>

568. Sreeja MS, ‘Not Allowed to Take Exams Wearing Hijab, 2 Karnataka Students Leave’ NDTV (22 April 2022) <<https://www.ndtv.com/india-news/two-pro-hijab-petitioners-in-karnatakas-udupi-not-allowed-to-take-exams-wearing-hijab-leave-college-premises-2909571>>

569. Supreme Court of India, order dated 22 January 2020 <[https://main.sci.gov.in/supremecourt/2019/44931/44931\\_2019\\_1\\_4\\_19796\\_Order\\_22-Jan-2020.pdf](https://main.sci.gov.in/supremecourt/2019/44931/44931_2019_1_4_19796_Order_22-Jan-2020.pdf)>

570. Justice Anjana Prakash, ‘One Year of CAA: In its Approach to CAA Cases, the SC Has Failed its Own Standards’ The Quint (11 December 2020) <<https://www.thequint.com/voices/opinion/supreme-court-approach-to-caa-cases-failure-to-list-is-failure-of-its-standards#read-more>>

571. Jamiat Ulama-E-Hind Gujarat v State of Gujarat, Special Civil Application No. 10304 of 2021 (High Court of Gujarat), order dated 18 August 2021.

572. Umang Poddar, ‘How Have Legal Cases Seeking to Strike Down India’s Anti-Conversion Laws Fared?’ Scroll (4 January 2022) <<https://scroll.in/article/1014042/how-have-legal-challenges-against-indias-anti-conversion-laws-fared>>

573. Khusbu @ Kokil & Anr v State of Uttarakhand, Writ Petition (Criminal) No. 2226 of 2020 (High Court of Uttarakhand), order dated 31 December 2020.

As with the CAA, the Supreme Court refused to grant an interim stay on these laws,<sup>574</sup> but has delayed hearing substantive arguments about their constitutionality.

In relation to Kashmir, there appear to be significant legal and constitutional challenges to the manner in which Article 370 was unilaterally revoked.<sup>575</sup> Some 25 petitions challenging the validity of the J&K Reorganisation Act, 2019, and nullification of Article 370, remain pending before the Supreme Court, more than two years after they were initiated.<sup>576</sup> The petitions were referred to a five-judge Bench in August 2019 and the case was last listed in the Supreme Court on 2 March 2020.<sup>577</sup>

'Cow protection' laws (discussed in Section 3) are likely to be even more difficult to challenge than other legislation that, prima facie, appear to be directly or indirectly discriminatory. Article 48 of the Indian Constitution directs the state to 'take steps' towards 'prohibiting the slaughter, of cows and calves'. In the past, the Supreme Court has cited this constitutional provision to uphold wide prohibitions on cow-slaughter under different state laws.<sup>578</sup> These precedents make it harder for applicants to challenge recently legislated or amended 'cow protection' statutes. That said, we note that the broad, invasive search and seizure powers in these laws (including powers that can be exercised by non-state or quasi-state actors) warrant urgent judicial scrutiny.

Thus far, the Supreme Court has not provided such scrutiny, while the pronouncements of certain High Courts have been not just inadequate but extremely concerning. For example, in October 2020, the High Court of Uttar Pradesh warned that the state's 'cow protection' law 'is being misused against innocent persons', but did not issue orders that would curtail the violent, sometimes fatal, abuse inflicted under cover of this law.<sup>579</sup> A year later, the same court held that 'government should bring a bill in the Parliament to include cow [sic] within the scope of fundamental rights, and strict laws should be made to punish those who talk about harming cows'.<sup>580</sup>

#### 4.9 International Engagement

Historically, India has often displayed moral leadership in international fora. India has also made voluntary pledges to uphold the UN system and values when putting itself forward for election to the Human Rights Council and the UN Security Council.<sup>581</sup> We are disappointed, therefore, by India's refusal to engage with UN stakeholders in relation to the human rights of Muslims and other religious minorities. UN human rights actors have raised concerns about escalating abuses against Muslims on multiple occasions. India has responded to these concerns with clichés and platitudes on some occasions, and with disdain and open hostility on others.

574. 'Supreme Court Refuses to Stay 'Love Jihad' Laws in Uttar Pradesh, Uttarakhand: Issues Notice' Hindustan Times (6 January 2021)

<<https://www.hindustantimes.com/india-news/supreme-court-refuses-to-stay-laws-which-punish-marriages-based-on-religious-conversion-issues-notices-to-uttar-pradesh-uttarakhand/story-92IFE16wQVhxl02NbZuxcP.html>>

575. Gautam Bhatia, 'The Article 370 Amendments: Key Legal Issues' Indian Constitutional Law and Philosophy Blog (5 August 2019)

<<https://indconlawphil.wordpress.com/2019/08/05/the-article-370-amendments-key-legal-issues/>>

576. Satya Prakash, '25 pleas challenging Art 370 abrogation pending in SC' Tribune India (25 June 2021) <[www.tribuneindia.com/news/j-k/25-pleas-challenging-art-370-abrogation-pending-in-sc-273484](http://www.tribuneindia.com/news/j-k/25-pleas-challenging-art-370-abrogation-pending-in-sc-273484)>

577. Shruti Kakkar, 'Article 370: Former MLA Tarigami Seeks Early Hearing Of Petitions In Supreme Court Challenging Abrogation Of J&K Special Status' Live Law (28 August 2021) <[www.livelaw.in/top-stories/article-370-former-mla-tarigami-seeks-early-hearing-of-petitions-in-supreme-court-challenging-abrogation-of-jk-special-status-180470](http://www.livelaw.in/top-stories/article-370-former-mla-tarigami-seeks-early-hearing-of-petitions-in-supreme-court-challenging-abrogation-of-jk-special-status-180470)>

578. Mohd. Hanif Quareshi & Others vs The State Of Bihar 1958 AIR 731; State Of Gujarat vs Mirzapur Moti Kureshi Kassab, Appeal (civil), C.A. No.-004937-004940 / 1998 4937-4940 of 1998 (Supreme Court of India, order dated 26 October 2005).

579. Manish Sahu, 'UP cow slaughter law is being misused against innocent: Allahabad HC' The Indian Express (27 October 2020)

<<https://indianexpress.com/article/india/up-cow-slaughter-law-is-being-misused-against-innocent-allahabad-hc-6889785/>>

580. Areeb Uddin Ahmed, '[BREAKING] Cow is part of culture of India; should be declared as national animal, made part of fundamental rights: Allahabad High Court' Bar and Bench (1 September 2021) <<https://www.barandbench.com/news/litigation/bring-law-grant-cows-fundamental-rights-declare-cow-as-national-animal-allahabad-high-court>>

581. See, generally, statements made by members of the Indian delegation at the United Nations General Assembly, the United Nations Human Rights Council and the United Nations Security Council.

### Implementation of recommendations received during the Third Cycle (2007) of Universal Periodic Review:

- India received a total of 250 recommendations from fellow states in September 2017 during the Third Cycle of the UPR, of which it accepted 152 (61 per cent). There was, however, no acceptance of any recommendations relating to shrinking civic space, religious freedom, hate crimes or impunity.
- A mid-term evaluation of India's implementation of Third Cycle recommendations, published by the Working Group on Human Rights in India and the UN,<sup>582</sup> noted:
  - All six recommendations relating to human rights defenders and civic space remained 'not implemented'.<sup>583</sup>
  - Of the 15 recommendations relating to freedom of religion and minority rights, nine remained 'not implemented'. Recommendations classified as 'partially implemented' related to budgetary allocation for welfare measures that could benefit Indian Muslims.<sup>584</sup>

### Cooperation with UN human rights mechanisms:

#### Country visits by UNHRC special procedures:

As of January 2022, there are 25 pending requests for visits from various UN mandate holders. Of these, 15 have also sent reminders, to no response from the Indian government.<sup>585</sup> Among those who have been unable to make country visits despite reminders are the mandate holders on

racism; minority issues; freedom of expression; freedom of assembly; torture; arbitrary detention; disappearances; and violence against women.

**Communications from UN HRC special procedures:** Since the BJP assumed power in May 2014, India has received 132 communications from the UNHRC special procedures. Of these, it has responded to less than a third (43). The contents of around half these replies are not available in the public domain because of their 'confidential nature'.<sup>586</sup>

**Engagement with UN Treaty Bodies:** Since the present government assumed power, India has submitted two state party reports to UN Treaty Monitoring Bodies: to the Committee on the Rights of Persons with Disabilities (August 2015, due in 2011),<sup>587</sup> and the Human Rights Committee (September 2021).<sup>588</sup>

In its report to the HRC, the Indian government defended its record over several recent anti-minority developments in the country – including rising hate crimes, the targeting of human rights defenders, the Citizenship (Amendment) Act, the National Register of Citizens, the revocation of Kashmir's titular autonomy and subsequent communications shutdown and other developments – mostly by pointing to the functioning of India's 'independent' domestic institutions and accountability mechanisms.<sup>589</sup>

Public statements by the Indian government: Public statements by the Indian government and its representatives in response to violations in India being highlighted at UN fora have also been increasingly forceful and hostile. For example:

582. Working Group on Human Rights in India and the UN, 'UPR: Mid-Term Report 2020 - Assessing India's Implementation of UPR-III Recommendations' (2020) <<https://www.haqrc.org/new-at-haq/universal-periodic-review-upr-mid-term-report-2020>>

583. Working Group on Human Rights in India and the UN, 'UPR: Mid-Term Report 2020 51.

584. Working Group on Human Rights in India and the UN, 'UPR: Mid-Term Report 2020 140.

585. 'Country Visits of Special Procedures of the Human Rights Council since 1998 -- India' (United Nations Human Rights Office of the High Commissioner)

<<https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&country=IND&Lang=en>>

586. 'Communication Report and Search' (Office of the High Commissioner for Human Rights) <<https://spcommreports.ohchr.org/Tmsearch/TMDocuments>>

587. 'Initial Report Submitted by India under Article 35 of the Convention, Due in 2011' (2015)

<[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fIND%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fIND%2f1&Lang=en)>

588. 'Fourth Periodic Report Submitted by India under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure' (2021)

<[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIND%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIND%2f4&Lang=en)>

589. 'Fourth Periodic Report Submitted by India under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure' (2021)

<[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIND%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIND%2f4&Lang=en)>

- In October 2020, the Special Rapporteur on Freedom of Religion or Belief referred to various anti-Muslim measures in India in his briefing to the UN General Assembly. In response, the Indian representative accused the Special Rapporteur (a Muslim himself) of ‘cherry-picking’ incidents ‘relating to only one community’ and accused ‘the same religious community’ of ‘unleashing horrors against minorities’ in South Asia through ‘forced conversions, pursuing targeted persecution under the draconian blasphemy laws, issuing fatwas against construction of places of worship and being a partner in desecration of gravestones of sectarian minorities’.<sup>591</sup>
- The OHCHR’s detailed reports on the human rights situation in Kashmir – published in 2018 and July 2019 – were accused of being a ‘violation of India’s sovereignty and territorial integrity’, and of displaying, inter alia, ‘bias and prejudice’ and a ‘false and motivated narrative’.<sup>592</sup>
- In September 2021, after the High Commissioner on Human Rights mentioned various concerns in India in her general update to the Human Rights Council,<sup>593</sup> the Indian government dismissed her concerns as ‘unwarranted remarks’ that ‘do not reflect the ground reality’.<sup>594</sup>

India has a responsibility as a state party to engage constructively with UN human rights mechanisms. But as the discussion above indicates, the BJP government appears to abdicate this responsibility where the human rights of Muslims are concerned.

#### 4.10 Summing up

To sum up, the available information strongly indicates that the state in India is failing to respect and protect the right to an effective remedy for Muslims and human rights defenders who have suffered serious violations of human rights. The national government and various state governments appear to have seriously, indeed actively, neglected their duty to record, investigate and punish violations of human rights.

Monetary compensation to victims of rights violations has been limited. It has been offered only by some governments and the amounts offered are inadequate in view of the losses sustained.

Furthermore, we see no evidence of attempts by the national government or relevant state governments to offer restitution, guarantees of non-repetition, or public apologies. Nor do we observe any evidence of genuine attempts at independent inquiries into widespread, recurring abuses. On the contrary, it appears that no police officer or political leader belonging to the BJP or its affiliates has been charged, investigated or prosecuted despite repeated and serious allegations against them, as discussed above.

We also note with concern the inadequate and delayed responses of the Indian judiciary to urgent human rights abuses against Muslims since 2019. State High Courts have been uneven in their responses. The Supreme Court, meanwhile, appears to have repeatedly evaded its constitutional responsibility to remedy serious violations of fundamental rights. It has delayed hearing sensitive petitions that are closely tied to human rights abuses on the ground. In other cases, it has also allowed state actions that

590. United Nations Secretary-General, ‘Interim Report of the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed - Elimination of All Forms of Religious Intolerance’ (United Nations General Assembly 2020) <<https://undocs.org/A/75/385>>

591. Anirban Bhaumik, ‘India slams UN expert for bias towards ‘community’ unleashing horror on minorities in its neighbourhood’ Deccan Herald (21 October 2021) <<https://www.deccanherald.com/national/india-slams-un-expert-for-bias-towards-community-unleashing-horror-on-minorities-in-its-neighbourhood-905302.html>>

592. Kallol Bhattacharjee, ‘United Nations Human Rights Report Legitimises Cross-Border Terrorism: India’ The Hindu (8 July 2019) <<https://www.thehindu.com/news/national/india-slams-un-rights-office-report-on-jk-as-continuation-of-false-narrative/article28320189.ece>>

593. ‘UN Human Rights Chief Raises Kashmir at Start of HRC Session, India Regrets Mention’ The Wire (New Delhi, 15 September 2020) <<https://thewire.in/world/un-human-rights-chief-michele-bachelet-kashmir-45th-unhrc-session>>

594. ‘Not Ground Reality,’ India Reacts to UN Human Rights Chief’s Remarks on Kashmir’ The Wire (New Delhi, 14 September 2021) <<https://thewire.in/rights/not-ground-reality-india-reacts-to-un-human-rights-chiefs-remarks-on-kashmir>>

prima facie violate fundamental rights to continue. It has also failed to query police inaction and collusion even in the face of startling violence (in north-east Delhi, for example) or incitement (on multiple occasions since December 2021, for example). The Supreme Court is the highest judicial check on human rights violations in India. As a court, it is bound by human rights treaties to which India is a party and by customary international law and plays a crucial role in actualising India's human rights commitments. The Supreme Court's repeated delays and evasions in relation to measures that prima facie discriminate against religious minorities fosters impunity among senior leaders and frontline actors in the executive branch and in powerful Hindu-rights organisations. This leaves Indian Muslims – who are the particular targets of discrimination by the BJP and other Hindu-rights groups – particularly deprived of access to effective remedies. It also heightens the risk of further discriminatory measures against Indian Muslims.

Since the BJP government came to power in India, it has submitted one state party report to the UN Human Rights Committee (September 2021).<sup>595</sup> In its report to the HRC, the Indian government defended its record over several recent anti-minority developments in the country – including rising hate crimes, the targeting of human rights defenders, the Citizenship (Amendment) Act, the National Register of Citizens, the revocation of Kashmir's titular autonomy and subsequent communications shutdown and other developments – largely by pointing to the functioning of India's independent domestic institutions and accountability mechanisms.<sup>596</sup>

In practice, however, the long delays and uneven response of India's senior judiciary have been insufficient to protect the rights of religious minorities in relation to the abuses discussed in this report. Moreover, the acute failures of the police and prosecution in relation to these abuses has severely undermined access to criminal justice. We see no evidence of administrative or political will to address this large-scale failure.

Thus, there is credible evidence to suggest that the right to an effective remedy has not been respected or protected. This indicates an overall sense of prevailing impunity. It also increases the risk that abuses against Muslims and human rights defenders will escalate. The genocidal calls for violence against Muslims by Hindu religious leaders in December 2021, January 2022, and April 2022 deepen our concerns in this regard.<sup>597</sup>

In light of the above, the Panel deems it imperative that the human rights situation in India and particularly in the specific regions ruled by the BJP needs to be investigated by an independent and impartial body to hold the responsible actors accountable and pave the way for an effective remedy for the victims.

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595. 'Fourth Periodic Report Submitted by India under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure' (2021) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F4%2FIND%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F4%2FIND%2F4&Lang=en)>

596. 'Fourth Periodic Report'.

597. Sameer Yasir, 'As Hindu Extremists Call for Killing of Muslims, India's Leaders Keep Silent' *The New York Times* (24 December 2021) <<https://www.nytimes.com/2021/12/24/world/asia/hindu-extremists-india-muslims.html>>

## Conclusion

Having reviewed the materials compiled and presented to us, we come to the following general conclusions:

5.1 As set out above, there is credible information that suggests that a wide range of international human rights, both civil and political as well economic, social and cultural rights have been violated by the Indian authorities across the entire country. In addition, there is credible evidence that some episodes of violence may amount to crimes against humanity and war crimes. All of those violations were either targeting Muslims or disproportionately affecting this particular minority group which shows the ideological driver behind these actions.

5.2 The materials we reviewed show the serious and long-lasting impact these state-led abuses have had on the victims and the wider Muslim community. We are particularly concerned about the high number of children affected and the treatment meted out on women. The information we inspected shows that, despite the pervasiveness and seriousness of the claims made by victims and their families, India has failed to address them through effective remedies and reparation.

5.3 These violations are the outcome of and themselves contribute to the hostile environment that exists against Muslims in public spaces, with state authorities and Hindu nationalist groups often working in concert to make life precarious for Muslims. Discrimination and dehumanisation are at the heart of this systematic conduct. All of these violations were targeted and disproportionately affected Muslims, which

shows the ideological driver behind the actions. Taken together, the situation shows a state-led, systemic targeting and marginalising of Muslims because of their religion and their status as a minority. The emblematic cases and situation provide an inventory of a pattern that prevails across the country. It is also evident that India is failing in its obligation to provide judicial redress. In light of this, we are seriously concerned that Muslims have become a persecuted religious minority in India,<sup>598</sup> particularly in BJP-ruled or controlled states such as Assam, Jammu & Kashmir, and Uttar Pradesh.

5.4 Since domestic-level remedies have so far been ineffective, inadequate or inaccessible, we believe that the credible information we received justifies the initiation of formal investigations by a competent, independent and impartial body, mandated by the UN, which would conduct in-depth investigations into the allegations we uncovered in this report with a view to ensuring accountability in the future.

5.5 We are also concerned that the previous conduct of Indian authorities combined with the lack of accountability bodes ill for the future. We have seen credible information that abuses against Muslims have not ceased, rather they have continued and are now taking more serious forms, on the back of a majority whose emotions have been mobilised, primed over legacy and social media to other the Muslim. Many experts have raised concerns recently about the growing risk of mass atrocities against Muslims in India.<sup>599</sup> Early warning projects have flagged India for very high risk of atrocity crimes, a prominent one ranking India second on its risk score.<sup>600</sup>

598. In this context, persecution is construed as severe deprivation of fundamental rights contrary to international law by reason of religious identity of the group or collective. Persecution may take many forms with its common characteristic being the denial of the human rights and fundamental freedoms to which every individual is entitled without distinction as recognised in the Charter of the United Nations (Articles 1 and 55) and the International Covenant on Civil and Political Rights (Art. 2). (See Article 7(2)(g) of the Rome Statute and Report of the International Law Commission on the work of its forty-eighth session, Yearbook of the International Law Commission, 1996, vol. II, (Part Two), 49).

599. Raqib Hameed Naik, 'Interview: 'UNSC should step in to protect Indian minorities' Aljazeera (21 January 2022) <<https://www.aljazeera.com/news/2022/1/21/interview-juan-mendez-unscc-protect-india-minorities-genocide-muslims>>; 'Expert warns of impending 'genocide' of Muslims in India' (18 January 2022)

<<https://www.aljazeera.com/news/2022/1/16/expert-warns-of-possible-genocide-against-muslims-in-india>>

600. 'Countries at Risk for Mass Killing 2021-22: Early Warning Project Statistical Risk Assessment Results' (29 November 2021)

<<https://earlywarningproject.usmmm.org/reports/countries-at-risk-for-mass-killing-2021-22-early-warning-project-statistical-risk-assessment-results>>

5.6 History shows us, time and time again, that systemic discrimination and hostility against minorities, in the hands of a mobilised majority, often escalates to mass atrocity crimes, even genocide.

5.7 Despite the alarming factors which show how the situation is rapidly sliding towards an environment of hostility and discrimination that breeds the ground for genocidal acts against the Muslim community, and the early signs of public and direct incitement to commit such acts,<sup>601</sup> the UN system has so far not taken sufficient actions on early warning and prevention.

5.8 The prevention of atrocity crimes is at the core of the mandate of the United Nations. The UN Secretary-General has highlighted the importance of the different UN entities, such as the Special Advisers on the Prevention of Genocide and the Responsibility to Protect and the Human Rights Council, in avoiding escalation of violence against groups protected by the Genocide Convention. (A/HRC/41/24) In particular, the Secretary-General has recommended that the Special Advisers issue alert warnings, brief the UN Security Council and conduct in-country visits. In addition, the Human Rights Council is called on to pay attention to early warning signs and react by adopting resolutions on prevention and establishing fact-finding bodies. In addition, the Office of the High Commissioner on Human Rights (OHCHR) has expressed its commitment to integrate human rights information and analysis in early warning systems.

5.9 These must be leveraged to prevent yet another tragedy in the form of an outbreak of mass atrocity crimes against Muslims in India, and its attendant regional implications, before it is too late.

## 6. Recommendations

Based on the above findings, the Panel makes the following recommendations.

### *6.1. To the Human Rights Council*

- Mandate an independent fact-finding body to investigate past and ongoing human rights violations against Muslims in India.
- Mandate an international mechanism to preserve information on serious human rights violations against minorities gathered by the fact-finding and documentation processes, for future accountability proceedings.
- Establish a territorial mandate of a Special Rapporteur on religious minorities in India.
- Promote and advance UN resolutions condemning the abuses and the named perpetrators.

### *6.2. To the High Commissioner for Human Rights; Special Advisers on the Prevention of Genocide and the Responsibility to Protect; and UN Special Procedures Mandate Holders*

- Actively and visibly monitor serious human rights violations against Muslims and other vulnerable religious minorities in India.
- Request and conduct in-country visits to gather information on serious human rights violations against Muslims and other vulnerable religious minorities.
- Publicly express concerns at the treatment of Muslims in India.

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601. UN Framework for Atrocity Prevention. New York: UN Office of Special Advisor on genocide prevention and the office to protect.

### **6.3. To the Government of India**

- Amend the Citizenship Amendment Act 2019, to remove discriminatory provisions based on religious criteria, and bring it in line with international human rights and humanitarian law standards.
- Urgently commence the Assam NRC appeals process, while ensuring that the Foreigners Tribunals follow robust procedures and protocols for hearing appeals and weighing the evidence.
- Restore the special status of Jammu & Kashmir, including those contained in the erstwhile Article 370 and Article 35A of the Constitution, and protect rights of indigenous communities, including to effective participation.
- Immediately cease, prevent, punish and remedy ongoing human rights violations against Muslims committed by Indian government agents.
- Develop and implement measures at all levels of the state and in the general public to prevent future human rights violations and marginalisation of Muslims.
- Conduct effective, independent and impartial investigations, and where it is merited, prosecutions of international crimes and any serious human rights violation that amounts to a criminal offence under the domestic laws.
- Provide adequate, accessible and effective reparation to victims of serious human rights violations, including interim measures to alleviate immediate needs.
- Implement measures to promote equal access to socio-economic rights for Muslims.

### **6.4. To the Supreme Court of India**

- Ensure independent, effective and expedient resolution of cases challenging the constitutional validity of laws impacting Muslims as a religious minority.
- Monitor and review actions of investigating authorities in cases involving serious violations of international human rights law.

- Provide effective remedies to victims of serious human rights violations.

### **6.5. To the governments of other States**

- Monitor the human rights situation in India.
- Use available diplomatic or economic leverage to urge India to protect Muslim minorities.
- Exercise your extra-territorial jurisdiction in accordance with the national legal framework to hold perpetrators of international crimes to account.
- Impose targeted sanctions against perpetrators of serious human rights violations, where warranted under the national legal framework.

### **6.6. To social media companies**

- Take proactive ‘zero tolerance’ steps against hate speech.
- Launch early warning system to protect vulnerable minorities.
- Be transparent on page and post takedowns.
- Launch human rights audits of the impact of your operations on minorities.
- Establish and enforce content moderation systems, oversight mechanisms and community standards that are able effectively to protect minorities.
- Abide by the UN Guiding Principles on Business and Human Rights.

### **6.7. To Indian and international civil society**

- Document and report violations against Muslims and other religious minorities.
- Enable Indian authorities and international stakeholders to improve commitment to minority rights.
- Equip frontline minority and human rights activists and networks to raise and demand rights and justice, without fear of reprisal.

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[https://www.scribd.com/document/449928296/Draft-Intervention-application-on-behalf-of-OHCHR#from\\_embed](https://www.scribd.com/document/449928296/Draft-Intervention-application-on-behalf-of-OHCHR#from_embed)
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## **ANNEXURE I**

### **EXCLUSION, DISCRIMINATION, AND STIGMATISATION OF MUSLIMS IN INDIA**

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## I. Introduction

India is the largest democracy in the world. The religious composition of India, based on the last census which took place in 2011, is such that Hindus account for 79.8 per cent of India's population<sup>2</sup> and Muslims comprise 14.2 per cent; Christians, Sikhs, Buddhists and Jains account for most of the remaining 6 per cent.

Hindus form the majority in most of the federal states and union territories, including the most populous ones of Uttar Pradesh (total population 200 million), Maharashtra (112 million) and Bihar (104 million), and Muslims are the majority in only two regions: Jammu and Kashmir (13 million) sharing the border with Pakistan, and the small western archipelago of Lakshadweep (population <100,000).

The Government of India is currently ruled by the Hindu nationalist Bhartiya Janata Party (BJP), which came to power in 2014 and was re-elected in 2019 with an enhanced majority. As this Annexure will explicate, the BJP-led government has made several legislative changes claimed to be explicitly discriminatory against Muslims. In line with their Hindutva ideology, the government has also been accused of (mis-)using existing laws and legal frameworks to target the religious minority and those defending their rights. The legislative and executive measures by the state authorities are combined with an increasingly Islamophobic rhetoric led by the political leaders of the BJP and the members of their associated groups belonging to the wider Hindutva network. Public and explicit calls for violence, discrimination and hostility are increasingly normalised and further amplified by the mainstream media channels and social

media platforms. These developments become particularly concerning in view of the reports claiming that the ideological bias against Muslims has also infiltrated law-enforcement institutions, such as the police and the courts, in the ways authorities act (or choose not to) in matters of serious concern. Such practices, then, undermine equal protection of the law without discrimination and further empower nationalist groups to threaten, harass and attack religious minorities with impunity.

Furthermore, reports suggest that economic, social and cultural rights have been restricted, leading to further segregation and stigmatisation of the Muslim community, limiting their participation in a harmonious society. For instance, there are several reports indicating that such discrimination not only leads to the exclusion of Muslim women and children from educational institutions and society, but also to physical violence, allegedly committed by state authorities as well as vigilantes.

This Annexure, in **Part II**, deals with the factual claims of exclusionary laws and policies, misuse of existing legal frameworks to target a minority community based on their religious beliefs, hate-speech and Islamophobic rhetoric fuelling hate crimes against Muslims, and their intersectional impact of Muslim girls and women. **Part III** identifies state and non-actors along with their hierarchies, part of the wider network involved in these violations. The final part, **Part IV**, of the Annexure analyses these claims in the framework of the applicable international human rights law and international criminal law.

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1. Stephanie Kramer, 'Key findings about the religious composition of India' (Pew Research Center, 21 September 2021) <[www.pewresearch.org/fact-tank/2021/09/21/key-findings-about-the-religious-composition-of-india/](http://www.pewresearch.org/fact-tank/2021/09/21/key-findings-about-the-religious-composition-of-india/)>

2. Stephanie Kramer, 'Key findings about the religious composition of India' (Pew Research Center, 21 September 2021) <[www.pewresearch.org/fact-tank/2021/09/21/key-findings-about-the-religious-composition-of-india/](http://www.pewresearch.org/fact-tank/2021/09/21/key-findings-about-the-religious-composition-of-india/)>

It must be noted that the claims of serious human rights violations arising from various regions across the country have been dealt with separately in geographically focused Annexures on Assam, Delhi, Kashmir and Uttar Pradesh. This Annexure serves to shed light on the claims of broader patterns and manifestations of structural discrimination against Muslims across the country from July 2019 onwards.

## II. Factual Findings

### I. Exclusionary measures by the state

It must be noted that the claims of serious human rights violations arising from various regions across the country have been dealt with separately in geographically focused Annexures on Assam, Delhi, Kashmir and Uttar Pradesh. This Annexure serves to shed light on the claims of broader patterns and manifestations of structural discrimination against Muslims across the country from July 2019 onwards.

#### I.1 The National Register of Citizens (NRC)

##### *Context and background – The NRC in Assam*

The North-Eastern region of India, sharing borders with Bangladesh and Myanmar, is composed of several religious and ethnic groups and minorities. The region is historically characterised by divisions along the lines of ethnic ‘insiders’ and ‘outsiders’, which also date to British colonial policies and labour migration from Bengal to Assam in the early 20th century.<sup>3</sup> The state of Assam is particularly illustrative of these ethnic tensions in the region. The three largest religious communities in Assam are Hindu

(61.47 per cent of the state population), Muslim (34.22 per cent), and Christians (3.7 per cent).<sup>4</sup>

Assam is the only Indian State that has a NRC, a register that contains a list of all Indian citizens in Assam bearing their name, address and photograph.<sup>5</sup> The first NRC was published in Assam in 1951 with the objective of identifying illegal immigrants from neighbouring Bangladesh (at the time called East Pakistan).<sup>6</sup> After decades of labour migration to the region, following the 1971 Bangladeshi independence war, millions of refugees from Bangladesh came to Assam, which continued to fuel the Assamese anti-immigrant politics and sentiment.<sup>7</sup>

Assamese leaders argued that these refugees had created a demographic imbalance and endangered the rights of the ‘indigenous’ Assamese.<sup>8</sup> As a result, Bengali-speaking people in Assam have been frequently targeted by Assamese nationalist groups (who consider themselves as ‘indigenous Assamese’) as they are considered the ‘foreigners’ and ‘outsiders’.<sup>9</sup> Such attacks are fuelled by the fear of losing land, jobs, identity and culture to immigrants, which is characterised by a general resistance to ‘outsiders’ to preserve the Assamese ethno-linguistic identity.<sup>10</sup> This was also the core of the six-year ‘Assam Movement’ or ‘Assam Agitation’ from 1979 to 1985, that witnessed years of violent protests and civil unrest, led by Assamese (youth) groups demanding identification and deportation of illegal Bangladeshi immigrants.<sup>11</sup> The protests and

3. Harrison Akins, ‘The Religious Freedom Implications of the National Register of Citizens in India’ United States Commission on International Religious Freedom (2019) <[www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf](http://www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf)>; Abdul Kalam Azad, ‘Assam NRC: A History of Violence and Persecution’ (The Wire, 15 August 2019) <<https://thewire.in/rights/assam-nrc-a-history-of-violence-and-persecution>>

4. Ministry of Home Affairs, 2011 Census Data - Population Enumeration Data (Final Population) (Government of India 2011) <[www.censusindia.gov.in/2011census/population\\_enumeration.html](http://www.censusindia.gov.in/2011census/population_enumeration.html)> accessed 4 March 2022.

5. Abdul Kalam Azad, ‘Assam NRC: A History of Violence and Persecution’ (The Wire, 15 August 2019) <<https://thewire.in/rights/assam-nrc-a-history-of-violence-and-persecution>>

6. Abdul Kalam Azad, ‘Assam NRC: A History of Violence and Persecution’ (The Wire, 15 August 2019) <<https://thewire.in/rights/assam-nrc-a-history-of-violence-and-persecution>>

7. Jolin Joseph and Vishnu, ‘Neither Here nor There: An Overview of South-South Migration from both sides of the Bangladesh-India Migration Corridor’ (2013) International Institute of Social Sciences, 9 <[https://www.iss.nl/sites/corporate/files/Rajan-Joseph-Narendran\\_South\\_Asia\\_S-S\\_migration\\_lit\\_review\\_bibly\\_June2013.pdf](https://www.iss.nl/sites/corporate/files/Rajan-Joseph-Narendran_South_Asia_S-S_migration_lit_review_bibly_June2013.pdf)>

8. Manash Firaq Bhattacharjee, ‘We foreigners: What it means to be Bengali in India’s Assam’ (Aljazeera 26 February 2020) <<https://www.aljazeera.com/features/2020/2/26/we-foreigners-what-it-means-to-be-bengali-in-indias-assam>>

9. Manash Firaq Bhattacharjee, ‘We foreigners: What it means to be Bengali in India’s Assam’ (Aljazeera 26 February 2020) <<https://www.aljazeera.com/features/2020/2/26/we-foreigners-what-it-means-to-be-bengali-in-indias-assam>>

10. Abdul Kalam Azad, ‘Assam NRC: A History of Violence and Persecution’ (The Wire, 15 August 2019) <<https://thewire.in/rights/assam-nrc-a-history-of-violence-and-persecution>>; Aljazeera, ‘India excludes nearly 2 million people from Assam citizen list’ (31 August 2019) <[www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list)>

11. Kaushik Deka, ‘1979-85 Assam agitation: A pure agenda’ (India Today, 26 December 2021) <<https://www.indiatoday.in/magazine/youth-movements/story/20221013-1979-85-assam-agitation-a-pure-agenda-1892289-2021-12-26>>

unrest ended at the conclusion of the 1985 Assam Accord, a Memorandum of Settlement between the Governments of India and Assam, and two Assamese groups which fought against the influx of foreigners into Assam (particularly immigrants from Bangladesh).<sup>12</sup> The leaders of the Assam Movement agreed to accept all migrants who had entered into Assam prior to 1 January 1966 and the government agreed to identify and deport any and all refugees and migrants who came to India after 25 March 1971 (the formal end date of Bangladesh's Liberation War against Pakistan).<sup>13</sup> The individuals who came to Assam between 1966 and 1971 were to be detected as 'foreigners', deleted from electoral rolls, thus denying them voting rights for 10 years but they could enjoy all other rights of citizenship. The agreement, referred to as the Assam Accord required the state to take all practical steps to expel such 'foreigners' who came in after March 1921 in order to 'protect, preserve and promote the culture, social, linguistic identity and heritage of the Assamese people'.<sup>14</sup>

However, the agreement was not implemented until 31 August 2019, when the updated version of the NRC was published. The update process began after a key ruling by the Supreme Court of India in December 2014, ordering the Assam government to

carry out this update of the NRC.<sup>15</sup> This ruling was backed by the central government led by the BJP.<sup>16</sup> Following the Supreme Court directions, the process of updating the NRC started in 2015.<sup>17</sup> The result was a large-scale administrative exercise to verify the citizenship of Assam residents in order to identify and distinguish 'genuine' Indian citizens from 'infiltrators' or 'illegal immigrants', so that the government could 'detect and deport undocumented immigrants from Bangladesh'.<sup>18</sup> In the final NRC published in 2019, a total of 1,906,657 people (roughly 6 per cent of the Assamese population) were excluded from the list.<sup>19</sup> Statistically, the majority of the excluded people were Bengali-speaking Hindus and Bengali-speaking Muslims.<sup>20</sup>

### *The process and procedures of the NRC*

For the 2019 NRC revision, only individuals able to prove their Indian citizenship or residence in India prior to 25 March 1971, and their descendants, could be identified as citizens and thus be included in the NRC.<sup>21</sup> This cut-off date had been already determined in the 1985 Assam Accord,<sup>22</sup> and, accordingly, the individuals who came to Assam on or after this date were to be treated as 'foreigners' or 'illegal migrants'.<sup>23</sup> The procedure adopted in updating the NRC between 2015 and 2019 is set out below:

12. The Indian Express, 'Explained: What is the Assam Accord that is fueling protests in the state?' (13 December 2019)

<<https://indianexpress.com/article/explained/explained-what-is-the-assam-accord-citizenship-amendment-bill-protests-6164018/>>

13. Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord), 15 August 1985, paras. 5.1 – 5.6

<[https://peacemaker.un.org/sites/peacemaker.un.org/files/IN\\_850815\\_Assam%20Accord.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IN_850815_Assam%20Accord.pdf)>

14. The Indian Express, 'Explained: What is the Assam Accord that is fueling protests in the state?' (13 December 2019)

<<https://indianexpress.com/article/explained/explained-what-is-the-assam-accord-citizenship-amendment-bill-protests-6164018/>>

\However, the agreement was not implemented until 31 August 2019, when the updated version of the NRC was published. The update process began after a key ruling

15. Office of the State Coordinator of National Registration, Press Brief Publication of Final NRC (Government of Assam, 31 August 2019)

<[www.nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf](http://www.nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf)>; Harrison Akins, 'The Religious Freedom Implications of the National Register of Citizens in India' United States Commission on International Religious Freedom (2019)

<[www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf](http://www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf)>

16. Harrison Akins, 'The Religious Freedom Implications of the National Register of Citizens in India' United States Commission on International Religious Freedom (2019) <[www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf](http://www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf)>

17. Saif Khalid, 'India publishes final NRC: All you need to know on citizens list' (Al Jazeera, 31 August 2019) <<https://www.aljazeera.com/news/2019/8/31/india-publishes-final-nrc-all-you-need-to-know-on-citizens-list>>; Bikash Singh, 'BJP and its allies comes back to power in Assam, party yet to decide next CM'

(Economic Times, 3 May 2021) <<https://economictimes.indiatimes.com/news/elections/assembly-elections/assam/bjp-and-its-allies-comes-back-to-power-in-assam-party-yet-to-decide-next-cm/articleshow/82359226.cms?from=mdr>>

18. Saif Khalid, 'India publishes final NRC: All you need to know on citizens list' (Al Jazeera, 31 August 2019) <<https://www.aljazeera.com/news/2019/8/31/india-publishes-final-nrc-all-you-need-to-know-on-citizens-list>>; Aljazeera, 'India excludes nearly 2 million people from Assam citizen list' (31 August 2019)

<[www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list)>

19. Biswa Kalyan Purkayastha, 'Assam foreigners' tribunal says NRC is final' (The Hindustan Times, 21 September 2021) <<https://www.hindustantimes.com/india-news/assam-foreigners-tribunal-says-nrc-is-final-101632222612470.html>>; Office of the State Coordinator of National Registration, Press Brief Publication of Final NRC (Government of Assam, 31 August 2019) <[www.nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf](http://www.nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf)>

20. Harrison Akins, 'The Religious Freedom Implications of the National Register of Citizens in India' United States Commission on International Religious Freedom (2019) <[www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf](http://www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf)>

21. Office of the State Coordinator of National Registration, Press Brief Publication of Final NRC (Government of Assam, 31 August 2019)

<[www.nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf](http://www.nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf)>

22. Abdul Kalam Azad, 'Assam NRC: A History of Violence and Persecution' (The Wire, 15 August 2019) <<https://thewire.in/rights/assam-nrc-a-history-of-violence-and-persecution>>

23. Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord), 15 August 1985, para. 5.8

<[https://peacemaker.un.org/sites/peacemaker.un.org/files/IN\\_850815\\_Assam%20Accord.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IN_850815_Assam%20Accord.pdf)>

### i. *Application and required documents*

In a specified time period in 2015, the entire population of Assam was required to file an application for inclusion in the NRC, whereby the application forms were distributed from house to house or could be filled in online.<sup>24</sup> To be included in the NRC, applicants had to provide two types of documents as proof: List A ‘legacy’ documents proving the presence of their ancestors in Assam prior to 24 March 1971, and List B ‘linkage’ documents proving the applicants’ relationship with the ancestors. Under List A, at least one of 15 admissible documents (dated in any period before 24 March 1971) was required: for example, inclusion in the 1951 NRC or electoral rolls before 24 March 1971, land and tenancy records, citizenship certificate, residence certificate, passport, birth certificate, court records, bank or post office documents, any government-issued license or certificate, and certain other documents.<sup>25</sup> Second, in case of the document under List A referring to an ancestor, under List B, legal proof of the relationship between the applicant and their ancestor was required, for example, a birth certificate, land document, electoral roll, or ‘any other legally acceptable document’.<sup>26</sup> For the purposes of the application, the 1951 NRC and electoral rolls up to 1971 were made available for inspection at certain offices.<sup>27</sup> After submitting the application and supporting documents, the application was reviewed and these documents were then ‘verified’ by

government officials, who decided the applicant’s inclusion or exclusion in the NRC.<sup>28</sup> At the time of application, around 120,000 individuals were designated as ‘doubtful voter’ or ‘D-voter’ (a category not recognised under the local citizenship law).<sup>29</sup> The label of D-voter was given during the preparation of the electoral rolls. This practice of identifying ‘D-voters’ has been used since 1977 after political mobilisation by nationalist groups in Assam, and in theory requires door-to-door surveys by Election Commission officials to verify individuals’ citizenship documents.<sup>30</sup> However, there are reports of arbitrary and random marking as ‘D-voter’ by officials.<sup>31</sup> The consequence of this category includes loss of citizenship rights, entitlements, and privileges such as the right to vote and access to welfare schemes being restricted, and requires proving citizenship before a Foreigners Tribunal in order to remove the ‘D-voter’ designation and to be included in the NRC.<sup>32</sup>

### ii. *Claims and appeals after exclusion from the NRC*

When a Draft NRC was published on 30 July 2018, those excluded from it, and therefore declared to be illegal migrants, could file ‘claims’ challenging their exclusion.<sup>33</sup> In parallel, any person could also formally object to another individual’s inclusion in the NRC on grounds of their ‘legacy’ or pending citizenship cases. Thus, the individual whose citizenship had been doubted was then required to disprove these ‘objections’.<sup>34</sup>

24. Government of Assam Office of the State Coordinator of National Registration (NRC), ‘Receipt of Application Form’ <<http://nrcassam.nic.in/receipt-application-form.html>>

25. Government of Assam Office of the State Coordinator of National Registration (NRC), ‘What Are The Admissible Documents?’ <<http://nrcassam.nic.in/admin-documents.html>>; ‘What Is Legacy Data?’ (Office of the State Coordinator of National Registration (NRC), Assam) <<http://nrcassam.nic.in/what-legacy.html#1>>.

26. Government of Assam Office of the State Coordinator of National Registration (NRC), ‘What Are The Admissible Documents?’ <<http://nrcassam.nic.in/admin-documents.html>>

27. Government of Assam Office of the State Coordinator of National Registration (NRC), ‘Publication of Legacy Data’ <<http://nrcassam.nic.in/publication-legacy-data.html>>

28. ‘Verification’ (Office of the State Coordinator of National Registration (NRC), Assam) <<http://nrcassam.nic.in/field-verification.html>> .

29. The Economic Times, ‘Doubtful voters can make it to NRC only if names cleared by foreigners’ tribunal’ (28 May 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/doubtful-voters-can-make-it-to-nrc-only-if-names-cleared-by-foreigners-tribunal/articleshow/69546320.cms>>

30. Abdul Kalam Azad, ‘The Struggle of ‘Doubtful Voters’ Has Intensified in BJP’s Assam’ (The Wire, 12 July 2017) <<https://thewire.in/law/assam-doubtful-voters-sonawal>>

31. Abdul Kalam Azad, ‘The Struggle of ‘Doubtful Voters’ Has Intensified in BJP’s Assam’ (The Wire, 12 July 2017) <<https://thewire.in/law/assam-doubtful-voters-sonawal>>

32. Abdul Kalam Azad, ‘The Struggle of ‘Doubtful Voters’ Has Intensified in BJP’s Assam’ (The Wire, 12 July 2017) <<https://thewire.in/law/assam-doubtful-voters-sonawal>>; Bikash Singh, ‘Doubtful voters can make it to NRC only if names cleared by foreigners’ tribunal’ (The Economic Times, 28 May 2019)

<<https://economictimes.indiatimes.com/news/politics-and-nation/doubtful-voters-can-make-it-to-nrc-only-if-names-cleared-by-foreigners-tribunal/articleshow/69546320.cms?from=mdr>>; Government of Assam Office of the State Coordinator of National Registration (NRC), ‘D-Voters’ <<http://nrcassam.nic.in/faq09.html>>

33. ‘Receipt and Disposal of Claims and Objections’ (Office of the State Coordinator of National Registration (NRC), Assam) <<http://nrcassam.nic.in/receipt-claims-objections.html>> .

34. ‘Receipt and Disposal of Claims and Objections’ (Office of the State Coordinator of National Registration (NRC), Assam) <<http://nrcassam.nic.in/receipt-claims-objections.html>> .

After publication of the Final NRC in 2019, those excluded from the Final NRC could file ‘appeals’ before quasi-judicial Foreigners Tribunals (FTs) and prove their citizenship within 120 days at these Tribunals.<sup>35</sup> This includes individuals who are designated as doubtful voters or ‘D-voters’ and have to prove their citizenship before FTs.<sup>36</sup> The government has stated further appeal in higher courts is also possible, and that those excluded would not be considered foreigners until all legal options were exhausted.<sup>37</sup> Only these Tribunals have the power to declare individuals as ‘foreigners’ and the verdict of a Foreigners Tribunal can reinstate the claimant’s legal status of Indian citizen for inclusion on the NRC or confirm their foreign status and exclusion from the NRC, leading to possible incarceration in detention centres and possible deportation because of this status.<sup>38</sup>

However, in over two years since the publication of this list, the people excluded from the list have not been issued ‘rejection slips’ which would then allow them to file an appeal before the FTs. The process has been in a logjam, leaving millions in a state of uncertainty regarding their citizenship.<sup>39</sup>

## Problems and criticisms of the NRC process and procedures

The process and procedures of the NRC have been widely criticised by local legislators, lawyers, activists, NGOs, and internationally by other States and the UN OHCHR.<sup>40</sup> Overall, the 2019 Assam NRC has been criticised for its discriminatory impact on Bengalis and Muslims.<sup>41</sup> Specifically in light of the BJP’s anti-Muslim framing and use of the NRC, it has also been criticised as an attempt to disenfranchise and deport millions of Muslims.<sup>42</sup> Additionally, concerns have been raised by human rights groups regarding the discriminatory effect of the NRC process and procedures.<sup>43</sup>

For example, in December 2018, UN mandate holders including the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on minority issues, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, highlighted major issues and concerns with verification of citizenship in the NRC process.<sup>44</sup>

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35. Arshu John, ‘Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar’ (The Caravan, 28 November 2019) <<https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar>>; Aljazeera, ‘India excludes nearly 2 million people from Assam citizen list’ (31 August 2019) <[www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list)>; Vijaita Singh, ‘Assam’s NRC: Time limit to appeal before Foreigners Tribunal increased to 120 days’ (The Hindu, 20 August 2019, updated 28 November 2021) <[www.thehindu.com/news/national/assams-nrc-time-limit-to-appeal-before-foreigners-tribunal-increased-to-120-days/article61582197.ece](http://www.thehindu.com/news/national/assams-nrc-time-limit-to-appeal-before-foreigners-tribunal-increased-to-120-days/article61582197.ece)>
36. Arshu John, ‘Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar’ (The Caravan, 28 November 2019) <<https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar>>
37. Saif Khalid, ‘India publishes final NRC: All you need to know on citizens list’ (Al Jazeera, 31 August 2019) <<https://www.aljazeera.com/news/2019/8/31/india-publishes-final-nrc-all-you-need-to-know-on-citizens-list>>
38. Office of the State Coordinator of National Registration, Press Brief Publication of Final NRC (Government of Assam, 31 August 2019) <[www.nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf](http://www.nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf)>
39. ‘NRC updation pending 2 years after publication of supplementary list’ (Economic Times, 31 August 2021) <<https://economictimes.indiatimes.com/news/india/nrc-updation-pending-2-yrs-after-publication-of-supplementary-list/articleshow/85779660.cms?from=mdr>>
40. OHCHR, ‘Information received concerning the National Register of Citizens (NRC)’ (11 June 2018) (Communication) OL IND 13/2018; OHCHR, ‘UN experts: Risk of statelessness for millions and instability in Assam, India’ (Press Release, 3 July 2019) <[www.ohchr.org/en/press-releases/2019/07/un-experts-risk-statelessness-millions-and-instability-assam-india?LangID=E&NewsID=24781](http://www.ohchr.org/en/press-releases/2019/07/un-experts-risk-statelessness-millions-and-instability-assam-india?LangID=E&NewsID=24781)>; Human Rights Watch, ‘“Shoot the Traitors”: Discrimination Against Muslims under India’s New Citizenship Policy’ (9 April 2020) <[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>; Aljazeera, ‘India excludes nearly 2 million people from Assam citizen list’ (31 August 2019) <[www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list)>; Arshu John, ‘Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar’ (The Caravan, 28 November 2019) <<https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar>> [I] Abdul Kalam Azad, ‘Assam NRC: A History of Violence and Persecution’ (The Wire, 15 August 2019) <<https://thewire.in/rights/assam-nrc-a-history-of-violence-and-persecution>>
41. Abdul Kalam Azad, ‘Assam NRC: A History of Violence and Persecution’ (The Wire, 15 August 2019) <<https://thewire.in/rights/assam-nrc-a-history-of-violence-and-persecution>>
42. Abdul Kalam Azad, ‘Assam NRC: A History of Violence and Persecution’ (The Wire, 15 August 2019) <<https://thewire.in/rights/assam-nrc-a-history-of-violence-and-persecution>>
43. Aljazeera, ‘India excludes nearly 2 million people from Assam citizen list’ (31 August 2019) <[www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list)>
44. OHCHR, ‘Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.’ (13 December 2018) (Joint Communication) OL IND 29/2018.

### *i. Challenges in providing required documents*

A common critique has been made regarding the application and challenges in providing the required documents. Challenges such as the impossibility of providing documents dating back to before the 1970s due to the documents having been lost or destroyed by the numerous floods in the region of Assam, or historic records having been poorly created and maintained, and thus containing errors and inconsistencies, have been reported.<sup>45</sup> Similarly, there have been technical errors such as the wrong spelling of names causing variations between different documents, or the general lack of knowledge of the application procedure and lack of access to the accepted documents because of individuals' remote geographic location.<sup>46</sup> The most vulnerable members of the population and marginalised communities are most affected by these issues.<sup>47</sup> Those who are illiterate and impoverished have and will likely continue to experience difficulties with the NRC process.<sup>48</sup> The women, particularly those who moved to Assam from other states after marriage, found it difficult to provide documents accepted under List B (discussed in further detail on section on Gender-based violence and discrimination Statistically, individuals of the Bengali minority, including all Muslim Bengalis, were classified as 'non-original inhabitants' without there being a legal and official definition of what makes a person an 'original inhabitant' of Assam.<sup>49</sup>

It has also been reported that the NRC applied more stringent verification standards regarding documentation of members of ethnic minority groups who were deemed to be 'non-original' inhabitants.<sup>50</sup> Besides, the determination of the citizenship status of individuals designated as 'D-voters' on the electoral roll (some of whom have already been designated this way since 1997 or 2010) was put on hold during the preparation of the NRC, which led them to be excluded from the final 2019 NRC without consideration of their status, application and documents.<sup>51</sup> These individuals were thus often left in complicated situations whereby there are also cases of the FTs declaring them as Indian, but since the NRC authorities did not consider their cases during the NRC process, they could not be included in the NRC – resulting in the criticism of this being an arbitrary procedure.<sup>52</sup>

### *ii. Lack of awareness of exclusion criterion and difficulties in appeal procedure*

The claims and objections processes have been criticised as making it difficult for complaints to succeed and has arguably become a vehicle for discrimination against the Muslim minority in the region.<sup>53</sup> For example, individuals were not directly notified of their exclusion from the NRC, rather this was only published in the draft NRC accessible online or at certain offices, and those excluded were also required to

45. OHCHR, 'Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.' (13 December 2018) (Joint Communication) OL IND 29/2018, 2.

46. OHCHR, 'Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.' (13 December 2018) (Joint Communication) OL IND 29/2018.

47. OHCHR, 'Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.' (13 December 2018) (Joint Communication) OL IND 29/2018, 2.

48. OHCHR, 'Information received concerning the National Register of Citizens (NRC)' (11 June 2018) (Communication) OL IND 13/2018; Amnesty International India, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) 35.

49. Tapan Bose, 'The Search for "Original Inhabitants" in Assam and the future of the "Other"' (Countercurrents.org, 21 August 2018) <[www.countercurrents.org/2018/08/the-search-for-original-inhabitants-in-assam-and-the-future-of-the-other/](http://www.countercurrents.org/2018/08/the-search-for-original-inhabitants-in-assam-and-the-future-of-the-other/)>

50. Human Rights Watch, "'Shoot the Traitors": Discrimination Against Muslims under India's New Citizenship Policy' (9 April 2020)

<[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>; OHCHR, 'Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.' (13 December 2018) (Joint Communication) OL IND 29/2018, 2.

51. Arshu John, 'Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar' (The Caravan, 28 November 2019) <<https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar>>

52. Arshu John, 'Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar' (The Caravan, 28 November 2019) <<https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar>>

53. OHCHR, 'Information received concerning the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam' (13 December 2018) (Communication) OL IND 29/2018; see also Arshu John, 'Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar' (The Caravan, 28 November 2019) <<https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar>>

make a separate application for information on the grounds for their rejection.<sup>54</sup> This disproportionately affected poor, illiterate and geographically remote individuals depending on their wealth and internet accessibility, which only reinforced the complexity of the NRC process and remedying deficiencies in the application.<sup>55</sup> Additionally, access to knowledge of the claims and appeals procedures and which documents meet the strict standards for these processes has also been criticised to be lacking, even after the Supreme Court developed a Standard Operating Procedure in November 2018 in an effort to make the process more accessible.<sup>56</sup>

Another key criticism is the procedural requirement that legacy data (the documents used to prove the relationship with a claimed ancestor) cannot be changed during the appeals procedure at FTs. This means that individuals who wrongly identified an ancestor cannot correct this during the claims procedure and will therefore be excluded on these grounds again.<sup>57</sup>

As part of the NRC process, contesting inclusion of those already on the draft NRC was also possible.<sup>58</sup> The last day to submit such a claim was 31 December 2018, and on this day roughly 250,000 of such objections were filed, many of which were filed following an Assamese nationalist group campaign which implicitly encouraged contesting the inclusion of Muslims in the NRC.<sup>59</sup> The filed claims were mainly directed at residents of

areas largely populated by Muslims and alleged their use of forged documents for the legacy and ancestral linkage data, even though many such claims were without sufficient proof and justification.<sup>60</sup> Despite the explicit exclusionary motivations behind these mass objections and lack of sufficient documentary proof, these applications were accepted by authorities.

### iii. Concerns about Foreigners Tribunals

Concerns have also been raised regarding the members and mechanisms of the Foreigners Tribunals (FTs), quasi-judicial bodies, that hear appeals from those excluded. The FT members, a combination of judges and advocates, are being criticised for not having sufficient training, as they receive only four days of training in the form of a seminar, which does not or insufficiently addresses the process and standards of fairness and overcoming biases.<sup>61</sup> Allegedly, they are also not independent, both in their decision making and appointment. FT members are appointed by the government and eligibility standards have been relaxed over the years.<sup>62</sup> It has also been reported that members of the FTs '[...] were assessed and had their contracts renewed based on how many applicants they declared as foreigners as part of the NRC exercise', whereby those who declared fewer applicants as 'foreigners' were given a 'non-satisfactory' review and had their contracts terminated.<sup>63</sup> Such incentivisation to exclude people from the

54. OHCHR, 'Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.' (13 December 2018) (Joint Communication) OL IND 29/2018, 3.

55. OHCHR, 'Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.' (13 December 2018) (Joint Communication) OL IND 29/2018, 4.

56. OHCHR, 'Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.' (13 December 2018) (Joint Communication) OL IND 29/2018, 4.

57. Arshu John, 'Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar' (The Caravan, 28 November 2019) <<https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar>>

58. Government of Assam, 'FAQs - Others' <<http://nrcassam.nic.in/faq12.html>>

59. Arunabh Saikia, 'In Assam, student group contests the inclusion of over 2.5 lakh people in draft NRC' (Scroll.in, 1 January 2019)

<[www.scroll.in/latest/907828/in-assam-student-group-contests-the-inclusion-of-over-2-5-lakh-people-in-draft-nrc](http://www.scroll.in/latest/907828/in-assam-student-group-contests-the-inclusion-of-over-2-5-lakh-people-in-draft-nrc)>

60. Arunabh Saikia, 'In Assam, student group contests the inclusion of over 2.5 lakh people in draft NRC' (Scroll.in, 1 January 2019)

<[www.scroll.in/latest/907828/in-assam-student-group-contests-the-inclusion-of-over-2-5-lakh-people-in-draft-nrc](http://www.scroll.in/latest/907828/in-assam-student-group-contests-the-inclusion-of-over-2-5-lakh-people-in-draft-nrc)>

61. Amnesty International India, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019), 5.

62. Talha Abdul Rahman, 'Identifying the "outsider": an assessment of foreigner tribunals in the Indian state of Assam' (2021) 2(1) Statelessness & Citizenship Review.

63. Fatima Khan, 'Job in Assam Foreigners Tribunal depends on conviction rate, says civil rights group report' (The Print, 19 September 2019)

<[www.theprint.in/india/job-in-assam-foreigners-tribunal-depends-on-conviction-rate-says-civil-rights-group-report/294030/](http://www.theprint.in/india/job-in-assam-foreigners-tribunal-depends-on-conviction-rate-says-civil-rights-group-report/294030/)> accessed 4 March 2022.

list further indicates bias and agenda behind the process, thus questioning its independence and fairness.

As of February 2020, a Ministry of Home Affairs report to the Parliament disclosed 63,959 persons have been declared foreigners through *ex parte* proceedings at the FTs.<sup>64</sup> Moreover, unlike courts, FTs have the power to devise and regulate their own procedure, which leaves them without effective oversight and has created inconsistencies in how FTs function.<sup>65</sup> These procedural irregularities can be observed particularly in trials concerning Muslim individuals, who have to often face additional oral procedures during the trial even though they had all the documents required by the procedure to prove their citizenship, further substantiating the allegations of bias.<sup>66</sup>

As the process of issuing rejection slips to those excluded from the NRC is still ongoing, another challenge faced is whether the final NRC list published in August 2019 is indeed 'final'. A recent development has been NRC State Coordinator Sarma issuing a notice in April 2022 to the Foreigner's Tribunals that this list cannot be considered legally 'final' and 'cannot be treated as evidence for disposal of cases under judicial or quasi-judicial process'.<sup>67</sup> This contrasts with the previous NRC State Coordinator Hajela describing and referring to the list as final.<sup>68</sup> This results in continued uncertainty about the status of the NRC list.

#### *iv. Burden of proof on the person accused of being a foreigner*

64. Parliament of India, Question No. 3558 (10 December 2019) <<http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=10079&lno=17>>

65. Amnesty International India, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019), 5; Guatam Bhatia, 'The judicial presumption of non-citizenship' (The Hindu, 23 July 2019) <<https://www.thehindu.com/opinion/lead/the-judicial-presumption-of-non-citizenship/article28660624.ece>>; Citizens for Justice and Peace, 'Foreigners' Tribunals: Why were they established and how do they operate?' (15 April 2021) <<https://cjp.org.in/all-you-ever-wanted-to-know-about-foreigners-tribunals/>>

66. Amnesty International India, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019), 48.

67. Arunabh Saikia, 'Is Assam's final NRC really final?' (Scroll.in, 19 May 2022) <<https://scroll.in/article/1024182/is-assams-final-nrc-really-final>>

68. Tora Agarwala, 'After Foreigners' Tribunal's 'stop interfering' letter, NRC coordinator says: 'List not final' (The Indian Express, 17 May 2022) <<https://indianexpress.com/article/assam/foreigners-tribunal-letter-nrc-coordinator-7919726/>>

69. Akanksha Khullar, 'The Gendered Impact of the NRC in Assam' (Institute of Peace and Conflict Studies, 9 March 2020) <[www.ipcs.org/comm\\_select.php?articleNo=5656](http://www.ipcs.org/comm_select.php?articleNo=5656)>

70. Amnesty International India, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019), 13.

71. Aljazeera, 'India excludes nearly 2 million people from Assam citizen list' (31 August 2019) <[www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list)>

72. OHCHR, 'Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.' (13 December 2018) (Joint Communication) OL IND 29/2018, 4-5.

73. Harsh Mander, 'The dark side of humanity and legality: A glimpse inside Assam's detention centres for 'foreigners'' (Scroll.in, 26 June 2018) <[www.scroll.in/article/883936/assam-citizens-register-detention-centres-for-foreigners-offer-a-glimpse-of-the-looming-tragedy](http://www.scroll.in/article/883936/assam-citizens-register-detention-centres-for-foreigners-offer-a-glimpse-of-the-looming-tragedy)>

74. Human Rights Watch, "'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy' (9 April 2020)

<[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>; Rahul Karmakar, '30 'foreigners' dead in Assam's detention centres' (The Hindu, 12 April 2020) <[www.thehindu.com/news/national/30-foreigners-dead-in-assams-detention-centres/article31325045.ece](http://www.thehindu.com/news/national/30-foreigners-dead-in-assams-detention-centres/article31325045.ece)>

The process worked with the presumption of illegality and reversed the burden of proof where citizens must prove that they are not 'foreigners'.<sup>69</sup> Through this process, the state enables FTs to discriminate based on ease of access to certain documents, which, as explained above, is not equal for all. This is evident with the state's rhetoric and perception of minorities being 'threats to national security' as a justification for discriminating against people of Bengali origin, especially those of the Muslim faith.<sup>70</sup>

#### *v. Consequences of being declared a 'foreigner' and concerns about detention centres*

Those excluded from the NRC are already facing exclusion from several state programmes. Those that are finally declared 'foreigner' by FTs will face detention and possible deportation.<sup>71</sup> The situation of D-voters and those already declared foreigner by FTs is a good indicator of what is to come for those excluded from NRC and finally declared foreigner by FTs.<sup>72</sup> Children are separated from their parents, and the detainees are held in prison-like conditions, which, according to families, have led to the death of detainees.<sup>73</sup> The majority of victims are reported to belong to the minority communities: for instance, out of the 30 reported deaths, 26 were Bengali-speakers with 16 Hindus and 14 Muslims.<sup>74</sup> In addition to deaths in state-run detention centres, it has been reported that by July 2019, at least 60 people had committed suicide linked to the publication of the draft NRC in 2018, because

of the fear of detention and the possibility of being deported from the country.<sup>75</sup>

#### *vi. Impact on women, children and the poor*

The NRC process also had an aggravated impact on women, children and the poor. Stringent procedures especially directed against women deemed ‘non-original inhabitants’ have been reported, this distinction having been authorised by the Supreme Court itself, that supervised preparation of NRC. This particular vulnerability of women to the NRC process is further discussed later in the section on Gender-based violence and discrimination.

Similarly, children suffer under the NRC process if their birth cannot be proven through a birth certificate, especially noting that in 2016, 38 per cent of children under five years of age did not have a birth certificate.<sup>76</sup> Thus, they may not be granted Indian citizenship, according to the Assam Public Works v. Union of India (2019) Supreme Court decision.<sup>77</sup> Moreover, following a Supreme Court ruling in November 2018, a new ‘Standard Operating Procedure’ was established which prescribes special measures to be taken regarding children despite their parents being recognised citizens.<sup>78</sup> Consequently, many children could be rendered stateless at a very young age. The NRC application, and the claims and appeals processes, have disproportionately affected the poor, marginalised, rural and less educated individuals, who often come from minority communities. There are reports of instances of poor families being

forced to use their life savings and limited financial assets to gather the necessary documents and prove their citizenship in the claims and appeals procedures at FTs after having been excluded from the NRC.<sup>79</sup>

#### *vii. Arbitrariness and discrimination of the NRC process*

Research by various domestic and international rights groups and independent journalists have found that the process in Assam lacked standardisation, leading to arbitrary and discriminatory decisions by officials, particularly during the document verification process.<sup>80</sup> By so doing, the process placed Muslim residents at risk of statelessness, and subjected poorer residents and women to undue hardship regarding their access to identity documentation – dating back decades – to establish their citizenship claims.<sup>81</sup> Coupled with the uncertainty of what will happen to those declared ‘foreigners’ by the FTs, the NRC has heightened the concern of the Muslim population living in the Assam region. Indeed, that the decisions of exclusion will be taken by the FTs, which lack impartiality, independence and clear procedures and standards, is worrying. Moreover, depriving Assam residents of their nationality and detaining them in detention centres that are being built would only worsen the current situation.<sup>82</sup> It would create a category of citizens deprived of many rights (for instance, the right to vote, to use public services such as having a job or benefiting from social security or even acquiring property) mainly based on their religion.<sup>83</sup>

75. Talha Mujibi, ‘Suicides over the NRC – Trend Analysis’ (The Citizen, 7 March 2020). <[www.thecitizen.in/index.php/en/NewsDetail/index/15/18425/Suicides-over-the-NRC--Trend-Analysis](http://www.thecitizen.in/index.php/en/NewsDetail/index/15/18425/Suicides-over-the-NRC--Trend-Analysis)>; Subir Bhaumik, ‘Assam NRC: Are India’s “Unwanted People” Being Driven to Suicide?’ (BBC News, 28 June 2019)

76. Swagata Yadavar and Disha Shetty, ‘Birth Certificates Are Citizenship Proof, Govt Says. But 38% Under-5 Children Don’t Have One’ (IndiaSpend, 3 January 2020) <[www.indiaspend.com/birth-certificates-are-citizenship-proof-govt-says-but-38-under-5-children-dont-have-one/](http://www.indiaspend.com/birth-certificates-are-citizenship-proof-govt-says-but-38-under-5-children-dont-have-one/)>

77. Amnesty International India, ‘Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (2019) 15.

78. International Communication Clearance Form ‘OL IND 29/2018’ (13 December 2018) 4. <<https://www.bbc.com/news/world-asia-india-48754802>>.

79. Amnesty International India, ‘Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (2019), 30;

Human Rights Watch, ‘“Shoot the Traitors”: Discrimination Against Muslims under India’s New Citizenship Policy’ (9 April 2020), 23

<[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

80. OHCHR, ‘Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31

December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam.’ (13 December 2018) (Joint Communication) OL IND 29/2018, 3.

81. Amnesty International India, ‘Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (2019).

82. Tawqeer Hussain, ‘How is it human?: India’s largest detention centre almost ready’ (Al Jazeera, 2 January 2020) <[www.aljazeera.com/news/2020/1/2/how-is-it-human-indias-largest-detention-centre-almost-ready](http://www.aljazeera.com/news/2020/1/2/how-is-it-human-indias-largest-detention-centre-almost-ready)>; Sanjib Baruah, ‘Defining thousands as non-citizens will create a new form of precarious citizenship – people with fewer rights, entitlements’ (The Indian Express, 31 August 2019) <[www.indianexpress.com/article/opinion/columns/a-more-precarious-citizenship-assam-nrc-list-jammu-kashmir-5949158/](http://www.indianexpress.com/article/opinion/columns/a-more-precarious-citizenship-assam-nrc-list-jammu-kashmir-5949158/)>

83. Sanjoy Hazarika, ‘In Assam, basic dignity at stake’ (The Hindu, 30 July 2019) <[www.thehindu.com/opinion/op-ed/basic-dignity-at-stake/article28750647.ece?homepage=true](http://www.thehindu.com/opinion/op-ed/basic-dignity-at-stake/article28750647.ece?homepage=true)>

This already became evident when about 2,700,000 million people who had been excluded from the draft NRC in 2018 have already been deprived of governmental resources such as the Aadhaar card, a ration card necessary to obtain food subsidies given by the state.<sup>84</sup> The biometric national ID (Aadhaar card) is a pre-requisite to avail any governmental facility or service, and this deprivation affected all those excluded.

### Proposals for a nationwide NRC

As mentioned above, so far, Assam is the only state to have gone through the NRC process. Since then, the Assam BJP branch has demanded implementation of a nationwide NRC, citing Hindus which were excluded from the Assam 2019 NRC because they are from different states and therefore could not prove they came to Assam before 1971. Though it started from Assam, the 'NRC is a national phenomenon'.<sup>85</sup>

The administrative exercise needs to be contextualised in the politics of the state of Assam and the whole country to understand the implications of the proposed nationwide NRC. It is important to address that the general continued Assamese resistance to outsiders has been adopted into the BJP's politics of religious nationalism. The BJP has appropriated this historical anti-outsider sentiment in the North-East by framing it in Hindu-Muslim binary and anti-Muslim rhetoric.<sup>86</sup> This is also apparent in the implementation and enforcement of the Assam NRC. For example, the Home Minister of India, Amit Shah, in a public speech referred to illegal Muslim migrants from

Bangladesh as 'termites' and that 'they are eating the grain that should go to the poor, they are taking our jobs'.<sup>87</sup>

Moreover, the specific anti-Muslim sentiment of BJP politicians in Assam is evident in their condemnation of the exclusion of Hindu Bengalis from the NRC.<sup>88</sup> For instance, a BJP member of the legislative assembly addressed the excluded Bengali Hindus by specifically offering them legal assistance and stating, 'no Hindu Bengali is a foreigner and should be included in the NRC unconditionally' and 'BJP's stand is that Hindus can never be foreigners'.<sup>89</sup> The BJP considers the large number of excluded Hindus as a major setback of the NRC process: for example, Himanta Biswa, the Chief Minister of Assam, said of 'so many genuine Indians' having been left off the NRC that 'we [the BJP] have lost hope in the present form of the NRC', stating that the party was already mulling a 'fresh strategy on how we can drive out the illegal migrants'.<sup>90</sup> Similarly, Home Minister Amit Shah has stated: 'No refugee will have to go, no infiltrator will be allowed to live. We will expel each one of them', assuring Hindu, Sikh, Jain, Buddhist and Christian refugees 'will not be forced to leave India' while disregarding Muslims.<sup>91</sup> Another BJP legislator has said 'we can never accept this NRC where names of illegal Bangladeshi Muslims have appeared'.<sup>92</sup> More generally, remarks by Assamese government officials and government reports discriminating against people of Bengali origin (both Hindus and Muslims) using xenophobic terms such as 'demographic invasion', 'grave danger to our national security', 'illegal immigrant' and 'insurgency' must be highlighted for their discriminatory nature.<sup>93</sup>

84. 'Two years since NRC, lakhs still remain in limbo' (The Hindu, 1 September 2021) <[www.thehindu.com/news/national/two-years-since-nrc-lakhs-still-remain-in-limbo/article61423617.ece](http://www.thehindu.com/news/national/two-years-since-nrc-lakhs-still-remain-in-limbo/article61423617.ece)>

85. Manogya Loibal, 'Hindus can never be foreigners: Assam BJP demands Hindustani NRC across nation' (India Today, 1 September 2019) <[www.indiatoday.in/india/story/hindus-can-never-be-foreigners-assam-bjp-demands-hindustani-foreigner-free-nrc-across-nation-1594107-2019-09-01](http://www.indiatoday.in/india/story/hindus-can-never-be-foreigners-assam-bjp-demands-hindustani-foreigner-free-nrc-across-nation-1594107-2019-09-01)>

86. Namrata Kolachalam, 'India's Great Disenfranchisement' (Slate, 9 August 2019) <<https://slate.com/news-and-politics/2019/08/india-nrc-assam-modi-muslims-citizens.html>>

87. India Today, 'Illegal immigrants are like termites, will throw them out if BJP comes back to power: Amit Shah' (11 April 2019)

<<https://www.indiatoday.in/elections/lok-sabha-2019/story/bjp-amit-shah-hindu-refugees-mamata-banerjee-1499691-2019-04-11>>

88. Abhishek Saha, 'Across Assam, chorus rises among MLAs: NRC is faulty, many genuine citizens out' (The Indian Express, 2 September 2019) <<https://indianexpress.com/article/north-east-india/assam-nrc-mlas-faulty-genuine-citizens-out-5957268/>>

89. Human Rights Watch, "'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy' (9 April 2020)

<[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

90. Aljazeera, 'India excludes nearly 2 million people from Assam citizen list' (31 August 2019) <[www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list)>

91. Outlook India, 'Hindu, Buddhist, Sikh, Jain Refugees Won't Leave India, They Will Get Citizenship: Amit Shah in Bengal' (Outlook India, 1 October 2019)

<[www.outlookindia.com/website/story/india-news-hindu-buddhist-sikh-jain-refugees-wont-leave-india-they-will-get-citizenship-amit-shah-in-bengal/339783](http://www.outlookindia.com/website/story/india-news-hindu-buddhist-sikh-jain-refugees-wont-leave-india-they-will-get-citizenship-amit-shah-in-bengal/339783)>

92. Human Rights Watch, "'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy' (9 April 2020)

<[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

93. Amnesty International India, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) 13

Similarly, BJP leaders from other states with governments led by the BJP have also pushed for the implementation of an NRC in other states, including Delhi, Haryana, Maharashtra, Uttar Pradesh and West Bengal.<sup>94</sup> For example, the Chief Minister of Uttar Pradesh has praised the implementation of the NRC in Assam and has said ‘when Uttar Pradesh will need an NRC, we will do so. In the first phase, it has been Assam and the way it is being implemented there, it can be an example for us’ citing national security and protecting the poor from suffering due to illegal immigration as reasons.<sup>95</sup> Additionally, Union Home Minister Amit Shah has expressed his desire to implement a nationwide NRC: following the Assam NRC, he has said ‘NRC is a must. We will have to implement NRC to ensure the country's safety and security’.<sup>96</sup> The Minister of State for Home Affairs explained to the Rajya Sabha (Upper House of the Parliament) on 26 November 2014 that ‘the National Population Register (NPR) is a register of all the usual residents which include citizens and non-citizens as well. The NPR is the first step towards creation of National Register of Indian Citizens (NRIC) by verifying the citizenship status of every usual resident’.<sup>97</sup> Prime Minister Modi has supported the NRC project in Assam and has often promised to implement a similar system nationwide.<sup>98</sup> However, in December 2021, the Indian Home Ministry announced it has not yet taken any decisions on the development of a nationwide NRC.<sup>99</sup> These calls for implementation of a National Register of Citizens in other states, and particularly a nationwide NRC, are

concerning. The experiences and critiques of the Assam NRC processes, which was motivated by the historical Assamese sentiment of resistance to ethnic ‘outsiders’, have already raised (international) alarm. Moreover, the project of extending the application of the NRC nationwide would only aggravate the situation and could be used as a tool to target minorities and deny the right to nationality to hundreds of millions of Indians, including many Muslims who constitute about 14.2 per cent of India’s population.<sup>100</sup> This proposal appears more alarming when considered alongside the Citizenship Amendment Act of 2019, discussed in the next sub-section.

## 1.2 The Citizenship Amendment Act, 2019 (CAA)

### Context and background

In December 2019, the Parliament enacted the Citizenship (Amendment) Act 2019 (the ‘CAA’). This legislation followed several earlier amendments to the Citizenship Act, 1955. It provides for fast-track asylum claims and citizenship for non-Muslim immigrants from the neighbouring Muslim-majority countries of Afghanistan, Bangladesh and Pakistan.<sup>101</sup> The Amendment has been criticised for discriminating against Muslims, and has been condemned, both nationally and internationally, for being unconstitutional for linking citizenship to religion. The constitutional validity of the Act has also been challenged before India’s Supreme Court for being an explicitly discriminatory law.<sup>102</sup>

94. India Today, ‘Yogi Adityanath hails NRC, says will implement in Uttar Pradesh if needed’ (16 September 2019) <[www.indiatoday.in/india/story/yogi-adityanath-hails-nrc-will-implement-uttarpradesh-if-needed-1599712-2019-09-16](http://www.indiatoday.in/india/story/yogi-adityanath-hails-nrc-will-implement-uttarpradesh-if-needed-1599712-2019-09-16)>

95. India Today, ‘Yogi Adityanath hails NRC, says will implement in Uttar Pradesh if needed’ (16 September 2019) <[www.indiatoday.in/india/story/yogi-adityanath-hails-nrc-will-implement-uttarpradesh-if-needed-1599712-2019-09-16](http://www.indiatoday.in/india/story/yogi-adityanath-hails-nrc-will-implement-uttarpradesh-if-needed-1599712-2019-09-16)>

96. Outlook India, ‘Hindu, Buddhist, Sikh, Jain Refugees Won’t Leave India, They Will Get Citizenship: Amit Shah in Bengal’ (Outlook India, 1 October 2019)

<[www.outlookindia.com/website/story/india-news-hindu-buddhist-sikh-jain-refugees-wont-leave-india-they-will-get-citizenship-amit-shah-in-bengal/339783](http://www.outlookindia.com/website/story/india-news-hindu-buddhist-sikh-jain-refugees-wont-leave-india-they-will-get-citizenship-amit-shah-in-bengal/339783)>

97. Press Information Bureau, Ministry of Home Affairs, ‘Identifying Citizens While Preparing NPR’ (26 November 2014)

<<https://pib.gov.in/newsite/PrintRelease.aspx?relid=111934>>

98. Aljazeera, ‘India excludes nearly 2 million people from Assam citizen list’ (31 August 2019) <[www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list)>; The Wire, ‘MHA Says ‘No Decision Has Been Taken’ on Nationwide NRC’ (The Wire, 2 February 2021)

<[www.thewire.in/government/mha-says-no-decision-has-been-taken-on-nationwide-nrc](http://www.thewire.in/government/mha-says-no-decision-has-been-taken-on-nationwide-nrc)>

99. Neeraj Chauhan, ‘No decision yet on nationwide NRC, applications under CAA after rules notified: Centre’ (The Hindustan Times, 1 December 2021)

<[www.hindustantimes.com/india-news/no-decision-yet-on-nationwide-nrc-says-govt-101638267092628.html](http://www.hindustantimes.com/india-news/no-decision-yet-on-nationwide-nrc-says-govt-101638267092628.html)>

100. Jonathan Evans and Neha Sahgal, ‘Key findings about religion in India’ (Pew Research Center, 29 June 2021) <[www.pewresearch.org/fact-tank/2021/06/29/key-findings-about-religion-in-india/](http://www.pewresearch.org/fact-tank/2021/06/29/key-findings-about-religion-in-india/)>

101. Citizenship (Amendment) Act 2019 (India) <<https://egazette.nic.in/WriteReadData/2019/214646.pdf>>

102. International Commission of Jurists, ‘India: Citizenship Amendment Act violates international law’ (10 March 2020) <[www.icj.org/hrc43indiaca/](http://www.icj.org/hrc43indiaca/)>; UK

Parliament, ‘Research Briefing: India’s Citizenship (Amendment) Act 2019’ (February 2020) <<https://lordslibrary.parliament.uk/research-briefings/ln-2020-0058/>>; Raghbendra Jha, ‘Analysis: India’s Citizenship Amendment Act 2019’ (Australian Institute of International Affairs, 30 January 2020)

<[www.internationalaffairs.org.au/australianoutlook/indias-citizenship-amendment-act-2019/](http://www.internationalaffairs.org.au/australianoutlook/indias-citizenship-amendment-act-2019/)>; Harrison Atkins, ‘Legislation Factsheet: The Citizenship

(Amendment) Act in India’ (United States Commission on International Religious Freedom, February 2020)

The Indian government argues it protects religious minorities by protecting individuals who have fled religious persecution from neighbouring countries.<sup>103</sup>

The enactment of the CAA in 2019 was followed by severe protests against the legislation across the country, but particularly in New Delhi, Uttar Pradesh and Assam, which have large Muslim minorities.<sup>104</sup> Termed as the anti-CAA movement, for as long as it was on, this became the longest sustained people's movement since the BJP came to power in 2014.<sup>105</sup> The government responded to such protests with strict crackdowns, which resulted in police brutality.<sup>106</sup> State-sanctioned anti-Muslim violence in response to these protests have been dealt with in greater detail in the Annexures on Delhi and Uttar Pradesh.

It is important to place the CAA in the context of wider nationalistic policy and Hindutva ideology of the BJP. As noted in the previous section, Home Minister Amit Shah has said 'illegal immigrants are like termites, and they are eating the food that should go to our poor and they are taking our jobs'. He promised that '[...] if we come to power in 2019, we will find each and every one and send them away'.<sup>108</sup> Such statements by a prominent cabinet minister formed the political backdrop of the CAA. Together with the

Union government's considerations for a nationwide citizenship verification process through a National Population Register (NPR) and a proposed nationwide National Register of Citizens (NRC), with the aim of identifying 'illegal migrants', the 2019 amendment to the citizenship laws heightened fears that millions of Indian Muslims could be stripped of their citizenship rights and disenfranchised.<sup>109</sup>

### Content and implications of the CAA

The Citizenship Act 1955 prevents illegal migrants – defined as foreigners who entered India without valid travel documents or entered with a valid travel document but stayed beyond their permitted period – from obtaining Indian citizenship.<sup>110</sup> The 2019 Amendment at once accepts all 'illegal migrants' except Muslims. It states that 'any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh, or Pakistan [...] shall not be treated as an illegal migrant for the purposes of this [1955] Act'.<sup>111</sup> Additionally, individuals of these listed religions who had migrated to India illegally without a visa before 31 December 2014, and have stayed in India for five years, are no longer considered illegal immigrants and are eligible to apply for citizenship under the Amendment.<sup>112</sup>

<[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>; Gary Hausman, 'Citizenship Amendment Act (CAA) and National Register of Citizens (NRC)' (Global Studies Blog Columbia University Library, 10 December 2020) <<https://blogs.cul.columbia.edu/global-studies/2020/12/10/citizenship-amendment-act-caa-and-national-register-of-citizens-nrc/>>

103. Kaushik Deka, 'Everything you wanted to know about the CAA and NRC' (India Today, 23 December 2019) <[www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23](http://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23)>; DW, 'Indian parliament approves citizenship bill, sparking protests' (DW, 11 December 2019) <<https://p.dw.com/p/3Udfb>>

104. Hannah Ellis-Petersen, 'India clamps down on citizenship law protests' (The Guardian, 18 December 2019) <[www.theguardian.com/world/2019/dec/18/india-clamps-down-against-citizenship-law-protests](http://www.theguardian.com/world/2019/dec/18/india-clamps-down-against-citizenship-law-protests)>; Munish Chandra Pandey, 'Assam CAA protest: 4 dead in police firing, 175 arrested, more than 1400 detained' (India Today, 16 December 2019) <[www.indiatoday.in/india/story/assam-caa-protest-4-dead-in-police-firing-175-arrested-more-than-1400-detained-1628545-2019-12-16](http://www.indiatoday.in/india/story/assam-caa-protest-4-dead-in-police-firing-175-arrested-more-than-1400-detained-1628545-2019-12-16)>;

105. Betwa Sharma, 'One Year After Mass Protests, India's Muslims Still Live in Fear' (Foreign Policy, 18 December 2020) <<https://foreignpolicy.com/2020/12/18/one-year-mass-caa-protests-india-muslims-citizenship-amendment-act-modi/>>

106. Amnesty International UK, 'India: Crackdown on peaceful Citizenship Act protests must stop' (Press release, 19 December 2019) <[www.amnesty.org.uk/press-releases/india-crackdown-peaceful-citizenship-act-protests-must-stop](http://www.amnesty.org.uk/press-releases/india-crackdown-peaceful-citizenship-act-protests-must-stop)>; International Commission of Jurists, 'India: Citizenship Amendment Act violates international law' (10 March 2020) <[www.icj.org/hrc43indiaca/](http://www.icj.org/hrc43indiaca/)>; Hannah Ellis-Petersen, 'India protests: students condemn 'barbaric' police' (The Guardian, 17 December 2019) <[www.theguardian.com/world/2019/dec/17/india-protests-students-condemn-barbaric-police](http://www.theguardian.com/world/2019/dec/17/india-protests-students-condemn-barbaric-police)>

107. India Today, 'Illegal immigrants are like termites, will throw them out if BJP comes back to power: Amit Shah' (11 April 2019) <<https://www.indiatoday.in/elections/lok-sabha-2019/story/bjp-amit-shah-hindu-refugees-mamata-bannerjee-1499691-2019-04-11>>

108. Deepshikha Ghosh, 'Amit Shah "Termite" Remark On Immigrants Unwanted, Says Bangladesh' (NDTV, 24 September 2018) <[www.ndtv.com/india-news/amit-shah-termite-remark-on-immigrants-unwanted-says-bangladesh-1921088](http://www.ndtv.com/india-news/amit-shah-termite-remark-on-immigrants-unwanted-says-bangladesh-1921088)>

109. Human Rights Watch, "'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy' (9 April 2020) <[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>; Puja Changoiwala, 'India's Muslims Are Terrified of Being Deported' (Foreign Policy, 21 February 2020) <<https://foreignpolicy.com/2020/02/21/india-muslims-deported-terrified-citizenship-amendment-act-caa/>>; Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

110. Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

111. Citizenship (Amendment) Act 2019 (India), Article 2.

112. Kaushik Deka, 'Everything you wanted to know about the CAA and NRC' (India Today, 23 December 2019) <[www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23](http://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23)>

It also provides these individuals with immunity from any legal cases against them concerning their immigration status.<sup>113</sup> Further, the amendment fast-tracked the process for those eligible for citizenship through naturalisation, for example, it has reduced the number of years of residency in India in order to qualify for Indian citizenship from 11 years to five years, for some groups based on their religious affiliation.<sup>114</sup>

Notably, the 2019 amendment does not include Muslims among the groups eligible for said protection, nor does it extend these provisions to persecuted Muslim minorities from the countries in its scope, such as the Shias in Afghanistan and Pakistan, Ahmadiyyas from Pakistan, and the Rohingyas from Myanmar. It also does not include several other persecuted minorities from South Asia, such as Tamils from Sri Lanka.<sup>115</sup>

The BJP has defended the introduction of religion in citizenship laws as a means to protect individuals from the specified countries who were persecuted based on their religion.<sup>116</sup> However, the word 'persecution' is not mentioned as a requirement under the CAA, nor is it mentioned in the original Citizenship Act. It is mentioned as the objective of the amendment, but there is no provision that addresses the fact of religious persecution. The absence suggests that there is no rational nexus between the distinctions made by the law and the objectives of the law, because the law grants citizenship regardless of whether or not religious persecution has occurred.

There are two kinds of distinctions that are made by the CAA. First, there is a distinction based on the religion of the person involved. Certain religions are included, which means that both certain religions (most clearly, Islam) as well as irreligious individuals are excluded. Second, there is a distinction based on the countries to which the individuals belong – three countries are included (Afghanistan, Pakistan and Bangladesh) but other countries (in the region and elsewhere) are excluded. The government has not been able to offer a rational basis for both of these distinctions or a justification that they are made in pursuance of a legitimate aim.<sup>117</sup>

Therefore, it has been alleged that the CAA is explicitly discriminatory, particularly against Muslims from the three specified countries who entered India without a visa before 2015, and who have been in the country for more than five years, but who are not considered eligible for Indian citizenship under the CAA. As outlined above, Muslims have also been excluded from the more favourable immigration policy afforded to other religious minorities via the amendments made in the CAA.<sup>118</sup>

### **Concerns and critiques expressed by international authorities**

National and international actors have condemned the legislative amendment and emphasised that such differentiation based on religion constitutes discrimination and is in violation of the Indian Constitution and international human rights law.<sup>119</sup>

113. Citizenship (Amendment) Act 2019 (India), Article 3; Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

114. Citizenship (Amendment) Act 2019 (India), Article 6.

115. Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

116. Kaushik Deka, 'Everything you wanted to know about the CAA and NRC' (India Today, 23 December 2019) <[www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23](http://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23)>

117. Citizenship (Amendment) Act 2019 (India), Article 2; Markandey Katju and Dhruvi Kapadia, 'Why the Citizenship (Amendment) Bill Is Unconstitutional' (The Wire, 13 December 2019) <<https://thewire.in/law/citizenship-amendment-bill-unconstitutional>>

118. International Commission of Jurists, 'India: Citizenship Amendment Act violates international law' (10 March 2020) <[www.icj.org/hrc43indiaca/](http://www.icj.org/hrc43indiaca/)>

119. International Commission of Jurists, 'India: Citizenship Amendment Act violates international law' (10 March 2020) <[www.icj.org/hrc43indiaca/](http://www.icj.org/hrc43indiaca/)>; The Wire, 'UN Human Rights Chief Moves to Intervene Over CAA in SC, India Objects' (The Wire, 3 March 2020) <<https://thewire.in/diplomacy/un-human-rights-chief-intervention-application-supreme-court-cao>>

Not only activists, human rights defenders, but constitutional law experts have widely challenged the law for being violative of basic guarantees provided by the Indian Constitution. Where clear arguments have been made to challenge the arbitrary distinction based on religion as violation of right to equality and attack on India's secularism,<sup>120</sup> the law has also been criticised for betraying the constitutional values of dignity, universality and integrity.<sup>121</sup>

Internationally, the UN Office of the High Commissioner for Human Rights (OHCHR) called the law 'fundamentally discriminatory'.<sup>122</sup> In February 2020, the UN Secretary-General said he was concerned over the future of religious minorities in India after the enactment of the CAA, saying '[...] there is a risk of statelessness'.<sup>123</sup> In January 2020, the United States Congress held a hearing on global religious persecution and raised concerns over the citizenship law and citizenship verification processes.<sup>124</sup> The same month, the European Parliament debated a joint motion on the law that described it as '[...] discriminatory in nature and dangerously divisive'.<sup>125</sup> The US Commission on International Religious Freedom said the US government '[...] should consider sanctions against the Home Minister and other principal leadership' and held a hearing in March during which one commissioner raised concerns that the law '[...] in conjunction with a planned National Population Register and a potential nation-

wide National Register of Citizens, or NRC, could result in the wide-scale disenfranchisement of Indian Muslims'.<sup>126</sup>

### The NRC-CAA Nexus

The legislative amendment must be considered against the backdrop of the NRC as implemented in 2019 in Assam, the proposed nationwide NRC. The 2003 amendment to the Citizenship Act 1955 made it mandatory to compile a National Register of Citizens (NRC), which laid the foundations for the proposed nationwide NRC, and Union Home Minister Amit Shah has said that he will 'frame a nationwide NRC by 2024 to detect illegal immigrants'.<sup>127</sup> Therefore, a future nationwide NRC, like the Assam NRC, would be an exercise of counting and registering 'legitimate' Indian citizens. However, the Assam NRC is adjusted and specific to Assam and is based on the Assam Accord of 1985: namely, it allows proving one's citizenship status with documents proving relation to ancestors settled in Assam on or before 24 March 1971 (a date specifically determined in the 1985 Accord).<sup>128</sup>

The framework of rules and documents which will be accepted as proof of citizenship for the nationwide NRC are still under discussion, as a nationwide NRC is still only a proposal. Therefore, the nationwide NRC will be contextually different from the Assam NRC but may be based on a similar process.

120. Chandrachud, A. (2020). Secularism and the Citizenship Amendment Act. *Indian Law Review*, 4(2), 138-162.

121. Pritam Baruah, 'Not Just Equality, the CAA Betrays Constitutional Values of Dignity, Integrity' (The Wire, 27 December 2019) <<https://thewire.in/rights/caa-constitution-equality>>

122. 'New citizenship law in India 'fundamentally discriminatory': UN human rights office' (UN News, 13 December 13)

<[www.news.un.org/en/story/2019/12/1053511](http://www.news.un.org/en/story/2019/12/1053511)> accessed 4 March 2022; see also The Wire, 'UN Human Rights Chief Moves to Intervene Over CAA in SC, India Objects' (The Wire, 3 March 2020) <<https://thewire.in/diplomacy/un-human-rights-chief-intervention-application-supreme-court-cao>>

123. 'Citizenship Amendment Act may leave Muslims stateless, says U.N. Secretary-General António Guterres' (The Hindu, 19 February 2020)

<[www.thehindu.com/news/national/citizenship-amendment-act-may-leave-muslims-statelessays-un-secretary-general-antnio-guterres/article30863390.ece](http://www.thehindu.com/news/national/citizenship-amendment-act-may-leave-muslims-statelessays-un-secretary-general-antnio-guterres/article30863390.ece)> accessed 4 March 2022.

124. Sriram Lakshman, 'CAA, NRC raised during Congressional hearing on global human rights' (The Hindu, 29 January 2020)

<[www.thehindu.com/news/international/caa-nrc-raised-during-congressional-hearing-on-global-human-rights/article30681185.ece](http://www.thehindu.com/news/international/caa-nrc-raised-during-congressional-hearing-on-global-human-rights/article30681185.ece)>

125. 'European Parliament debates anti-CAA motion, vote delayed till March' (India Today, 30 January 2020) <[www.indiatoday.in/india/story/european-parliament-debates-anti-cao-motion-vote-delayed-till-march-1641429-2020-01-30](http://www.indiatoday.in/india/story/european-parliament-debates-anti-cao-motion-vote-delayed-till-march-1641429-2020-01-30)>

126. U.S. Commission on International Religious Freedom, 'USCIRF Raises Serious Concerns and Eyes Sanctions Recommendations for Citizenship (Amendment) Bill in India, Which Passed Lower House Today' (Press Release) (9 December 2019) <[www.uscifr.gov/news-room/releases-statements/uscifr-raises-serious-concerns-and-eyes-sanctions-recommendations](http://www.uscifr.gov/news-room/releases-statements/uscifr-raises-serious-concerns-and-eyes-sanctions-recommendations)>; 'USCIRF members express concern over CAA; say it could result in 'disenfranchisement' of Muslims' (The Economic Times, 5 March 2020) <[www.economictimes.indiatimes.com/news/politics-and-nation/uscifr-members-express-concern-over-cao-say-it-could-result-in-disenfranchisement-of-muslims/articleshow/74491626.cms](http://www.economictimes.indiatimes.com/news/politics-and-nation/uscifr-members-express-concern-over-cao-say-it-could-result-in-disenfranchisement-of-muslims/articleshow/74491626.cms)>

127. Kaushik Deka, 'Everything you wanted to know about the CAA and NRC' (India Today, 23 December 2019) <[www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-cao-and-nrc-1630771-2019-12-23](http://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-cao-and-nrc-1630771-2019-12-23)>

128. See section 1.2.1.A.

There are significant concerns being raised when the CAA is seen in relation to the proposed nationwide NRC. The CAA serves as a protective measure for non-Muslims in case of exclusion as 'foreigners' from a nationwide NRC, which expedites their citizenship application so that they can eventually still be included on the NRC as Indian citizens.<sup>129</sup> The risk for Indian Muslims is that because Muslims are not included in the CAA provisions, those who will be excluded from the nationwide NRC lists and designated as foreigners, will not be eligible for citizenship under the CAA and would therefore be excluded. The consequences would include 'statelessness, deportation, or prolonged detention', as seen in the Assam NRC case.<sup>130</sup> Moreover, the critiques of the Assam NRC process have also already demonstrated that Indian citizens could be stripped of their citizenship in a nationwide NRC, as many individuals were wrongfully excluded through the process and procedures of the Assam NRC, and had to proceed with claims and appeals to be able to confirm their Indian citizenship.<sup>131</sup>

Most importantly, with protections for non-Muslims in place under the CAA, a nationwide NRC process would therefore largely impact Muslims alone.<sup>132</sup> Even within the broader community, those with lack of access to resources, education will be disproportionately impacted. Consequently, it is feared that a nationwide NRC in combination with the CAA, which explicitly distinguishes and discriminates against individuals based on religion, will put many

Indian Muslims at risk.<sup>133</sup> Even if the nationwide NRC is not implemented, the protective shield of CAA would be applicable to those non-Muslims excluded from the NRC in Assam as the process would allow Bengali-speaking Hindus to apply for citizenship through naturalisation but not Muslims from the same region.

The NRC and CAA are therefore viewed as tools of the BJP's Islamophobic rhetoric and Hindutva ideology, which views India as a Hindu state (with the definition of Hinduism including Buddhists, Jains and Sikhs) and Islam as a foreign and invading religion.<sup>134</sup> In combination, both measures serve the exclusionary agenda of Hindutva. These acts by state authorities question the legitimacy of Muslims' Indian citizenship which could lead to large-scale denial of the nationality of Indian Muslims, and further enable marginalisation of this minority by non-state actors.<sup>135</sup>

## 2. Laws targeting Muslims as a religious minority

### 2.1. Anti-conversion laws

At least 11 states in India – Karnataka, Uttar Pradesh, Chhattisgarh, Gujarat, Odisha, Jharkhand, Uttarakhand, Himachal Pradesh, Madhya Pradesh, Haryana and Arunachal Pradesh – have laws ostensibly aimed at banning 'unlawful' religious conversions.<sup>136</sup> According to these laws, religious conversions are considered unlawful when they take place on the basis of misrepresentation, force, fraud, allurement or marriage.

129. Outlook India, 'Hindu, Buddhist, Sikh, Jain Refugees Won't Leave India, They Will Get Citizenship: Amit Shah in Bengal' (Outlook India, 1 October 2019) <[www.outlookindia.com/website/story/india-news-hindu-buddhist-sikh-jain-refugees-wont-leave-india-they-will-get-citizenship-amit-shah-in-bengal/339783](http://www.outlookindia.com/website/story/india-news-hindu-buddhist-sikh-jain-refugees-wont-leave-india-they-will-get-citizenship-amit-shah-in-bengal/339783)>; Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>.

130. Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

131. See section 1.2.1.A.

132. Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

133. Kaushik Deka, 'Everything you wanted to know about the CAA and NRC' (India Today, 23 December 2019) <[www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23](http://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23)>; Rudabeh Shahid and Champa Patel, 'Understanding India's citizenship controversy' (Atlantic Council, 19 March 2020) <<https://www.atlanticcouncil.org/blogs/new-atlanticist/understanding-indias-citizenship-controversy/>>

134. Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

135. Harrison Akins, 'Legislation Factsheet: The Citizenship (Amendment) Act in India' (United States Commission on International Religious Freedom, February 2020) <[www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](http://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

136. Shweta Velayudhan and Shreyam Sharma, 'Anatomy of anti-conversion laws: Part I' (The Leaflet, 24 December 2021) <<https://www.theleaflet.in/anatomy-of-anti-conversion-laws-part-i/>>; Anoop Ramakrishnan, 'Anti-Conversion Legislation: Comparison of the UP Ordinances with other state laws' (PRS Legislative Research, 17 December 2020) <<https://prsindia.org/theprsblog/anti-conversion-legislation-comparison-of-the-up-ordinances-with-other-state-laws>>

Where the provisions such as allurements are not specifically defined, the law primarily bans religious conversion for the purposes of marriage.<sup>137</sup> Seven of these states, all led by BJP governments, have either passed or updated existing laws since 2017. In May 2022, Karnataka state government bypassed the regular legislative process and enacted the anti-conversion law as an ordinance (a provision meant for urgent immediate legislative action when the legislative assembly is not in session) despite objections by the opposition parties, and further re-affirmed its strict implementation.<sup>138</sup> Some other BJP-run states are also considering similar laws.<sup>139</sup>

These laws contain overbroad provisions that violate the religious freedoms guaranteed in the constitution and are increasingly being used to attack or arrest Christian pastors and prevent Christians from holding religious services. These policies are also used to curb interfaith relationship between couples, especially to harass and arrest Muslim men in relationships with Hindu women.

It must be noted that India's family laws on matters concerning marriage, succession etc. are religion-based. Unless someone chooses to get married under the secular Special Marriage Act (outside of their religion), their marriage is governed by their religion. Thus, in the case of inter-faith marriages, if the couple chooses to get married according to one of their religious laws, the spouse from the other religion may not convert to that religion. Such conversions have been taking place in line with the Indian Constitution that

guarantees freedom to choose one's religion as a fundamental right.<sup>140</sup> While most of these state laws have some variations, they generally share the following characteristic features: One, ban on forced or fraudulent religious conversions. In some cases, the laws explicitly list marriage as a cause to declare a conversion forced. Two, the act of forced conversion is criminalised and in some cases it is a non-bailable offence with imprisonment of up to 10 years. Three, reversal of burden of proof on the person who converted their religion (the accused) and not on the person complaining that the religious conversion was forced.<sup>141</sup>

These laws have merited criticism on three counts: the letter of the law; the aims pursued by the law; and its selective use as a tool to target religious minorities. The law per se has been challenged for being unconstitutional as it violates the citizen's right to freedom of religion, right to privacy and non-interference of the state in personal matters, as well as right to equality as the laws are only applicable in some of the states and unreasonably discriminate against inter-faith couples.<sup>142</sup>

As for the objectives behind the law, BJP politicians in the states where such laws have been enacted say these are necessary measures to curb 'love jihad', a derogatory phrase used by the Hindutva network to promote a baseless theory that Muslim men lure Hindu women into marriages to convert them to Islam.<sup>143</sup> Some of these anti-conversion laws, such as the one in Uttar Pradesh,<sup>144</sup>

137. Shweta Velayudhan and Shreyam Sharma, 'Anatomy of anti-conversion laws: Part I' (The Leaflet, 24 December 2021) <<https://www.theleaflet.in/anatomy-of-anti-conversion-laws-part-i/>>; Shweta Velayudhan and Shreyam Sharma, 'Anatomy of anti-conversion laws: Part II' (The Leaflet, 25 December 2021) <<https://www.theleaflet.in/anatomy-of-anti-conversion-laws-part-ii/>>; Anoop Ramakrishnan, 'Anti-Conversion Legislation: Comparison of the UP Ordinances with other state laws' (PRS Legislative Research, 17 December 2020) <<https://prsindia.org/theprsblog/anti-conversion-legislation-comparison-of-the-up-ordinances-with-other-state-laws>>

138. The Indian Express, 'Karnataka Takes Ordinance Route to Introduce Anti-Conversion Law' <https://indianexpress.com/article/cities/bangalore/karnataka-ordinance-anti-conversion-law-7914166/>

139. Shweta Velayudhan and Shreyam Sharma, 'Anatomy of anti-conversion laws: Part I' (The Leaflet, 24 December 2021) <<https://www.theleaflet.in/anatomy-of-anti-conversion-laws-part-i/>>; Shweta Velayudhan and Shreyam Sharma, 'Anatomy of anti-conversion laws: Part II' (The Leaflet, 25 December 2021) <<https://www.theleaflet.in/anatomy-of-anti-conversion-laws-part-ii/>>; Anoop Ramakrishnan, 'Anti-Conversion Legislation: Comparison of the UP Ordinances with other state laws' (PRS Legislative Research, 17 December 2020) <<https://prsindia.org/theprsblog/anti-conversion-legislation-comparison-of-the-up-ordinances-with-other-state-laws>>

140. Constitution of India, Article 25.

141. Shreyam Sharma & Shweta Velayudham, 'Anatomy of Anti-Conversion Law: Part I' <<https://theleaflet.in/anatomy-of-anti-conversion-laws-part-i/>>; Shreyam Sharma & Shweta Velayudham, 'Anatomy of Anti-Conversion Law: Part 2' <<https://theleaflet.in/anatomy-of-anti-conversion-laws-part-ii/>>

142. In the Supreme Court of India- Writ Petition (Criminal) NO 428 of 2020 <<https://cjp.org.in/wp-content/uploads/2021/02/Application-for-Amendment-of-Writ-Petition-FINAL.pdf>>

143. Hannah Ellis-Petersen, 'Muslims targeted under Indian state's 'love jihad' law' (The Guardian, 14 December 2020) <[www.theguardian.com/world/2020/dec/14/muslims-targeted-under-indian-states-love-jihad-law](http://www.theguardian.com/world/2020/dec/14/muslims-targeted-under-indian-states-love-jihad-law)>

144. The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, U.P. Ordinance No. 21 of 2020, <[https://prsindia.org/files/bills\\_acts/bills\\_states/uttar-pradesh/2020/UP%20Prohibition%20of%20Unlawful%20Conversion%20of%20Religion%20Ordinance,%202020%20.pdf](https://prsindia.org/files/bills_acts/bills_states/uttar-pradesh/2020/UP%20Prohibition%20of%20Unlawful%20Conversion%20of%20Religion%20Ordinance,%202020%20.pdf)>

require anyone wishing to convert to seek approval from the district authorities and carries a punishment of up to 10 years in prison for converting another person through coercion, fraud, misrepresentation or inducement. The punishment for religious conversions of women or members of Scheduled Castes (SCs) or Scheduled Tribes (STs) deemed unlawful is greater, with an imprisonment term of at least 10 years.<sup>145</sup>

While these laws ostensibly apply to all forced religious conversions, enforcement has largely targeted Muslim men in Hindu-Muslim relationships. According to reports, they have been used as a tool to target Muslim men marrying or intending to marry Hindu women. As of July 2021, a total of 162 people were arrested under such laws in the state of Uttar Pradesh alone, and 101 jailed.<sup>146</sup>

In the aftermath of the enactment of these laws, police and Hindu vigilante groups are reported to be working jointly to violently target consensual, inter-faith couples by tracking down the couple with the help of the police's phone surveillance system and using violence or threatening them.<sup>147</sup> In some cases, the law has been applied retroactively and sometimes brought cases against entire families of the accused Muslim men.<sup>148</sup> In most cases, the complainant is not the woman but her relatives, who oppose an inter-faith relationship.<sup>149</sup> The law has created considerable fear among inter-faith couples<sup>150</sup>

already at risk from censoring families and Hindu nationalist groups. In November 2020, the Allahabad High Court in Uttar Pradesh had to grant protection to 125 interfaith couples. Hindu nationalist groups, including those affiliated with the BJP, have openly harassed and attacked inter-faith couples and filed cases against them.<sup>151</sup>

On 5 December 2020, men from the militant Hindu group Bajrang Dal, which supports the BJP, forcibly took a 22-year-old Hindu woman married to a Muslim man to the police in Uttar Pradesh.<sup>152</sup> The police sent the woman to a government shelter and arrested her husband and his brother under the anti-conversion law. The woman alleged that she suffered a miscarriage at the shelter due to medical negligence. She was reunited with her husband after she told the court that she was an adult and had married by choice.<sup>153</sup>

## 2.2. Cow protection laws

According to reports reviewed by the panel, state laws aimed at protection of cows, an animal considered holy by many Hindus, are used by the authorities to target and arrest Muslim cattle traders. Cow slaughter is banned currently in 20 of India's 28 states.<sup>154</sup> Punishment varies in terms of prison sentences and fines.<sup>155</sup>

Most state laws on cow protection are modelled after the national law, Prevention of Cruelty to Animals Act, 1960, which

145. The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, U.P. Ordinance No. 21 of 2020, Article 5(1).

146. Rai P, '7 Months of UP's Anti-Conversion Law: 162 People Booked in 63 Cases' (The Quint, 8 July 2021) <<https://www.thequint.com/news/india/7-months-of-ups-anti-conversion-law-162-people-booked-in-63-cases>>

147. The Intercept, Hindu Vigilantes Work with Police to Enforce "Love Jihad" Law in North India, 3 July 2021, <<https://theintercept.com/2021/07/03/love-jihad-law-india/>>

148. Bhadra Sinha and Prashant Srivastava, '3 of UP's 5 'love jihad' cases are old, 'unconstitutional' to prosecute them under new law' (The Print, 12 December 2020) <[www.theprint.in/india/3-of-ups-5-love-jihad-cases-are-old-unconstitutional-to-prosecute-them-under-new-law/565218/](http://www.theprint.in/india/3-of-ups-5-love-jihad-cases-are-old-unconstitutional-to-prosecute-them-under-new-law/565218/)> accessed 4 March 2022; 'Entire families of Muslims booked by UP police under 'love jihad' law; women, minor girls not spared' (National Herald, 11 January 2021) <[www.nationalheraldindia.com/india/entire-families-of-muslims-booked-by-up-police-under-love-jihad-law-women-minor-girls-not-spared](http://www.nationalheraldindia.com/india/entire-families-of-muslims-booked-by-up-police-under-love-jihad-law-women-minor-girls-not-spared)>

149. Manish Sahu, '1 month of UP 'love jihad' law: 14 cases, 49 in jail, woman 'victim' complainant in only two' (The Indian Express, 9 January 2021) <[www.indianexpress.com/article/india/love-jihad-law-up-police-7124001/](http://www.indianexpress.com/article/india/love-jihad-law-up-police-7124001/)>

150. The Wire, <<https://thewire.in/law/no-one-entitled-to-interfere-allahabad-hc-comes-to-interfaith-couples-aid-again>>

151. Human Rights Watch, 'India: Government Policies, Actions Target Minorities' (19 February 2019) <<https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities>>; Sheikh Saaliq, 'Interfaith love a risk amid India's Hindu nationalist surge' (AP News, 29 November 2021) <<https://apnews.com/article/religion-india-narendra-modi-b630e78cd2c94c3a09fa5b51e9e4202>>; Mohammad Ali and Ashok Kumar, 'Bajrang Dal disrupts interfaith couple's marriage in Meerut' (The Hindu, 28 September 2017) <<https://www.thehindu.com/news/national/other-states/bajrang-dal-disrupts-interfaith-couples-marriage-in-meerut/article61468676.ece>>

152. Geeta Pandey, 'Love jihad': What a reported miscarriage says about India's anti-conversion law' (BBC, 17 December 2020) <[www.bbc.com/news/world-asia-india-55314832](http://www.bbc.com/news/world-asia-india-55314832)>

153. Geeta Pandey, 'Love jihad': What a reported miscarriage says about India's anti-conversion law' (BBC, 17 December 2020) <[www.bbc.com/news/world-asia-india-55314832](http://www.bbc.com/news/world-asia-india-55314832)>

154. Nagma Sahar & Rasheed Kidwar, 'A Century of Giving Up Beef: Muslims Demand Nationwide Ban on Cow Slaughter' <<https://www.orfonline.org/expert-speak/a-century-of-giving-up-beef-muslims-demand-nationwide-ban-on-cow-slaughter-54351/>>

155. The eight states that do not ban slaughter of cows are Kerala, Arunachal Pradesh, Mizoram, Meghalaya, Manipur Nagaland, Sikkim and Tripura.

empowers police and state agents to enter, stop and search premises, as well as to seize animals to ensure that they are not being treated with cruelty.<sup>156</sup> Under most of these laws, cow slaughter is a cognisable, non-bailable offence and the burden of proof is often on the accused, in violation of the right to be presumed innocent.<sup>157</sup> In cognisable offences, police officers are empowered to arrest the accused without warrant and such offences are usually more serious in nature than non-cognisable offences. Given the variation in these laws, the extent and scope of cow protection and consequent criminalisation changes from state to state. For example, among other states, Gujarat, Maharashtra, Delhi, Uttar Pradesh and Madhya Pradesh ban the slaughter of cows completely, while other states, for example West Bengal, allow slaughter in cases of old or unfit cows after the acquisition of a 'fit for slaughter' certificate.<sup>158</sup> Some states also ban the transporting of cows to other states for slaughter, or the trading or possession of the meat products.<sup>159</sup>

These laws must be contextualised in the politics around cow-protection in India. While these laws have been in place for decades, in the last several years Hindu nationalists have led a political campaign complaining that the authorities do not do enough to enforce the ban and stop cattle smuggling.<sup>160</sup> Since beef is consumed largely by religious and ethnic minorities, BJP leaders – including Prime Minister Narendra Modi, in seeking to appeal to Hindu voters, have made strong statements about the need to protect

cows that have enabled, and at times may have incited, communal violence.<sup>161</sup> Cow protection has been one of the key themes in the increasing use of communally divisive speeches by politicians since 2014 and the cause of hate crimes.<sup>162</sup> Pursuant to their political campaign, the BJP-led state governments not only made the cow protection laws stricter with increased sentences of up to seven years, reversed burden of proof etc. but they also empowered private groups to help enforce the law and oversee its implementation.<sup>163</sup> Across the states, gau raksha samitis (cow protection committees) have been formed which act as quasi-official bodies with no accountability. The groups, constituted by Hindu extremists, work alongside the police to patrol the streets/checkpoints and apprehend the potential 'offenders' of the laws.<sup>164</sup>

These laws and mechanisms, coupled with communal and divisive speeches by BJP leaders, including many officeholders, have spurred a violent vigilante campaign against beef consumption and those deemed linked to it. A 2019 Human Rights Watch report states, between May 2015 and December 2018, at least 44 people – 36 of them Muslims – were killed across 12 Indian states. Over that same period, around 280 people were injured in more than 100 different incidents across 20 states.<sup>165</sup> In addition to beating up cattle traders and transporters that have caused serious injuries, even fatalities, cow protectors have reportedly assaulted Muslim men and women in trains and railway

156. The Prevention of Cruelty to Animals Act 1960, No. 59 of 1960 s. 32 <[http://wgbis.ces.iisc.ernet.in/biodiversity/Environ\\_sys/legis/aniact.htm](http://wgbis.ces.iisc.ernet.in/biodiversity/Environ_sys/legis/aniact.htm)>

157. See Appendix: India National and State Cow Protection Laws.

158. Komal Deol, 'Cow protection was a sensitive subject in India even when the Constitution was being framed' (Scroll.in, 7 July 2021)

<<https://scroll.in/article/998735/cow-protection-was-a-sensitive-subject-in-india-even-when-the-constitution-was-being-framed>>

159. These include the states of Chhattisgarh, Delhi, Haryana, Maharashtra, Punjab, Rajasthan and Uttar Pradesh.

160. HRW Report, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

161. HRW Report, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

162. HRW Report, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

163. Aakar Patel, 'The Dark Chronology of India's Cow-Slaughter Laws' <<https://www.article-14.com/post/the-dark-chronology-of-india-s-cow-slaughter-laws>>

164. Aakar Patel

165. HRW Report, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

stations in Madhya Pradesh state,<sup>166</sup> stripped and beaten Dalit men in Gujarat,<sup>167</sup> force-fed cow dung and urine to two men in Haryana,<sup>168</sup> raided a Muslim hotel in Jaipur,<sup>169</sup> and raped two women<sup>170</sup> and killed two men in Haryana for allegedly eating beef at home.<sup>171</sup>

The response of the police and state authorities further highlights the bias against the religious community. On the one hand, the authorities have used strict laws such as the National Security Act – a repressive law that permits detention without charge for up to a year – against those suspected of illegally slaughtering cows. In 2020, the Uttar Pradesh government arrested at least 4,000 people over allegations of cow slaughter under the law banning it, and used the National Security Act against 76 people accused of cow slaughter.<sup>172</sup> On the other hand, the police have often stalled prosecutions concerning violent attacks against people by cow vigilante groups, while several BJP politicians have publicly justified the attacks. In a number of cases, police have filed complaints against victims' family members and associates under laws banning cow slaughter, leaving witnesses and families afraid to pursue justice. In some cases, witnesses turned hostile because of intimidation both by the authorities and the accused. These practices

have been criticised nationally and internationally for the law being used by the authorities to prosecute Muslim cattle herders and traders, and for incentivising Hindu vigilante groups to attack Muslim individuals for suspected cow slaughter or consumption transgressions.<sup>173</sup> Beyond the violent physical attacks, Muslims and Dalits have been disproportionately affected by these laws, policies and unlawful attacks because of their impact on cattle-related industries. Slaughterhouses and meat shops are mostly run by Muslims. Dalits traditionally carry out jobs to dispose of cattle carcasses and skin them for commercial purposes such as leather and leather goods. The tougher laws and attacks by vigilante groups are harming entire communities, particularly farmers and labourers as they have disrupted not just the cattle trade and the rural agricultural economy, but also leather and meat export industries linked to farming and dairy sectors.<sup>174</sup>

Lastly, these laws also restrict the religious freedom of Muslims in India.<sup>175</sup> For example, in Jammu and Kashmir, where certain sections of the Muslim community sacrifice (bovine) animals as part of their religious practices, for example, Eid-ul-Azha, the laws have been criticised as an 'attempt to prevent Muslims from discharging their religious duties'.<sup>176</sup>

166. Hindustan Times, <<https://www.hindustantimes.com/india/mp-muslim-couple-assaulted-on-a-train-for-carrying-beef/story-No6DGrWdiXzpKk2WpsL5KM.html>>

167. HT Correspondent, Ahmedabad, 'Four Dalit Men Stripped, Beaten by Cow Protection Vigilante in Gujarat' <<https://www.hindustantimes.com/india-news/four-dalit-men-stripped-beaten-by-cow-protection-vigilantes-in-gujarat/story-vGhVgYXeHa0h8DwlXfQn.html>>

168. 'Gau Raksha Dal Chief Justifies Forcing 'Beef Smugglers' to Eat Cow Dung' <<https://www.deccanchronicle.com/nation/current-affairs/290616/gau-raksha-dal-chief-justifies-forcing-beef-smugglers-to-eat-cow-dung.html>>

169. Deep Mukherjee, 'Meat Seized from Jaipur Hotel After Vigilante Attack Not Beef: Forensic Lab' <<https://www.hindustantimes.com/india-news/meat-seized-from-jaipur-hotel-after-vigilante-attack-not-beef-forensic-lab/story-WgyCVtc5ZlIdPWanPTY3q0.html>>

170. India Today Web Desk, 'We were Gangraped for 'Eating Beef', Says Mewat Woman' <<https://www.indiatoday.in/india/story/mewat-murder-gangrape-beef-biryani-cow-vigilantes-340463-2016-09-11>>

171. HRW Report, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

172. Manish Sahu, 'In Uttar Pradesh, more than half of NSA arrests this year were for cow slaughter' (The Indian Express, 11 September 2020) <[www.indianexpress.com/article/india/in-uttar-pradesh-more-than-half-of-nsa-arrests-this-year-were-for-cow-slaughter-6591315/](https://www.indianexpress.com/article/india/in-uttar-pradesh-more-than-half-of-nsa-arrests-this-year-were-for-cow-slaughter-6591315/)>

173. Human Rights Watch, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' (Report, 18 February 2019)

<<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities#812>>; Human Rights Watch, 'Human Rights Watch Submission to the Universal Periodic Review of India' (Press Release, 31 March 2022) <<https://www.hrw.org/news/2022/03/31/human-rights-watch-submission-universal-periodic-review-india>>; Jehangir Ali, 'After Row Over Bovine Animal Slaughter Ban Ahead of Eid, J&K Admin Attempts Climbdow' (The Wire, 16 July 2021) <<https://thewire.in/communalism/eid-jammu-and-kashmir-animal-slaughter-ban>>

174. Human Rights Watch Report, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

175. Jehangir Ali, 'After Row Over Bovine Animal Slaughter Ban Ahead of Eid, J&K Admin Attempts Climbdow' (The Wire, 16 July 2021) <<https://thewire.in/communalism/eid-jammu-and-kashmir-animal-slaughter-ban>>

176. Jehangir Ali, 'After Row Over Bovine Animal Slaughter Ban Ahead of Eid, J&K Admin Attempts Climbdow' (The Wire, 16 July 2021) <<https://thewire.in/communalism/eid-jammu-and-kashmir-animal-slaughter-ban>>

### 2.3. Other legislative measures

The Gujarat's Disturbed Areas Act (1991) conditions a transfer of property in 'disturbed areas', areas where riots against the governments were observed, to the express approval of district authorities. In 2020, the Act was amended by the government to allow its officials to issue a notification to apply this express authorisation to any area it deems likely to give rise to a riot. It has been observed that although the government stated that this measure was taken to protect tenants from forced evictions, it is mainly used to institute segregation between Hindus and Muslims by not allowing certain transfers for Muslim people,<sup>178</sup> as it has been publicly admitted by a member of the Vishwa Hindu Parishad (VHP), a right-wing organisation.

The Muslim Women (Protection of Rights on Marriage) Act (2019) penalises the triple talaq, a practice already ruled illegal by the Supreme Court of India in 2017.<sup>180</sup> The interdiction of practice, used by Muslim men to end their marriage unilaterally, was hijacked by Hindu officials two years later in the pretext of protecting the rights of Muslim women by instituting a jail penalty that could go up to three years for men using the 'triple talaq' to end their marriage, without considering Muslim women's opinions in the process. This law has been seen as yet another discriminatory law targeting Muslim people<sup>181</sup> and more particularly Muslim men since it made a civil wrong, already declared illegal and thus null and void by the Supreme Court, a non-bailable offence punishable by jail time. As mentioned earlier, the family

laws in the country are religion-based and no other personal law practice has been criminalised in this manner. Muslim-targeted restrictions regarding family law can also be observed in the draft legislation of the Population Control Bills (2021), targeting population control,<sup>182</sup> where government subsidies, jobs and the right to contest in local body elections would be impossible for families having more than two children. This legislation, alongside a stigmatising discourse held by the government where Muslim families would have numerous children, debunked several times,<sup>183</sup> allows the government to target certain groups, mostly Muslim families, on a legal ground that is not based on any factual reason, besides Islamophobia.

### 3. Restrictions on religious practices and beliefs

Restrictions on religious practice, profession and manifestation of the Muslim community has been reported to be wide-ranging, multi-faceted and spanning across the country, including attacks on places of worship, religious symbols, religious holidays and education. They can be attributed to both state and non-state actors. All of them are discussed hereunder.

On public prayers: In Haryana state, Hindu vigilantes routinely harass Muslims and noisily demand the end of Muslim prayers in public spaces, and confrontations and interruptions during Muslim prayer are more frequent.<sup>185</sup> During the reporting period, members of right-wing groups have led protests against this practice, resulting in

177. Parimal A. Dabhi, 'Explained: What has changed in Gujarat's Disturbed Areas Act' (The Indian Express, 19 October 2020) <[www.indianexpress.com/article/explained/gujarats-disturbed-areas-act-amendments-6723215/](http://www.indianexpress.com/article/explained/gujarats-disturbed-areas-act-amendments-6723215/)>

178. Nileena MS, 'The Gujarat government is enforcing communal segregation and criminalising property transfers' (The Caravan, 21 August 2019) <[www.caravanmagazine.in/policy/the-gujarat-state-is-enforcing-communal-segregation-and-criminalising-property-transfers](http://www.caravanmagazine.in/policy/the-gujarat-state-is-enforcing-communal-segregation-and-criminalising-property-transfers)>

179. Damayantee Dhar, 'Us and Them: The Misuse of Gujarat's Controversial Disturbed Areas Act' (News Click, 17 October 2020) <[www.newslick.in/Us-Them-The-Misuse-Gujarat-Controversial-Disturbed-Areas-Act](http://www.newslick.in/Us-Them-The-Misuse-Gujarat-Controversial-Disturbed-Areas-Act)>

180. Shayara Bano v. Union of India [2017] Supreme Court of India, 9 SCC 1.

181. Angshukanta Chakraborty, 'Criminalising instant triple talaq makes Muslim men second-class citizen' (DailyO, 29 December 2017) <[www.dailyo.in/politics/triple-talaq-bill-muslim-men-second-class-citizen-modi-government-parliament/story/1/21443.html](http://www.dailyo.in/politics/triple-talaq-bill-muslim-men-second-class-citizen-modi-government-parliament/story/1/21443.html)>

182. 'The Wire Staff 'UP's Draft Population Control Bill Proposes Two Child Policy, Penalties for Violation' (The Wire, 10 July 2021)

<[www.thewire.in/government/ups-draft-population-control-bill-proposes-two-child-policy-penalties-for-violation](http://www.thewire.in/government/ups-draft-population-control-bill-proposes-two-child-policy-penalties-for-violation)>

183. 'SY Quraishi 'The Population Myth: Islam, Family Planning and Politics in India' (Hindustan Times, 19 February 2021)

<[www.hindustantimes.com/books/interviews-y-quraishi-author-the-population-myth-islam-family-planning-and-politics-in-india-101613741759641.html](http://www.hindustantimes.com/books/interviews-y-quraishi-author-the-population-myth-islam-family-planning-and-politics-in-india-101613741759641.html)>

184. Ismat Ara, 'Why UP's Population Control Bill May Be Dangerous' (Science The Wire, 17 July 2021) <<https://science.thewire.in/health/why-ups-population-control-bill-may-be-dangerous/>>

185. Sameer Yasir, 'As Hindu Extremists Call for Killing of Muslims, India's Leaders Keep Silent' (The New York Times, 24 December 2021)

<[www.nytimes.com/2021/12/24/world/asia/hindu-extremists-india-muslims.html](http://www.nytimes.com/2021/12/24/world/asia/hindu-extremists-india-muslims.html)>; Hannah Ellis-Petersen, 'New city, old schism: Hindu groups target Gurgaon's Muslim prayer sites' (The Guardian, 4 December 2021) <[www.theguardian.com/world/2021/dec/04/hindu-groups-target-muslim-sites-india-gurgaon](http://www.theguardian.com/world/2021/dec/04/hindu-groups-target-muslim-sites-india-gurgaon)>

the harassment of worshippers.<sup>186</sup> In December 2021 the Haryana Chief Minister lent legitimacy to these groups and undercut the freedom of worship of Muslims by declaring that public prayers would not be tolerated.<sup>187</sup>

In 2022, the religious groups such as the Bajrang Dal called for a ban on the use of loudspeakers in mosques.<sup>188</sup> As a result, different public interest litigations have been filed in the high courts (Gujarat and Jharkhand for example) recently seeking a ban on the use of loudspeakers in mosques. They demanded that azaan (Islamic prayers) must not be offered using loudspeakers atop mosques. The groups have threatened to play bhajans (Hindu devotional songs) on loudspeakers near mosques if their objection is not addressed.<sup>189</sup>

On places of worship: Attacks on mosques have been reported across several states in India. Recent incidents include the vandalism of mosques in Tripura in October 2021, in alleged retaliation against attacks on Hindus in Bangladesh.<sup>190</sup> In June 2021 a mosque was bulldozed in Uttar Pradesh, allegedly for being an illegal structure.<sup>191</sup> During the targeted violence in February 2020 in North East Delhi, 22 different Muslim religious buildings, including mosques, seminaries, graveyards and mausoleums were reported to have been

targeted, all in the span of three days.<sup>192</sup>

In April 2022, Hindu petitioners in Varanasi, Uttar Pradesh, went to a local court asking for access to pray at a shrine behind the 17th-century Gyanavapi mosque. A court order allowed video-recorded survey of the mosque which is reported to have revealed a stone shaft that is the symbol of the Hindu deity Shiva, a claim that has been disputed by the mosque authorities.<sup>193</sup> Following this, a part of the mosque was sealed by the court without giving the mosque authorities a chance to present their case. The dispute reached the Supreme Court, which said that the complex would be protected, and prayers will continue in the mosque, but returned the case to the local civil court to decide whether the petition is maintainable.<sup>194</sup> Similar claims have been made by Hindu petitioners regarding mosques in Mathura (Shahi Idgah) and in Lucknow (Tilewali masjid), both in Uttar Pradesh.<sup>195</sup>

These attacks have triggered the fear that they may be following the model of a decades-long dispute involving the Babri Masjid, a 16th-Century mosque which was razed to the ground by Hindu mobs in the holy city of Ayodhya in 1992.<sup>196</sup> In 2019, the Supreme Court ordered to hand over the disputed land to a trust for the construction of a Hindu temple.<sup>197</sup>

186. 'India: Hindu Groups Continue to Disrupt Muslim Prayers in Gurgaon' <<https://www.aljazeera.com/news/2021/12/7/india-gurgaon-muslims-friday-prayers-hindu-groups-islamophobia-haryana>>

187. Leena Dhankhar, 'Offering Namaz at Public Places will not be Tolerated: Haryana CM Khattar' <<https://www.hindustantimes.com/cities/delhi-news/offering-namaz-at-public-places-will-not-be-tolerated/haryana-cm-khattar-in-gurgaon-101639162164560.html>>

188. 'Hindu Fringe Group in Karnataka Demands Ban on Loudspeaker at Mosques' <<https://www.indiatoday.in/india/video/karnataka-hindu-fringe-group-loudspeaker-at-mosques-ban-1933581-2022-04-05>>

189. Alok Ranjan, 'What the Courts Have Said on Using Loudspeakers at Religious Events and Public Places' <<https://www.indiatoday.in/india/story/what-courts-have-said-on-using-loudspeakers-at-religious-events-public-places-1933854-2022-04-05>>

190. Sadiq Naqvi, 'Muslims in India's Tripura Remain in Fear After Mosques Targeted' <<https://www.aljazeera.com/news/2021/11/5/india-tripura-muslims-mosques-violence-bjp-vhp>>

191. Hannah Ellis-Petersen & Mohammed Sartaj Alam, 'India Mosque Demolition: Officials Accused of Filing False Report on Muslim Leaders' <<https://www.theguardian.com/world/2021/jun/01/india-mosque-demolition-officials-accused-of-filing-false-report-on-muslim-leaders>>

192. Delhi Minorities Commission, 'Report of the DMC fact-finding committee on North-east Delhi riots of February 202' (July 2020) <[www.india-abroad.org/report-on-north-east-delhi-riots/](http://www.india-abroad.org/report-on-north-east-delhi-riots/)>

193. Ananthkrishnan G, 'Supreme Court's Ayodhya Verdict Faces Kashi Test: Mosque Plea Hearing Today' <<https://indianexpress.com/article/india/sc-ayodhya-verdict-kashi-test-mosque-plea-hearing-7920911/>>

194. Soutik Biswas, 'Gyanvapi Masjid: India Dispute Could Become a Religious Flashpoint' <<https://www.bbc.com/news/world-asia-india-61476741>>; The Outlook Web, 'Gyanvapi Mosque Case Timeline: Varanasi Court Hears Arguments on Plea's Maintainability, Next Hearing on July 4'

<<https://www.outlookindia.com/national/gyanvapi-case-here-is-everything-about-the-issue-that-is-tearing-apart-india-s-syncretic-culture-news-195468>>

195. PTI, 'Tilewali Masjid, Shahi Idgah: UP Courts See Rising Number of 'Survey Requests' From Hindus' <<https://thewire.in/law/tilewali-masjid-shahi-idgah-up-courts-see-rising-number-of-survey-requests-from-hindus>>

196. Krishna Jha & Dharendra K. Jha, 'The Untold Story of How the Rama Idol Surfaced Inside Babri Masjid' <<https://thewire.in/communalism/untold-story-rama-idol-surfaced-inside-babri-masjid>>; The Wire Staff, 'Babri Masjid: The Timeline of a Demolition',

<<https://thewire.in/communalism/babri-masjid-the-timeline-of-a-demolition>>

197. Apoorva Mandhani, 'Why Supreme Court Awarded Disputed Ayodhya Land to Hindus' <<https://theprint.in/judiciary/why-supreme-court-awarded-disputed-ayodhya-land-to-hindus/318566/>>

On religious symbols: In January, 2022, Muslim girls wearing the hijab at a government college in Udupi in Karnataka, were reportedly denied entry on the basis of wearing the hijab.<sup>198</sup> Other colleges in the state began to enforce similar bans, which included restrictions on their ability to appear for their exams. On 5 February, the Karnataka state government issued directions, banning hijab deemed as ‘clothes which disturb equality, integrity and public law and order should not be worn’.<sup>199</sup> On 15 March, the High Court of Karnataka upheld the ban, ruling that wearing hijab was not an essential religious practice of Islam while school uniforms promoted harmony and spirit of common brotherhood. The High Court order has been challenged in the Supreme Court but not heard yet, even as students continue to be kept off classrooms and taking exams.<sup>200</sup>

On religious education: The state of Gujarat announced recently that the Hindu religious scripture ‘Bhagwad Gita’ will be part of the school curriculum for grades 6-12 (ages 11-18), beginning in the 2022-23 academic year. All students irrespective of their religious orientation will be required to study the text under this change, and no other religious texts are included in the school curricula.<sup>201</sup> In April 2021, all government-funded madrassas providing Islamic education in Assam, were converted to regular schools, dropping all theological components from their syllabi.<sup>202</sup>

On teaching and dissemination of material including missionary activity: In March 2020, before the national shutdown due to Covid-19, international delegates of the Muslim missionary movement Tablighi Jamaat met in Delhi. News of an outbreak of Covid-19 within the congregation led to a ban on the missionary movement in the country, as well as detention and cases filed against hundreds of its members.<sup>203</sup> By December 2020, Indian courts had acquitted 36 foreign nationals charged with violating Covid-19 protocols.<sup>204</sup>

The Uttar Pradesh Anti-Terrorist Squad has filed a case in June against clerics and members of an organisation providing legal support to people converting to Islam. The accused have been booked for ‘waging war against the country’ through forced conversions to make India an ‘Islamic state’. Interviews with those in the list of forced converts have disagreed with the police’s version saying they converted of free will and were provided support and guidance by the accused.<sup>205</sup>

The government has been making changes over the years to visa and Overseas Citizen of India (OCI) guidelines. According to changes made, OCI card holders will need special permission to take up any ‘missionary’ or ‘Tablighi’ activities. No such restriction is imposed on Hindu or other religious activities.<sup>206</sup> No such restriction has been imposed ‘on Hindu missionary activity or that of any other faith.

198. Risha Fathima Khan, ‘28 Muslim girls wearing hijab barred from classes at Indian college’ (Al-Jazeera, 18 January 2022)

<<https://www.aljazeera.com/news/2022/1/18/india-karnataka-muslims-college-students-hijab-ban-udupi>>

199. Vakasha Sachdev, ‘Karnataka Hijab Row: Govt Order on Clothes ‘Disturbing Public Order’ is a Farce’ (The Quint, 8 February 2022)

<<https://www.thequint.com/news/law/karnataka-government-hijab-order-unconstitutional-public-order-education-act-wrong>>

200. ‘Hijab row: SC refuses urgent hearing on pleas against Karnataka court verdict’ (Mint, 25 March 2022)

<<https://www.livemint.com/news/india/hijab-row-sc-refuses-urgent-hearing-on-pleas-against-karnataka-court-verdict-see-details-here-11648170693629.html>>

201. ‘Gujarat schools to teach Bhagavad Gita’ (The Hindu, 17 March 2022) <[https://www.thehindu.com/news/national/other-states/gujarat-to-introduce-bhagavad-gita-for-classes-6-to-](https://www.thehindu.com/news/national/other-states/gujarat-to-introduce-bhagavad-gita-for-classes-6-to-12/article65235296.ece#:~:text=In%20Gujarat%2C%20the%20Bhagavad%20Gita,the%20Education%20department%20on%20Thursday)

[12/article65235296.ece#:~:text=In%20Gujarat%2C%20the%20Bhagavad%20Gita,the%20Education%20department%20on%20Thursday](https://www.thehindu.com/news/national/other-states/gujarat-to-introduce-bhagavad-gita-for-classes-6-to-12/article65235296.ece#:~:text=In%20Gujarat%2C%20the%20Bhagavad%20Gita,the%20Education%20department%20on%20Thursday)>

202. Makepeace Sitlhou, ‘In Assam, ban on state-run madrassas may force girls to drop out’ (Al-Jazeera, 11 March 2021)

<<https://www.aljazeera.com/features/2021/3/11/shut-down-of-madrassas-in-indias-assam-could-see-girls-drop-out>>

203. Hanan Zaffar & Shaheen Abdulla, ‘Tablighi Jamaat Men India Held for ‘Spreading Covid’ Share Ordeal’ <<https://www.aljazeera.com/news/2021/3/25/tablighi-jamaat-members-held-for-spreading-covid-stuck-in-india>>

204. Bilal Kuchay, ‘India Court Acquits Foreigners Over Tabligh Event During Pandemic’ <<https://www.aljazeera.com/news/2020/12/16/court-acquits-foreigners-who-attended-tablighi-jamaat-event>>

205. Bismee Taskin, ‘5 Lakh ‘Forced’ into Islam, Funds From Gulf, UK: What UP ATS Found in ‘Conversion Racket’ Probe’ <<https://theprint.in/india/5-lakh-forced-into-islam-funds-from-gulf-uk-what-up-ats-found-in-conversion-racket-probe/750310/>>

206. Arvind Gunasekar, ‘OCI Need Permission for ‘Tabligh, Journalistic Activities’: Home Ministry’ <<https://www.ndtv.com/india-news/oci-card-holders-need-permission-for-tabligh-journalistic-activities-says-home-ministry-2384122>>

Engaging in Tablighi work' has been added as a visa violation in India's general visa policy guidelines in 2020.<sup>207</sup> There have also been reports of work visas being denied to Christian priests visiting India, thereby disallowing them from missionary work.<sup>208</sup>

In 2019, a few months before the abrogation of Article 370 that provided special status to the state of Jammu and Kashmir, a socio-religious organisation called Jamat-i-Islami was banned for five years under the Unlawful Activities Prevention Act (India's principal anti-terror legislation) and most of its basic members and office bearers were put under arrest.<sup>209</sup> The organisation has been accused of being involved in activities intended to disrupt India's integrity.<sup>210</sup> However, since the last decade, the organisation mainly engages in socio-religious activities, particularly, supporting educational institutions.<sup>211</sup>

**Coerced conversions:** Reports suggest that Muslims have also been converted under 'ghar wapsi' (returning home) programmes led by members of right-wing Hindu groups.<sup>212</sup> It was reported that in December 2021, the chief of the Rashtriya Swayamsevak Sangh asked Hindus to take a pledge to ensure the 'ghar wapsi' of their brethren who had 'converted'.<sup>213</sup>

#### 4. Incitement to discrimination, hostility and violence

According to the reports reviewed by the Panel, the aforementioned use of legislative and executive measures combined with the violent acts of non-state actors and Hindutva

groups, need to be contextualised in the atmosphere of communally divisive hate speeches – on many occasions, calling for direct violence against the Muslim community. While these Islamophobic speeches are being made by individuals, including influential political and religious leaders, they are further amplified by news channels and social media platforms largely without critique and accountability. The following sub-sections discuss separate elements of this multi-dimensional structure leading to stigmatisation of Muslims and thus, enabling discrimination, hostility and violence against them.

##### 4.1. Public hate speeches

While under Indian domestic law, hate speech is criminalised,<sup>214</sup> a 2018 study found that there has been an increase of hate speech by around 490 per cent under the Modi government since 2014 when compared to the previous government.<sup>215</sup> 124 instances of hate speech by 45 politicians were found in the timeframe between May 2014 to April 2018 alone, while 21 instances of hate speeches were recorded from 2009 to 2013.<sup>216</sup> Since April 2018, more instances of public hate speech have been reported. A few of these instances warrant mentioning here.

Multiple incidents took place during the anti-CAA and anti-NRC protests in late 2019 to early 2020. BJP electoral candidates popularised the slogan 'Goli maaron saalon ko' (Shoot the traitors) against the protesters.<sup>217</sup>

207. The Wire Staff, 'Home Ministry Includes 'Tablighi Work' as an Indian Visa Violation' <<https://thewire.in/government/mha-india-visa-violation-tablighi-jamaat>>

208. Sangeeta Barooah Pishatory, 'In 'Christian' Meghalaya, the BJP Finds its Hindutva Baggage Weighing It Down' <<https://thewire.in/politics/church-getting-sucked-meghalayas-electoral-politics>>

209. J&K's Jamaat-i-Islami banned, <<https://www.thehindu.com/news/national/govt-imposes-ban-on-jamaat-e-islami-jammu-and-kashmir/article26400681.ece>>

210. What is Jamaat-e-Islami that has been banned in Jammu and Kashmir (India Today, 2 March 2019) <<https://www.indiatoday.in/fyi/story/what-is-jamaat-e-islami-jammu-and-kashmir-1469144-2019-03-02>>

211. Ayesha Khanyari, 'J & K Jamaat-e-Islami: Limiting its Ambitions or Learning from the Past? (IPCS, 30 April 2014) <[http://www.ipcs.org/comm\\_select.php?articleNo=4419](http://www.ipcs.org/comm_select.php?articleNo=4419)>

212. Dharendra k Jha, 'Yogi Effect: RSS Men Convert 43 Muslims in Uttar Pradesh to Hinduism' <<https://scroll.in/article/838416/yogi-effect-rss-men-convert-43-muslims-in-uttar-pradesh-to-hinduism>>

213. Sanjay Pandey, DHNS, Lucknow, 'RSS Vows 'Ghar Wapsi' of Hindus Who 'Converted'; Mahakumbh Seers Allege Attempt to 'Erase' Culture' <<https://www.deccanherald.com/national/national-politics/rss-vows-ghar-wapsi-of-hindus-who-converted-mahakumbh-seers-allege-attempt-to-erase-culture-1061110.html>>

214. Laws criminalising hate speech include Sections 153-A and 295-A of the Indian Penal Code, 1860 and Section 95 of the Code of Criminal Procedure, 1973.

215. Nimisha Jaiswal with Srinivasan Hain and Manas Pratap Singh, 'Under Modi Government, VIP Hate Speech Skyrockets – By 500%' (NDTV, 19 April 2018) <<https://www.ndtv.com/india-news/under-narendra-modi-government-vip-hate-speech-skyrockets-by-500-1838925>>

216. Nimisha Jaiswal with Srinivasan Hain and Manas Pratap Singh, 'Under Modi Government, VIP Hate Speech Skyrockets – By 500%' (NDTV, 19 April 2018) <<https://www.ndtv.com/india-news/under-narendra-modi-government-vip-hate-speech-skyrockets-by-500-1838925>>

217. Human Rights Watch, "Shoot the Traitors": Discrimination Against Muslims under India's New Citizenship Policy' (HRW, 9 April 2020), 23 <[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

Most notably, in February 2020, BJP politician Kapil Mishra gave the police a three-day ultimatum to clean the streets or ‘we would have to take to the streets’, sparking violence against the protesters by the police and by a mob<sup>218</sup> (see Annexure on Delhi for more details).

However, incidents of public hate speech, reportedly, did not solely occur in the context of the anti-CAA and anti-NRC protests. For several weeks following the outbreak of Covid-19 in March 2020, the BJP central government and mainstream TV news channels singled out a Muslim religious congregation in Delhi, organised by the international Islamic missionary movement, ‘Tablighi Jamaat’, as the cause of the spike in Covid-19 cases in India.<sup>219</sup> This led to a surge in Islamophobia with some BJP leaders calling the congregation a ‘Talibani crime’ and ‘Corona Terrorism’.<sup>220</sup> Pro-government television channels accused those who attended the gathering, and Indian Muslims, in general of being responsible for the outbreak and for deliberately spreading the virus in the country.<sup>221</sup> This anti-Muslim targeting spilled over into real-world violence, economic boycotts and denial of public services for Muslims.<sup>222</sup>

In Assam, during the state legislative assembly elections in 2021, BJP candidates repeatedly made incendiary remarks against

the Bengali-speaking Muslims in the state equating them with ‘termites’ or illegal migrants, or encroachers.<sup>223</sup>

In the lead-up to elections in Uttar Pradesh in March 2022, independent media reported on the use of hate speech during campaigning, especially by the incumbent Chief Minister, Yogi Adityanath.<sup>224</sup> In 34 public speeches made during the election campaign, Yogi Adityanath labels the Muslim community as a whole as terrorists and criminals who are a threat to the nation.<sup>225</sup>

Particularly disturbing reports of hate speech surfaced in December 2021, where extremist religious leaders who held a three-day religious convention (dharam sansad) in Haridwar, Uttarakhand, called for Hindus to pick up weapons and kill all of the Muslims in India. Senior religious leaders were seen pledging the destruction of the Muslim community and urging their followers to take to arms.<sup>226</sup> Calls for a ‘cleanliness drive’ against Muslims and to kill ‘at least 2 million’ Muslims were repeated in these conventions by some of the most prominent faces, all with strong links to the ruling BJP. Calls have also been made to ‘rape and impregnate’ Muslim women.<sup>227</sup> These meetings are organised by Hindu extremist groups with links to the BJP and at least two meetings – in Delhi and in Haridwar – were attended by Ashwini

218. See ‘Won’t listen after 3 days: Kapil Mishra’s ultimatum to Delhi Police to vacate Jafrabad roads’ (India Today, 23 February 2020)

<[www.indiatoday.in/india/story/won-t-listen-after-3-days-bjp-kapil-mishra-ultimatum-to-delhi-police-to-vacate-jaffrabad-chand-bagh-roads-1649271-2020-02-23](http://www.indiatoday.in/india/story/won-t-listen-after-3-days-bjp-kapil-mishra-ultimatum-to-delhi-police-to-vacate-jaffrabad-chand-bagh-roads-1649271-2020-02-23)>; See also Human Rights Watch, ‘Shoot the Traitors’: Discrimination Against Muslims under India’s New Citizenship Policy’ (HRW, 9 April 2020), 23 <[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

219. ‘COVID-19: Centre blames Tablighi Jamaat for sudden spike in cases’ (The Week, 1 April 2020) <[www.theweek.in/news/india/2020/04/01/covid-19-centre-blames-tablighi-jamath-for-sudden-spike-in-cases.html](http://www.theweek.in/news/india/2020/04/01/covid-19-centre-blames-tablighi-jamath-for-sudden-spike-in-cases.html)>

220. Divya Trivedi, ‘Human Rights Watch paints grim picture of India in its latest report’ (Frontline, 13 January 2021)

<<https://frontline.thehindu.com/dispatches/human-rights-watch-paints-grim-picture-of-india-in-its-latest-report/article33570641.ece>>; Hannah Ellis-Petersen and Shaikh Azizur, ‘Coronavirus conspiracy theories targeting Muslims spread in India’ (The Guardian, 13 April 2020)

<<https://www.theguardian.com/world/2020/apr/13/coronavirus-conspiracy-theories-targeting-muslims-spread-in-india>>

221. Meenakshi Ganguly, ‘India’s Steps to Contain Covid-19 Have Failed to Curb Anti-Muslim Rhetoric’ (Scroll.in, 18 April 2020)

<[www.hrw.org/news/2020/04/18/indias-steps-contain-covid-19-have-failed-curb-anti-muslim-rhetoric](http://www.hrw.org/news/2020/04/18/indias-steps-contain-covid-19-have-failed-curb-anti-muslim-rhetoric)>; ‘This is a ‘Talibani crime’ by Tablighi Jamaat: Naqvi on Nizamuddin Markaz gathering’ (The Print, 1 April 2020) <[www.youtube.com/watch?v=4HxAg\\_zh0ag](http://www.youtube.com/watch?v=4HxAg_zh0ag)>; ‘This is corona terrorism’, says BJP’s Sangeet Som over Nizamuddin Markaz’ (abp live, 01 April 2020) <<https://news.abplive.com/videos/news/india-this-is-corona-terrorism-says-bjps-sangeet-som-over-nizamuddin-markaz-1186833>>

222. Strong Cities, ‘#CoronaJihad: COVID-19, Misinformation, and Anti-Muslim Violence in India’ <<https://strongcitiesnetwork.org/en/coronajihad-covid-19-misinformation-and-anti-muslim-violence-in-india/>>

223. ‘Stress on Hindu identity’: BJP hate campaign in poll-bound Assam (Al-Jazeera, 25 March 2021) <<https://www.aljazeera.com/news/2021/3/25/stress-on-hindu-identity-bjp-hate-campaign-in-poll-bound-assam>>

224. ‘100+ Instances of Hate Speech, Religious Polarisation, Hindutva Supremacy in Adityanath’s Poll Speeches’ (The Wire, 3 March 2022)

<<https://thewire.in/communalism/100-instances-of-hate-speech-religious-polarisation-hindutva-supremacy-in-adityanaths-poll-speeches>>

225. ‘100+ Instances of Hate Speech, Religious Polarisation, Hindutva Supremacy in Adityanath’s Poll Speeches’ (The Wire, 3 March 2022)

<<https://thewire.in/communalism/100-instances-of-hate-speech-religious-polarisation-hindutva-supremacy-in-adityanaths-poll-speeches>>

226. ‘Hindutva Leaders at Haridwar Event Call for Muslim Genocide’ (The Wire, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

227. NC Asthana, ‘Sadhvi Vibhanand’s Call to ‘Rape’ Muslim Women with Impunity Shows Hindutva’s Politics of Fear’ (The Wire, 12 February 2022)

<<https://m.thewire.in/article/communalism/sadhvi-vibhanands-call-to-rape-muslim-women-with-impunity-shows-hindutvas-politics-of-fear/amp>>

Upadhyay, BJP leader and former spokesperson of the ruling party.<sup>228</sup> While this drew much international condemnation, this was one of the latest in over a dozen such meetings that have been organised by Hindu extremists in the last two years across the country, targeting religious minorities, leading to much fear and insecurity among the minority population.<sup>229</sup>

Despite the condemnation, similar events continue to be organised on varying scales, where Hindu leaders are seen reinforcing their mission of creating a Hindu Nation while calling for the eradication of Islam and for the perpetuation of sexual violence against women.<sup>230</sup> In addition to these events, reports of hate speeches against Muslims tend to increase around religious festivals, for instance, the Hindu Ram Navami festival, which took place in April 2022.<sup>231</sup>

Overall, such hate speech leads to the stigmatisation and dehumanisation of the entire Muslim community, thereby encouraging attacks against Muslims. For instance, in August 2021, a Hindu mob beat up a Muslim rickshaw driver in Kanpur, a city in Uttar Pradesh, as his young daughter begged the men to stop hitting him.<sup>232</sup> In another incident, a Hindu mob beat up a Muslim bangle seller in BJP-ruled Madhya Pradesh for trading in a Hindu neighbourhood. However, the next day, the police arrested the victim after the 13-year-old daughter of

one of his alleged attackers accused him of molesting her. The charges appeared as an afterthought, fabricated to ensure his attackers, who were captured on video, got away.<sup>233</sup>

For more details on targeted violence against Muslims following hate speech by political leaders, see Annexure III - Delhi, and on hate crimes, see Annexure V – Uttar Pradesh.

#### 4.2. Amplification of hate by TV channels and social media platforms

The reports suggest that, often, videos of speeches by public figures or politicians are spread over social media or pro-government television, thereby expanding their reach. For instance, during the Covid-19 pandemic, fake videos contending that Muslims were deliberately spreading the virus went viral on social media and WhatsApp, leading to weeks of abuse against Muslims, boycotts of their businesses and of individuals, and numerous physical attacks on Muslims, including volunteers distributing relief supplies.<sup>234</sup>

Several other channels such as Facebook or Twitter are also used by officials and non-officials to amplify the feeling of hate towards Muslim people and to incite violence. In fact, a study recently found that Anti-Muslim messages constituted 37 per cent of the content viewed on Facebook, and that caste-based hate accounted, on the other hand, for 13 per cent.<sup>235</sup> Much of this

228. 'Hindutva Leaders at Haridwar Event Call for Muslim Genocide' (The Wire, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>; Kaushik Raj and Alishan Jafri, 'As Hindu Extremists Repeatedly Call for Muslim Genocide, The Police Ignore An Obvious Conspiracy' (Article 14, 10 January 2022) <[www.article-14.com/post/as-hindu-extremists-repeatedly-call-for-muslim-genocide-the-police-ignore-an-obvious-conspiracy-61dba33fa759c](http://www.article-14.com/post/as-hindu-extremists-repeatedly-call-for-muslim-genocide-the-police-ignore-an-obvious-conspiracy-61dba33fa759c)>

229. Kaushik Raj and Alishan Jafri (n 228).

230. Tweeted links to the videos <[https://twitter.com/alishan\\_jafri/status/1488875434783608833](https://twitter.com/alishan_jafri/status/1488875434783608833)>

<<https://twitter.com/news24tvchannel/status/1487637803777523712?s=20&t=HY71lpYw0f8AWOGPmzTOVg>>

<<https://twitter.com/HindutvaWatchIn/status/1488181435110363137>>

ref\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cwterm%5E1488181435110363137%7Ctwgr%5E%7Ctwcon%5E%5Es1\_c10&ref\_url=https%3A%2F%2Fsabrangindia.in%2Farticle%2Fprayagrajs-sant-sammelan-just-another-edit>

231. 'India: Muslims see wave of attacks, hate speech on Hindu festival' (Al-Jazeera, 12 April 2022) <<https://www.aljazeera.com/news/2022/4/12/india-muslims-see-wave-of-attacks-hate-speech-on-hindu-festival>>

232. Asad Rehman, 'Kanpur assault case: Videos show man made to chant 'Jai Shri Ram', kid cried to let him go' (The Indian Express, 13 August 2021)

<<https://indianexpress.com/article/india/kanpur-assault-case-videos-show-man-made-to-chant-jai-shri-ram-kid-cried-to-let-him-go-7451346/>>

233. 'Indore: Muslim Man Beaten for Selling Bangles in 'Hindu Area' Now Charged Under POCSO' (The Wire, 24 August 2021) <<https://thewire.in/rights/indore-muslim-bangle-seller-beaten-up-by-hindu-mob-now-charged-under-pocso>>

234. Ritika Jain, 'How India's Government Set Off a Spiral of Islamophobia' (Article 14, 20 April 2020) <[www.article-14.com/post/how-india-s-government-set-off-a-spiral-of-islamophobia](http://www.article-14.com/post/how-india-s-government-set-off-a-spiral-of-islamophobia)>; 'Covid-19: Muslim vendors stopped from selling vegetables in UP, accused of being Tablighi members' (Scroll.in, 14 April 2020)

<<https://scroll.in/latest/95911/covid-19-muslim-vendors-stopped-from-selling-vegetables-in-up-accused-of-being-tablighi-members>>

235. Citizens Against Hate, 'Majoritarian Consolidation: Chronicling the Undermining of the Secular Republic' <<https://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Chronicling-Majoritarian-Consolidation.pdf>> 15.

information emanates from the 'IT Cell', a BJP unit specialising in creating and spreading fake news, and is being spread by multiple actors, such as its social media chief, Amit Malviya, who posted manipulated content on his Twitter account, content that was later flagged by Twitter's content moderators as 'Manipulated Media'.<sup>236</sup> The sophistication of these processes and the incitation of certain leading figures of the BJP, such as the Prime Minister, Narendra Modi, inviting 'influencers' to his residence, furthers and supports their ideological narrative,<sup>237</sup> thus contributing to the climate of violence and discrimination that Muslim people are currently living under. The incitement to discriminate against Muslim people goes even further, as top companies, such as Facebook, are, firstly, not taking enough measures to delete such content from their platforms, and are also employing people, such as Ankhi Das, appointed as 'Facebook India's policy head', who are allegedly active participants in the online hate.<sup>238</sup>

In addition, Muslim women are increasingly being targeted on social media, and online trolling against them has worsened in recent years. These gender-specific forms of humiliation, degradation and intimidation are discussed more in detail in the section on Gender-based violence and discrimination. Television media also plays a significant role in spreading fake news and instigating an oppressive climate for Muslim people, as the majority of news channels are owned by a few people, most of whom reportedly have direct political ties with the BJP,<sup>239</sup> or by

corporate conglomerates which openly support the BJP.<sup>240</sup> The reports of active participation of 23 leading media organisations in the process of spreading hateful speech, as well as their agreement to accept bribes to do so,<sup>241</sup> are particularly concerning. It has been further reported that newsrooms are predominantly composed of Hindus, leaving very little room for religious minorities. A glaring example of the impact of media bias and the amplification of the anti-Muslim narrative, can be found in a hate campaign which arose in Delhi following the 2019 Pulwama terrorist attack. As part of this hate campaign, several fake videos were circulated on social media,<sup>242</sup> ending up in intimidation, violence and attacks targeting Muslim people in the region.<sup>244</sup>

## 5. Censoring via juridical means

The aforementioned policies and practices have empowered vigilantes who act on the basis that they can commit unlawful acts with impunity. As the reports suggest, those criticising the government or its actions have been subjected to legal complaints being filed against them in addition to pro-BJP mobs threatening, harassing or attacking minority community members. Some of these incidents are listed below.

In the context of the Covid-19 outbreak in 2020, state governments across the country filed cases against over 2,500 foreign nationals for allegedly violating visa terms and intentionally disregarding Covid-19 guidelines in order to attend the above-mentioned 'Tablighi Jamaat' meeting.<sup>245</sup>

236. Deepshikha Ghosh, 'Twitter Flags BJP's Amot Malviya's Tweet as 'Manipulated Media' (NDTV, 2 December 2020) <<https://www.ndtv.com/india-news/twitter-flags-bjp-amit-malviya-tweet-as-manipulated-media-2332990>>

237. 'Twitter Trolls among #Super150 Invited by PM Modi' (The Quint, 6 July 2015) <<https://www.thequint.com/tech-and-auto/tech-news/twitter-trolls-among-super150-invited-by-pm-modi>>

238. Ankhi Das: Facebook India's policy head quits amid hate speech row (BBC News, 28 October 2020) <<https://www.bbc.com/news/world-asia-india-54715995>>

239. Media Ownership Monitor India 'A delicate handshake' <<https://india.mom-rsf.org/en/findings/politicalaffiliations/>>

240. Media Ownership Monitor India 'A delicate handshake' <<https://india.mom-rsf.org/en/findings/politicalaffiliations/>>

241. The Wire Staff, 'Cobrapost Sting: Big Media Houses Say Yes to Hindutva, Black Money, Paid News' (The Wire, 26 May 2018) <<https://thewire.in/media/cobrapost-sting-big-media-houses-say-yes-to-hindutva-black-money-paid-news>>

242. Nithya Subramanian, 'In charts: India's newsrooms are dominated by the upper castes – and that reflects what media covers' (Scroll.in, 3 August 2018) <<https://scroll.in/article/932660/in-charts-indias-newsrooms-are-dominated-by-the-upper-castes-and-that-reflects-what-media-covers>>

243. Karen Rebelo, 'Syria Blast Video Falsely Shared as CCTV Footage of Pulwama Attack' (Boomlive.in, 15 February 2019) <<https://www.boomlive.in/syria-blast-video-falsely-shared-as-cctv-footage-of-pulwama-attack/>>

244. Ishfaq Naseem, 'Pulwama blast aftermath: Attack triggers violence in Jammu as mobs torch vehicles, attack Kashmiri Muslims' (FirstPost, 16 February 2019) <<https://www.firstpost.com/india/pulwama-blast-aftermath-attack-triggers-violence-in-jammu-as-mobs-torch-vehicles-attack-kashmiri-muslims-6099731.html>>

245. Karan Tripathi and Maisah Irfan, 'Criminalised By Govt, Cleared by Courts: The Tablighi Story' (Article 14, 18 December 2020) <[www.article-14.com/post/criminalised-by-govt-cleared-by-courts-the-tablighi-story](http://www.article-14.com/post/criminalised-by-govt-cleared-by-courts-the-tablighi-story)>

Courts in several states cleared the accused, while strongly criticising the authorities for ‘malicious’ prosecutions, devoid of evidence. While quashing cases against 35 people who attended the Jamaat congregation, 29 of them foreign nationals, the Bombay High Court stated in August that the cases appeared to have been filed as a warning towards Indian Muslims who had been protesting against the citizenship policies across the country. In its judgement, the court stated, ‘This action indirectly gave warning to Indian Muslims that action in any form and for anything can be taken against Muslims’.<sup>246</sup>

In May 2021, amid the second wave of Covid-19, a group of BJP lawmakers in Karnataka state brought up alleged corruption in the local government body’s allocation of beds to Covid-19 patients in Bengaluru. The group, including BJP parliamentarian Tejasvi Surya, gave a communal twist to the allegations, accusing Muslims in the war room of being responsible for the conspiracy, without any evidence. Surya made communal remarks against Muslims working at the coronavirus war room and read out the names of 17 officials responsible for the alleged scam, all of whom are Muslims among the 200-plus staff working there. In addition, the BJP leaders asked why so many from the same community were appointed in the war room.<sup>247</sup> This profiling, once again, led to the vilification of Muslims involved in Covid-relief measures, on social media. Several of the Muslim workers named by Surya were harassed by strangers after their names and phone numbers were leaked. There were some reports of Surya later apologising, but those reports were later refuted by his office.<sup>248</sup>

Furthermore, in January 2021, Uttar Pradesh police detained Nasir, 26, a Muslim street vendor, after members of the militant Hindu group, Bajrang Dal, accused him of offending them by selling a shoe branded ‘Thakur’, an upper-caste name. Following much criticism on social media and elsewhere, police denied detaining Nasir and dropped the charge of promoting enmity between groups against him, but said they were still investigating allegations related to the charges of causing hurt and intentional insult.<sup>249</sup>

A high-end jewellery chain, Tanishq, withdrew an advertisement in October 2020, fearing violence after a Hindu nationalist backlash.<sup>250</sup> The advertisement depicted a Muslim family throwing a baby shower for their Hindu daughter-in-law; those opposing it said it promoted ‘love jihad’ or interfaith marriages. The company faced vicious trolling on social media, threats of attacks against their staff at one of their stores and boycott campaigns.<sup>251</sup> In October 2021, at least three other advertisements were withdrawn after being targeted for offending Hindu sentiments, with a growing intolerance for secular or more inclusive content.<sup>252</sup>

Legal provisions, such as section 295A of the Indian Penal Code, which criminalises ‘deliberate and malicious’ speech intended to outrage religious feelings, are increasingly used by the authorities to silence those with whom they disagree.<sup>253</sup> For example, in May 2022, a Delhi University professor was booked under 295A for his tweet on an ongoing mosque dispute in Varanasi, Uttar Pradesh. Using these provisions, the police make arrests based on spurious complaints even though the Supreme Court has clarified that

246. Cri.WP 548/20 & Ors. <[www.livelaw.in/pdf\\_upload/pdf\\_upload-380282.pdf](http://www.livelaw.in/pdf_upload/pdf_upload-380282.pdf)>; ‘Chosen to Make Them Scapegoats’: Bombay HC Quashes FIRs Against Tablighi Jamaat Members’ (The Wire, 23 August 2020) <[www.thewire.in/law/tablighi-jamaat-delhi-high-court-quash-fir-scapegoats](http://www.thewire.in/law/tablighi-jamaat-delhi-high-court-quash-fir-scapegoats)>

247. Rohini Swamy, ‘Tejasvi Surya ‘communalises’ Covid fight by accusing Muslim volunteers of beds allotment racket’ (The Print, 5 May 2021) <<https://theprint.in/india/tejasvi-surya-communalises-covid-fight-by-accusing-muslim-volunteers-of-beds-allotment-racket/653000/>>

248. Rohini Swamy, ‘Did Tejasvi Surya apologise for ‘communal’ remark? His office says no, BBMP staff say yes’ (The Print, 7 May 2021) <<https://theprint.in/india/did-tejasvi-surya-apologise-for-communal-remark-his-office-says-no-bbmp-staff-say-yes/654240/>>

249. Sanjeev Bhatnager, ‘No Evidence, No Crime: Muslim Man in UP Arrested For Selling Shoes is Freed’ (Article 14, 8 January 2021) <[www.article-14.com/post/no-evidence-no-crime-muslim-arrested-for-selling-shoes-is-freed](http://www.article-14.com/post/no-evidence-no-crime-muslim-arrested-for-selling-shoes-is-freed)>; Jignasa Sinha, ‘Casteist’ shoe: Cops say never held accused, charge diluted’ (The Indian Express, 7 January 2021) <[www.indianexpress.com/article/india/uttar-pradesh-shoes-vendor-caste-word-7134835/](http://www.indianexpress.com/article/india/uttar-pradesh-shoes-vendor-caste-word-7134835/)>

250. ‘Tanishq: Jewellery ad on interfaith couple withdrawn after outrage’ (BBC News, 13 October 2020) <[www.bbc.com/news/world-asia-india-54520390](http://www.bbc.com/news/world-asia-india-54520390)>

251. Sakshi Bajaj, ‘Threats Made at Tanishq Store in Gujarat, Police Patrolling Area: Cops’ (NDTV, 14 October 2020) <[www.ndtv.com/india-news/threats-made-at-tanishq-store-in-gujarat-police-patrolling-area-cops-2309886](http://www.ndtv.com/india-news/threats-made-at-tanishq-store-in-gujarat-police-patrolling-area-cops-2309886)>

252. Hannah Ellis-Petersen, ‘Dictating what is Indian’: backlash over Urdu phrase in fashion advert’ (The Guardian, 26 October 2021)

<[www.theguardian.com/world/2021/oct/26/completely-bizarre-india-clothes-ad-taken-down-after-critics-say-urdu-use-offensive-to-hindus-fabindia](http://www.theguardian.com/world/2021/oct/26/completely-bizarre-india-clothes-ad-taken-down-after-critics-say-urdu-use-offensive-to-hindus-fabindia)>

253. Human Rights Watch, ‘Stifling Dissent: The Criminalization of Peaceful Expression in India’ (HRW, 2016) <[www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india](http://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india)>

the law does not punish every act of insult to religion. It must be proved that the act was malicious or deliberate, and only an aggravated form of insult to religion that also has a tendency to disrupt public order can be punished.<sup>254</sup> Rights groups have long called for the repeal of section 295A, which uses overbroad language that does not meet international standards of freedom of speech and expression.

In November 2020, when granting bail to a news anchor sympathetic to the government, the Supreme Court reiterated that bail is the rule and jail is the exception, and observed that criminal law should not be used for ‘selective harassment of citizens’.<sup>255</sup> However, the police have continued to harass critics of the government, activists and journalists by filing unjustified cases against them for dissenting views, protesting, or covering protests, and arguing against bail in the courts.

Courts in Madhya Pradesh denied bail to a Muslim stand-up comic, Munawar Faruqui, who was arrested under section 295A for jokes which he apparently did not perform, that allegedly hurt Hindu sentiments. The police subsequently admitted that they had no evidence of the performance.<sup>256</sup> Faruqui and his five associates – including three Hindus, a Muslim and a Christian – were arrested on 1 January 2021, by state police, based on a complaint made by the son of a BJP politician, who also leads a Hindu nationalist group. A mob of men from the organisation disrupted

Faruqui’s show, saying he made ‘indecent’ and ‘vulgar’ remarks against Hindu deities. During Faruqui’s bail hearing, the judge reportedly remarked that ‘such people must not be spared’.<sup>257</sup> Faruqui appealed to the Supreme Court, which granted him bail on 5 February, noting that the allegations in the case were vague and that the police had failed to follow proper procedure before his arrest.<sup>258</sup> However, Faruqui has found it difficult to perform after being out on bail. At least a dozen of his shows were cancelled in 2021 after protests by Hindu extremist groups.<sup>259</sup>

## 6. Gender-based violence and discrimination

Against the backdrop of the developments listed above, it is imperative to discuss the gendered impact of these laws, policies, restrictions and instances of hate speech, particularly on young girls and women.

Hijab ban and restrictions on access to education: Women and girls wearing hijab are allegedly facing discrimination in their access to education and employment in multiple states. A hijab is an expression of faith specific to Muslim women.<sup>260</sup> Therefore, discrimination on the basis of hijabs is targeted discrimination against Muslim women and girls in particular. Hijab-wearing students in Maharashtra shared accounts of discrimination by schools who refused to accommodate the hijab.<sup>261</sup> Similarly, women reported having challenging and discriminatory experiences with potential employers.<sup>262</sup>

254. Siddharth Shivakumar, ‘Munawar Faruqui’s Case - Misuse of Section 295A Of Penal Code and An Aggravated Insult on Free Speech’ (LiveLaw.in, 23 January 2021) <[www.livelaw.in/columns/munawar-faruquis-case-section-295a-ipc-insult-free-speech-168809](http://www.livelaw.in/columns/munawar-faruquis-case-section-295a-ipc-insult-free-speech-168809)>

255. Sanya Talwar, ‘Courts Must Ensure That Criminal Law Does Not Become a Weapon For Selective Harassment of Citizens: SC in Arnab Goswami Judgment’ (LiveLaw.in, 27 November 2020) <[www.livelaw.in/top-stories/deprivation-for-a-single-day-is-a-day-to-many-courts-must-ensure-that-criminal-law-does-not-become-a-weapon-for-selective-harassment-of-citizens-sc-in-arnab-goswami-judgment-166459](http://www.livelaw.in/top-stories/deprivation-for-a-single-day-is-a-day-to-many-courts-must-ensure-that-criminal-law-does-not-become-a-weapon-for-selective-harassment-of-citizens-sc-in-arnab-goswami-judgment-166459)>

256. Soutik Biswas, ‘The Indian Comic in Jail for jokes he didn’t crack’ (BBC News, 28 January 2021) <[www.bbc.com/news/world-asia-india-55797053](http://www.bbc.com/news/world-asia-india-55797053)>; Kunal Purohit, ‘Muslim Stand-Up Comic Jailed – For Jokes He Did Not Crack’ (Article 14, 7 January 2021) <[www.article-14.com/post/muslim-stand-up-comic-jailed-for-a-joke-he-did-not-crack](http://www.article-14.com/post/muslim-stand-up-comic-jailed-for-a-joke-he-did-not-crack)>

257. Areeb Uddin Ahmed, ‘Munawar Faruqui case: When comedy becomes crime and bail is the exception’ (Bar and Bench, 29 January 2021) <[www.barandbench.com/columns/munawar-faruqui-case-when-comedy-becomes-crime-and-bail-is-the-exception](http://www.barandbench.com/columns/munawar-faruqui-case-when-comedy-becomes-crime-and-bail-is-the-exception)>

258. ‘Supreme Court Grants Interim Bail to Comedian Munawar Faruqui’ (Hindustan Times, 5 February 2021)

<[www.hindustantimes.com/india-news/supreme-court-grants-interim-bail-to-comedian-munawar-faruqui-101612505003674.html](http://www.hindustantimes.com/india-news/supreme-court-grants-interim-bail-to-comedian-munawar-faruqui-101612505003674.html)>

259. Soutik Biswas, ‘Munawar Faruqui: Is It Dangerous to Crack a Joke in India?’ (BBC News, 30 November 2021) <[www.bbc.co.uk/news/world-asia-india-59404542](http://www.bbc.co.uk/news/world-asia-india-59404542)>

260. Haniya Rumaney and Sujata Sriram, ‘Not Without My Hijab: Experiences of Veiled Muslim Women in India’ (2021) Human Arenas <<https://link.springer.com/content/pdf/10.1007/s42087-021-00193-3.pdf>>

261. Haniya Rumaney and Sujata Sriram, ‘Not Without My Hijab: Experiences of Veiled Muslim Women in India’ (2021) Human Arenas <<https://link.springer.com/content/pdf/10.1007/s42087-021-00193-3.pdf>>

262. Haniya Rumaney and Sujata Sriram, ‘Not Without My Hijab: Experiences of Veiled Muslim Women in India’ (2021) Human Arenas <<https://link.springer.com/content/pdf/10.1007/s42087-021-00193-3.pdf>>

In the state of Karnataka, 12 Muslim girls were reportedly refused entry into the classroom for wearing hijab at a government-run college.<sup>263</sup> While the girls showed up to the college every day, they were marked as absent from classes as they were not allowed to enter the classroom.<sup>264</sup> The students submitted a memorandum to the school's principal asking for permission to wear the hijab.<sup>265</sup> The principal denied the request.<sup>266</sup> Thereafter, a petition was filed by six of the students to the Karnataka High Court.<sup>267</sup> However, in an interim order, the court prohibited students from wearing hijab and similar pieces of clothing.<sup>268</sup> Since then, other schools in the state have denied access to students wearing a hijab.<sup>269</sup> On 15 March 2022, the Karnataka High Court issued a verdict upholding the ban, stating that wearing of the hijab is not an essential religious practice under Islam.<sup>270</sup> The order has been challenged by various groups before the Supreme Court and the matter is pending at the time of writing of this report.

Allegations of sexual violence: As a response to the passing of the CAA in mid-December 2019, women led anti-CAA sit-ins in Delhi.<sup>271</sup> Several of these protests ended violently. As

women were at the forefront of these protests, they also became the first subjects of the attacks against protesters. A concrete example of this includes police barricades stopping a march to the Parliament House in Delhi on 10 February 2020.<sup>272</sup> After altercations between police and protesters, at least 10 protesters were left injured.<sup>273</sup> A Fact-Finding Report by the National Federation of Indian Women reveals that men were violently injured, and women were gassed and beaten, and some were sexually assaulted by policemen.<sup>274</sup>

A further example occurred on 23 February 2020, when BJP leader Kapil Mishra gave a speech in the late afternoon stating that the police had three days to clear the roads from the protesters in North Eastern Delhi.<sup>275</sup> A Fact-Finding Commission, which was established after violence escalated later that day, found that protesters were attacked by police.<sup>276</sup> It was also reported that several women were injured, physically assaulted, sexually harassed and threatened with sexual assault by the police forces and by a mob that started to form.<sup>277</sup> As a result of the violence in the following days, there were 53 officially-recorded deaths and 250 hospitalised persons.<sup>278</sup>

263. Rushda Fathima Khan, 'Muslim girls wearing hijab barred from classes at Indian college' (Al-Jazeera, 18 January 2022)

<[www.aljazeera.com/news/2022/1/18/india-karnataka-muslim-college-students-hijab-ban-udupi](http://www.aljazeera.com/news/2022/1/18/india-karnataka-muslim-college-students-hijab-ban-udupi)>; see also Rebecca Rose Varghese and Vignesh Radhakrishnan, 'Data | Hijab Row: Why the ban is a double blow to Muslim girl students' (The Hindu, 20 February 2022) <[www.thehindu.com/data/data-hijab-row-why-the-ban-is-a-double-blow-for-muslim-girl-students/article65066546.ece](http://www.thehindu.com/data/data-hijab-row-why-the-ban-is-a-double-blow-for-muslim-girl-students/article65066546.ece)>

264. Rushda Fathima Khan (n 263).

265. Rebecca Rose Varghese and Vignesh Radhakrishnan (n 263). 'The ban is a double blow to girl students'

266. Rebecca Rose Varghese and Vignesh Radhakrishnan (n 263). 'The ban is a double blow to girl students'

267. See e.g., Mekhala Saran, 'HC Verdict Due in Hijab Case: What Did Petitioners Argue? What Did State Say?' (The Quint, 1 March 2022)

<[www.thequint.com/news/law/hc-verdict-due-in-hijab-case-what-did-petitioners-argue-what-did-state-say-explainer#read-more](http://www.thequint.com/news/law/hc-verdict-due-in-hijab-case-what-did-petitioners-argue-what-did-state-say-explainer#read-more)>

268. Mekhala Saran, 'HC Verdict Due in Hijab Case: What Did Petitioners Argue? What Did State Say?' (The Quint, 1 March 2022) <[www.thequint.com/news/law/hc-verdict-due-in-hijab-case-what-did-petitioners-argue-what-did-state-say-explainer#read-more](http://www.thequint.com/news/law/hc-verdict-due-in-hijab-case-what-did-petitioners-argue-what-did-state-say-explainer#read-more)>

269. Kiran Parashar, 'Karnataka: As row goes on, many students in hijab sent back by schools, parents protest' (Indian Express, 16 February 2022)

<[www.indianexpress.com/article/cities/bangalore/karnataka-hijab-row-students-parents-protest-7775553/](http://www.indianexpress.com/article/cities/bangalore/karnataka-hijab-row-students-parents-protest-7775553/)>

270. 'Karnataka hijab row: 4 Questions the High Court Asked (and the answers)' (The Hindustan Times, 15 March 2022) <<https://www.hindustantimes.com/india-news/karnataka-hijab-row-3-questions-the-high-court-asked-and-the-answers-101647322764070.html>>

271. Human Rights Watch, 'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy' (9 April 2020) 26

<[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

272. 'Cops kicked us in stomach': 16 Protesters Injured After Clash with Delhi Police in Jamia Nagar' (The Indian Express, 10 February 2020)

<<https://indianexpress.com/article/cities/delhi/delhi-anti-kaa-nrc-npr-protesters-jamia-police-clash-6261139/>>

273. 'Delhi: More Than 10 Jamia students injured as police stop CAA Protest March to Parliament' (scroll.in, February 2020) <<https://scroll.in/latest/952754/delhi-more-than-10-jamia-students-injured-as-police-stop-kaa-protest-march-to-parliament>>

274. For a more detailed report of the injuries suffered see National Federation of Indian Women's Fact-Finding Report on the Events of 10 February 2020

'Targeted Violence in Jamia' <<https://nfiw.files.wordpress.com/2020/08/for-press-corrected-final-fact-finding-report-jamia.pdf>>

275. 'Won't Listen After 3 Days: Kapil Mishra's Ultimatum to Delhi Police to Vacate Jaffrabad roads' (India Today, 23 February 2020)

<[www.indiatoday.in/india/story/won-t-listen-after-3-days-bjp-kapil-mishra-ultimatum-to-delhi-police-to-vacate-jaffrabad-chand-bagh-roads-1649271-2020-02-23](http://www.indiatoday.in/india/story/won-t-listen-after-3-days-bjp-kapil-mishra-ultimatum-to-delhi-police-to-vacate-jaffrabad-chand-bagh-roads-1649271-2020-02-23)>

276. Delhi Minorities Commission, 'Report of the DMC fact-finding committee on North-east Delhi riots of February 202' (July 2020) 65 <[www.india-abroad.org/report-on-north-east-delhi-riots/](http://www.india-abroad.org/report-on-north-east-delhi-riots/)>

277. Delhi Minorities Commission, 'Report of the DMC fact-finding committee on North-east Delhi riots of February 202' (July 2020) 65 <[www.india-abroad.org/report-on-north-east-delhi-riots/](http://www.india-abroad.org/report-on-north-east-delhi-riots/)>

278. Delhi Minorities Commission (n 276) 17.

Online harassment: Apart from the institutionalised discrimination, Muslim women have also been targets of sexualisation and harassment online. Research has shown that sexualisation leads to dehumanisation<sup>279</sup> and that sexual objectification in the media can lead to normalising and increasing harassment, both online and otherwise.<sup>280</sup> This can be seen by a general trend of online harassment of Muslim women in India. As an example, Muslim women celebrating Eid festivities were being sexualised and degraded by an Indian YouTube channel in May 2021.<sup>281</sup>

Another concrete example is that of apps 'auctioning' Indian Muslim women. In July 2021, an app named 'Sulli Deals' listed Muslim women for 'auctions' online.<sup>282</sup> Six months later, the app 'Bulli Bai' listed Muslim women again 'for sale'.<sup>283</sup> Bulli and Sulli are derogatory terms for Muslim women.<sup>284</sup> These apps target Muslim women by 'auctioning' them off in order to degrade and humiliate them. Some of the women who were included in the apps continued to be harassed online on other websites.<sup>285</sup> While both of the apps have been shut down,<sup>286</sup> the authorities stayed inactive after July 2021 and no arrests were made in the case of 'Sulli Deals'.<sup>287</sup> Therefore, when 'Bulli Bai' appeared online, several women's organisations sent a joint memorandum to the president, stating that 'whether it is hate-

speech, physical attacks or prevention of prayer meetings, wherever members of Minority communities like Christians and Muslims are the victims, the police, the administration and even the courts remain mute'.<sup>288</sup> It appears that, consequently, several arrests have been made in relation to the 'Bulli Bai' case.<sup>289</sup>

Threats of sexual harassment: It is not just online that Muslim women face such harassment. Instead, Muslim women and girls have also been subject to threats of rape and forced impregnation by prominent Hindu religious leaders. On at least two occasions, Hindu religious leaders have used sexual violence against Muslim women as a threat intended for Muslim men in public speeches. On 2 April 2022, in front of Sheeshe wali mosque in Khairabad, Bajrang Muni made incendiary remarks threatening sexual violence against Muslim women in the presence of police officers on the occasion of the Hindu new year.<sup>290</sup> Prior to that, on 25 and 26 December 2021, around 20 Hindutva religious leaders met for a two-day Dharam Sansad event in Raipur, Chhattisgarh, to urge Hindus to begin preparation for the realisation of the Hindu rashtra (Hindu Nation).<sup>291</sup> At the event, Sadhvi Vibhanand Giri reportedly said from a stage, 'your [Muslim] women will be impregnated by Hindus, if you cast even a glance at Hindu girls, without any Muslim or Hindu marriage rituals'.<sup>292</sup>

279. See Philippe Bernard and Robin Wollast, 'Why Is Sexualization Dehumanizing? The Effects of Posture Suggestiveness and Revealing Clothing on Dehumanization' (2019) SAGE Open <<https://journals.sagepub.com/doi/full/10.1177/2158244019828230>>

280. See Silvia Galdi and Francesca Guizzo, 'Media-Induced Sexual Harassment: The Routes from Sexually Objectifying Media to Sexual Harassment' (2021) 84 Sex Roles 645.

281. Akhila Thomas, 'Harassment Touted As 'Entertainment': Liberal Doge and His Toxic Objectification' (Feminism in India, 25 May 2021) <<https://feminisminindia.com/2021/05/25/liberal-doge-pakistani-women-online-harassment/>>

282. See Geeta Pandey, 'Sulli Deals: The Indian Muslim Women 'up for Sale' on an App' (BBC News, 10 July 2021) <[www.bbc.com/news/world-asia-india-57764271](http://www.bbc.com/news/world-asia-india-57764271)>

283. See Srishti Jaswal, 'Bulli Bai: India's Muslim Women Again Listed on App for 'Auction'' (Al Jazeera, 2 January 2022) <[www.aljazeera.com/news/2022/1/2/bulli-bai-muslim-women-auction-online-india](http://www.aljazeera.com/news/2022/1/2/bulli-bai-muslim-women-auction-online-india)>

284. See Srishti Jaswal, 'Bulli Bai: India's Muslim Women Again Listed on App for 'Auction'' (Al Jazeera, 2 January 2022) <[www.aljazeera.com/news/2022/1/2/bulli-bai-muslim-women-auction-online-india](http://www.aljazeera.com/news/2022/1/2/bulli-bai-muslim-women-auction-online-india)>

285. See Geeta Pandey (n 283).

286. See Geeta Pandey (n 283) see also 'Bulli Bai: India App That Put Muslim Women Up for Sale is Shut' (BBC News, 3 January 2022) <[www.bbc.com/news/world-asia-india-59856619](http://www.bbc.com/news/world-asia-india-59856619)>

287. See Hemani Bhandari and Jagriti Chandra, 'Police Inaction Has Emboldened Goons, Say Women Who Were 'Auctioned' Online' (The Hindu, 12 January 2022) <[www.thehindu.com/news/national/no-hope-of-action-against-abusers-says-victim-of-online-trolling/article38102296.ece](http://www.thehindu.com/news/national/no-hope-of-action-against-abusers-says-victim-of-online-trolling/article38102296.ece)>

288. All India Democratic Women's Association, 'Joint Memorandum from Women's Organisations to President' (3 January 2022) <[www.aidwaonline.org/index.php/ensure-severe-punishment-public-incident-sexual-abuse-muslim-women](http://www.aidwaonline.org/index.php/ensure-severe-punishment-public-incident-sexual-abuse-muslim-women)>

289. See 'One more arrested in 'Bulli Bai' app case' (The Hindu, 21 January 2022) <[www.thehindu.com/news/national/one-more-arrested-in-bulli-bai-app-case/article38300375.ece](http://www.thehindu.com/news/national/one-more-arrested-in-bulli-bai-app-case/article38300375.ece)>

290. Kaushik Raj & Alishan Jafri, Mahant Bajrang Muni Udasin, Who Repeatedly Called for Rape of Muslim Women, Is a Serial Offender' (The Wire, 9 April 2022) <<https://thewire.in/communalism/mahant-bajrang-muni-udasin-hate-speech>>

291. Tarushi Aswani, 'At Raipur Dharma Sansad, Hindutva Leaders Raise Call to Take Up Arms for Hindu Rashtra' (The Wire, 30 December 2021) <<https://thewire.in/communalism/raipur-dharma-sansad-call-for-violence-hindu-rashtra-christian-muslim>>

292. Twitter, Alishan Jafri, <[https://twitter.com/alishan\\_jafri/status/1488875434783608833](https://twitter.com/alishan_jafri/status/1488875434783608833)>

Disproportionate impact of exclusionary measures: Besides governmental schools denying access to Muslim girls and women, discriminatory laws against Muslim minorities such as the NRC and the CAA, which are discussed above, also leave women particularly vulnerable. Gender-based ‘different verification standards regarding documentation’ are applied to women who are suspected of being ‘non-original’ inhabitants under NRC processes.<sup>293</sup>

An example of this is the refusal to accept residency certificates by courts. Around 23 per cent of women in India get married before the age of 18. Most likely, their first official documents will carry their married name, leading to difficulties establishing a link to their parents.<sup>294</sup> This makes it difficult to prove their ancestral lineage as required by the NRC application process. Therefore, women are likely to rely on residency certificates issued by a gram panchayat (village council).<sup>295</sup> However, in 2017, the Guwahati High Court in Assam, in its judgment in the case of Manowara Bewa v. Union of India & Ors,<sup>297</sup> decided that such certificates are not public documents and, thus, cannot be accepted in order to register as citizens nor to issue National Identity Cards.<sup>298</sup> While the Indian Supreme Court set aside the order of the Guwahati High Court and allowed the gram panchayat certificates to be used as documents for claiming citizenship,<sup>299</sup> under the NRC they are still not accepted in several cases.<sup>300</sup> Other factors, such

as lack of land ownership documents, educational qualification documents, and birth certificates, contribute to the vulnerability of women to laws like the NRC in Assam.<sup>301</sup> Consequently, Muslim women may end up stateless because they are not able to document their citizenship. Muslim women are therefore particularly marginalised by Citizenship rules.

## 7. Attacks against cultural identity

As per the reports reviewed by the Panel, it appears that the BJP government has taken some legislative and executive measures that directly affect the cultural identity of Muslims as a group in India. These are discussed below.

Education and Training: The attack on Muslim identity and culture is exemplified by the systemic attack on academic freedom which disproportionately affects minority groups and is used as a medium through which to propagate disinformation regarding Muslims and their place in India’s history. The National Institute of Open Schooling (the “NIOS”) has changed the curriculum to make the teaching of Hindu epics mandatory for all students.<sup>302</sup> In other words, students in mainstream institutions, irrespective of their religious beliefs, must learn Hindu religious teachings.<sup>303</sup> Notably, Islamic traditions and teachings are excluded from the National Education Policy (NEP), while symbolic references to Hindu traditions and norms continue.<sup>304</sup>

293. OL IND 29/2018, 3; Amnesty International, ‘Designed to Exclude: How India’s Courts are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (2019) 30; Human Rights Watch, “Shoot the Traitors”: Discrimination Against Muslims under India’s New Citizenship Policy’ (9 April 2020) 26, 27 <[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

294. Ministry of Family and Health Welfare, Government of India, ‘National Family Health Survey – 5, 2019-2020: Indian Fact Sheet’ (2021.) <<https://ruralindiaonline.org/en/library/resource/national-family-health-survey-nfhs-5-2019-20-fact-sheets-key-indicators---22-statesuts-from-phase-i/>>

295. Human Rights Watch, “Shoot the Traitors”: Discrimination Against Muslims under India’s New Citizenship Policy’ (9 April 2020) 26

<[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

296. Human Rights Watch, “Shoot the Traitors”: Discrimination Against Muslims under India’s New Citizenship Policy’ (9 April 2020) 26

<[www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy)>

297. Writ Petition (Civil) No. 4989/2016, Gauhati High Court.

298. Amnesty International India, ‘Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (2019) 17

<[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

299. ‘National Register of Citizens: Supreme Court Allows Gram Panchayat Certificates to Be Used as Identity Document For Claiming Citizenship’ (Outlook India, 5 December 2017) <[www.outlookindia.com/website/story/assam-citizenship-issue-supreme-court-allows-gram-panchayat-certificates-to-be-u/305198](http://www.outlookindia.com/website/story/assam-citizenship-issue-supreme-court-allows-gram-panchayat-certificates-to-be-u/305198)>

300. Akanksha Khullar, ‘The Gendered Impact of the NRC in Assam’ (Institute of Peace and Conflict Studies, 9 March 2020) <[www.ipcs.org/comm\\_select.php?articleNo=5656](http://www.ipcs.org/comm_select.php?articleNo=5656)>

301. See Akanksha Khullar, ‘The Gendered Impact of the NRC in Assam’ (Institute of Peace and Conflict Studies, 9 March 2020) <[www.ipcs.org/comm\\_select.php?articleNo=5656](http://www.ipcs.org/comm_select.php?articleNo=5656)>

302. Asad Rizvi, ‘UP: Madrasas Protest Move to Make Teaching Of Bhagavad Gita, Ramayana Mandatory’ (The Wire, 6 March 2021)

<[www.thewire.in/education/uttar-pradesh-madrasas-hindu-epics-new-education-policy](http://www.thewire.in/education/uttar-pradesh-madrasas-hindu-epics-new-education-policy)>

303. Murali Krishnan, ‘India: Teaching of Hinduism Books in Islamic Madrasas Sparks Anger’ (DW, 10 March 2021) <[www.dw.com/en/india-teaching-of-hinduism-books-in-islamic-madrasas-sparks-anger/a-56829744](http://www.dw.com/en/india-teaching-of-hinduism-books-in-islamic-madrasas-sparks-anger/a-56829744)>

304. Chandan Gowda, ‘Missing secularism in new education policy’ (Mint, 26 June 2019) <[www.livemint.com/education/news/missing-secularism-in-new-education-policy-1561564775831.html](http://www.livemint.com/education/news/missing-secularism-in-new-education-policy-1561564775831.html)>

Curriculums are also being affected at higher education institutions. For example, the Jawaharlal Nehru University established a new course on counterterrorism for engineering students. The course structure states that ‘jihadi terrorism’ is the only form of ‘fundamentalist-religious terrorism’ and linked such terrorism directly with the acts of radical Islamic nations.<sup>305</sup>

History and Heritage: University history syllabi are also changing to create the narrative that Hindu scriptures are not myths and that Hindu civilisation is the bedrock of Indian culture.<sup>306</sup> The Mughal Empire, which famously contributed to many of the Indian traditions that exist today, has been painted as an era of Indian history marred with violence and sectarian values, whereas the historical eras before Islamic rule are characterised as a golden age.<sup>307</sup> Officials have claimed, without providing any evidence, that ‘Marxist historians’ have whitewashed Mughal history and diluted their role as invaders.<sup>308</sup> Medieval history teachings have been reduced to portray a period of religious strife, violence and bloodshed perpetrated by Muslims, without any relevant historical background to give these events proper context and framing.<sup>309</sup> The institutionalisation of discrimination in the Indian education system goes beyond the curriculum. Right-wing ideologues with direct ties to militant Hindu organisations and with no objective academic repute have been appointed to head academic institutions

such as the Indian Council for Historical Research (ICHR), Indian Council for Social Science Research (ICSSR), Jawaharlal Nehru University (JNU), and Delhi University.<sup>310</sup> Such political appointments have provided an impetus to the Hindutva infiltration of academic spaces, which takes discrimination beyond what is taught in the classroom. Not only does the changing curriculum at all educational levels highlight the exclusionary nature of the NEP, but it also contradicts the promise of education being secular.<sup>311</sup>

Muslim academics, as well as their sympathisers, have been excluded and removed from academic commissions and institutional boards.<sup>312</sup> Further, academics and writers working on historical themes not supported by the ruling ideology are regularly harassed on social media, and their safety is explicitly threatened by Hindu mobs and even by the police.<sup>313</sup> Following complaints that Wendy Doniger’s work, ‘Hindus: An Alternate History’, is ‘denigrating Hindu traditions’, Penguin India chose to remove the book from the Indian market, which is a notable illustration of this widespread trend.<sup>314</sup>

Removal of public symbols and spaces: The reports also suggest that symbols of Muslim identity and culture are being washed out of everyday life by way of renaming cities and monuments associated with historical Islamic rule and history, demolishing historic Muslim architecture, and seeking to rename what cannot be destroyed (such as the Taj Mahal<sup>315, 316</sup>).

305. Kumar Kunal, ‘New JNU Course Calls Islamic Jihadi Terrorism the Only Form Of Religious Terrorism, Sparks Controversy’ (India Today, 30 August 2021) <[www.indiatoday.in/education-today/news/story/new-jnu-course-calls-islamic-jihadi-terrorism-the-only-form-of-religious-terrorism-sparks-controversy-1847160-2021-08-30](http://www.indiatoday.in/education-today/news/story/new-jnu-course-calls-islamic-jihadi-terrorism-the-only-form-of-religious-terrorism-sparks-controversy-1847160-2021-08-30)>

306. Rupam Jain and Tom Lasseter, ‘By Rewriting History, Hindu Nationalists Aim To Assert Their Dominance Over India’ (Reuters Investigates, 6 March 2018) <[www.reuters.com/investigates/special-report/india-modi-culture/](http://www.reuters.com/investigates/special-report/india-modi-culture/)>

307. Alex Traub, ‘India’s Dangerous New Curriculum’ (The New York Review, 6 December 2018) <[www.nybooks.com/articles/2018/12/06/indias-dangerous-new-curriculum/](http://www.nybooks.com/articles/2018/12/06/indias-dangerous-new-curriculum/)>

308. Sobhana K. Nair and Priscilla Jebaraj, ‘Mughal History Whitewashed in Textbooks, Educationists Tell House Panel’ (The Hindu, 14 January 2021) <[www.thehindu.com/news/national/mughal-history-whitewashed-in-textbooks-educationists-tell-house-panel/article33570951.ece](http://www.thehindu.com/news/national/mughal-history-whitewashed-in-textbooks-educationists-tell-house-panel/article33570951.ece)>

309. Macey Malone, ‘India’s Dangerous New Curriculum to Rewrite History’ (Medium, 3 April 2020) <[www.medium.com/illumination/indias-dangerous-new-curriculum-to-rewrite-history-a9bf8105968](http://www.medium.com/illumination/indias-dangerous-new-curriculum-to-rewrite-history-a9bf8105968)>

310. Nandini Sundar and Gowhar Fazili, ‘Academic Freedom in India’ (The India Forum, 4 September 2020)

<[www.theindiaforum.in/sites/default/files/pdf/2020/09/04/academic-freedom-in-india.pdf](http://www.theindiaforum.in/sites/default/files/pdf/2020/09/04/academic-freedom-in-india.pdf)> accessed 4 March 2022.

311. Chandan Gowda, ‘Missing Secularism in New Education Policy’ (Mint, 26 June 2019) <[www.livemint.com/education/news/missing-secularism-in-new-education-policy-1561564775831.html](http://www.livemint.com/education/news/missing-secularism-in-new-education-policy-1561564775831.html)>

312. Staff Writer, ‘Ram Guha Tweets That He Isn’t Joining Ahmedabad University ‘Due To Circumstances Beyond’ His Control’ (Scroll.in, 1 November 2018) <[www.scroll.in/latest/900527/ram-guha-tweets-that-he-isnt-joining-ahmedabad-university-due-to-circumstances-beyond-his-control](http://www.scroll.in/latest/900527/ram-guha-tweets-that-he-isnt-joining-ahmedabad-university-due-to-circumstances-beyond-his-control)>

313. Audrey Truschke, ‘Hindutva’s Dangerous Rewriting of History’ (2020) 24(25) South Asia Multidisciplinary Academic Journal.

314. Anita Joshua, ‘Penguin Withdraws Book On Hinduism’ (The Hindu, 11 February 2014) <[www.thehindu.com/books/books-authors/Penguin-withdraws-book-on-hinduism/article11535057.ece](http://www.thehindu.com/books/books-authors/Penguin-withdraws-book-on-hinduism/article11535057.ece)>

315. ‘Taj Mahal ‘built on Hindu temple’, claims Indian MP’ (Al Jazeera, 6 February 2018) <[www.aljazeera.com/news/2018/2/6/taj-mahal-built-on-hindu-temple-claims-indian-mp](http://www.aljazeera.com/news/2018/2/6/taj-mahal-built-on-hindu-temple-claims-indian-mp)>

316. Lauren Frayer, ‘India Is Changing Some Cities’ Names, And Muslims Fear Their Heritage Is Being Erased’ (NPR, 23 April 2019) <[www.npr.org/2019/04/23/714108344/india-is-changing-some-cities-names-and-muslims-fear-their-heritage-is-being-erased?hpid=hp-top-story%3Aindia-is-changing-some-cities-names-and-muslims-fear-their-heritage-is-being-erased%3Ahomepage%2Ft=1646150737023](http://www.npr.org/2019/04/23/714108344/india-is-changing-some-cities-names-and-muslims-fear-their-heritage-is-being-erased?hpid=hp-top-story%3Aindia-is-changing-some-cities-names-and-muslims-fear-their-heritage-is-being-erased%3Ahomepage%2Ft=1646150737023)>

Some concrete examples of these actions include the renaming of the city Allahabad, to Prayagraj, a word that references Hindu culture.<sup>317</sup> Similarly, the Faizabad, a former seat of Islamic chieftains, has been renamed Rama, after a Hindu god.<sup>318</sup> Within cities, monuments and buildings are being renamed as well. The Mughal Museum in Agra, which is meant to celebrate the contributions of the Mughal Empire to India, has been renamed after the Hindu ruler Chhatrapati Shivaji Maharaj, and the project has been openly criticised by government representatives for portraying Mughals as heroes.<sup>319</sup> The BJP claims that it is only seeking to safeguard Hindu culture, but it is doing so at the direct cost of Muslim culture.<sup>320</sup>

## 8. Other religion-based restrictions

### 8.1. Employment and livelihood

As mentioned above, the stringent cow protection laws and the crackdown on slaughterhouses - mostly run by Muslims - have had a disproportionate impact on the religious minority.<sup>321</sup> Butchers, leather workers and transporters have also been significantly impacted by cow-vigilantism and their violent attacks. Oddly, the Uttar Pradesh cow protection framework protects meat exporters,<sup>322</sup> but slaughterhouses that meet the demands for local consumption - and run mainly by Muslim butchers - are shut down.<sup>323</sup> One must also point out that, since the

leather industry employs 2.5 million people in India - mainly from a marginalised section of society - the forced application of the BJP ideology affects those who are the weakest economically.<sup>324</sup> Earlier this year, reports surfaced from the state of Karnataka that Hindu nationalist organisations evicted Muslim traders from temple fairs and further demanded that non-Hindu traders and vendors not be allowed to carry out business during annual temple fairs and religious events in Karnataka.<sup>325</sup> The move and demand were justified by the state government citing Rule 31(12) of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 2002, which states that no property, including land, building or site, situated near the institution, shall be leased to non-Hindus.<sup>326</sup> The enforcement of this law is in violation of the Supreme Court and Karnataka High Court orders which have, in the past, stayed this rule and allowed Muslim traders to lease shops in and around temple premises. This is because the letter of the law is applicable to immovable property only, and not to stalls, stores or shops erected by Muslims during the fair.<sup>327</sup> Along similar lines, in April 2022, as per a non-official order issued by the Mayor of South Delhi Municipal Corporation, meat shops were banned during a nine-day religious festival of Hindus (*Navratri*).<sup>328</sup>

317. Lauren Frayer, 'India Is Changing Some Cities' Names, And Muslims Fear Their Heritage Is Being Erased' (NPR, 23 April 2019)

<[www.npr.org/2019/04/23/714108344/india-is-changing-some-cities-names-and-muslims-fear-their-heritage-is-being-erased](http://www.npr.org/2019/04/23/714108344/india-is-changing-some-cities-names-and-muslims-fear-their-heritage-is-being-erased)?t=1646150737023>

318. Rahul Bedi, 'India's Hindu Nationalists Changing Muslim Town Names' (The Irish Times, 14 November 2018) <[www.irishtimes.com/news/world/asia-pacific/india-s-hindu-nationalists-changing-muslim-town-names-1.3697944](http://www.irishtimes.com/news/world/asia-pacific/india-s-hindu-nationalists-changing-muslim-town-names-1.3697944)>

319. Pallavi Pundir, 'Streets, Buildings, Museums: India Is On a Name Changing Spree To Erase The Mughal History' (Vice, 17 September 2020)

<[www.vice.com/en/article/jgxz83/india-is-changing-names-of-streets-museums-cities-to-erase-mughal-history](http://www.vice.com/en/article/jgxz83/india-is-changing-names-of-streets-museums-cities-to-erase-mughal-history)>

320. Rahul Bedi, 'India's Hindu Nationalists Changing Muslim Town Names' (The Irish Times, 14 November 2018) <[www.irishtimes.com/news/world/asia-pacific/india-s-hindu-nationalists-changing-muslim-town-names-1.3697944](http://www.irishtimes.com/news/world/asia-pacific/india-s-hindu-nationalists-changing-muslim-town-names-1.3697944)>

321. Human Rights Watch, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' (2019) <[www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities](http://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities)>

322. Gulam Jeelani, Brajendra Parashar and M Tariq Khan, 'UP Slaughterhouses: All about the Rs 15,000-cr industry that Industry That Employs 25 Lakh People' (Hindustan Times, 30 April 2017) <[www.hindustantimes.com/india-news/up-s-slaughterhouses-a-rs-15-000-crore-industry-that-provides-livelihood-to-25-lakh-people/story-7ZLE81JFynBFWzRGZFVLFK.html](http://www.hindustantimes.com/india-news/up-s-slaughterhouses-a-rs-15-000-crore-industry-that-provides-livelihood-to-25-lakh-people/story-7ZLE81JFynBFWzRGZFVLFK.html)>

323. People's Union for Democratic Rights, 'Cow Vigilantism: Crime, Community and Livelihood' (2018) <[www.pudr.org/sites/default/files/2019-01/cow%20vigilantism.pdf](http://www.pudr.org/sites/default/files/2019-01/cow%20vigilantism.pdf)>

324. Jahnvi Sen, 'The Unmaking of Kanpur's Leather Industry' (The Wire, 12 April 2016) <<https://thewire.in/uncategorised/the-unmaking-of-kanpurs-leather-industry>>

325. 'Udupi Temple Bans Non-Hindus From Setting Up Stalls During Annual Festival' (The News Minute, 23 March 2022)

<<https://www.thenewsminute.com/article/udupi-temple-bans-non-hindus-setting-stalls-during-annual-festival-162199>>

326. Sanyukta Dharmadhikari, 'Karnataka govt is misapplying a law to keep Muslim traders out of temple festivals' (The News Minute, 29 March 2022)

<<https://www.thenewsminute.com/article/karnataka-govt-misapplying-law-keep-muslim-traders-out-temple-festivals-162375>>; Kiran Parashar, 'Explained: Why are Muslim vendors being banned from Karnataka temple fairs?' (The Indian Express, 6 April 2022) <<https://indianexpress.com/article/explained/explained-muslim-vendors-banned-karnataka-temple-fairs-7850357/>>

327. Sanyukta Dharmadhikari, 'Karnataka govt is misapplying a law to keep Muslim traders out of temple festivals' (The News Minute, 29 March 2022)

<<https://www.thenewsminute.com/article/karnataka-govt-misapplying-law-keep-muslim-traders-out-temple-festivals-162375>>

328. Ratna Singh & Areeb Uddin Ahmen, 'Class Discrimination, Policing Food Habits: Why Meat Bans Are Legally Dubious' (The Quint, 12 April 2022)

<<https://www.thequint.com/voices/opinion/meat-ban-delhi-ghaziabad-bengaluru-india-illegal-unconstitutional-discriminatory#read-more>>

## 8.2. Housing

According to some reports reviewed by the Panel, Muslim families have been forced to leave their homes in various parts of the country owing to their religious identity. For instance, in Delhi and Uttar Pradesh, attacks against Muslims led to mass migration to safer havens in both close and distant locations.<sup>329</sup> On the contrary, Assam has pursued a systematic policy of forced eviction of Bengali-speaking Muslims to further weaken their claim of belonging to the state. Between 2019 and 2021, over 2,500 Muslim families were reported as being forcefully evicted from their homes in the districts of Hojai, Sonitpur and Darrang.<sup>330</sup> There have also been reports of deaths occurring during these eviction operations. In a different model, Gujarat's property laws are being used to disincentivise property transactions with Muslims, causing spatial segregation on religious lines and resulting in large numbers of Muslims being forced to live in ghettos with dismal civic services.<sup>331</sup>

More recently, in April 2022, dozens of Muslim properties were demolished during 'anti-encroachment' drives in New Delhi and the BJP-ruled states of Madhya Pradesh and Gujarat as a form of collective punishment.<sup>332</sup> The demolitions followed Hindu-Muslim violence that erupted amid Hindu festivals, where Hindu deities were paraded through the streets in public celebrations. Processions of Hindu devotees brandishing

sticks and knives, playing incendiary music, and raising provocative anti-Muslim slogans marched through Muslim neighbourhoods in several cities on the festival day, which led to violence in many places.<sup>333</sup> In response to the violence, the following days and weeks saw municipal authorities sending bulldozers to the Muslim neighbourhoods in order to demolish homes and shops. Similar demolition was also initiated, and then halted after residents protested,<sup>334</sup> against Shaheen Bagh, a Muslim neighbourhood in Delhi that became the face for and centre of anti-CAA protests in Delhi.<sup>335</sup> After the demolition attempts, Muslim residents from at least one of these neighbourhoods reported being forced to leave their houses and locality because of continued harassment by police.<sup>336</sup>

On a more structural level, the Housing Discrimination Project (HDR) conducted research on New Delhi and Mumbai neighbourhoods from 2017 to 2019. The report's findings confirmed the widespread nature of discrimination in rental housing, particularly concerning Muslim tenants, who have difficulties in finding houses and are asked to pay higher rents. Moreover, sufficient credible evidence suggests that an unwritten pact between brokers and landlords directs Muslims towards Muslim-concentrated localities, leading to increased segregation. Yet, as there is no comprehensive law against discrimination in private markets, such behaviour remains unreported.<sup>337</sup> Although Article 15 of the Indian

329. Soutik Biswas, 'Delhi Riots: How Muslims' Homes Were Targeted and Burnt' (BBC, 4 March 2020) <<https://www.bbc.com/news/world-asia-india-51719204>>; Bilal Kuchay & Manoj Singh, 'Muslims near India's Hindu Temple Allege Pressure to Vacate Homes' (Al Jazeera, 4 June 2021)

<<https://www.aljazeera.com/news/2021/6/4/muslims-near-india-hindu-temple-allege-pressure-to-vacate-homes>>

330. Abdul Kalam Azad, 'In India's Assam, Muslim Families Evicted Weeks Before Elections' (Al Jazeera, 25 March 2019)

<<https://www.aljazeera.com/news/2019/3/25/in-indias-assam-muslim-families-evicted-weeks-before-elections>>; Sadiq Naqvi, 'Muslims in India's Assam in Shock After Deadly Eviction Drive' (Al Jazeera, 29 September 2021) <<https://www.aljazeera.com/news/2021/9/29/assam>>; Utal Parashar, 'A Month And Half After Dhalpur Violence, Assam Evicts 562 reserveFamilies From Reserve' (Hindustan Times, 9 November 2021) <<https://www.hindustantimes.com/india-news/assam-evicts-562-families-from-reserve-forest-101636429025025.html>>

For more details see Annexure on Assam.

331. MS Nileena, 'The Gujarat government is Enforcing Communal Segregation and Criminalising Property Transfers' (The Caravan 20 August 2019)

<<https://caravanmagazine.in/policy/the-gujarat-state-is-enforcing-communal-segregation-and-criminalising-property-transfers>>

332. Bilal Kuchay, 'India: Muslim Group Takes 'Dangerous Bulldozer Politics' To Court' (Al Jazeera, 18 April 2022)

<<https://www.aljazeera.com/news/2022/4/18/india-muslim-group-takes-dangerous-bulldozer-politics-to-court>>

333. Zoya Mateen, 'Madhya Pradesh: Why an Indian State is Demolishing Muslim homes' (BBC, 15 April 2022) <<https://www.bbc.com/news/world-asia-india-61042315>>

334. 'India: Demolition in Shaheen Bagh Halted After Residents Protest' (Al Jazeera, 9 May 2022) <<https://www.aljazeera.com/news/2022/5/9/protests-in-new-delhi-halt-demolition-in-muslim-area>>

335. See Annexure III – Delhi for more details.

336. Nikita Jain & Sumedha Pal, 'Muslim Men Leaving Jahangirpuri Out of Fear of Police Harassment, Say Locals' (The Wire, 2 June 2022)

<<https://thewire.in/communalism/muslim-men-leaving-jahangirpuri-out-of-fear-of-police-harassment-say-locals>>

337. Mohsin Alam Bhat and Asaf Ali Lone, 'Cities Divided: How Exclusion Of Muslims Sharpens Inequality' (Article 14, 12 February 2021) <<https://www.article-14.com/post/cities-divided-how-exclusion-of-muslims-sharpens-inequality>>

Constitution prohibits discrimination on the grounds of religion, such practices against Muslims with regards to housing in urban areas arguably remains.

Furthermore, scholars have discussed the stigmatisation of Muslim neighbourhoods in certain regions in India as a place for harbouring criminals, leading to ghettoisation and marginalisation.<sup>338</sup> One example is the stigmatisation and characterisation of the youth in a Muslim neighbourhood in Delhi as 'tech-savvy terrorists', which limits their professional prospects to computer-related professions only.<sup>339</sup> Moreover, since Muslims are arguably discriminated against when finding a home - such as when residents protested when two houses were sold to Muslims in a middle-class neighbourhood<sup>340</sup> - they avoid settling outside of Muslim communities. As a result, it has been alleged that they are deprived of better health centres and schools. In addition, Muslims may also lack access to piped water, sanitation and adequate electricity coverage.<sup>341</sup> Thus, the segregation of housing directly restricts other economic and social rights, such as the right to education, employment and healthcare.

### 8.3. Education and healthcare

Basic public services, such as access to drinking water, sanitation, education and healthcare, are essential to ensure the socio-economic development of the population. Notably, education and poverty have a well-established correlation, since highly skilled workers tend to earn more than those with lower education levels. Unfortunately, data in

Basic public services, such as access to drinking water, sanitation, education and healthcare, are essential to ensure the socio-economic development of the population. Notably, education and poverty have a well-established correlation, since highly skilled workers tend to earn more than those with lower education levels. Unfortunately, data in India has shown that most of the population is not highly educated, with Muslim people having the worst rates of education among the different religious groups, thereby further segregating them and restricting their development.

The census of India showed that the literacy rate among Muslims in 2001 was 55 per cent for men and 40.6 per cent for women, whereas the average literacy rate of all religious groups was 63.2 per cent and 45.1 per cent, respectively.<sup>342</sup> Moreover, educational attainment among Muslims was 14 per cent in 2017-18, as opposed to 25 per cent among the Hindu Other Backward Classes, and 37 per cent among the Hindu upper castes. In Haryana, Rajasthan and Uttar Pradesh, the situation is even worse, with the educational attainment among the Muslim youth at 3 per cent, 7 per cent, and 11 per cent, respectively.<sup>343</sup> As a result, a study on intergenerational mobility regards Muslims as the least upwardly mobile group in India.<sup>344</sup>

Among women, the education level is even lower. On top of that, it might arguably worsen due to discriminatory laws such as the ban on hijab in colleges in the southern Indian state of Karnataka, governed by the BJP, as discussed above.<sup>345</sup> In such a case, restrictions on the freedom of religion, the

338. Raphael Susewind, 'Muslims in Indian cities: Degrees of segregation and the elusive ghetto' (2017) 49 EP 1286, 1287.

339. Jamil Ghazala, *Accumulation by segregation: Muslim localities in Delhi* (OUP 2017).

340. Sukrita Baruah, 'Two In Moradabad Locality Sold to Muslims, exodus' (The Indian Express, 5 August 2021) <[www.indianexpress.com/article/india/two-houses-in-moradabad-locality-sold-to-muslims-residents-threaten-exodus-7438901/](http://www.indianexpress.com/article/india/two-houses-in-moradabad-locality-sold-to-muslims-residents-threaten-exodus-7438901/)>

341. Sajjad Hassan, 'Unable to Protect: Reluctant to Promote' in the South Asian Collective (eds.), *South Asia State of Minorities Report 2018: Exploring the Roots* Bangalore (Book for Change, 2018) 148.

342. Amit Thorat and others, 'Escaping and Falling into Poverty in India Today' (2017) 93 WD 413.

343. Christophe Jafferlot and Kalaiyaran A., 'On socio-economic indicators, Muslim youth fare worse than SCs and OBCs' (The Indian Express, 1 November 2019), <[www.indianexpress.com/article/opinion/columns/muslim-community-youth-india-marginalisation-6096881/](http://www.indianexpress.com/article/opinion/columns/muslim-community-youth-india-marginalisation-6096881/)>

344. Sam Asher Paul Novosad and Charlie Rafkin, 'Intergenerational Mobility in India: Estimates from New Methods and Administrative Data' (2018) World Bank Working Paper.

345. Rushda Fathima Khan, 'What's Behind the Escalating Row Over Hijabs in India?' (Al Jazeera, 15 February 2022) <[www.aljazeera.com/news/2022/2/15/what-lies-beneath-the-indias-hijab-ban-row](http://www.aljazeera.com/news/2022/2/15/what-lies-beneath-the-indias-hijab-ban-row)>

gendered aspects of human rights violations, and the limited right to education are intertwined, resulting in an increased marginalisation of Muslims.

In addition, Muslim groups in India attend higher education institutions disproportionately less than other marginalised groups. The Gross Enrolment Ratio (GER) in higher education for Muslims, who constitute nearly 14.2 per cent of the population, is a mere 5.5 per cent of the student population.<sup>346</sup>

Reports indicate that Muslims are being discriminated against in their access to education in primarily two ways: one, an overall attack against madrasas, traditional Islamic schools that, often, are the principal avenue for literacy and numeracy skills at primary level for the bulk of the poorest Muslims in rural areas; and two, large higher educational institutions, such as Aligarh Muslim University and Jamia Millia University, historically catering to Muslim students being systematically vilified by BJP politicians for being dens of anti-national elements,<sup>347</sup> and being deprived of their 'minority status', thereby restricting their ability to continue to serve Muslims and other minorities, as guaranteed by the Constitution.<sup>348</sup>

To give one example, in February 2021, when current Assam Chief Minister Sarma was the education minister, the Assam government enforced an act to abolish all 620 government-funded madrasas functioning in the state and convert them to general schools that would not teach theological

courses. The closure of madrasas, which will come into effect in April 2022, is expected to affect about 98,000 students, of whom nearly half are girls. Experts and activists have warned of a mass dropout of Assam's female Muslim students as a very real consequence.<sup>349</sup> Students in Kashmir were disproportionately affected by the shutdown after the revocation of the special status of the region, leading to long disruptions in their access to education, and later, the lack of access to high-speed internet during the pandemic further made it difficult for them to switch to virtual schooling.<sup>350</sup>

In addition to the restrictions on the right to education, Muslims arguably have deficient access to health facilities, which puts them in a vulnerable condition amid the Covid-19 pandemic. Moreover, misinformation was spread implicating Muslims in a plot to infect Hindus by 'spitting on food and infiltrating respectable middle-class spaces'.<sup>351</sup> As a result, Covid-19 became an excuse to exclude Muslims from institutions, such as hospitals. For example, in one hospital, in the Gujarat Ahmedabad district, Muslim and Hindu Covid-19 patients were segregated on the basis of their faith.<sup>352</sup>

According to Oxfam India, one in four Indians face discrimination while accessing health services due to their caste and religion, such as Muslims, Dalits and Adivasis, including mistreatment and denial of basic rights. Key findings from the Oxfam survey also suggest various challenges with the Covid-19 vaccination drive in India, including the lack of vaccines in vaccination centres, long queues, high prices of the vaccine and the

346. Ministry of Education Department of Higher Education, 'All India Survey on Higher Education 2019-20'

<[www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/aishe\\_eng.pdf](http://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/aishe_eng.pdf)>

347. 'Minister Gives 'Only Solution' to End 'Anti-National Protests in JNU, Jamia' (Hindustan Times, 31 August 2020) <<https://www.hindustantimes.com/india-news/union-minister-s-only-solution-to-end-anti-national-protests-in-jnu-jamia/story-z5B6M4OZBQwrINbhYJU63K.html>>

348. Satya Prakash, 'Minority Status to AMU: SC to Refer Issue to 7-Judge Bench' (The Tribune, 12 February 2019)

<<https://www.tribuneindia.com/news/archive/nation/minority-status-to-amu-sc-refers-issue-to-7-judge-bench-727915>>

349. Makepeace Sitlhou, 'In Assam, Ban on State-Run Madrasas May Force Girls to Drop Out' (Al Jazeera, 11 March 2021)

<<https://www.aljazeera.com/features/2021/3/11/shut-down-of-madrasas-in-indias-assam-could-see-girls-drop-out>>

350. 'Kashmir Lockdowns, Slow Internet Rob Students Of Their Education' (DW, 17 March 2021) <<https://www.dw.com/en/kashmir-lockdowns-hurt-students/a-56904725>>; 'Kashmir Schools, Colleges Saw Less Than 100 Academic Days in 2019' (Valley Online, 2 January 2022) <<http://valleyonline.in/kashmir-schools-colleges-saw-less-than-100-academic-days-in-2019/>>

351. Shakuntala Banaji and Ram Bhat, 'Disinformation against Indian Muslims during the Covid-19 pandemic' (London School of Economics, 24 September 2020)

<[www.blogs.lse.ac.uk/medialse/2020/09/24/disinformation-against-indian-muslims-during-the-covid-19-pandemic/](http://www.blogs.lse.ac.uk/medialse/2020/09/24/disinformation-against-indian-muslims-during-the-covid-19-pandemic/)> accessed 1 March 2022.

352. Citizens against Hate and Justice and Equality Forum, 'Hit Job: Using COVID-19 to deepen anti-Muslim bias and weaken Muslim voice' (May 2020)

<[www.citizensagainsthate.org/wp-content/uploads/2020/05/Hit-Job-Final.pdf](http://www.citizensagainsthate.org/wp-content/uploads/2020/05/Hit-Job-Final.pdf)>

possibility of losing a day's wages to get vaccinated. As argued by Oxfam India CEO Amitabh Behar, power dynamics concerning class, religion and gender between healthcare providers and patients deepen existing structural inequalities.<sup>353</sup>

### III. Groups and Actors Involved

The section deals with major state as well as non-state actors/groups who have reportedly been involved, in varying degrees, with the factual claims made above. Broadly categorised, the section deals with state actors who have been instrumental in implementing the exclusionary measures such as the NRC and CAA. The second set of actors that the section highlights is the TV and other media news platforms who have mainly contributed to the furtherance of stigmatisation and resulting hatred against Muslims. Finally, the section also discusses some of the non-state Hindu extremist groups who are often reported to be associated with vigilantism and harassment of Muslims in the name of implementation of anti-conversion or cow protection laws. The lists are only indicative and not exhaustive in nature.

#### I. State actors

##### a. Ministry of Home Affairs, Government of India

The Ministry of Home Affairs (MHA, also known as the Home Ministry) of the Government of India is responsible for internal national security, border management, and the centre-state relations.<sup>354</sup> The Home Ministry is headed by the Home Minister who is supported by three Ministers of State and the Home Secretary, and numerous departments and divisions.<sup>355</sup> The Home Minister is one of the most senior officers in the Union Council of Ministers and the position is regarded as the third highest in seniority after the Prime Minister and Defense Minister.<sup>356</sup> Rajnath Singh served as Home Minister from May 2014 to May 2019.<sup>357</sup> Singh is a former BJP National President and since 2019 has served as the Defense Minister of India.<sup>358</sup> Since 30 May 2019, the incumbent Home Minister is Amit Shah.<sup>359</sup> Shah was also President of the BJP, serving from 2014 to 2020, is a successful (BJP) politician, and a close aide of Prime Minister Modi.<sup>360</sup> Additionally, Shah is described as a nationalist and was a proponent of the NRC before entering office as Home Minister, and as BJP President he already clearly stated 'we will deport each and every infiltrator with the help of NRC. We are committed to that.'<sup>361</sup> Moreover, both Singh and Shah have been associated with the Rashtriya Swayamsewak Sangh (RSS) since childhood.<sup>362</sup>

353. The Wire, '30% Muslims, 20% Dalits and Adivasis Report Discrimination in Accessing Healthcare: Oxfam' (November 2021) <<https://thewire.in/health/one-in-4-indians-face-discrimination-while-accessing-healthcare-due-to-caste-religion-oxfam>>

See also: Shriyuta Abhishek and others, Securing Rights of Patients in India: Lessons from rapid surveys on people's experiences of Patient's Rights Charter and the COVID-19 vaccination drive (Oxfam India 2021).

354. Ministry of Home Affairs, Government of India, 'About Us – About the Ministry' <<https://www.mha.gov.in/about-us/about-the-ministry>>

355. Ministry of Home Affairs, Government of India, 'About Us – About the Ministry' <<https://www.mha.gov.in/about-us/about-the-ministry>>

356. Government of India, 'Who's Who – Council of Ministers' <<https://www.india.gov.in/my-government/whos-who/council-ministers>>

357. Rajnath Singh, 'Biography' <<https://www.rajnathsingh.in/biography/>>

358. Rajnath Singh, 'Biography' <<https://www.rajnathsingh.in/biography/>>

359. India Today, 'Amit Shah takes charge as home minister: 5 challenges he faces ahead' (India Today, 1 June 2019) <<https://www.indiatoday.in/india/story/ amit-shah-takes-charge-home-minister-5-challenges-he-faces-ahead-1540133-2019-06-01>>

360. Ministry of Home Affairs, Government of India, 'Union Home Minister' <<https://www.mha.gov.in/about-us/meet-the-minister/union-home-minister>>;

Business Standard, 'Who is Amit Shah' <<https://www.business-standard.com/about/who-is-amit-shah>>

361. The Times of India, 'Amit Shah: BJP's 'Chanakya' who delivered Modi Wave 2.0' (23 May 2019) <<https://timesofindia.indiatimes.com/india/amit-shah-bjps-chanakya-who-delivered-modi-wave-2-0/articleshow/69465902.cms>>; India Today, 'Won't allow Assam to become another Kashmir: Amit Shah Defends NRC' (17 February 2019) <<https://www.indiatoday.in/india/story/won-t-allow-assam-to-become-another-kashmir-amit-shah-defends-nrc-1458311-2019-02-17>>

362. For more details, see section below.

363. Business Standard, 'Rajnath Singh: RSS activist Turned Home Minister (Profile)' (30 May 2019) <<https://www.business-standard.com/article/news-ians/rajnath-singh-rss-activist-turned-home-minister-profile-119053001325.1.html>>; Business Standard, 'Who is Amit Shah' <<https://www.business-standard.com/about/who-is-amit-shah>>

The Home Secretary is the administrative head of the Ministry of Home Affairs and acts as Chief Advisor to the Home Minister regarding all policy and administration matters of the Home Ministry.<sup>364</sup> Since 2019, the post of Home Secretary is held by Ajar Kumar Bhalla.<sup>365</sup>

At the national level, the MHA has been involved in the implementation of the Assam NRC (see The National Register of Citizens (NRC)), particularly through the Registrar General of India (RGI),<sup>366</sup> which falls under the administrative control of the MHA (see further section 1.c on the RGI). Besides this, the MHA and Home Minister are politically, operationally and financially responsible for the NRC process in Assam and are regarding proposals for a nation-wide NRC.<sup>367</sup>

The Ministry of Home Affairs created the first NRC in Assam after the 1951 census.<sup>368</sup> For the latest exercise of updating the Assam NRC list, which started in 2015, the MHA had a series of meetings with the Government of Assam to discuss the RGI opening a temporary office in Guwahati for the purpose of supervising the exercise, which was proposed by the Assam government but denied by the MHA.<sup>369</sup> After the publication of the final NRC list in August 2019, Home

Minister Amit Shah reportedly met with Assam Chief Minister Sonowal, Assam State Minister Sarma, Union Home Secretary Bhalla and other officials at his residence in 2020, during which it was decided that the central government and Assamese government would 'jointly take up the issue' of requesting (partial) reverification of the list at the Supreme Court.<sup>370</sup>

Additionally, the RGI, at the request of the MHA, is the authority responsible for issuing the official notification of the NRC list, thereby making it a legal document. This has not occurred yet because the rejection appeals process is still ongoing, reverification requests are still pending, and discussions around whether the August 2019 list is 'final' or not are ongoing.<sup>371</sup>

Besides the Assam NRC exercise, there have also been statements by officials and parliamentary questions about a nationwide NRC. For example, in 2019, Home Minister Amit Shah made several statements, including in the upper house of Parliament, that an all-India NRC would be created.<sup>372</sup> In 2019, the Foreigners (Tribunals) Order 1964 was also amended by the MHA, empowering district magistrates in all States and Union Territories to set up Foreigners' Tribunals,

364. Ministry of Personnel, Public Grievances and Pensions, Government of India, 'Powers and Duties of Officers and Employees' <<https://www.mca.gov.in/Ministry/pdf/Manual2.pdf>>

365. Ministry of Home Affairs, Government of India, 'About Us – Meet the Secretary' <<https://www.mha.gov.in/about-us/meet-the-secretary/home-secretary>>

366. Rajeev Bhattacharyya, 'Making sense of Assam's NRC: A closer look at three factors that caused errors in register of citizens' (Firstpost, 11 September 2019) <<https://www.firstpost.com/india/making-sense-of-assams-nrc-a-closer-look-at-three-factors-that-caused-errors-in-register-of-citizens-7320561.html>>; Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Government of India, 'About the Ministry' <<https://censusindia.gov.in/census.website/about/mha>>

367. The New Indian Express, 'Union Home Minister Amit Shah and his team of 16 working on Kashmir, NRC' (29 July 2019) <<https://www.newindianexpress.com/nation/2019/jul/29/union-home-minister-amit-shah-and-his-team-of-16-working-on-kashmir-nrc-2011092.html>>; Rajeev Bhattacharyya, 'Making sense of Assam's NRC: A closer look at three factors that caused errors in register of citizens' (Firstpost, 11 September 2019)

<<https://www.firstpost.com/india/making-sense-of-assams-nrc-a-closer-look-at-three-factors-that-caused-errors-in-register-of-citizens-7320561.html>>; Ministry of Home Affairs, Government of India, 'Statement of Union Home Minister on N.R.C.' (Press Release, 22 July 2018)

<[https://www.mha.gov.in/sites/default/files/press\\_230720181030.pdf](https://www.mha.gov.in/sites/default/files/press_230720181030.pdf)>; Ministry of Home Affairs, Government of India, 'Lok Sabha Unstarred Question No. 3448' (16 March 2021) <<https://www.mha.gov.in/MHA/Par2017/pdfs/par2021-pdfs/LS-16032021/3448.pdf>>; Ministry of Home Affairs, Government of India, 'Lok Sabha Starred Question No. 111' (27 July 2021) <<https://www.mha.gov.in/MHA/Par2017/pdfs/par2021-pdfs/LS-27072021/111.pdf>>; Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Government of India, 'About the Ministry' <<https://censusindia.gov.in/census.website/about/mha>>; The Wire, 'MHA Tells Assam Govt to 'Immediately' Issue Rejection Slips to Those Not in NRC' (29 March 2021) <<https://thewire.in/government/mha-nrc-assam-government-rejection-slips>>

368. Office of the State Coordinator of National Registration (NRC) Assam, Government of Assam, 'About NRC - What is NRC?' <<http://nrcassam.nic.in/what-nrc.html>>; Supreme Court Observer, 'Cases: Assam's National Register of Citizens' <<https://www.scoobserver.in/cases/assam-public-works-v-union-of-india-assams-national-register-of-citizens-background/>>

369. Office of the State Coordinator of National Registration (NRC) Assam, Government of Assam, 'About NRC - What is NRC?' <<http://nrcassam.nic.in/what-nrc.html>>; Rajeev Bhattacharyya, 'Making sense of Assam's NRC: A closer look at three factors that caused errors in register of citizens' (Firstpost, 11 September 2019) <<https://www.firstpost.com/india/making-sense-of-assams-nrc-a-closer-look-at-three-factors-that-caused-errors-in-register-of-citizens-7320561.html>>

370. Sabrang India, 'Assam Chief Minister Openly Rejects NRC' (13 October 2020) <<https://sabrangindia.in/article/assam-chief-minister-openly-rejects-nrc>>

371. Rajeev Bhattacharyya, 'Assam NRC Notification Up in Air, Home Ministry Seeks Issue of Rejection Slips to Delisted, Reveals RTI' (First Post, 8 February 2021) <<https://www.firstpost.com/india/assam-nrc-notification-up-in-air-home-ministry-seeks-issue-of-rejection-slips-to-delisted-reveals-rti-9282041.html>>; Arunabh Saikia, 'Is Assam's Final NRC Really Final?' (Scroll.in, 19 May 2022) <<https://scroll.in/article/1024182/is-assams-final-nrc-really-final>>

372. The Hindu, 'Centre Plans NRC Exercise All Over The Country: Amit Shah' (20 November 2019) <<https://www.thehindu.com/news/national/nrc-process-to-be-carried-out-in-entire-country-says-amit-shah-in-rajya-sabha/article61670698.ece>>; Shoaib Daniyal, 'Scroll Investigation: Amit Shah's all-India NRC Has Already Begun - With the NPR' (Scroll.in, 17 December 2019) <<https://scroll.in/article/947116/scroll-investigation-amit-shahs-all-india-nrc-has-already-begun-with-the-npr>>

which has been considered as preparation for a nationwide NRC exercise.<sup>373</sup> However, when the MHA was asked by parliament whether there was a '[Union] Government plan to introduce the National Register of Citizens (NRC) all over the country' in February 2020, the MHA answer was 'Till now, the Government has not taken any decision to prepare the National Register of Indian Citizens (NRIC) at the National level'.<sup>374</sup> As of March 2022, there was no concrete Union government proposal or plan for a nationwide NRC, but the interest and demand are apparent, particularly from the BJP government and Home Minister, Amit Shah.<sup>375</sup>

Finally, regarding the Citizenship Amendment Act (CAA) which was enacted in 2019 but the implementation of which has been delayed, Home Minister Amit Shah stated at a rally in May 2022 that the Centre will implement the CAA after the Covid-19 pandemic is over. He further reiterated that the CAA 'was a reality, is a reality and will remain a reality'.<sup>376</sup> Before this, in January and February of 2022, the MHA asked the parliamentary committees 'for more time to frame the rules of the Citizenship (Amendment) Act, 2019 (CAA)' before it can be implemented.<sup>377</sup>

Similarly, the next census, which was due to take place in 2021, but which has been postponed until further notice by the MHA

and RGI, will include updating the National Population Register (NPR).<sup>378</sup> The NPR involves collecting demographic and biometric data, including the date and place of birth of one's parents.<sup>379</sup> This data may also legally be used for creating an National Register of Indian Citizens (NRIC), and therefore the NPR has been criticised as the first step towards compiling a national NRC.<sup>380</sup>

## b. Supreme Court

The Supreme Court of India has played a central role in the preparation and updating process of the NRC in the state of Assam (see above, The National Register of Citizens). First, in 2013, the Court ordered and mandated the Union Government and Assam State Government to update the 1951 NRC list, and in a December 2014 judgement, it set a deadline for this to be completed and published by January 2016.<sup>381</sup> In this judgement, the Supreme Court also took on a monitoring and supervising role over the NRC updating process.<sup>382</sup> This includes the NRC Coordinator submitting reports on the process to the Supreme Court for review.<sup>383</sup>

The Supreme Court has been reported as 'the motive force' behind the Assam NRC exercise, and while the NRC is an executive task, the Court monitoring is said to have made it a 'judiciary-led bureaucratic exercise'.<sup>384</sup> We also note that the Supreme Court has been

373. Vijaita Singh, 'All States Can Now Constitute Foreigners Tribunals' (The Hindu, 10 June 2019) <<https://www.thehindu.com/news/national/all-states-can-now-constitute-foreigners-tribunals/article61998106.ece>>

374. Ministry of Home Affairs, Government of India, 'Lok Sabha Starred Question No. \*22' (4 February 2020) <<https://www.mha.gov.in/MHA1/Par2017/pdfs/par2020-pdfs/ls-04022020/22.pdf>>

375. The Economic Times, 'No decision to prepare NRC at national level: Govt in Lok Sabha' (15 March 2022) <<https://economictimes.indiatimes.com/news/india/no-decision-to-prepare-nrc-at-national-level-govt-in-lok-sabha/articleshow/90224703.cms?from=mdr>>

376. CNBC TV18, 'Revisiting Citizenship Amendment Act and Why its Implementation is Delayed' (6 May 2022) <<https://www.cnbcv18.com/politics/revisiting-citizenship-amendment-act-and-why-its-implementation-is-delayed-13396932.htm>>

377. Vijaita Singh, 'Home Ministry Seeks More Time to Frame CAA Rules' (The Hindu, 8 February 2022) <<https://www.thehindu.com/news/national/home-ministry-seeks-more-time-to-frame-caa-rules/article38394468.ece>>

378. Vijaita Singh, 'Census First Phase, NPR Data Collection Put Off Till September' (The Hindu, 2 January 2022) <<https://www.thehindu.com/news/national/census-first-phase-npr-data-collection-put-off-till-september/article38091880.ece>>

379. Prabhaskar K. Dutta, 'CAA, NPR and NRC: Confusion and Connection Explained' (India Today, 26 December 2019) <<https://www.indiatoday.in/news-analysis/story/congress-rajya-sabha-nominees-list-sonia-gandhi-1955757-2022-05-29>>; Harikishan Sharma, 'National Population Register Update: Centre to Seek Info on Date and Place of Parents' Birth' (The Indian Express, 21 December 2019) <<https://indianexpress.com/article/india/national-population-register-updation-centre-to-seek-info-on-date-and-place-of-parents-birth-6177564/>>

380. Vijaita Singh (n 378); 'Did the Union Cabinet Just Set the Stage for NRC by Pushing for 'Updated' NPR?' (The Wire, 24 December 2019) <<https://thewire.in/government/cabinet-npr-budget>>

381. Supreme Court of India, Writ Petition (Civil) No. 876 of 2014 (17 December 2014), para. 48 <[http://nrcassam.nic.in/pdf/17%20Dec%202014%20Record%20of%20Proceedings\\_SUPREME%20COURT.pdf](http://nrcassam.nic.in/pdf/17%20Dec%202014%20Record%20of%20Proceedings_SUPREME%20COURT.pdf)>

382. Sruthisagar Yamunan, 'How the Supreme Court's hardline stance on citizenship deepened the Flaws in Assam's NRC' (Scroll.in, 31 July 2019) <<https://scroll.in/article/932176/how-the-supreme-court-s-hardline-stance-on-citizenship-deepened-the-flaws-in-assams-nrc>>

383. Mohsin Alam Bhat, 'On the NRC, Even the Supreme Court is Helpless' (The Wire, 7 January 2019) <<https://thewire.in/law/nrc-supreme-court-crisis>>

384. Sruthisagar Yamunan (n 382); Mohsin Alam Bhat (n 383).

criticised for taking on the rhetoric of ‘illegal immigrants’ and that its judgments have been geared towards expelling such migrants rather than protecting individuals who may be unfairly deprived of citizenship.<sup>385</sup> The role of the Supreme Court in the NRC process has also been criticised for pressuring NRC authorities in Assam to speed up the process, and for making the details and procedures of the process opaque.<sup>386</sup> This has led to serious allegations of the Supreme Court and several Justices being biased and sympathetic to the Assamese anti-foreigner movement.<sup>387</sup>

For its role in the NRC process, the Supreme Court has been accused of disregarding due process, causing injury to vulnerable communities and having ‘diminished its own credibility through its overreach on matters’.<sup>388</sup> More recently, the Supreme Court has seemingly retreated from its active role after the August 2019 publication of a final version of the NRC list. Since then, ‘petitions from the government and Assamese nationalist groups, seeking re-examination and fresh rounds of verification of names in the NRC’ are still awaiting hearings and trials before the Supreme Court.<sup>389</sup>

A key judge on the Supreme Court bench at the time of the 2013 and 2014 judgements, which initiated the Assam NRC update process, was Justice Ranjan Gogoi. Gogoi was nominated to the Supreme Court in 2012 and was later appointed as Chief Justice of India in October 2018.<sup>390</sup>

Justice Gogoi, who is Assamese himself, was already on the bench in 2013 during which time the Supreme Court ‘started nudging the Union government to press on with the NRC’.<sup>391</sup> During his term as Chief Justice, he headed a Supreme Court bench which was firm on finalizing the Assam NRC.<sup>392</sup>

In November 2019, he retired from this position and since March 2020, he is a member of parliament in the Rajya Sabha (the upper house of the Parliament of India).<sup>393</sup> His nomination to the Rajya Sabha immediately after the end of his term was unusual for a Supreme Court judge, and was seen as a reward for his rulings. Consequently, he was criticised by observers for having ‘disgraced the Indian judiciary’.<sup>394</sup>

### c. Registrar General of India (part of Ministry of Home Affairs)

The office of the Registrar General of India (RGI) is tasked with the housing and population census, the civil registration system and the national population register, among other responsibilities.<sup>395</sup> It falls under the administrative control of the Ministry of Home Affairs (MHA) of the Union Government of India.<sup>396</sup> Since January 2019, Dr. Vivek Joshi has been holding the position of Registrar General and Census Commissioner of India.<sup>397</sup> For the purposes of this report, it is noted that the RGI has an authoritative role in the implementation of the NRC updating process in Assam (see above, The National Register of Citizens).

385. Sruthisagar Yamunan (n 382).

386. Sruthisagar Yumnam

387. Kaushik Deka, ‘Did the SC Give Assam a Flawed NRC?’ (India Today, 14 December 2020) <<https://www.indiatoday.in/india-today-insight/story/did-the-sc-give-assam-a-flawed-nrc-1749520-2020-12-14>>; Alok Prasanna Kumar, ‘National Register of Citizens and the Supreme Court’ (Economic & Political Weekly, 18 November 2019) <<https://www.epw.in/journal/2018/29/law-and-society/national-register-citizens-and-supreme.html>>

388. Alok Prasanna Kumar (n 387).

389. Arunabh Saikia, ‘Is Assam’s Final NRC Really Final?’ (Scroll.in, 19 May 2022) <<https://scroll.in/article/1024182/is-assams-final-nrc-really-final>>

390. National Legal Services Authority, ‘Hon’ble Mr. Justice Ranjan Gogoi’ <<https://nalsa.gov.in/patron-in-chief/hon-ble-mr-justice-ranjan-gogoi>>; Sobhana K. Nair, ‘As Former CJI Ranjan Gogoi Takes Oath as Rajya Sabha Member, Opposition ‘Walks Out’ (The Hindu, 19 March 2020) <<https://www.thehindu.com/news/national/former-cji-ranjan-gogoi-takes-oath-as-rajya-sabha-member/article31106321.ece>>

391. In the Assam Sanmilita Mahasangha v Union of India case; Sruthisagar Yamunan, ‘How the Supreme Court’s Hardline Stance on Citizenship Deepened the Flaws in Assam’s NRC’ (The Scroll India, 31 July 2019) <<https://scroll.in/article/932176/how-the-supreme-court-s-hardline-stance-on-citizenship-deepened-the-flaws-in-assams-nrc>>

392. The Indian Express, ‘IE100: The List of Most Powerful Indians in 2019’ (27 March 2021) <<https://indianexpress.com/article/india/ie100-list-of-most-powerful-indians-in-2019-narendra-modi-amit-shah-mukesh-ambani-gogoi-mohan-bhagwat-6039930/>>

393. National Legal Services Authority, ‘Hon’ble Mr. Justice Ranjan Gogoi’ <<https://nalsa.gov.in/patron-in-chief/hon-ble-mr-justice-ranjan-gogoi>>; Sobhana K. Nair, ‘As former CJI Ranjan Gogoi takes oath as Rajya Sabha member, Opposition walks out’ (The Hindu, 19 March 2020) <<https://www.thehindu.com/news/national/former-cji-ranjan-gogoi-takes-oath-as-rajya-sabha-member/article31106321.ece>>

394. Saif Khalid, ‘Book review: No Land’s People Indicts India’s NRC process’ (Al-Jazeera, 2 November 2021) <<https://www.aljazeera.com/features/2021/11/2/book-review-no-lands-people-an-indictment-of-indias-nrc-process>>; Sobhana K. Nair, ‘As former CJI Ranjan Gogoi Takes Oath as Rajya Sabha Member, Opposition Walks Out’ (The Hindu, 19 March 2020) <<https://www.thehindu.com/news/national/former-cji-ranjan-gogoi-takes-oath-as-rajya-sabha-member/article31106321.ece>>

395. Office of the Registrar General & Census Commissioner, India Ministry of Home Affairs, Government of India, ‘About Us - Functions’ <<https://censusindia.gov.in/census.website/node/297>>

396. Rajeev Bhattacharyya, ‘Making Sense of Assam’s NRC: A Closer Look at Three Factors That Caused Errors in Register of Citizens’ (Firstpost, 11 September 2019) <<https://www.firstpost.com/india/making-sense-of-assams-nrc-a-closer-look-at-three-factors-that-caused-errors-in-register-of-citizens-7320561.html>>

397. Office of the Registrar General & Census Commissioner, India Ministry of Home Affairs, Government of India ‘About Us’ <<https://censusindia.gov.in/census.website/node/426>>

After the Supreme Court decision in 2013 that mandated the Union Government and the Assam State Government to update the NRC, the RGI notified the commencement of the NRC updating process in December 2013.<sup>398</sup> Since then, the ‘overall superintendence, direction and control’ of the updating of the NRC is vested with the RGI.<sup>399</sup> Additionally, the RGI is designated as the Registrar General of Citizens Registration (RGCR) according to the Citizenship Rules, 2003. This empowers the authority to issue national identity cards and a national identity number to citizens included on the NRC list (which is different from the Aadhaar, which is also an identification number but issued by another government authority).<sup>401</sup> The RGI also funded the Assam NRC process. In March 2021, the RGI requested that the Assam government complete the finalisation of the NRC updating by 31 March 2021, as there was no provision for continued financing after this date.<sup>402</sup> Lastly, as mentioned previously, the RGI is the authority responsible for issuing the notification of the NRC in the official Gazette of India, and in so doing, making it a legal document. While a final draft of the NRC list was published by the Assam State Government on 31 August 2019, notification by the RGI is yet to happen (as of May 2022), since the NRC process is still being finalised and re-verification requests by the Assam Government are still pending.<sup>404</sup>

#### d. NRC Coordinator, State Government of Assam

The Office of the State Coordinator of National Registration of Citizens, part of the state government of Assam, is responsible for the coordination and conducting of the NRC updating process (see above, The National Register of Citizens). This involved developing the methodology and mechanisms for this process, including the determination of which legacy data would be accepted for identification purposes, as well as digitisation of the exercise.<sup>405</sup> The NRC Coordinator, together with the Registrar General of India, is also responsible for issuing the rejection slips to the individuals left off the NRC list.<sup>406</sup> The Office heads more than 68,000 government officials and contractors, and around 2,500 local offices.<sup>407</sup>

The Registrar General of India (RGI) appointed Prateek Hajela as the State Coordinator in 2013. He served this function until November 2019, when he was transferred on deputation to his home state government of Madhya Pradesh, following a transfer order of the Supreme Court.<sup>408</sup> Hajela comes from a prominent family from Bhopal in Madhya Pradesh.<sup>409</sup> In November 2019, the state government appointed Hitesh Dev Sarma as the new NRC State Coordinator.<sup>410</sup>

398. Ministry of Home Affairs, Office of the Registrar General India, Order S.O.3591E (5 December 2013) <<http://www.nrcassam.nic.in/pdf/not11.pdf>>

399. Government of Assam, Office of the State Coordinator of National Registration (NRC), ‘About NRC – Operating Procedure’ <<http://nrcassam.nic.in/operating.html#:~:text=Registrar%20General%20of%20Citizens%20Registration,of%20Rule%20of%20Citizenship>>

400. Government of Assam, Office of the State Coordinator of National Registration (NRC), ‘About NRC – Operating Procedure’ <<http://nrcassam.nic.in/operating.html#:~:text=Registrar%20General%20of%20Citizens%20Registration,of%20Rule%20of%20Citizenship>>

401. R. B. Bhagat, Population and the Political Imagination Census: Register and Citizenship in India (Routledge India, 2022) accessed 13 May 2022.

402. Hemanta Kumar Nath, ‘Assam Govt’s Request For More Funds to Finish NRC Work Rejected, Asked to Complete it by March 31’ (India Today, 28 March 2021) <<https://www.indiatoday.in/india/story/assam-govt-request-for-funds-to-finish-nrc-work-rejected-1784506-2021-03-28>>; ‘Centre Pulls Up Assam For Seeking More Funds to Complete NRC Work Beyond March 31’ (Scroll.in, 29 March 2021) <<https://scroll.in/latest/990826/centre-pulls-up-assam-for-seeking-more-funds-to-complete-nrc-work-beyond-march-31>>

403. Abhishek Saha, ‘Assam NRC chief moves Supreme Court for Relook at 2019 ‘list’ (The Indian Express, 14 May 2021) <<https://indianexpress.com/article/north-east-india/assam-nrc-chief-moves-supreme-court-for-relook-at-2019-draft-list-7314330/>>; Guwahati Plus, ‘Assam: No Movement On NRC In 2021, Process Remains Stuck In Limbo’ (3 January 2022) <<https://www.guwahatipius.com/exclusive-news/assam-no-movement-on-nrc-in-2021-process-remains-stuck-in-limbo>>

404. Guwahati Plus, ‘Assam: No Movement on NRC In 2021, Process Remains Stuck In Limbo’ (3 January 2022) <<https://www.guwahatipius.com/exclusive-news/assam-no-movement-on-nrc-in-2021-process-remains-stuck-in-limbo>>; Arunabh Saikia, ‘Is Assam’s NRC Really Final?’ (Scroll.in, 19 May 2022) <<https://scroll.in/article/1024182/is-assams-final-nrc-really-final>>

405. Rahul Karmakar, ‘Who is Prateek Hajela, Who’s Making the Headlines in Assam?’ (The Hindu, 21 July 2018) <<https://www.thehindu.com/news/national/who-is-prateek-hajela-whos-making-the-headlines-in-assam/article24483668.ece>>

406. The Indian Express, ‘Rs 1528 Crore Spent On NRC: Himanta Biswa Sarma’ (20 July 2021) <<https://indianexpress.com/article/north-east-india/assam/rs-1528-crore-spent-on-updating-nrc-himanta-biswa-sarma-7413249/>>

407. Rahul Karmakar, ‘Who is Prateek Hajela, who’s making the headlines in Assam?’ (The Hindu, 21 July 2018) <<https://www.thehindu.com/news/national/who-is-prateek-hajela-whos-making-the-headlines-in-assam/article24483668.ece>>

408. Northeast Now News, ‘Hitesh Dev Sarma Appointed New NRC State Coordinator’ (9 November 2019) <<https://nenow.in/north-east-news/assam/hitesh-dev-sarma-appointed-new-nrc-state-coordinator.html>>

409. Rahul Karmakar, ‘Who is Prateek Hajela, who’s making the headlines in Assam?’ (The Hindu, 21 July 2018) <<https://www.thehindu.com/news/national/who-is-prateek-hajela-whos-making-the-headlines-in-assam/article24483668.ece>>

410. Northeast Now News, ‘Hitesh Dev Sarma appointed new NRC state coordinator’ (9 November 2019) <<https://nenow.in/north-east-news/assam/hitesh-dev-sarma-appointed-new-nrc-state-coordinator.html>>

The State Coordinator Hajela has been criticised for changing which documents were legally admissible to prove one's citizenship claims during the NRC application process in 2018.<sup>411</sup> Similarly, Hajela was also responsible for issuing a notice to verification officers directing them not to include any siblings of a person detected as an illegal citizen on the NRC list, which was seen as a 'predetermined move to make millions stateless'.<sup>412</sup> Yet, BJP officials have blamed him 'for too many faulty inclusions', and in the process, leaving out genuine Indian citizens.<sup>413</sup> In 2022, investigations were lodged by the current State Coordinator Hitesh Dev Sarma against Hajela and several data entry operators following allegations of 'anti-national activities' and loopholes in the process of verifying documents which allowed fraudulent documents to avoid detection.<sup>414</sup> This complaint against Hajela also accuses him of not ordering any quality checks during the verification process, in contradiction to his mandate to ensure an 'error free NRC'.<sup>415</sup>

The new State Coordinator Sarma has also been accused of being communal, biased and supportive of BJP rhetoric, because of alleged controversial Facebook comments regarding the NRC and BJP pressure for revising the NRC process.<sup>416</sup> Overall, the NRC, under the purview of the State Coordinator, has been

criticised by individuals excluded from the list as well as by the BJP, which finds the process is full of anomalies.<sup>417</sup>

#### e. Assam State Government

The Assam State Government, together with the Union government, carried out the update of the NRC (see above, The National Register of Citizens). For this, the State Home Department worked together with the Union Home Ministry.<sup>418</sup> The Assam Government has also strongly advocated that those individuals not included on the NRC list be deported, following the stance of Union Home Minister Amit Shah.<sup>419</sup> Similarly, the Assam Government is also a proponent of a nationwide NRC.<sup>420</sup> As of May 2022, the Assam government has not yet accepted the NRC list published in August 2019 as final, and is currently preparing to file a petition at the Supreme Court for a 'corrected' NRC and a complete comprehensive review and 'fresh exercise' of the NRC.<sup>421</sup>

The most recent and currently ongoing NRC process is not the first NRC list to have been prepared in Assam. The first NRC list was published in 1951 following that year's census. Later, following the 1985 Assam Accord, the Assam State Government was part of the 17 rounds of tripartite talks between itself, the central Union government, and student groups, to finalise the mechanisms of the Accord.

411. Rahul Karmakar, 'Who is Prateek Hajela, who's making the headlines in Assam?' (The Hindu, 21 July 2018) <<https://www.thehindu.com/news/national/who-is-prateek-hajela-whos-making-the-headlines-in-assam/article24483668.ece>>

412. Rahul Karmakar, 'Who is Prateek Hajela, who's making the headlines in Assam?' (The Hindu, 21 July 2018) <<https://www.thehindu.com/news/national/who-is-prateek-hajela-whos-making-the-headlines-in-assam/article24483668.ece>>

413. Rahul Karmakar, 'Who is Prateek Hajela, who's making the headlines in Assam?' (The Hindu, 21 July 2018) <<https://www.thehindu.com/news/national/who-is-prateek-hajela-whos-making-the-headlines-in-assam/article24483668.ece>>

414. Rahul Karmakar, 'FIR ex-NRC Coordinator, Assam Officials' (The Hindu, 21 May 2022) <<https://www.thehindu.com/news/national/other-states/fir-lodged-against-ex-nrc-coordinator-assam-officials/article65439838.ece>>

415. Bikash Singh, 'Assam NRC Coordinator Files FIR Against Some Officers for Anti-National Activities' (The Economic Times, 20 May 2022) <<https://economictimes.indiatimes.com/news/india/assam-nrc-coordinator-files-fir-against-some-officers-for-anti-national-activities/articleshow/91693519.cms>>

416. The New Indian Express, 'Assam NRC: Office Functions Without Newly-Appointed State Coordinator, Work Hangs Midway' (16 November 2019) <<https://www.newindianexpress.com/nation/2019/nov/16/assam-nrc-office-functions-without-newly-appointed-state-coordinator-work-hangs-midway-2062663.html>>; Arunabh Saikia, 'Is Assam's Final NRC Really Final?' (Scroll.in, 19 May 2022) <<https://scroll.in/article/1024182/is-assams-final-nrc-really-final>>

417. Northeast Now News, 'Hitesh Dev Sarma Appointed New NRC State Coordinator' (9 November 2019) <<https://nenow.in/north-east-news/assam/hitesh-dev-sarma-appointed-new-nrc-state-coordinator.html>>

418. Hemanta Kumar Nath, 'Centre and Assam Govt Jointly Prepare Road Map For Draft NRC publication' (India Blooms, 24 October 2017) <<https://www.indiablooms.com/news-details/N/35229/centre-and-assam-govt-jointly-prepare-road-map-for-draft-nrc-publication.html>>

419. Grant Wyeth, 'The NRC and India's Unfinished Partition' (The Diplomat, 3 October 2019) <<https://thediplomat.com/2019/10/the-nrc-and-indias-unfinished-partition/>>

420. Hemanta Kumar Nath, 'Assam Govt Rejects Present NRC, wants to Be Part of National NRC: Himanta Biswa Sarma' (India Today, 20 November 2019) <<https://www.indiatoday.in/india/story/assam-nrc-national-cut-off-himanta-biswa-sarma-bjp-amit-shah-1620965-2019-11-20>>

421. Tora Agarwala, 'After Foreigners' Tribunal's 'Stop Interfering' Letter, NRC Coordinator Says: 'List Not Final' (The Indian Express, 17 May 2022) <<https://indianexpress.com/article/assam/foreigners-tribunal-letter-nrc-coordinator-7919726/>>; Kangkan Kalita, 'Want Fresh NRC Exercise: Assam CM Himanta Biswa Sarma' (The Times of India, 28 March 2022) <<https://timesofindia.indiatimes.com/india/want-fresh-nrc-exercise-assam-cm-himanta-biswa-sarma/articleshow/90481352.cms>>

In 2010, the Assam Government launched a pilot program to prepare a new NRC list. Finally, with the 2013 Supreme Court judgement, the Assam government was ordered and mandated to update the NRC, and it started the current process and 2019 NRC updating in 2013.<sup>422</sup>

The Chief Minister of Assam is Himanta Biswa Sarma of the BJP, who has been in office since May 2021. Before being appointed as Assam's Chief Minister, Sarma was a successful member of the BJP party since 2015 and as a teenager was part of the All Assam Students' Union (AASU) and took part in the Assam agitation against foreigners in the early 1980s.<sup>423</sup> As Chief Minister, Sarma has called for reverification of parts of the NRC list and stated that his government will fulfil all its promises made before the elections, including implementing 'laws against love jihad and land jihad' (see above, Laws targeting Muslims as a religious minority).<sup>424</sup> Sarma has also focused on laws against illegal cattle smuggling and has asked Muslim communities in Assam to 'adopt decent family planning norms' to reduce poverty and other social problems.<sup>425</sup> Moreover, before becoming Chief Minister, Sarma was the Education Minister and under his leadership in 2020, the Assam government passed a law which will abolish all state-run and state-funded madrasas (Islamic educational institutions) and convert these to 'regular schools for general education'.<sup>426</sup> At the time, Sarma said this was done to 'reform the education system to make it secular', and more recently, at an event in May 2022, Sarma reiterated the BJP Hindu nationalist rhetoric that 'when we [the Bharatiya Janata

Party] came to power, we felt that the state's money should not be spent on imparting religious education of a particular religion.'<sup>427</sup> Overall, Sarma voices the rhetoric of viewing Muslims who have migrated from outside India as following a different culture and as 'responsible for distorting Assam's culture'.<sup>428</sup>

## 2. Non-state actors

### a. TV channels and online media platforms

Against the backdrop of factual findings laid above (see, Incitement to discrimination, hostility, and violence), we believe it is important to highlight the representation of minorities in media and more specifically of Muslims in popular Indian television channels and news outlets that plays an important role in propagating anti-Muslim sentiments in India.<sup>429</sup>

A study by Reporters Without Borders shows that many of the most viewed news channels in India are privately owned or controlled by individuals openly supporting the BJP and their agenda.<sup>430</sup> As research shows, such channels often, instead of holding an individual accountable for its actions, tend to blame all Muslims and Islam, and in so doing fuel anti-Muslim sentiments.<sup>431</sup> The reporting by these channels perpetuates an image of Muslims as barbaric, misogynistic, terrorists, non-Indian etc.<sup>432</sup> Such an 'othering' of Muslims, a rhetoric of 'us vs them', arguably leads to more tension and more violence and hate speech against Muslim Indians. We discuss three of these channels and their anti-Muslim broadcasting patterns in detail here: Republic TV, Sudarshan News and Times Now. These profiles serve an exemplary purpose and are not exhaustive in nature.

422. Kaushik Deka, 'Who is the Father of NRC?' (India Today, 17 January 2020) <<https://www.indiatoday.in/india-today-insight/story/who-is-the-father-of-nrc-1637330-2020-01-16>>

423. Kaushik Deka, 'Why the BJP made Himanta Biswa Sarma Assam CM' (India Today, 9 May 2021) <<https://www.indiatoday.in/india-today-insight/story/why-the-bjp-made-himanta-sarma-assam-cm-1800598-2021-05-09>>

424. Hemanta Kumar Nath, 'Himanta Biswa Sarma Takes Oath as Assam CM, Says His Govt Will Re-Verify NRC' (India Today, 10 May 2021) <<https://www.indiatoday.in/india/story/himanta-biswa-sarma-takes-oath-15th-assam-cm-says-his-govt-will-reverify-nrc-lists-1800796-2021-05-10>>

425. 'Adopt 'decent family planning' policy to reduce poverty: Assam CM Himanta Biswa Sarma tells Muslims' (Scroll.in, 10 June 2021) <<https://scroll.in/latest/997194/adopt-decent-family-planning-policy-to-reduce-poverty-assam-cm-himanta-biswa-sarma-tells-muslims>>

426. Tora Agarwala, 'HC upholds Assam law to abolish state-funded madrasas' (The Indian Express, 5 February 2022) <<https://indianexpress.com/article/north-east-india/assam/gauhati-high-court-assam-law-abolish-state-funded-madrasas-7757606/>>

427. Tora Agarwala (n 426); Unnati Sharma, 'Madrasas Should Disappear, Muslims Originally Hindus': Assam CM Himanta Biswa Sarma at RSS Event' (The Print, 23 May 2022) <<https://theprint.in/india/madrasas-should-disappear-muslims-originally-hindus-assam-cm-himanta-biswa-sarma-at-rss-event/966865/>>

428. Unnati Sharma (n 427).

429. See e.g., Shanto Iyengar, 'The Accessibility Bias in Politics: Television News and Public Opinion' (1990) 2(1) International Journal of Public Opinion Research, 1.

430. 'Media Ownership Monitor: Who Owns the Media in India?' (Reporters Without Borders, May 29 2019) <<https://rsf.org/en/media-ownership-monitor-who-owns-media-india>>

431. Onaiza Drabu, 'Who is the Muslim? Discursive Representations of The Muslims and Islam in Indian Prime Time News' (2018) 9 Religions 283, 300.

432. Onaiza Drabu, 'Who is the Muslim? Discursive Representations of The Muslims and Islam in Indian Prime Time News' (2018) 9 Religions 283, 300.

### *i. Republic TV*

Republic TV is an Indian private television news channel and the most viewed English-speaking news channel in India.<sup>433</sup> It was founded by Arnab Goswami and Rejeev Chandrashekhar. Reportedly, both founders have ties to the BJP party and its members. Chandrashekhar is a former independent politician, but formally joined the BJP in 2018.<sup>434</sup> Goswami, who was previously presenting a show on the news channel Times Now,<sup>435</sup> is alleged to have connections to senior BJP Ministers and even the Prime Minister's office.<sup>436</sup> While Chandrashekhar has sold his shares, Goswami is now the main shareholder of Republic TV.<sup>437</sup>

Republic TV has on many occasions portrayed Muslims in a negative light, spreading an anti-Muslim sentiment among its viewers. For instance, during the Covid-19 lockdown in spring 2020, Republic TV was engaging in biased coverage of the incident blaming Indian Muslims for the spread of coronavirus, with Goswami asking on Republic TV: 'Why does every crowd gather only near mosques?'.<sup>438</sup> The show reported on the protest of migrants, but Goswami allegedly highlighted a mosque in the background in order to spread hatred against the Muslim community.<sup>439</sup> Moreover, there are reports of Republic TV wrongly accusing the Jamaat-e-Islami's (an Islamic socio-religious organisation) India chief of being a terrorist.<sup>440</sup>

Further, in 2020, the channel was fined by the UK broadcasting regulator Ofcom for hate speech against Pakistan, as it claimed in a show that 'Pakistanis are terrorists'. According to Ofcom, the show has 'spread, incited, promoted, and justified such intolerance towards Pakistani people among viewers'.<sup>441</sup> These were not new allegations against Goswami, who has been found in violation of Ofcom rules for similar incidents when he was still working for Times Now.<sup>442</sup> While such hate speech against Pakistani nationals does not directly concern Indian Muslims, it does, however, fuel a general anti-Muslim sentiment among its viewers. In addition to direct hate speech, Republic TV has also regularly omitted to report on the hate speech and incitement against Muslims, for instance, at Dharam Sansad in December 2021.<sup>443</sup>

Since Republic TV is the most watched English-speaking news channel in India, it yields considerable influence over public opinion.<sup>444</sup>

### *ii. Sudarshan TV*

Sudarshan News is a 24-hour Hindi-language news channel in India. It was founded in 2005 by Suresh Chavhanke who is a proud member of the Rashtriya Swayamsevak Sangh (RSS),<sup>445</sup> a right-wing Hindu nationalist organisation that serves as the ideologue of the BJP.<sup>446</sup>

433. See 'BARC India Releases Ratings for the News Genre After 17 Months' (Best Media Info, 17 March 2022) <<https://bestmediainfo.com/2022/03/barc-india-releases-ratings-for-the-news-genre-after-17-months>>

434. Sudeshna Thapa, Saphala Dhital, Khem Shreesh, Sunil Tamang, Manesh Shrestha and Deepak Thapa (eds.), South Asia State of Minorities Report 2021: Hate Speech Against Minorities (The South Asia Collective 2021), 71.

435. This will be further discussed in section 2.a.iii below.

436. Rakshitha R, "All Ministers Are With Us": Arnab Goswami's Alleged WhatsApp Chat With Ex-BARC CEO Reveals Cozy Relations with Govt' (The Logical Indian, 15 January 2021) <<https://thelogicalindian.com/trending/all-ministers-are-with-us-republic-tv-arnab-goswami-on-trp-scam-26162>>

437. 'Arnab Goswami Buys Back Shares From Asianet; Republic TV Now Valued at This Much' (Financial Express, 6 May 2019)

<[www.financialexpress.com/market/arnab-goswami-buys-back-shares-from-asianet-republic-tv-now-valued-at-this-much/1569639/](http://www.financialexpress.com/market/arnab-goswami-buys-back-shares-from-asianet-republic-tv-now-valued-at-this-much/1569639/)>

438. Anna MM Vetticad, 'Indian media accused of Islamophobia AlJazeera, 15 May 2020' <<https://www.aljazeera.com/news/2020/5/15/indian-media-accused-of-islamophobia-for-its-coronavirus-coverage/>>

439. See Faisal Tandel, 'Mumbai Police File a Fresh Case Against Arnab Goswami' (Hindustan Times, 3 May 2020) <[www.hindustantimes.com/mumbai-news/mumbai-police-file-a-fresh-case-against-arnab-goswami/story-0LuMzNRV2TCFTYFwiklEcl.html](http://www.hindustantimes.com/mumbai-news/mumbai-police-file-a-fresh-case-against-arnab-goswami/story-0LuMzNRV2TCFTYFwiklEcl.html)>; see also 'Mumbai Police Files Fresh FIR Against Arnab Goswami For Spreading Communal Hatred Against Muslims' (The Cognate, 3 May 2020) <<https://thecognate.com/mumbai-police-files-fresh-fir-against-arnab-goswami-for-spreading-communal-hatred-against-muslims/>>

440. 'Arnab's Republic TV Apologises for Hurting Muslim Sentiment' (The Siasat Daily, 12 April 2020) <[www.siasat.com/arnabs-republic-tv-apologises-hurting-muslim-sentiment-1872940/](http://www.siasat.com/arnabs-republic-tv-apologises-hurting-muslim-sentiment-1872940/)>

441. Hannah Ellis-Petersen, 'Indian News Channel Fined in UK for Hate Speech About Pakistan' (The Guardian, 23 December 2020) <[www.theguardian.com/media/2020/dec/23/indian-news-channel-fined-in-uk-for-hate-speech-about-pakistan](http://www.theguardian.com/media/2020/dec/23/indian-news-channel-fined-in-uk-for-hate-speech-about-pakistan)>

442. See section 2.a.iii below.

443. 'Hariwar Hate Speeches: ABP, Republic Skip Issue in Primetime Debates' (News Laundry, 24 December 2021) <<https://www.newslandry.com/2021/12/24/haridwar-hate-speeches-abp-republic-skip-issue-in-prime-time-debates>>

444. See 'BARC India Releases Ratings for The News Genre After 17 Months' (Best Media Info, 17 March 2022) <<https://bestmediainfo.com/2022/03/barc-india-releases-ratings-for-the-news-genre-after-17-months>>

445. See Ashutosh Bharadwaj, 'Held for 'Promoting Enmity', TV Channel Head is Proud of it' (The Indian Express, 14 April 2017) <<https://indianexpress.com/article/india/channel-not-business-whatever-i-am-is-due-to-rss-sudarshan-news-cmd-4612317/>>

446. The RSS is further discussed in the next sub-section.

Sudarshan News reportedly has a long history of spreading misinformation and hate, especially about Muslims. In 2017, Chavhanke was allegedly arrested for incitement of communal hatred after stating in a show on Sudarshan News that the city of Sambhal (Uttar Pradesh) was becoming a ‘center of terrorism’ (Sambhal has a majority Muslim population).<sup>447</sup> This is not the only instance of inflammatory programmes on Sudarshan News. In a 2020 Supreme Court case, the Court labelled the channel’s show ‘Bindas Bol’ as trying to ‘vilify the Muslim community’ for claiming that Muslims had infiltrated the civil services and that they were therefore performing ‘UPSC Jihad’ (Union Public Service Commission – central government’s recruitment agency).<sup>448</sup> Further, the Indian Supreme Court also called some of the show’s content ‘divisive propaganda’, ‘insidious’ and ‘rabid’.<sup>449</sup> On multiple occasions, derogatory terms for Muslims have reportedly been used on Sudarshan News, which include reference to Muslims as ‘jihadis’, ‘enemies’ and ‘pigs’ who would get infected by a virus.<sup>450</sup> These are just some instances of the anti-Muslim sentiments regularly presented at the Sudarshan News channel.

### iii. Times Now

Times Now is the second most viewed English-speaking TV Channel in India after Republic TV. Until 2016, Arnab Goswami, the now main shareholder of Republic TV,<sup>451</sup> was the editor-in-chief of Times Now. Ofcom, the UK broadcasting operator, held that during the period of August to September 2016, Times Now and Arnab Goswami, who was still its editor-in-chief at the time, had breached

its rules on the impartiality of presenters and reporters.<sup>452</sup> Ofcom found that ‘the presenter used the advantage of his regular appearances in the 19 programs in this case to promote his views in a way that compromised the requirement for due impartiality’ in programmes on the relationship between India and Pakistan, reportedly calling Pakistanis ‘terrorists’, among other things.<sup>453</sup>

Even after Goswami’s departure, Times Now continues to report in a seemingly biased manner. During the Covid-19 lockdown in spring 2020, Times Now was found to have been targeting members of Muslim communities, claiming that they were ignoring social distancing rules and infecting ‘hundreds of people’.<sup>454</sup> In response, the News Broadcasting Standards Authority (NBSA) censured the channel for programmes which could cause communal conflicts. Times Now has also been found in violation of the NBSA’s Code of Ethics and Broadcasting Standards for reporting on the February 2020 targeted violence in a way that was not ‘impartial and objective [in] manner’.<sup>455</sup>

### iv. OpIndia

Similar to mainstream media, online media outlets also contribute towards an anti-Muslim narrative and have an influence on public opinion. OpIndia is an Indian online news website. Its content is regularly used by ultra-nationalist groups on Facebook.<sup>456</sup> A 2020 study by Foundation The London Story has found that in the time period from 2014 to 2019 not only did the number of OpIndia

447. ‘Sudarshan TV Channel Editor Suresh Chavhanke Arrested for Inciting Communal Hatred’ (India Today, 13 April 2017) <<https://www.indiatoday.in/india/story/sudarshan-channel-head-suresh-chavhanke-arrested-971122-2017-04-13>>; and Ashutosh Bharadwaj (n 445).

449. ‘What Supreme Court Got Right & What It Didn’t in the Dudarshan News ‘UPSC Jihad’ Case’ (The Print, 17 September 2020).

450. Ayush Tiwari, ‘Everyone Wants to Make Hay While Sudarshan News Shines’ (NewsLaundry, 22 September 2020)

<<https://www.newsLaundry.com/2020/09/22/everyone-wants-to-make-hay-while-sudarshan-news-shines>>

451. Alishan Jafri, ‘The ‘Hindutva Ecosystem’ Has a New Anti-Muslim Narrative. This Time Street Vendors Are the Target’ (The Wire, 28 June 2021)

<<https://thewire.in/communalism/hindutva-ecosystem-muslim-fruit-sellers-threat-india>>; Ayush Tiwari, ‘Sponsored by Koo, Sudarshan News Takes Anti-Muslim Slurs to a New Low’ (NewsLaundry, 26 February 2022) <<https://www.newsLaundry.com/2022/02/26/sponsored-by-koo-sudarshan-news-takes-anti-muslim-slurs-to-a-new-low>>

452. See ‘BARC India Releases Ratings For The News Genre After 17 Months’ (Best Media Info, 17 March 2022) <<https://bestmediainfo.com/2022/03/barc-india-releases-ratings-for-the-news-genre-after-17-months>>

453. See ‘Ofcom Broadcast and on Demand Bulletin: Issue number 327’ (Ofcom 24 April 2017), 22-39.

454. Pooja Prasanna, ‘Times Now Censored, Two Kannada Channels Fined Over Tablighi Jamaat Coverage’ (The News Minute, 18 June 2021)

<[www.thenewsminute.com/article/times-now-two-kannada-channels-censored-hateful-coverage-tablighi-jamaat-150846](http://www.thenewsminute.com/article/times-now-two-kannada-channels-censored-hateful-coverage-tablighi-jamaat-150846)>

455. ‘Two of Times Now’s Debates on Delhi Riots Were Not Impartial, Objective: NBSA’ (The Wire, 22 November 2021) <<https://thewire.in/media/two-of-times-news-debates-on-delhi-riots-were-not-impartial-objective-nbdsa>>

456. Ritumbra Manuvie and Shivam Maurya, The Atmosphere of Hate - Case Study: OpIndia, (Foundation The London Story 2020), 1.

articles referring to Muslims almost triple, but the misrepresentation and anti-Muslim propaganda also increased.<sup>457</sup> OpIndia and its editor, Ajit Bharti, have been reported to use fake news and to omit facts in a way that negatively represents Muslims.<sup>458</sup> Furthermore, the study shows that OpIndia actively accuses Muslims of being responsible for attacks on Hindus and India.<sup>459</sup> One such instance took place in 2020 when OpIndia falsely claimed that a Hindu boy was sacrificed in a mosque.<sup>460</sup> In addition, when a film on the life of an Indian freedom fighter of Muslim religion, Variyamkunnath Kunjahammed Haji, was announced, OpIndia referred to him as ‘terrorist’ and ‘jihadi’ and falsely accused him of murdering thousands of Hindus.<sup>461</sup>

Overall, OpIndia contributes to the spread of anti-Muslim hate speech and the justification of violence against Muslims by including misinformation and producing increasingly Islamophobic content.

## b. Hindu extremist groups

### i. Rashtriya Swayamsevak Sangh

The Rashtriya Swayamsevak Sangh (RSS) is a right-wing, Hindu nationalist organisation that was founded in 1925. At the time, envisaged as a social movement, it was set up

to translate Hindutva’s goals of defending Hinduism and its domination on the Indian nation. RSS seeks to ‘reform minds to make each Hindu aware of his or her history, the threats to its civilization, and the need to shape a united social and political body – the Hindu Rashtra [Nation] – to resist the Other, principally Muslims’.<sup>462</sup> The RSS ideologues, since its establishment, have been of the view that India is an inherently Hindu nation.<sup>463</sup> RSS sees its final goal as the consolidation of what it calls Akhand Bharat (unbroken Bharat or India), that not only includes undivided India – Pakistan and Bangladesh – but also Afghanistan and other south Asian states, as the historical Hindu land that must be reintegrated, by force if necessary.<sup>464</sup> Until that vision is realised, RSS seeks to fashion India as a natural home for the region’s Hindus.

RSS not only serves as the ideological fountainhead of BJP<sup>465</sup> and other affiliate groups, but as an all-male volunteer organisation with about 585,000 members and 57,000 branches,<sup>466</sup> it also engages with various aspects of the socio-religious fabric of Indian society. The organisation dedicatedly campaigns for the BJP in national and state elections,<sup>467</sup> and in the last few years, with the access it has gained to governance during the BJP’s rule, it has become even more influential and managed to place its ardent followers in the highest ranks of government.

457. Ritumbra Manuvie and Shivam Maurya, *The Atmosphere of Hate - Case Study: OpIndia*, (Foundation The London Story 2020), 5.

458. Basant Kumar, ‘Fake News, Lies, and Ravish Kumar: Inside OpIndia’s Harrowing World’ (NewsLaundry, 3 January 2020)

<<https://www.newsLaundry.com/2020/01/03/fake-news-lies-muslim-bashing-and-ravish-kumar-inside-opindias-harrowing-world>>

459. Ritumbra Manuvie and Shivam Maurya, *The Atmosphere of Hate - Case Study: OpIndia*, (Foundation The London Story 2020), 5.

460. See Priyanka Jha and Pratik Sinha, ‘Gopalganj Case: Boy Drowns in Rivers, OpIndia Claims He Was Sacrificed in a Mosque’ (AltNews 17 May 2020)

<<https://www.altnews.in/gopalganj-boy-drowned-in-river-opindia-falsely-claimed-that-minor-hindu-boy-sacrificed-by-mosque/>>

461. ‘Announcement of Film on Muslim Freedom Fighter from Kerala Leads to Hate Campaign’ (The Wire, 23 June 2020) <<https://thewire.in/film/announcement-of-film-on-muslim-freedom-fighter-from-kerala-leads-to-hate-campaign>>

462. Jaffrelot, (2021, 29).

463. ‘India is a Hindu Rashtra; It is non-negotiable’ RSS Chief Mohan Bhagwat In Shyamal Yadav, ‘RSS and the idea of Akhand Bharat’ (India Today, 1 October 2019) <<https://indianexpress.com/article/explained/rss-akhand-bharat/>>

464. This is a claim that is often voiced by RSS leaders, most recently by its chief, Mohan Bhagwat on 15 April 2022, at a meeting of prominent Hindu clerics in Haridwar <<https://timesofindia.indiatimes.com/india/akhand-bharat-will-be-a-reality-soon-bhagwat/articleshow/90855519.cms>>; Sheo S Jaiswal, ‘Akhand Bharat Will be a Reality Soon: RSS Chief Mohan Bhagwat’ (Times of India, 15 April 2022) <<https://timesofindia.indiatimes.com/india/akhand-bharat-will-be-a-reality-soon-bhagwat/articleshow/90855519.cms>>; Earlier, more direct references to merging Pakistan too have been made. ‘RSS Leader Talks of Akhand Bharat: Seeks Pak merger by 2025’ (Business Standard, 17 March 2019) <[https://www.business-standard.com/article/pti-stories/rss-leader-talks-of-akhand-bharat-sees-pak-merger-by-2025-119031700555\\_1.html](https://www.business-standard.com/article/pti-stories/rss-leader-talks-of-akhand-bharat-sees-pak-merger-by-2025-119031700555_1.html)>; >; Yadav (n 464)

Historically: munshi and akhand bharat

465. Bridge Initiative Team, ‘Factsheet: Rashtriya Swayamsevak Sangh (RSS)’ (Georgetown University, 18 May 2021) <<https://bridge.georgetown.edu/research/factsheet-rashtriya-swayamsevak-sangh-rss/>>

466. Bridge Initiative Team, ‘Factsheet: Rashtriya Swayamsevak Sangh (RSS)’ (Georgetown University, 18 May 2021) <<https://bridge.georgetown.edu/research/factsheet-rashtriya-swayamsevak-sangh-rss/>>

467. Prashant Srivastava, ‘How the RSS is Playing a Role Behind BJP’s UP Campaign’ (India Today, 15 February 2022) <<https://www.indiatoday.in/india-today-insight/story/how-the-rss-is-playing-a-role-behind-bjp-s-up-campaign-1913291-2022-02-15>>

According to the RSS, it has recently seen a spike in its membership requests, indicating its growing popularity among sections of the Indian population.<sup>468</sup>

RSS has had a history of inflicting targeted violence at Muslims,<sup>469</sup> but more recently, it has been reported to have mobilised a mob, invoking Hindu Unity, in north-east Delhi in 2020, leading to targeted violence against Muslims.<sup>470</sup> The religious clerics and monks, purportedly furthering RSS' ideology have been responsible for organising the recent Dharam Sansad meetings (an event that has historically been organised by the RSS), calling for the eradication of Islam from India.<sup>471</sup> Moreover, the organisation was reported to have been running summer camps where it trained volunteers to use rifles along with cultural teachings.<sup>472</sup>

## ii. Vishwa Hindu Parishad

Vishwa Hindu Parishad (VHP) is a right-wing Hindu organisation that was established in 1966 by members of the Rashtriya Swayamsevak Sangh (RSS).<sup>473</sup> The VHP quickly found allies in other right-wing organisations and parties such as the Bharatiya Janata Party (BJP).<sup>474</sup> It also created a sub-unit of the VHP called the Bajrang Dal in 1984. The group, according to reports, actively participated in the destruction of the Babri mosque in 1992, leading to a period of violence between

Hindus and Muslims, with thousands dying. This formed an important part of its anti-Muslim history.<sup>475</sup> The VHP is affiliated with the Rashtriya Swayamsevak Sangh (RSS), which, as mentioned previously, is the ideological fountainhead of India's Hindu supremacist groups that seeks to convert India into a Hindu-only state.<sup>476</sup> The VHP has a worldwide influence, as it has branches all over the world, thus making it very influential.<sup>477</sup>

In April 2022, one of its former leaders, Praveen Togadia, called for direct violence against Muslims at an event where weapons were distributed to the assembly.<sup>478</sup> In December 2021, the organisation's current president, Ravindra Narain Singh, referred to Indian Muslims as 'cancer' that has reached the 'fourth phase' in India and, thus, required 'chemotherapy'.<sup>479</sup>

In November 2021, in apparent retaliation to deadly violence in Bangladesh (leaving two Hindu men dead),<sup>480</sup> the VHP along with other local groups orchestrated protest rallies in the north-eastern Indian state of Tripura and attacked Muslims and at least 16 mosques in the region. The protests are reported to have included acts of vandalising and burning mosques, as well as shops and houses at night. These incidents were, reportedly, not provoked in any way by the Muslim population in Tripura.<sup>481</sup>

468. 'RSS – India's Hindu Nationalists Spread Their Wings Far and Wide' (DW, 9 July 2018) <<https://www.dw.com/en/rss-indias-hindu-nationalists-spread-their-wings-far-and-wide/a-44588126>>

469. See Main Report for more details.

470. 'Delhi Violence Unmasked | Part One' (The Caravan, 1 March 2021) <<https://caravanmagazine.in/politics/part-one-how-rss-bjp-members-invoked-hindu-identity-to-mobilise-hindutva-mobs-at-maujpur>>; For more details, see Annexure II – Delhi.

471. Dharendra K Jha, 'Unholy Orders' (The Caravan, 1 March 2022) <<https://caravanmagazine.in/commentary/haridwar-dharma-sansad-vhp-rss-hate-speech>>

472. Lauren Frayer, 'The Powerful Group Shaping the Rise of Hindu Nationalism in India' (NPR, 3 May 2019) <<https://www.npr.org/2019/05/03/706808616/the-powerful-group-shaping-the-rise-of-hindu-nationalism-in-india>>

473. Frayer

474. Vishwa Hindu Parishad (VHP) (Encyclopedia.com) <<https://www.encyclopedia.com/politics/legal-and-political-magazines/vishwa-hindu-parishad-vhp>>

475. Vishwa Hindu Parishad (VHP) (Encyclopedia.com) <<https://www.encyclopedia.com/politics/legal-and-political-magazines/vishwa-hindu-parishad-vhp>>

476. Sadiq Naqvi 'Muslims in India's Tripura Remain in Fear After Mosques Targeted' (Al Jazeera, 5 November 2021)

<<https://www.aljazeera.com/news/2021/11/5/india-tripura-muslims-mosques-violence-bjp-vhp>>

477. 'Hindus Abroad' (VHP.org, June 2022) <[https://vhp.org/hindus\\_abroad/](https://vhp.org/hindus_abroad/)>

478. 'Pravin Togadia's Aide Uses Derogatory Language for Muslims, Video Goes Viral' (New Indian Express, 8 April 2022)

<<https://www.newindianexpress.com/nation/2022/apr/08/pravin-togadia%E2%80%8Bs-aide-uses-derogatory-language-for-muslims-video-goes-viral-2439254.html>>

479. Hindutvawatch 'VHP Chief Indirectly Refers Indian Muslims as 'Cancer and wants "Chemotherapy"' (Hindutvawatch, 13 December 2021)

<<https://hindutvawatch.org/vhp-chief-indirectly-refers-indian-muslims-as-cancer-and-wants-chemotherapy/>>

480. 'Two Hindu Men Killed, Temples Vandalised in Bangladesh Violence' (Aljazeera, 18 October 2021) <<https://www.aljazeera.com/news/2021/10/18/bangladesh-hindus-men-killed-temples-vandalised-religious-violence>>

481. Sadiq Naqvi, 'Muslims in India's Tripura Remain in Fear After Mosques Targeted' (Aljazeera, 5 November 2021)

<<https://www.aljazeera.com/news/2021/11/5/india-tripura-muslims-mosques-violence-bjp-vhp>>

482. Sadiq Naqvi, 'Muslims in India's Tripura Remain in Fear After Mosques Targeted' (Aljazeera, 5 November 2021)

<<https://www.aljazeera.com/news/2021/11/5/india-tripura-muslims-mosques-violence-bjp-vhp>>

### iii. Bajrang Dal

Bajrang Dal is a Hindu right-wing organisation that was founded in 1984 in Uttar Pradesh by the VHP. It is considered ‘the VHP’s youth wing’ by many, with more than 4 million members, consequently, making it a very influential organisation.<sup>483</sup> It is currently being run by a former RSS worker, Sohan Singh Solanki. It is organised on a regional and nationwide scale, as several national and provincial ‘co-conveners’ lead its activities in their respective regions. The organisation’s recent actions include ‘opposing “love jihad”, cow slaughter and proselytization’.<sup>484</sup>

Members of Bajrang Dal have been at the forefront of furthering the narrative of ‘love jihad’ and acting on it. In December 2020, members of Bajrang Dal in Uttar Pradesh ‘forcibly took a 22-year-old Hindu woman married to a Muslim man to the police in Uttar Pradesh’,<sup>485</sup> which resulted in the woman having a miscarriage. She testified that her inter-faith marriage was her own choice, and not an outcome of forced conversion or ‘love jihad’. Additionally, in April 2021, a 23-year old Muslim man was beaten and stabbed by Bajrang Dal activists in Karnataka for

travelling with a Hindu woman.<sup>486</sup> Similar incidents have been reported from other states such as Madhya Pradesh<sup>487</sup> and Bihar.<sup>488</sup> As highlighted above (see Laws targeting Muslims as a religious minority), Bajrang Dal members assist the police in implementing anti-conversion laws and cow protection laws and, in the process, intimidate, harass and assault Muslims.<sup>489</sup> The group trains its workers en masse to work in the protection of cows and serve as cow vigilantes.<sup>490</sup> Some cases of lynchings of Muslim men by cow vigilantes have been directly attributed to Bajrang Dal members.<sup>491</sup>

Particularly influential in Uttar Pradesh, Bajrang Dal members have also managed to impact the small businesses and livelihoods of Muslims, for instance, the closure of a shoe-seller business<sup>492</sup> or a juice shop in a Hindu area of Moradabad district.<sup>493</sup> Bajrang Dal, among other groups, also called for the ban of loudspeakers in mosques, leading to public interest litigations being filed in high courts.<sup>494</sup> Most recently, one of its teenage members in Karnataka was seen addressing a crowd in connection with the ban on hijabs in educational institutions, and saying, ‘if you want the hijab all over India, we will chop you (Muslims) all with Shivaji’s sword’.<sup>495</sup>

483. Shanker Arnimesh, ‘Who Runs Bajrang Dal? Here Are the Men Who Power ‘Moral Policing & Vigilante’ Hindutva Group’ (The Print, 6 December 2021)

<<https://theprint.in/india/who-runs-bajrang-dal-here-are-the-men-who-power-moral-policing-vigilante-hindutva-group/776452/>>

484. Shanker Arnimesh (n 483).

485. See Section 2.1 / Geeta Pandey, ‘“Love jihad”: What a about India’s Anti-Conversion Law’ (BBC, 17 December 2020) <[www.bbc.com/news/world-asia-india-55314832](http://www.bbc.com/news/world-asia-india-55314832)>

486. ‘Muslim Youth Stabbed in Mangaluru By Bajrang Dal Goons For Traveling With Hindu Girl’ (New Indian Express, 3 April 2022)

<<https://www.newindianexpress.com/states/karnataka/2021/apr/03/muslim-youth-stabbed-in-mangaluru-by-bajrang-dal-goons-for-traveling-with-hindu-girl-2285128.html>>

487. ‘Bajrang Dal Workers Assault, Drag Muslim Man Off Train For Travelling With Hindu Woman In Madhya Pradesh’ (Firstpost, 19 January 2022)

<<https://www.firstpost.com/india/bajrang-dal-workers-assault-drag-muslim-man-off-train-for-travelling-with-hindu-woman-in-madhya-pradesh-10300641.html>>

488. ‘Two Sister of Darbhanga Got Married By Changing Their Religion in Kolkata, Bajrang Dal Said it is Love Jihad’ (NBT, 24 December 2021)

<<https://navbharattimes.indiatimes.com/state/bihar/darbhanga/two-sister-of-darbhanga-got-married-by-changing-their-religion-in-kolkata-bajrang-dal-said-it-is-love-jihad/articleshow/88473982.cms>>

489. ‘MP Lynching: Bajrang Dal Says Works With Police, Handed Over Seoni Tribals to it’ (The Indian Express, 7 May 2022)

<<https://indianexpress.com/article/india/mp-bajrang-dal-police-handed-over-seoni-tribals-7905917/>>

490. ‘Bajrang Dal Braces for Big ‘Cow Seva’: Right-Wing Group Wants 10 Lakh Volunteers to Push Cow Protection Programmes’ (The Daily Mail, 22 October 2015)

<<https://www.dailymail.co.uk/indiahome/indianews/article-3285167/Bajrang-Dal-braces-big-Cow-Seva-Right-wing-group-wants-10-lakh-volunteers-push-cow-protection-programmes.html>>

491. Vishnukant Tiwari, ‘2 Tribal Men Lynched in MP for Cow Slaughter, Cong Accuses Bajrang Dal, Ram Sena’ (The Quint, 7 May 2022)

<<https://www.thequint.com/news/india/two-men-allegedly-lynched-by-bajrang-dal-ram-sena-over-cow-smuggling-suspicion-madhya-pradesh-seoni#read-more>>

492. Sanjeev Bhatnager, ‘No Evidence, No Crime: Muslim Man in UP Arrested For Selling Shoes is Freed’ (article 14, 8 January 2021) <[www.article-14.com/post/no-evidence-no-crime-muslim-arrested-for-selling-shoes-is-freed](http://www.article-14.com/post/no-evidence-no-crime-muslim-arrested-for-selling-shoes-is-freed)>

493. ‘UP: Bajrang Dal Workers Create Ruckus, Shut Muslim Shop Alleging ‘Love Jihad’ (The Wire, 24 December 2021) <<https://thewire.in/communalism/up-bajrang-dal-workers-create-ruckus-shut-muslim-shop-alleging-love-jihad>>

494. ‘Hindu Fringe Group in Karnataka Demands Ban on Loudspeaker at Mosques’ (India Today, (5 April 2022) <<https://www.indiatoday.in/india/video/karnataka-hindu-fringe-group-loudspeaker-at-mosques-ban-1933581-2022-04-05>>

495. Rabia Shireen, ‘Teenage Bajrang Dal Worker in Karnataka Calls for Genocide of “Those Who Want Hijab” (The Wire, 28 February 2022)

<<https://thewire.in/communalism/teenage-bajrang-dal-worker-in-karnataka-calls-for-genocide-of-those-who-want-hijab>>

#### iv. Hindu Yuva Vahini

The Hindu Yuva Vahini (HYV) is a Hindu extremist group mainly based in the eastern region of the state of Uttar Pradesh. It was established by the current Chief Minister of Uttar Pradesh, Yogi Adityanath, when he was the head priest of the Gorakhnath Math (a Hindu monastery) in 2002.<sup>496</sup> This group was originally constituted of 'unemployed youth' and now describes itself as a 'fierce cultural and social organisation dedicated to Hindutva and nationalism'.<sup>497</sup> As per information made available to us, under Yogi Adityanath's administration, the group has been increasingly initiating and supporting anti-minority actions, especially anti-Muslim violence and discrimination. Examples include, enabling vigilante groups called 'Romeo squads' that target Muslim men in a relationship with Hindu women. This is intended to fight against what Hindu extremists are calling 'love jihad' or 'cow-protection' measures which also target the Muslim community, as discussed above.<sup>498</sup> The group also has a strong influence in Eastern Uttar Pradesh politics. Its members are usually seen donning a saffron stole to distinguish themselves from non-members.<sup>499</sup>

The group works as a vigilante group and assists the Uttar Pradesh Police by, for example, filing FIR's against anyone who speaks or writes against Hindu deities as well as the state Chief Minister, Yogi Adityanath.<sup>500</sup> According to one of the leaders of Hindu Yuva Vahini, after Adityanath became the chief minister, lodging complaints against the so-called anti-Hindus has been one of the main engagements of its workers.<sup>501</sup>

#### v. Hindu Raksha Sena

Swami Prabodhanand Giri is the President of the Hindu Raksha Sena (HRS), a right-wing organisation. This organisation has deep-rooted anti-Muslim rhetoric, as its website promotes an ideology of Muslim people taking from the hands of 'weak Hindu leaders' in countries such as Pakistan and Bangladesh.<sup>502</sup> The organisation is registered as a 'social and religious organisation'<sup>503</sup> and is composed of 25 main officers, as well as five categories of members, founder members, custodian members, lifelong members, active members and general members. The two last categories are given a renewable membership for one year.<sup>504</sup>

During the 17-19 December 2021 Dharam Sansad event, Swami Prabodhanand Giri, the President of HRS, made the following statement: '[t]his is why, like in Myanmar, the police here, the politicians here, the army and every Hindu must pick up weapons and we will have to conduct this cleanliness drive (safai abhiyan). There is no solution apart from this.' (See section on Direct and Public Incitement to Genocide).

#### vi. Hindu Mahasabha

The Hindu Mahasabha (or Akhil Bharatiya Hindu Mahasabha - ABHM) is a right-wing Hindu nationalist group that was established in 1915 and has a history of anti-Muslim actions. Historically, ABHM opposed the integration of Muslims in India by, for example, not actively supporting Gandhi's initiatives to 'hold conversations with Muslim League president Muhammad Ali Jinnah and Congress' efforts to integrate Muslims'.<sup>505</sup>

496. Express Web Desk 'What is Yogi Adityanath's Hindu Yuva Vahini' Indian Express (New Delhi, 17 May 2017) <<https://indianexpress.com/article/what-is/what-is-yogi-adityanaths-hindu-yuva-vahini/>>

497. Express Web Desk 'What is Yogi Adityanath's Hindu Yuva Vahini' Indian Express (New Delhi, 17 May 2017) <<https://indianexpress.com/article/what-is/what-is-yogi-adityanaths-hindu-yuva-vahini/>>

498. See Parts II.3 and II.5 above; People's Union for Democratic Rights, 'Cow Vigilantism: Crime, Community and Livelihood' (2018) <[www.pudr.org/sites/default/files/2019-01/cow%20vigilantism.pdf](http://www.pudr.org/sites/default/files/2019-01/cow%20vigilantism.pdf)>

499. Express Web Desk 'What is Yogi Adityanath's Hindu Yuva Vahini' Indian Express (New Delhi, 17 May 2017) <<https://indianexpress.com/article/what-is/what-is-yogi-adityanaths-hindu-yuva-vahini/>>

500. Dharendra K Jha, 'Are BJP-ruled states moving towards Nazi-style policing?' The Caravan (25 May 2022) <[https://caravanmagazine.in/politics/are-bjp-ruled-states-moving-towards-nazi-style-policing?utm\\_source=mailer&utm\\_medium=email&utm\\_campaign=special\\_reads&utm\\_id=104](https://caravanmagazine.in/politics/are-bjp-ruled-states-moving-towards-nazi-style-policing?utm_source=mailer&utm_medium=email&utm_campaign=special_reads&utm_id=104)>

501. Dharendra K Jha, 'Are BJP-ruled states moving towards Nazi-style policing?' The Caravan (25 May 2022) <[https://caravanmagazine.in/politics/are-bjp-ruled-states-moving-towards-nazi-style-policing?utm\\_source=mailer&utm\\_medium=email&utm\\_campaign=special\\_reads&utm\\_id=104](https://caravanmagazine.in/politics/are-bjp-ruled-states-moving-towards-nazi-style-policing?utm_source=mailer&utm_medium=email&utm_campaign=special_reads&utm_id=104)>

502. Hindu Raksha Sena's website <<http://www.hindurakshasena.com/Eng/about.php>>

503. Hindu Raksha Sena's website <<http://www.hindurakshasena.com/Eng/about.php>>

504. Hindu Raksha Sena's website <<http://www.hindurakshasena.com/Eng/about.php>>

505. Express Web Desk, 'Everything you need to know about the Hindu Mahasabha' The Indian Express (New Delhi, 2 February 2019) <<https://indianexpress.com/article/india/hindu-mahasabha-the-waning-fringe-outfit-shouting-to-stay-politically-relevant-5563082/>>

The group is most notorious for the membership of Nathuram Godse, the assassin of Mahatma Gandhi. Godse killed Gandhi for betraying Hindus and being pro-Muslim.<sup>506</sup> The group's senior members, such as BJP member of Parliament Sakshi Mahara and Acharya Madan, continue to condone the assassination of Gandhi. The group also celebrates Gandhi's death and recently installed a 'bust of Godse on its office premises in Meerut'.<sup>507</sup> It is worth noting that this group is considered marginal in India, as its presence is 'negligible across the country'.<sup>508</sup> Its influence on anti-Muslim discrimination can, however, not be neglected. Indeed, its leader, Sadhvi Annapurna, was present during the December 2021 Dharam Sansad, where she openly called for the elimination of the Muslim population from India.<sup>509</sup> (See section on Direct and Public Incitement to Genocide).

## IV. Legal analysis

### I. International Human Rights Law

#### I.1. Prohibition on non-discrimination

The right to equality and the principle of non-discrimination on the grounds of religion is enshrined in Article 2(1) ICCPR, Article 2(2) ICESCR, Article 2(1) of CRC and Article 5 of ICERD. The obligation of non-discrimination should be understood in light of Article 26 of ICCPR, which emphasises that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law should prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds, including religion. Article 26 is, therefore, concerned with the obligations imposed on States parties in regard to their legislation and the application thereof.<sup>510</sup> Thus, when

legislation is adopted by a State party, it must comply with the requirement of Article 26 that its content should be non-discriminatory.<sup>511</sup>

The facts highlighted above indicate that Muslims in India are being discriminated against in multiple ways based on their religious affiliations:

#### Discrimination on grounds of religion

In the case of NRC-CAA, two separate but related exclusionary measures stand to discriminate against Muslims collectively as a group. The implementation of NRC has also been fraught with irregularities. These irregularities, when read together with CAA, distinguish entitlement to citizenship on the basis of religion. (See above, Exclusionary measures by the state).

CAA excludes from its very important benefits the following two categories:

a) migrants from Afghanistan, Bangladesh and Pakistan who are Muslims, and b) those of any religion from countries other than the three listed in the law, including those without a religion. International human rights law does not distinguish between citizens and non-citizens or between different groups of citizens within the jurisdiction of a state. On analyzing the text of CAA, it appears that the law violates the obligation of non-discrimination under Article 26 ICCPR. With regard to access to citizenship in particular, the Human Rights Committee has stated that states should respect the rights enshrined in Article 26 when adopting and implementing a legislation.<sup>512</sup> Similar obligations also flow from ICERD and CRC.

506. Tushar Gandhi, *Lets Kill Gandhi* (Mumbai: Rupa Publications 2012).

507. Express Web Desk, 'Everything you need to know about the Hindu Mahasabha' *The Indian Express* (New Delhi, 2 February 2019) <<https://indianexpress.com/article/india/hindu-mahasabha-the-waning-fringe-outfit-shouting-to-stay-politically-relevant-5563082/>>

508. Express Web Desk, 'Everything you need to know about the Hindu Mahasabha' *The Indian Express* (New Delhi, 2 February 2019) <<https://indianexpress.com/article/india/hindu-mahasabha-the-waning-fringe-outfit-shouting-to-stay-politically-relevant-5563082/>>

509. Express Web Desk, 'Everything you need to know about the Hindu Mahasabha' *The Indian Express* (New Delhi, 2 February 2019) <<https://indianexpress.com/article/india/hindu-mahasabha-the-waning-fringe-outfit-shouting-to-stay-politically-relevant-5563082/>>

510. UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination (10 November 1989), para. 12 <<https://www.refworld.org/docid/453883fa.html>>

511. UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination (10 November 1989), para. 12 <<https://www.refworld.org/docid/453883fa.html>>

512. *Q v. Denmark*, CCPR/C/113/D/1001/2010. para. 7.2.

For this distinction on the basis of religion to be considered a permissible differentiation under international law, it must satisfy the following requirements: it must conform to the law; pursue a legitimate objective, and be proportional to the objective pursued. In this case, the law in itself pursues a noble objective of providing shelter to migrants persecuted from their home country. The question, therefore, is whether the distinction or exclusion of Muslims from the scope of the law is sufficiently reasonable and proportionate to the objective. The justification given by the government is that, unlike the faiths listed in the law (Buddhism, Jainism, Hinduism, Sikhism etc.), Islam is the state religion in all three listed countries as per their constitution, implying that all Muslims in these countries are afforded constitutional protection. However, such a justification does not take into account the various Muslim minorities within these countries, including Ahmadi, Hazara, Shia Muslims, who face the same risks and thus warrant similar preferential treatment as others on the list.

Moreover, it must be stated that the CAA, with its worthy aim, is also violative of the fundamental principle of non-refoulement and the obligation to carry out an individualised assessment. The CAA does not provide any criteria for such an assessment, but automatically grants citizenship on the basis of following a listed religion and coming from a listed country. Similarly, those not on the list stand to be expelled from the country regardless of the extent of fear and persecution they may face in their home country. In consideration of these factors, we believe CAA violates the right to equality and non-discrimination.

### Intersectional discrimination against Muslim women

Under Article 2 CEDAW, the State has, inter alia, the duty to ensure that public authorities and institutions do not ‘engage in any act or practice of discrimination against women’,<sup>513</sup> as well as the duty to ‘take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise’.<sup>514</sup> This means that the State is not only responsible for acts of discrimination and violence against women attributable to itself, but also has a due diligence obligation to eliminate discrimination perpetrated by private actors.<sup>515</sup> A ban on the hijab disproportionately exposes Muslim women to intersectional discrimination as women and as members of a religious minority and could have the effect of confining them to the home, impeding their access to schools and public services, thereby further exposing them to abuse and marginalisation. See above, Gender-based violence and discrimination.

#### **1.2. Right to nationality**

Those who have been excluded from the NRC also have the right to not be arbitrarily deprived of their nationality under Article 15 of the Universal Declaration of Human Rights. A country cannot take away a person’s citizenship without legally mandated safeguards.<sup>516</sup> Under international human rights law, the process for determining entitlements and claims to the citizenship of a country must be provided under and conform to the law. Such a process must have a legitimate purpose and be proportionate and necessary. Finally, it must follow the due process of law and cannot be discriminatory.

513. UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) United Nations, Treaty Series, vol. 1249, 13, 1249 UNTS 13 (CEDAW), Art. 2(d) <<https://www.refworld.org/docid/3ae6b3970.html>>

514. *Ibid.*, Art. 2(e).

515. UN Committee for the Elimination of All Forms of Discrimination Against Women, ‘General Recommendation No 19’ (29 July 1994) UN Doc HRI/GEN/1/Rev.1, paras. 8 and 9.

516. UN General Assembly, Universal Declaration of Human Rights (10 December 1948) 217 A (III), Art. 15 <<https://www.refworld.org/docid/3ae6b3712c.html>>

As highlighted above, one of the biggest challenges of the NRC process is that it placed unduly demanding, and thus disproportionate, documentary requirements on Assam's residents to prove their citizenship (see above, The National Register of Citizens (NRC)). Moreover, some policies were demonstrably discriminatory. For instance, the NRC administration relaxed evidentiary rules only for what it called 'original inhabitants', a category that in practice excludes Bengalis.

The process has the imminent consequence of statelessness, leaving millions at risk of detention and deportation. Rendering a person stateless restricts the individual's institutional access to all other human rights. States, therefore, have an obligation under international human rights law to prevent and reduce statelessness.<sup>517</sup>

The Panel is of the view that the NRC will have disproportionate effects on Bengali-speaking Muslims. The functioning of Foreigners Tribunals and the concerns raised in application of the process suggest that implementation of NRC is arbitrary.

Children are the most vulnerable to the exclusion process of the NRC, since the denial of nationality from birth subjects them to a cycle of extreme poverty without basic human rights or opportunities. Article 24 of the ICCPR states categorically that every child has the right to acquire a nationality. This is supplemented by Article 8 of the CRC, that obliges the state parties to accord the right to every child to acquire nationality in his or her country of birth. Moreover, the determination of citizenship through lineage is inherently exclusionary in a country where, according to UNICEF, about 40 per cent of urban births and 65 per cent of rural births are unregistered, despite an obligation under Article 7 of the CRC to register all births.

The panel notes an absence of a viable mitigating policy, domestic legislation on the legal status of refugees, and models from other significant conventions such as the Convention Relating to the Status of Stateless Persons, 1954 and the Convention on the Reduction of Statelessness, 1961 for the methodical detection, reduction and prevention of statelessness. The Panel thus expresses deep concern that continued enforcement of NRC will create a big statelessness crisis in the region.

### 1.3. Freedom of religion or belief

The right to freedom of thought, conscience and religion is enshrined in Article 18 of the ICCPR. Article 2(1) of the ICCPR also urges the State to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in ICCPR, without distinction of any kind, such as religion. Article 18 ICCPR further adds that 'no one shall be subject to coercion which would impair his freedom to have or to adopt a religion'.

The ICCPR establishes that limitations to freedom of religion are only allowed in specific situations. Article 18(3) of the ICCPR sets the legal requirements to limit such a right, which the HRC further elaborates in its General Comment No. 22.<sup>518</sup> First, the limitation must be prescribed by law, meaning that measures based on unrestrained executive discretion do not satisfy this requirement. Secondly, they must pursue one of the legitimate aims specified in Article 18(3) of the ICCPR, that is, public safety, order, health, or morals or the fundamental rights and freedom of others. Finally, the limitation must be necessary and proportionate, which means that it should be effective and not go beyond what is needed to achieve the desired result.

517. UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, 175 <[https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf)>

518. UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.43 <<https://www.refworld.org/docid/453883fb22.html>>

As mentioned above in the section on Restrictions on religious practices and beliefs, practice, profession and manifestation of Islam is being restricted in India in many ways. Then, the question arises whether these restrictions amount to justifiable limitations to the exercise of this right, implying that they pursue a legitimate aim and are necessary and proportionate to the goals. We analyse these conditions in each of the aforementioned cases hereunder:

Restrictions of worshipping and attacks on mosques: Regarding claims made in this category above, restrictions and attacks appear to not conform with any law and are thus arbitrary. The attacks mainly carried out by non-state actors, according to information available, are not being dissuaded, investigated or prosecuted by the state.

Restrictions on wearing hijab: While it is clear that a ban on hijab is a restriction on the right to freedom of religion, we believe, the ban imposed by the state of Karnataka also does not meet the legality, necessity and proportionality justifications of restricting the right to freedom of religion. In 2018, the Committee, in its two landmark decisions, *Miriana Hebbadj v. France*<sup>519</sup> and *Sonia Yaker v. France*<sup>520</sup> concerning the French burqa ban in public places that was initiated by way of legislation, did not find the ban on full-face veils to be proportionate to the objective of maintaining public order. The ban was found to be a violation of the right to freedom of religion (Article 18) and the right to equality (Article 26) of the ICCPR. In the aforementioned case in the state of Karnataka, the issue relates only to hijab/headscarves (and not full-face veils), a

manifestation of religion with no significant threat to public order as claimed by the state. It must be highlighted that the Muslim girls wearing headscarves had not been a cause of disturbance in public order. On the contrary, the bans caused both pro- and anti-hijab protests in the country. Furthermore, a ban that might result in denial of access to schools and colleges to young Muslim girls is also not a proportionate measure in the aim of maintaining public order.

Restrictions on religious education and dissemination of religious teaching: From the information available, these restrictions appear to be carried out by state authorities and backed by law. Where the ostensible aim of these restrictions may be to promote secular teaching, the facts suggest that the restrictions are being selectively applied to Islam and Christianity (in some cases). On the other hand, Hindu religious texts and Hindu preaching and dissemination of religious materials is being widely encouraged by the state. Therefore, even if it may be claimed that these restrictions are conforming to a law, they do not appear proportionate and are discriminatory in their application.

Furthermore, reports of coerced conversions are a clear violation of the right to freedom of religion.

Therefore, based on this analysis, we are of the opinion that there is credible information to suggest that Muslims in India are being deprived of their freedom of religion and belief and these claims warrant further investigation and analysis.

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519. *Miriana Hebbadj v. France* [2016] ICCPR Case Digest, CCPR/C/123/D/2807/2016 <<http://ccprcentre.org/decision/16904>>

520. *Sonia Yaker v. France* [2016] ICCPR Case Digest, CCPR/C/123/D/2747/2016 <<http://ccprcentre.org/decision/16901>>

#### 1.4. Prohibition on incitement to discrimination, hostility and violence

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 20(2) of the ICCPR require the states to prohibit ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’. Article 20(2) must be read in conjunction with the conditions for restrictions to the exercise of freedom of expression set out in Article 19(3) of the ICCPR. As pointed out by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, when high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy.<sup>521</sup>

Under Article 20 of the ICCPR, the state has an obligation to prohibit propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, violence or hostility. The prohibition under Article 20 is assessed contextually using the six-part threshold test identified by the Rabat Plan of Action in Article 20.<sup>522</sup>

The six-part threshold test takes into account the following: (1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of the speech, (5) extent of its dissemination, and (6) likelihood of harm, including imminence.<sup>523</sup>

The reports of hate speech highlighted above in the section ‘Incitement to discrimination, hostility, and violence’, when viewed in the context of other exclusionary and discriminatory measures initiated by the state, appear to meet the six-part threshold

test by the Rabat Plan of Action.

The speeches have been made repetitively in several different contexts, but particularly during elections in the states or at the central level, suggesting that religious issues are being used for electoral gains. The hate speeches are made by senior BJP leaders as well as religious leaders, who hold powerful political positions and enjoy significant popularity among their own electoral constituencies as well as on their online platforms.

On some occasions, Muslims are being equated with ‘termites’ or being called ‘corona spreaders’, leading to clear stigmatisation of the community. In other cases, the speeches call for direct violence, including derogatory words against Muslims. When indirect phrases such as ‘shoot the traitors’ are used, their meaning and target is very unambiguous and clearly understood in the context. Nevertheless, all the incendiary slogans call for direct acts of violence, including calls for ‘cleanliness drives’ or ‘impregnating Muslim women’.

We shall reserve the analysis on intent to incite for individual case-by-case assessments, but it is clear that the online and offline popularity of the speakers and the complicity of mainstream media channels ensures wide dissemination of these provocative speeches targeted against Muslims. In many cases, these speeches have resulted in direct violence against Muslims and their exclusion.

It must be also noted that the response of the state in preventing and prosecuting these speech acts has been minimal. Therefore, we believe that there is credible information to suggest that India has failed to ensure the right and guarantee provided to Muslims collectively as a religious group under Article 20 of the ICCPR.

521. UN General Assembly, Note by the Secretary-General: Promotion and protection of the right to freedom of opinion and expression, 7 September 2012, A/67/357, para. 67 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/501/25/PDF/N1250125.pdf?OpenElement>> accessed 9 June 2022.

522. UN Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights: Addendum, Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, 11 January 2013, A/HRC/22/17/Add.4 <<https://undocs.org/A/HRC/22/17/Add.4>>

523. UN OHCHR, ‘One-pager on “incitement to hatred”’ <[https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_threshold\\_test.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_threshold_test.pdf)>

Considering the fact that the speeches are ongoing, it is important to highlight that domestic and international actions against inciteful speeches are particularly urgent in line with the responsibility to act in the prevention of potential atrocity crimes.

### 1.5. Right to fair trial

The right is guaranteed under Article 14(2) of the ICCPR and 11(1) of the UDHR and provides that any reversal of burden of proof by the State and undue delay in pre-trial detention is inconsistent with international legal standards. With respect to use of counter-terrorism justifications to restrict the legitimate exercise of other rights, it must be noted that compliance with human rights treaties and standards are complementary and mutually reinforcing goals with effective counter-terrorism measures strictly guided by the principles of legality, necessity and proportionality.<sup>524</sup> International human rights standards applicable under Article 15(1) of the ICCPR read with Article 11 of the UDHR provide for the principle of legality. This principle requires that criminal laws must be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequences of committing such an offence. This principle recognises that ill-defined and/or overly broad laws are open to arbitrary application and abuse.<sup>525</sup> In that context, protections under Article 17 of the ICCPR and Article 12 of the UDHR against unlawful interference with a person's privacy, reputation and home are also applicable. Moreover, the competence, independence and impartiality of the decision-makers is an essential element of the right to fair trial.

In the Assam NRC process, the Foreigners Tribunals, which are quasi-judicial authorities hearing claims regarding exclusion from the register, do not appear to fulfil the guarantees of procedural standards under international law. There is no clear, consistent procedure that has been laid down in the Foreigners Act for these bodies.

Across states, human rights defenders or activists who protest against the CAA/NRC processes discussed above are being charged under Unlawful Activities Prevention Act (UAPA) in what appears to be a violation of the principle of legality. UAPA contains overly broad and ambiguous provisions such as, definition of a terrorist act and membership of terrorist organisations that are not sufficiently precise to meet the 'principle of legal certainty' under international law.<sup>526</sup> Dealt with in more detail, in the region-specific Annexures on Delhi, Uttar Pradesh, Kashmir and Assam, the overly broad law seems to be used in a discriminatory manner against Muslims and human rights defenders, thereby particularly targeting them based on their religious or political status as a means to intimidate them. The misuse of a counter-terrorism framework against human rights defenders would be contrary to India's obligations under the aforementioned provisions of international human rights law.

As discussed above (in the section 'Laws targeting Muslims as a religious minority'), anti-conversion laws and cow-protection laws empower private actors in society to assist in implementation of laws which are expansive in scope and which place a reversed burden of proof on those charged

524. UN General Assembly, The United Nations Global Counter-Terrorism Strategy: resolution / adopted by the General Assembly, 20 September 2006, A/RES/60/288, annex <<https://www.refworld.org/docid/468364e72.html>>

525. UN General Assembly, Promotion and protection of human rights and fundamental freedoms while countering terrorism: note by the Secretary-General, 18 September 2015, A/70/371, para. 46(c) <<https://www.refworld.org/docid/56209dd44.html>>; UN General Assembly, Promotion and protection of human rights and fundamental freedoms while countering terrorism: note by the Secretary-General, 3 September 2018, A/73/361, para. 34 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/274/67/PDF/N1827467.pdf?OpenElement>> accessed 9 June 2022.

526. Un human rights experts' comments concerning the Unlawful Activities (Prevention) Amendment Act 2019 (the amended Act), IND 7/2020 (6 May 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25219>>

with non-bailable offences. The private actors, or Hindutva groups (as highlighted above) in some cases, are serving to enforce these law functions without any clear accountability framework. According to the reports, the groups are exercising powers of investigation, search and arrest before they bring the alleged accused to the police. We believe that such implementation of criminal law provisions through private actors constitutes unlawful interference in the right to privacy, reputation and home of those charged under these laws and bypass standards guaranteed under the right to fair trial. Implementation of law through the private actors interferes with the rights of those charged particularly because these private actors 'assist' the police without any direct form of accountability.

#### **1.6. Discrimination in access to economic, social and cultural rights**

Non-discrimination is an immediate and cross-cutting obligation in the ICESCR. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.<sup>527</sup>

Housing: The right to adequate housing and the right not to be subjected to forced eviction arise from Article 11 (1) of the ICESCR, Articles 17, 23 and 27 of the ICCPR, and Article 27 (3) of the CRC, the non-discrimination provisions found in Article 14, paragraph 2 (h) of CEDAW, and Article 5 (e) of the ICERD.

Forced evictions as defined under international human rights law must be prohibited in all circumstances, regardless of ownership or tenure status of those affected. Victims of forced evictions must receive adequate compensation, reparation and access to housing or productive land as appropriate.<sup>528</sup> There are serious claims of targeted demolition drives without following due process. The demolition drives are carried out as a form of revenge in clear violation of the right to housing of Muslim communities. According to the reports reviewed by the Panel, Muslim families have been forced to leave their homes in various parts of the country owing to their religious identity. For instance, in Delhi and Uttar Pradesh, attacks against Muslims led to mass migration to safer havens in close and distant locations.<sup>529</sup> Moreover, the report conducted by the Housing Discrimination Project between 2017 and 2019 established that a deep-rooted discrimination towards Muslim tenants took place in India. This discrimination expresses itself by the difficulties met by Muslim people to find decent housing, as unwritten pacts between brokers and landlords prevent Muslims from finding a place to stay. Furthermore, Muslims have been subjected to higher rents and stigmatised in certain neighbourhoods, with Muslims occupying neighbourhoods where other Muslims are already living to avoid discrimination, thereby contributing to a form of segregation. According to the UN Special Rapporteur on Adequate Housing,<sup>530</sup> there are few domestic legal remedies to fight against discrimination in housing, given there is currently no law against discrimination in the private sector in India.

527. United Nations Committee on Economic, Cultural and Social Rights, 'General Comment No. 20' (E/C.12/GC/20, 2 July 2009) (para. 7)

<[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?key=92g0+9FnI5fX/ePqHxWObPpm//kusKEXT+B4ep/uCKo3nfhDrBLzv7eEhjZdFcf4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?key=92g0+9FnI5fX/ePqHxWObPpm//kusKEXT+B4ep/uCKo3nfhDrBLzv7eEhjZdFcf4&Lang=en)>

528. UN General Assembly, Guideline no. 6 in the Guidelines for the implementation of the right to adequate housing, A/HRC/43/43 (26 December 2019)

<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/353/90/PDF/G1935390.pdf?OpenElement>> accessed 9 June 2022. (A/HRC/43/43)

529. Soutik Biswas, 'Delhi riots: How Muslims' homes were targeted and burnt' BBC (4 March 2020) <<https://www.bbc.com/news/world-asia-india-51719204>>; Bilal

Kuchay and Manoj Singh, 'Muslims near India's Hindu temple allege pressure to vacate homes' Al Jazeera (Gorakhpur, India, 4 June 2021)

<<https://www.aljazeera.com/news/2021/6/4/muslims-near-india-hindu-temple-allege-pressure-to-vacate-homes>>

530. Leilani Farha, 'End-of-visit press statement, New Delhi, India' (OHCHR, 22 April 2016) <<https://www.ohchr.org/en/statements/2016/04/end-visit-press-statement-new-delhi-india-22-april-2016>>

Health: The right to health, as provided under Article 12 of the ICESCR, Article 24 of the CRC and Article 5 (e) (iv) of the ICERD, imposes on States the obligation to respect, protect and fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services.

According to the information highlighted above, there is sufficient credible information to suggest that the state obligation to respect the right to health has been breached. Discriminatory and unfounded stereotypes of Muslims infecting Hindus by spitting on food during the Covid-19 surge resulted in Muslims being excluded from facilities, including hospitals, and with patients being segregated based on their faith. Moreover, we are concerned by reports suggesting that one out of four Indians are facing faith-based discrimination in accessing health facilities. Furthermore, the Covid-19 pandemic worsened the already existing factors of discrimination based on class, religion and gender, leaving vulnerable populations and especially Muslims being denied an efficient access to health facilities, goods and services. Based on these claims, we believe there is credible information to suggest that India's obligations under Article 12 of the ICESCR have been breached.

Education: The right to education is recognised under Article 13 of the ICESCR, which ensures that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. The State parties agree that education shall enable all persons to participate effectively in

a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. According to Article 13 of the ICESCR, State parties must take steps to achieve the full realisation of the right to education, without discrimination of any kind. Therefore, Article 13 of the ICESCR must be read together with Article 2(2) of the ICESCR that prohibits discrimination.

The following appear to be unreasonable restrictions in access to education on the basis of religion: arbitrary closure of government funded madarassas (Islamic seminaries) that are the principal avenue for literacy and numeracy skills at the primary level for the bulk of the poorest Muslims in rural areas; vilification of higher educational institutions that cater to Muslim students; and bans of hijab leading to girls dropping out of educational institutions.

Employment and livelihood: The right to work is recognised in Article 6(1) of the ICESCR, which provides that '[t]he States Parties ... recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right'.

As highlighted above, cow protection laws and vigilante attacks have disproportionately impacted cattle traders and other associated occupations. Moreover, reports of direct economic boycotts and closure of meat shops, which are predominantly run by Muslims, are being endorsed by state authorities, thus suggesting discrimination in access to employment.

Cultural Identity: Article 15 of the ICESCR establishes that State parties must take steps to achieve the full realisation of the right to cultural identity, including the right to take part in cultural life and enjoy the benefits of scientific progress.

In General Comment No. 21, the Committee on Economic, Social and Cultural Rights (CESCR) clarifies that the right to take part in cultural life must be understood as freedom, and, as such, it contains negative and positive obligations for States. That is, State parties must refrain from interfering with the communities' right to promote their culture and identity and must introduce laws and policies to facilitate the expression of their cultural identity. In addition, to fully realise such a right, State parties must apply Article 15 of the ICESCR in a non-discriminatory manner, guaranteeing the availability of cultural goods and services, accessibility, acceptability, adaptability and appropriateness.<sup>531</sup>

As per the reports reviewed by the Panel, there has also been a sustained attack on public institutions and symbols of Islam in India, in addition to attempts to re-write history by changing curriculums and other aspects of Muslim cultural life. These appear to be unreasonable interference by the state on the cultural identity of Muslims as a group.

### 1.7. Right to effective remedy

The UDHR recognises the right to an effective remedy for violations of rights under Article 8.<sup>532</sup> The ICCPR recognises the right to an effective remedy<sup>533</sup> and establishes the right to equality before the law,<sup>534</sup> which has been interpreted to mandate substantive and procedural due process guarantees of non-discrimination to ensure a fair trial.<sup>535</sup> The Committee on Economic, Social and Cultural

Rights (CESCR) has noted the applicability of the right to access justice to the rights contained in the ICESCR,<sup>536</sup> which are not self-executing and require the institution of remedies in order to be effective.<sup>537</sup> It has been accepted as a general principle of international law that the breach of an international obligation gives rise to a general duty on the state to repair the harm caused.<sup>538</sup> The International Law Commission's Draft Articles on State Responsibility note that this duty occurs primarily in the form of restitution, compensation and satisfaction<sup>539</sup> in order to end ongoing breaches as well as to ensure that the parties' dignity and rights are respected.

The 2005 United Nations Basic Principles and Guidelines on the right to a remedy and reparations further clarify that the state owes an obligation to the victim of 'gross violations of international human rights law and serious violations of international humanitarian law'.<sup>540</sup> The Basic Principles assert that persons who 'individually or collectively suffer harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights,<sup>541</sup> are entitled to domestic reparation mechanisms which guarantee effective and equal access to justice. The right to an effective remedy for individuals<sup>542</sup> requires the state to investigate and punish violations of human rights as well as to establish independent frameworks for monitoring and providing reparations in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>543</sup>

531. UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 21: Right of everyone to take part in cultural life (art.15 para 1a of the Covenant on Economic, Social and Cultural Rights)' (2009) UN Doc. E/C.12/GC/21, para. 6-16.

532. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Art. 8.

533. International Covenant on Civil and Political Rights [ICCPR], 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976), Art. 2(3).

534. International Covenant on Civil and Political Rights [ICCPR], 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976), Art 14.

535. UNCHR 'General Comment 18' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (1994) UN Doc HRI/GEN/1/Rev.1.

536. UN CESCR, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, para. 1 of the Covenant) (14 December 1990) UN Doc E/1991/23, para. 5.

537. UN CESCR General Comment No. 9: The Domestic Application of the Covenant (3 December 1998) UN Doc E/C.12/1998/24, para. 9.

538. International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1 Art. 1.

539. International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1, Art. 34.

540. UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principles 4-5.

541. UNGA Res 60/147, principle 8.

542. UNGA Res 60/147, principle 15.

543. UNGA Res 60/147, principles 19-23.

In view of the binding treaty obligations as well as the soft law guidance above, the panel is of the view that victims of the human rights violations identified in Section IV(1.1)-(1.6) are also being denied the right to an effective remedy.

In response to serious human rights violations in some cases, for instance in Jammu and Kashmir, there are clear legislative obstacles to seeking justice. In those in Jammu and Kashmir, the Armed Forces (Special Powers) Act essentially ensures impunity by granting members of the Indian armed forces immunity from prosecution, thereby violating the right to remedy of those directly affected.<sup>544</sup> On the contrary, in the case of exclusionary and discriminatory measures discussed in this Annexure, the Indian courts are well-equipped to keep checks and provide effective remedy to the targeted community. In the following sections, we analyse the response of the Supreme Court and the High Courts within the context of the factual findings above and the right to effective remedy.

### Judicial review of executive and legislative measures resulting in serious violations

State High Courts and the national Supreme Court in India are empowered to review laws for compatibility with the national constitution, and to issue prerogative writs directing lower courts and public authorities to take or refrain from taking action, in order to ensure the enforcement of fundamental rights.<sup>545</sup> For instance, courts may issue a writ of habeas corpus (in instances of illegal detainment and imprisonment); mandamus (directing public authorities to fulfil their duty); prohibition (directing public authorities to refrain from exceeding their

jurisdiction); certiorari (correcting wrongful orders passed by lower courts outside the scope of their authority to do so); and quo warranto (requiring subordinate authorities to show the authority by which they hold office). The Indian judiciary also enjoys a wide range of suo moto powers, enabling High Courts and the Supreme Court to take up cases of its own accord even in the absence of a formal petition.<sup>546</sup>

The following discussion lays down the judicial response to each of the aforementioned executive or legislative measures targeting the Muslim community.

### National Register of Citizens (NRC)

As discussed in the section above on ‘The National Register of Citizens (NRC)’, individuals excluded from the National Register of Citizens in Assam can appeal their exclusion before quasi-judicial Foreigners Tribunals that have the power to declare them ‘foreigners’ and order their confinement in detention centres. Experts have noted the ‘serious procedural concerns’<sup>547</sup> with Foreigners Tribunals. An earlier report by the National Human Rights Commission had found that the detainees, victims of a system that human rights groups have claimed is ‘designed to exclude’,<sup>548</sup> are kept in sub-standard, prison-like conditions and that children are separated from their parents.<sup>549</sup> Taking note of the plight of the detainees, the Supreme Court<sup>550</sup> ordered the release in May 2019 of individuals who had been detained for more than three years. While we welcome this decision, we note that the three-year threshold for release is very high and further that such release was subject to stringent conditions, including monetary conditions, that many detainees would have struggled to

544. For more details, see Annexure IV – Jammu & Kashmir.

545. Constitution of India, Arts. 32, 226.

546. Constitution of India, Arts. 32, 131, 226, 227.

547. Talha Abdul Rahman, ‘Identifying the ‘Outsider’: An Assessment of Foreigner Tribunals in the Indian State of Assam’ (29 June 2020) 2.1 Statelessness & Citizenship Review <<https://ssrn.com/abstract=3723694>>

548. Amnesty International, ‘Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (2019) <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

549. Amnesty International, ‘Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (2019) <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

550. Supreme Court Legal Services Committee v Union of India, Writ Petition (Civil) 1045/2018 [Supreme Court of India], order dated 19 February 2019.

meet.<sup>551</sup> In addition, no further judicial action has been taken to address the lack of a stable and well-functioning appeals mechanism to challenge the orders of Foreigners Tribunals

Given the large numbers of people (about 1.9 million) excluded from the NRC in Assam, the lack of an accessible, system-wide remedy to challenge determinations of foreignness and detention is extremely concerning. The remedy offered by the Supreme Court appears to fall well short of international standards. It imposes a high threshold for release on individuals who are accused of a lack of citizenship rather than any form of criminality. In any event, few detainees are likely to have the wherewithal to petition the apex court or the state High Court. This consigns to detention many individuals who have effectively been rendered stateless for extended, indeterminate periods of time, without an independent and accessible appeals mechanism. The UN High Commissioner for Human Rights' appeals to the Government of India to ensure due process during the NRC appeals process and prevent detention or deportation, does not seem to have elicited any serious engagement.<sup>552</sup>

Numerous international observers have noted the Indian Supreme Court's role in 'overlooking fair trial standards and entrenching discriminatory attitudes and practices on the ground'<sup>553</sup> during the NRC

process.<sup>554</sup> These commentators cite, for example, (i) reversal of the burden of proof at Foreigners Tribunals, as a result of the Supreme Court striking down in 2005, the Illegal Migrants (Determination by Tribunals) Act<sup>555</sup> and reviving administrative Foreigners Tribunals in Assam,<sup>556</sup> (ii) justifying imposing a reverse burden of proof on individuals declared to be foreign by citing vague and unexamined 'threats to national security', which experts suggest 'set the tone in terms of both rhetoric and legal doctrine to demonise immigration',<sup>557</sup> (iii) ordering expeditious updating of the NRC, all the while relying on an erroneous government estimate that 5 million irregular Bangladeshi immigrants were present in Assam,<sup>558</sup> and (iv) last but not least, extending citizenship deprivation to children, through its decision in August 2019.<sup>559</sup>

### Citizenship Amendment Act, 2019

Despite robust powers to review legislation for compatibility with fundamental constitutional rights, the Indian judiciary's engagement with the law that may have far-reaching implications on Muslims and other religious minorities has been uneven and disappointing. In response to over 140 petitioners challenging the CAA (see The Citizenship Amendment Act, 2019 (CAA)), the Supreme Court declined to pass an interim stay on the law until its constitutionality was conclusively resolved.<sup>560</sup>

551. The conditions included: execution of a bond with two sureties of Rs. 1,00,000 each; the provision of a verifiable address for stay; collection of biometric data; and weekly reports to the police station Supreme Court Legal Services Committee v Union of India, Writ Petition (Civil) 1045/2018 [Supreme Court of India], order dated 10 May 2019.

552. UN OHCHR, 'Global update at the 42nd session of the Human Rights Council' (9 September 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E>>

553. Amnesty International, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

554. Amnesty International, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

555. A previously existing legislation that had laid the burden of proof on the state to establish that an individual is not an Indian citizen; laid down specific procedures for the vetting and appointment of Tribunal members, and a mechanism of appeals against Tribunal opinions, etc.

556. Talha Abdul Rahman, 'Identifying the 'Outsider': An Assessment of Foreigner Tribunals in the Indian State of Assam' (29 June 2020) 2.1 Statelessness & Citizenship Review <<https://ssrn.com/abstract=3723694>>

557. Amnesty International, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) (See section on 'Complicity of Courts') <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

558. Amnesty International, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) (See section on 'Complicity of Courts') <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

559. Amnesty International, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) (See section on 'Complicity of Courts') <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

560. Indian Union Of Muslim League vs Union Of India, (CIVIL) NO. 1470 of 2019, Supreme Court of India, Order dated 22 January 2020 <[https://main.sci.gov.in/supremecourt/2019/44931/44931\\_2019\\_1\\_4\\_19796\\_Order\\_22-Jan-2020.pdf](https://main.sci.gov.in/supremecourt/2019/44931/44931_2019_1_4_19796_Order_22-Jan-2020.pdf)>

The Court then failed to list petitions challenging the CAA for a hearing for over two years, which is an unusually long delay for such a pressing constitutional dispute.<sup>561</sup> Two years after this law, which expressly excludes Muslims from an expedited pathway to Indian citizenship, was passed, the Supreme Court's decision on its constitutional validity remains pending. While at the same time, the political leadership has been reinforcing their plan to begin implementation of the law,<sup>562</sup> the absence of an interim stay order for the time the law's constitutionality is under consideration raises serious concerns.

### Anti-conversion laws

Laws criminalising religious conversion have been challenged before High Courts and the Supreme Court, with divergent results. The High Courts of Gujarat<sup>563</sup> and Uttar Pradesh stayed the application of provisions prohibiting conversions by marriage.<sup>564</sup> On the other hand, the High Court of the State of Uttarakhand affirmed legal provisions that require individuals to inform local authorities before converting to another religion.<sup>565</sup>

Constitutional challenges to anti-conversion laws in Uttar Pradesh, Uttarakhand, Himachal Pradesh and Madhya Pradesh have been pending before the Supreme Court since February 2021. As with the CAA, the Supreme Court refused to grant an interim stay on these laws,<sup>566</sup> but has delayed hearing substantive arguments about their constitutionality.

### Cow protection laws

Challenging cow protection laws appears to be extremely difficult, facing not just procedural delays and avoidance, but also adverse legal precedent. Article 48 of the Indian Constitution directs the state to 'take steps' towards 'prohibiting the slaughter of cows and calves'. In the past, the Supreme Court has cited this constitutional provision to uphold wide prohibitions on cow-slaughter under different state laws.<sup>567</sup> These precedents make it harder for applicants to challenge recently legislated or amended 'cow protection' statutes. That said, we note that the broad, invasive search and seizure powers in these laws (including powers that can be exercised by non-state or quasi-state actors) warrant urgent judicial scrutiny. Thus far, the Supreme Court has not provided such scrutiny, while the pronouncements of certain High Courts have been not just inadequate but extremely concerning. For example, in October 2020, the High Court of Uttar Pradesh warned that the state's 'cow protection' law 'is being misused against innocent persons', but did not issue orders that would curtail the violent, sometimes fatal, abuse inflicted under cover of this law.<sup>568</sup> A year later, the same court held that the 'government should bring a bill in the Parliament to include cow [sic] within the scope of fundamental rights, and strict laws should be made to punish those who talk about harming cows'.<sup>569</sup>

561. JUSTICE ANJANA PRAKASH 'One Year of CAA: In its Approach to CAA Cases, the SC Has Failed its Own Standards' *The Quint* (11 December 2020) <<https://www.thequint.com/voices/opinion/supreme-court-approach-to-caa-cases-failure-to-list-is-failure-of-its-standards#read-more>>

562. 'Amit Shah in West Bengal: We'll implement CAA the moment COVID-19 wave ends' *The Economic Times* (5 May 2022) <<https://economictimes.indiatimes.com/news/politics-and-nation/amit-shah-in-west-bengal-well-implement-caa-the-moment-covid-19-wave-ends/videoshow/91349332.cms?from=mdr>>

563. *Jamiat Ulama-E-Hind Gujarat v State of Gujarat*, Special Civil Application No. 10304 of 2021 (High Court of Gujarat), order dated 18 August 2021.

564. Umang Poddar, 'How Have Legal Cases Seeking to Strike Down India's Anti-Conversion Laws Fared?' *Scroll* (4 January 2022) <<https://scroll.in/article/1014042/how-have-legal-challenges-against-indias-anti-conversion-laws-fared>>

565. Khusbu @ Kokil & Anr v State of Uttarakhand, Writ Petition (Criminal) No. 2226 of 2020 (High Court of Uttarakhand), order dated 31 December 2020.

566. 'Supreme Court Refuses to Stay 'Love Jihad' Laws in Uttar Pradesh, Uttarakhand: Issues Notice' *Hindustan Times* (6 January 2021) <<https://www.hindustantimes.com/india-news/supreme-court-refuses-to-stay-laws-which-punish-marriages-based-on-religious-conversion-issues-notices-to-uttar-pradesh-uttarakhand/story-92IFE16wQVhxl02NbZuxcP.html>>

567. Mohd. Hanif Quareshi & Others vs The State Of Bihar 1958 AIR 731; *State Of Gujarat vs Mirzapur Moti Kureshi Kassab* 2005 8 SCC 534.

568. Manish Sahu, 'UP cow slaughter law is being misused against innocent: Allahabad HC' *The Indian Express* (27 October 2020) <<https://indianexpress.com/article/india/up-cow-slaughter-law-is-being-misused-against-innocent-allahabad-hc-6889785/>>

569. Areeb Uddin Ahmed, '[BREAKING] Cow is part of culture of India; should be declared as national animal, made part of fundamental rights: Allahabad High Court' *Bar and Bench* (1 September 2021) <<https://www.barandbench.com/news/litigation/bring-law-grant-cows-fundamental-rights-declare-cow-as-national-animal-allahabad-high-court>>

### Judicial response to allegations of restrictions of religious practices and beliefs

We have noted that the Karnataka High Court upheld a prohibition on clothing with religious symbolism in educational institutions and the Supreme Court declined to expedite the appeal against this judgment, despite its obvious ramifications for the right to freedom of religion or belief and for access to higher education. As noted earlier in the section on gender-based violence and discrimination, the Government of Karnataka passed an order under the Karnataka Education Act 1983 requiring that students of all educational institutions must follow the dress code prescribed by the government or the private management, with clothes that would disturb ‘equality, unity, and public order’ to be banned.<sup>570</sup> A petition seeking recognition of a Muslim woman’s fundamental right to wear the hijab had been filed in the Karnataka High Court on 31 January 2022. On 15 March 2022, the Karnataka High Court upheld the government order prohibiting religious clothing and prescribing a dress code, on the grounds that wearing the hijab was not an essential part of Islam.<sup>571</sup> The High Court judgment was challenged before the Supreme Court on the same day. However, on 24 March 2022, the Supreme Court refused an urgent hearing, claiming that the issue ‘had nothing to do with exams’ which were to commence

shortly thereafter.<sup>572</sup> A few of the petitioners have therefore been unable to take their exams, as they are barred from entering classrooms wearing hijabs.<sup>573</sup>

### Judicial response to hate speech and incitement to violence

We were encouraged by the Supreme Court’s decision in the case of *Amish Devgan v. Union of India*<sup>574</sup> where the court declined to quash criminal complaints against a prominent news anchor who had referred to Islamic saintly figures as ‘terrorists’ on television. In making its decision, the court noted that persons of influence have a duty to be more responsible,<sup>575</sup> and directed the authorities to continue their investigation.

We also note that on 10 January 2022, the Supreme Court agreed, after much public consternation,<sup>576</sup> to take up a public interest litigation petition regarding the inciteful speech at the Dharam Sansad event in December 2021. Yet, the main figures who were reported making the speeches have not been investigated and are yet to be arrested.<sup>577</sup> The lead organiser of the meeting, Yati Narsinghanand,<sup>578</sup> earlier accused of inciting anti-minority violence, was arrested on 14 January 2022, but was granted bail shortly thereafter.<sup>579</sup> In April 2022, he again publicly incited violence against Muslims at another event in Delhi.<sup>580</sup>

570. Karnataka Government Order on Dress Code for Students (Translated to English) (Issued 5 February 2022) <<https://www.scobserver.in/journal/karnataka-government-order-on-dress-code-for-students/>>

571. *Smt. Resham & Anr. v. State of Karnataka & Ors.*, Writ Petition No. 2347/2022 <<https://www.scobserver.in/wp-content/uploads/2022/02/karnataka-high-court-412148.pdf>>

572. Sukirti Dwivedi, “‘Don’t Sensationalise’: Supreme Court Refuses Urgent Hearing on Hijab Ban” NDTV (24 March 2022) <<https://www.ndtv.com/india-news/karnataka-hijab-ban-dont-sensationalise-supreme-court-refuses-early-hearing-on-karnataka-hijab-ban-2840067>>

573. Sreeja MS, ‘Not Allowed to Take Exams Wearing Hijab, 2 Karnataka Students Leave’ NDTV (22 April 2022) <<https://www.ndtv.com/india-news/two-pro-hijab-petitioners-in-karnatakas-udupi-not-allowed-to-take-exams-wearing-hijab-leave-college-premises-2909571>>

574. *Amish Devgan vs Union of India and others*, Writ Petition (Criminal) No. 160 of 2020 (7 December 2020) <[https://www.livelaw.in/pdf\\_upload/pdf\\_upload-385580.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-385580.pdf)>

575. *Amish Devgan vs Union of India and others*, Writ Petition (Criminal) No. 160 of 2020 (7 December 2020) <[https://www.livelaw.in/pdf\\_upload/pdf\\_upload-385580.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-385580.pdf)>, paragraph 52.

576. “‘Condemn such incitement to violence’: Ex-armed forces chiefs write to PM, president on hate speech” Scroll (1 January 2022) <<https://scroll.in/latest/1014095/condemn-such-incitement-to-violence-ex-armed-forces-chiefs-write-to-pm-president-on-hate-speech->>; ‘Dharam Sansad row: 76 Supreme Court lawyers write to CJI Ramana over calls for ‘ethnic cleansing’” India Today (New Delhi, 27 December 2021) <<https://www.indiatoday.in/india/story/dharma-sansad-76-supreme-court-lawyers-cji-ramana-calls-for-ethnic-cleansing-1892597-2021-12-27>>

577. ‘Hindutva Leaders at Haridwar Event Call for Muslim Genocide’ The Wire (22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

578. Alishan Jafri, Shehlat Maknoon Wani and Siddharth Varadarajan, ‘Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed’ The Wire (New Delhi, 3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

579. Aruvelial Mariyam Alavi, ‘Haridwar Hatemonger Jailed for Hate Speech Too, Cops Now Say’ NDTV (17 January 2022) <<https://www.ndtv.com/india-news/hardiwar-hate-speech-hate-speech-charges-added-against-haridwar-hatemonger-yati-narsinghanand-2-days-after-arrest-2712363>>

580. Abhinav Rajput, Mahender Singh Manral, ‘Out on bail in hate speech case, Yati Narsinghanand at it again: tells Hindus to take up arms’ The Indian Express (New Delhi, 4 April 2022) <<https://indianexpress.com/article/cities/delhi/mahapanchatay-delhi-yati-narsinghanand-exhorts-hindus-pick-up-arms-event-no-permission-7850680/>>

by religious leaders have invoked and how it starkly differs from the actions against, for example, students or activists protesting against the CAA. Despite the fact that these inciting speeches have been made repeatedly and the meetings are organised frequently by the same people and organisations across different states, the police and the courts have failed to charge them under relevant provisions and the main organisers remain free. For instance, concerning an August 2021 incident of calling for violence against Muslims at Jantar Mantar, six people were arrested but they were only charged with one section of the law; ‘promoting enmity’ under the Indian Penal Code and got bail within two months. This was in contrast to 15 anti-CAA protestors in jail for up to two years for the 2019 protests, charged under various sections of criminal as well as anti-terror laws (for more details on the latter, see Annexure III on Delhi). Sharjeel Imam has been in jail for over two years facing charges filed by police in five states under 73 sections of the law, based on the video<sup>581</sup> of an anti-CAA speech he made in western UP on 16 January 2020 asking protestors to oppose the Citizenship Amendment Act (CAA). In contrast, at the Haridwar Dharam Sansad, Sadhvi Annapurna called for people to pick up weapons for eradication of an entire religious community and no case was filed against her.<sup>582</sup>

Based on the information available at the time of writing, the Supreme Court has not queried police failures and delays in regard to this repeated, escalating hate speech and incitement, even though it has accepted a petition specifically raising this matter.

In summary, there are several instances where the High Courts and the Supreme Court have intervened to provide remedy for individuals targeted and discriminated

against on the basis of religion. However, on many occasions where the bigger question pertains to the policy and actions of the government, the Supreme Court has failed to act or to provide remedy by unusually delaying the matters and not providing interim relief. Considering the disproportionate impact of these laws and measures on Muslims (as discussed above), it may well be argued that the state’s failure to provide adequate, prompt and effective remedy also impacts on the religious community disproportionately.

## **2. International Criminal Law - Direct and Public Incitement to Genocide**

Direct and public incitement to genocide is an inchoate crime under international law as provided in Article III (c) of the Genocide Convention and Article 25(3)(e) of the Rome Statute. In other words, under international criminal law, the crime of incitement to genocide is punishable even if the incitement does not result in a genocide.<sup>583</sup> It is not necessary for a genocide to unfold in order to prosecute incitement to genocide as a crime under international law.

To incite ‘publicly’ means that the call for criminal action is communicated to a number of individuals in a public place or to members of the general public at large particularly by technological means of mass communication, such as by radio or by television.<sup>584</sup> ‘Direct’ incitement implies that incitement must assume a direct form to provoke another which is more than a vague or indirect suggestion.<sup>585</sup> A speech constitutes a direct incitement if the persons for whom the message was intended immediately grasp the implication thereof,<sup>586</sup> to carry out one of the prohibited acts, inter alia, killings, causing serious bodily injuries.<sup>587</sup>

581. ‘Sharjeel Imam’s speech at Aligarh Muslim University’ (30 May 2021) <<https://www.youtube.com/watch?v=oxPopCtXc4g>>

582. KAUSHIK RAJ & ALISHAN JAFRI, ‘As Hindu Extremists Repeatedly Call For Muslim Genocide, The Police Ignore An Obvious Conspiracy’ (10 January 2022) <<https://article-14.com/post/as-hindu-extremists-repeatedly-call-for-muslim-genocide-the-police-ignore-an-obvious-conspiracy-61dba33fa759c>>

583. An inchoate crime penalises the commission of certain acts capable of constituting a step in the commission of another crime, even if that crime is not in fact committed. See Bryan A. Garner (ed.), *Black’s Law Dictionary*, 8th ed. (Saint Paul, Minnesota: Thomson West Publishing Company, 2004) 399.

584. *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze* (Appeal Judgment), ICTR-99-52-A, International Criminal Tribunal for Rwanda (ICTR), 28 November 2007, paras 758, 775 <<https://unictr.irmct.org/en/cases/ict9-52>>; *The Prosecutor v. Callixte Nzabonimana* (Nzabonimana, Callixte) (ICTR-98-44D), International Criminal Tribunal for Rwanda (ICTR), 31 May 2012, para. 1754 <<https://unictr.irmct.org/en/cases/ict9-44d>>

585. 1996 ILC Draft Code, 26; ICTR Akayesu, para. 557; ICTR Nahimana, ICTR Barayagwiza, Ngeze, para. 692.

586. ICTR Akayesu, para. 558, ICTR Nahimana, para. 701.

587. ICTR Nahimana, para. 692; ICTR Bikindi, para. 417.

Direct and public incitement to genocide is construed as encouraging or pressurising someone to destroy, in whole or in part, a protected group by engaging in criminal conduct.<sup>588</sup> The targeting must be against a national, ethnical, racial or religious group; against members of the group because of their membership in the group.<sup>589</sup>

An additional requirement for the crime of incitement to genocide is that the perpetrator must have the specific intent to destroy the group in whole or in part, as such.<sup>590</sup> In the absence of a clear expression or direct proof of the specific 'intent to destroy' the protected group in whole or in part, and in cases where the actual genocide does not take place, the genocidal intent may be inferred from a number of indicators, including the following: the general context and surrounding circumstances; perpetration of other culpable acts systematically directed against the same group; the scale of atrocities committed; targeting of victims on account of their membership in a particular group; the repetition of destructive and discriminatory acts; or the existence of a plan or policy.<sup>591</sup>

The Panel has reviewed reports of several incidents of public speeches since 2019, calling for direct violence against Muslims. The public speeches were made during Dharam Sansad (Hindu Religious Parliament) events held in the last two years organised by members of Hindu right-wing religious organisations associated with the BJP and were frequently attended by its members.

Taking into account this legal criteria, this section examines hate speeches made by four individuals; Yati Narsinghanand, Sadhvi Annapurna, Swami Prabodhanand Giri and Bajrang Muni Udasin, to determine whether they may constitute public incitement to genocide directed against Muslims.

## 2.1. Yati Narsinghanand

Yati Narsinghanand (alias Deependra Narayan Singh) is the Chief Priest of Dasna Devi Temple, Ghaziabad, Uttar Pradesh bordering Delhi. He is also the mahamandaleshwar (leader) of the influential Hindu Juna akhara (monastic order).<sup>592</sup> He is reported to have strong links with BJP leaders in UP and Delhi. He features regularly as a studio commentator on the panels of leading Hindi news channels like News Nation, Sudarshan TV and AajTak, and is perceived as influential for a number of militant Hindutva networks on YouTube who further circulate his speeches and messages among millions of people.<sup>593</sup>

### i. Inciting Speech

According to reports reviewed by the Panel, Yati Narsinghanand has repeatedly made incendiary speeches in recent years.<sup>594</sup> Three of those public speeches were made in Delhi addressing different audiences in connection with the anti-CAA protests (2019-2020) and have been addressed specifically in Annexure III. This section deals with the speeches made by Yati Narsinghanand at the Dharam Sansad (religious conclave) events that he organised in 2020 and 2021.

588. ICTR, Juvénal Kajelijeli, Appeal Judgment, 2003.

589. Aptel, Cecile, The Intent to Commit Genocide in the Case Law of the International Criminal Tribunal for Rwanda [2002] Criminal Law Forum 13. 273-291. 10.1023/A:1023344825934, 279.

590. UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, 277, Art. 2 <[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)>

591. Prosecutor v. Goran Jelisić (Appeal Judgement), IT-95-10-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 5 July 2001, paras 47-48 <<https://www.internationalcrimesdatabase.org/Case/76/Jelisi%C4%87/>>. See also Prosecutor v. Radislav Krstić (Appeal Judgement), IT-98-33-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 19 April 2004, para. 34 <<https://www.icty.org/x/cases/krstic/acjug/en/>>; Ildephonse Hategekimana v. The Prosecutor, International Criminal Tribunal for Rwanda (Appeals Chamber), Tanzania, ICTR-00-55B-A, 8 May 2012 <<https://www.internationalcrimesdatabase.org/Case/101/Hategekimana/>>, para. 133; Hategekimana Appeal Judgement, para. 133; Sylvestre Gacumbitsi v. The Prosecutor (Appeal Judgement), ICTR-2001-64-A, International Criminal Tribunal for Rwanda (ICTR), 7 July 2006, paras 40-41 <<https://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-01-64/appeals-chamber-judgements/en/060707.pdf>>

592. MOUSHUMI DAS GUPTA, 'Behind the 'bigot': How engineer Deependra became Dasna's hate-spewing sadhu Yati Narsinghanand' The Print (21 January 2022) <<https://theprint.in/india/behind-the-bigot-how-engineer-deependra-became-dasnas-hate-spewing-sadhu-yati-narsinghanand/808674/>>

593. ADITYA MENON, 'Dasna Priest Called For 'War On Islam' in Run-Up to Delhi Violence' The Quint (5 March 2020) <<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad#read-more>>

594. Alishan Jafri, Shehlat Maknoon Wani and Siddharth Varadarajan, 'Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed' The Wire (New Delhi, 3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

595. ADITYA MENON, 'Dasna Priest Called For 'War On Islam' in Run-Up to Delhi Violence' The Quint (5 March 2020) <<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad#read-more>>

On 16 January 2020, he organised a Hindu Dharam Sansad where he repeatedly emphasised his mission of making India a 'Hindu Rashtra' (Hindu Nation) and urged Hindus to 'collect weapons in their houses'. He addressed the audience several times during the three-day event whose agenda, according to him, was 'to protect India from Islam and jihadis' and as 'the final battle with Islam'.<sup>596</sup>

The second incident was reported from another high-level Hindu religious meeting co-organised by him from 17 to 19 December 2021 in Haridwar, Uttarakhand.<sup>597</sup> Among the attendees were BJP leader Ashwini Upadhyay and BJP women's wing leader Uditia Tyagi.<sup>598</sup>

At the event, in an interview that he gave to Sudarshan News, a channel reportedly known for its amplification of anti-Muslim hate speech and pro-BJP propaganda,<sup>599</sup> he elaborated on this theme, saying: '[t]his is our second Dharam Sansad. Our message is this that India, which is speedily becoming an Islamic state, should quickly be reversed, and it should become a Sanatan Vedic Rashtra (Hindu Nation).'<sup>600</sup>

During the three-day event, Yati Narsinghanand is reported to have said: 'economic boycott won't work. Hindu groups need to update themselves. Swords look good on stage only. This battle will be won by those with better weapons'.<sup>601</sup>

On 19 December, Narsinghanand then led the congregation to take an oath, which said, 'All of you raise your hands and repeat after me. I, \*your name\*, here on the banks of the Ganga, I take this vow, for Sanatan Dharam (endonym used by Hindus to refer to Hinduism) for my family, to keep my sisters and daughters protected. Anything in the world, whatever problems, whatever person, even thinks about causing loss to my religion, my family and my children, my women, I will not let him live. We will live for our religion. We will die for our religion. **Islam's jihad will be finished.** Long live Sanatan Dharm. **May the enemies of Sanatan be destroyed.**'<sup>602</sup>

## ii. Public

The available information suggests that the Dharam Sansad meetings were open-access public gatherings, and the speeches made at the event were not only addressed to people present at the meetings, but also broadcast through sympathetic news channels and social media platforms.

As the organiser of Dharam Sansad meetings, Yati Narsinghanand had issued an open invite over social media platforms addressed to Hindus, asking them to join them in large numbers in Haridwar, Uttarakhand.<sup>603</sup> The widely circulated videos of both the events indicate that they were attended by hundreds of people and the speeches made at the event were broadcast through news channels like Sudharshan News<sup>604</sup> and YouTube channels, including Satya Sanatan, Vishal Views and his own Narsingh Vani.<sup>605</sup>

596. 'The roar of Yeti Narasimhananda in the Parliament of Religions' (14 January 2020) <[https://www.youtube.com/watch?v=gr0TAL\\_E2xo](https://www.youtube.com/watch?v=gr0TAL_E2xo)>

597. The event was organised reportedly by Yati Narsinghanand, a Hindu priest involved in anti-Muslim incitement in the past. See ADITYA MENON, 'Dasna Priest Called For 'War On Islam' in Run-Up to Delhi Violence' The Quint (5 March 2020)

<<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad#read-more>>

598. Rabia Shireen, 'Yati Narsinghanand Organises 3-Day Hate Speech Conference Against Muslims in Haridwar' The Hindustan Gazette (23 December 2021)

<<https://thehindustangazette.com/national/uttarakhand/yati-narsinghanand-organises-3-day-hate-speech-conference-against-muslims-in-haridwar-7155>>;

Mohammed Zubair Tweet (22 December 2021) <[https://twitter.com/zoo\\_bear/status/1473581283242491904](https://twitter.com/zoo_bear/status/1473581283242491904)>

599. Anmol Somanchi & Supriti David, 'Who pays Sudarshan News to spew hate? You do, through your government' (24 October 2020)

<<https://www.newslaundry.com/2020/10/24/who-pays-sudarshan-news-to-spew-hate-speech-you-do-through-your-government>>

600. 'Yati Narsinghanand Offers Rs 1 Crore Award to Become 'Hindu Prabhakaran'' The Wire (22 December 2021) <<https://thewire.in/communalism/yati-narsinghanand-dharam-sansad-haridwar>>

601. 'Viral Hate Speech Videos From Haridwar Meet Spark Outrage, No Case Yet | The News' (23 December 2021) <<https://www.youtube.com/watch?v=nEcmlC8pXdA>>

602. 'Yati Narsinghanand Offers Rs 1 Crore Award to Become 'Hindu Prabhakaran'' The Wire (22 December 2021) <<https://thewire.in/communalism/yati-narsinghanand-dharam-sansad-haridwar>>

603. Alishan Jafri, Shehlat Maknoon Wani and Siddharth Varadarajan, 'Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed' The Wire (New Delhi, 3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

604. Anmol Somanchi & Supriti David, 'Who pays Sudarshan News to spew hate? You do, through your government' (24 October 2020)

<<https://www.newslaundry.com/2020/10/24/who-pays-sudarshan-news-to-spew-hate-speech-you-do-through-your-government>>

605. 'The roar of Yeti Narasimhananda in the Parliament of Religions' (14 January 2020) <[https://www.youtube.com/watch?v=gr0TAL\\_E2xo](https://www.youtube.com/watch?v=gr0TAL_E2xo)>; ADITYA MENON, 'Dasna Priest Called For 'War On Islam' in Run-Up to Delhi Violence' The Quint (5 March 2020)

<<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad#read-more>>

### iii. Direct

His speeches during both of these events appear to make clear and unambiguous references to Muslims while calling for direct violence against them.

Yati Narsinghanand makes several clear references to Islam as the enemy of Hindus and the idea of a Hindu nation. According to him, Islam needs to be ‘fought’ and ‘destroyed’. His speeches unambiguously target Muslims by virtue of their membership of a religious group. Moreover, they include direct calls to violence, asking Hindus to collect weapons; saying swords are not enough; that Hindus have to learn and commit to fighting; to live and die for their religion; and to destroy enemies of Hinduism and the Hindu nation. These phrases constitute a direct call to violence against the targeted group. According to these reports, it can be argued that incitement by Yati Narsinghanand assumed a direct form of provocation for his Hindu audience to violently target Muslims.

### iv. Indicators of specific intent to destroy

According to the information available, there are several indicators that need to be investigated further to examine whether specific genocidal intent can be attributed to Yati Narsinghanand, such as: 1) the general context; 2) repetition of discriminatory acts and speeches; 3) his clear and direct expression of intent through calls for removal/destruction of Islam from India; and 4) support from other actors indicating existence of a broader genocidal plan.

*General Context:* As highlighted in the report on several occasions, the last years have seen an increased stigmatisation, dehumanisation and discrimination against Muslims in India. The organisation of these events as well as the speeches calling for public and direct violence when viewed in that context appear

to contribute towards the ongoing multifaceted attack against the religious minority. More importantly, the speeches were made in the context of an event whose primary agenda is to further the mission of Hindu Rashtra (Hindu Nation).

*Repetition of discriminatory acts and speeches:* Yati Narsinghanand’s actions and speeches on several occasions before and after the aforementioned speeches may serve as an indicator of special ‘intent to destroy’ Muslims. Here is a brief listing of such reports:

- 606 • On 25 December 2019, Narsinghanand  
607 addressed a public rally against the anti-  
608 CAA protests at Jantar Mantar, Delhi,  
609 where he praised the government for bringing a ‘Muslims population control law like the CAA’ and used abusive terms like ‘sooar’ (pigs) and ‘katuon’ (circumcised) for Muslims, and then called for their eyes to be gouged out: ‘And all of you, you fighters for dharma, each one of you tigers is more than enough for 125,000 pigs. And if [the Muslims] are seeing dreams of taking over India, then tell them that we will gouge their eyes out.’<sup>606</sup>
- On 22 February 2020 (the day before the targeted violence began in north-east Delhi) in a viral YouTube video Yati Narsinghanand was seen calling for a final war against Muslims where his speech included the following statements (in Hindi): ‘Humanity can only be saved if Islam is finished off’; ‘Hindus, read Geeta along with Mahabharat [Hindu mythological texts] and learn how to die fighting’.<sup>607</sup>
- In April 2021, a video surfaced where ‘he is calling all Hindus to keep the best weapons available, to be ready to die and kill’.<sup>608</sup> On another occasion, he was reported calling for Muslims to be removed ‘from the face of Earth’.<sup>609</sup>

606. Alishan Jafri, Shehlat Maknoon Wani and Siddharth Varadarajan, ‘Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed’ *The Wire* (New Delhi, 3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

607. ADITYA MENON, ‘Dasna Priest Called For ‘War On Islam’ in Run-Up to Delhi Violence’ *The Quint* (5 March 2020) <<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad#read-more>>

608. Sania Ahmad Tweet (3 April 2021) <<https://twitter.com/SaniaAhmad1111/status/1378639588063735809?s=20>>

609. Alishan Jafri, ‘Beyond Blasphemy: Inside Yati Narsinghanand’s Militant Hindutva Machinery’ *The Wire* (17 April 2021) <<https://thewire.in/communalism/beyond-blasphemy-inside-yati-narsinghanands-militant-hindutva-machinery>>

- In March 2021, one of Narsinghanand's disciples brutally beat a 14-year-old Muslim boy who had come in their temple to drink some water.<sup>610</sup>
- In December 2017, a Muslim daily wage worker, named Afrazul, was lynched by a Hindu Shambhu Lal Regar in Rajsamand, Rajasthan. Narsinghanand was the first Hindutva leader to address a press conference glorifying Regar's actions. He travelled to Rajasthan to extend support to the perpetrator's family.<sup>611</sup>
- In 2017, videos surfaced where Yati Narsinghanand was seen teaching young men how to handle and operate a gun at his Dasna Devi temple in Gazhiabad (UP).<sup>612</sup>

*Clear and direct expression of intent:* On multiple occasions, Yati Narsinghanand has explicitly referred to eradication of Islam and Muslims from India, as part of his 'Hindu Rashtra' (Hindu Nation) mission. He organised events where he, along with others, have repeatedly called for such eradication and a 'cleanliness drive' to get rid of Islam from the nation. These appear as direct expressions of his genocidal intent.

*Actions in furtherance of a genocidal plan:* The weapon trainings, incendiary speeches, and encouragement of lone acts of violence against Muslims, do not appear as isolated accounts of hatred against Muslims from Yati Narsinghanand as an individual. These speeches and conduct by Hindu religious leaders such as Narsinghanand are grounded in the broader ideology of the RSS and other associated groups to make India a 'Hindu Nation'. The event was co-organised by a

Hindu nationalist group, Hindu Yuva Vahini, whose Facebook page claims that the group had been founded by Uttar Pradesh Chief Minister Adityanath.<sup>613</sup>

Narsinghanand personally has also been consistently supported by BJP political leaders and the police. For instance, Kapil Mishra called for donations and monetary support for Yati Narsinghanand's 'mission'.<sup>614</sup> His Dharam Sansad meetings are attended by senior leaders of BJP and the key religious figures speaking there have been reported to have connections with the BJP.<sup>615</sup>

Based on these reports, we believe there is sufficient credible information to indicate that speeches made by Yati Narsinghanand qualify as direct and public incitement to genocide against Muslims and the allegations must be investigated further.

## 2.2. Sadhvi Annapurna

Sadhvi Annapurna, alias Pooja Shakun Pandey, is the National President of Akhil Bharat Hindu Mahasabha, a political party in Aligarh, Uttar Pradesh and Mahamandleshwar (leader) of an influential Niranjini Akhada (Hindu monastic order).<sup>616</sup>

### i. Inciting Speech

During the three-day Dharam Sansad event in December 2021, Sadhvi Annapurna made the following statement while addressing the crowd:

'...hum jo chahte hain vo haasil hoga, ye Islamic Bharat nahi ye sanatan vedic Hindu rashtra bhut jaldi ghoshit hoga... Aap apne aap ko itna saksham banayein, apni aabaadi ko itna badhayein. Agar inki jan-sankhya ko

610. BISMEE TASKIN, "Mandir was open for all before, now drinking water also crime": Dad of thrashed UP Muslim boy' The Print (15 March 2021)

<<https://theprint.in/india/mandir-was-open-for-all-before-now-drinking-water-also-crime-dad-of-thrashed-up-muslim-boy/621888/>>

611. Alishan Jafri, 'Beyond Blasphemy: Inside Yati Narsinghanand's Militant Hindutva Machinery' The Wire (17 April 2021)

<<https://thewire.in/communalism/beyond-blasphemy-inside-yati-narsinghanands-militant-hindutva-machinery>>

612. 'Guns & Violence - How Mahant Narsinghanand's Spewing Hate?' The Quint (4 October 2017) <<https://www.youtube.com/watch?v=vEy4cGpHoOE>>

613. 'Hindutva leaders call for killing of Muslims at Haridwar and Delhi events' Scroll (24 December 2021) <<https://scroll.in/latest/1013435/videos-of-seers-calling-for-killing-of-muslims-hindu-rashtra-spark-anger>>

614. Alishan Jafri, 'Beyond Blasphemy: Inside Yati Narsinghanand's Militant Hindutva Machinery' The Wire (17 April 2021)

<<https://thewire.in/communalism/beyond-blasphemy-inside-yati-narsinghanands-militant-hindutva-machinery>>; Alishan Jafri, Shehlat Maknoon Wani and Siddharth Varadarajan, 'Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed' The Wire (New Delhi, 3 March 2021)

<<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

615. 'Hindutva Leaders at Haridwar Event Call for Muslim Genocide' The Wire (New Delhi, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>; PRABHJIT SINGHAND ARSHU JOHN, 'Crime and Prejudice, the BJP and Delhi Police's hand in Delhi violence' Caravan (1 September 2020) <<https://caravanmagazine.in/politics/the-bjp-and-delhi-police-hand-in-the-delhi-violence>>

616. SONAL MATHARU, 'Pooja Pandey's transformation into hate-spewing Sadhvi at forefront of 'Hindu Rashtra' mission' The Print (7 May 2022)

<<https://theprint.in/features/pooja-pandey-s-transformation-into-hate-spewing-sadhvi-at-forefront-of-hindu-rashtra-mission/946034/>>; 'Sadhvi Annapurna hate speech at the ongoing Dharam Sansad in Himachal Pradesh's Una || TD News 24x7 (17 April 2022) <<https://www.youtube.com/watch?v=B-Umq9vpHpc>>

khatam karna hai toh inhe maarne ko taiyar rahein, jail bhi jaane ko taiyar rahein. Agar hum 100 log bhi sainik ban gaye aur inke 20 lakh bhi maar diya humne, toh hum vijayi hain aur hum jail bhi jaane jo taiyar hain...'

'...we will achieve what we seek, it will not be an Islamic India but it will soon be declared as a Hindu nation... Make yourselves able, increase your population. And if you want to eliminate their population, then be ready to kill them and be ready to go to jail. If only a 100 of us become soldiers and each of us kills 20 lakhs (a lakh is 100,000) of them, we will be victorious and then we are ready to go to jail...'.<sup>617</sup>

## ii.Public

For public nature of speech, see the same discussion for Yati Narsinghanand's speeches as they were made during the same Dharam Sansad event.

## iii.Direct

The provocative speech made by Sadhvi Annapurna is clear and unambiguous in its message. She makes several references to Muslims as the intended target. The use of words 'elimination of their population' and 'kill 20 lakhs of them' convey a direct and unmistakable message with the audience understanding the implications of the speech without any doubt.

## iv.Indicators of Specific Intent to Destroy

The contents reviewed by the Panel establish a transparent overarching purpose of establishing a Hindu nation in the speech made by Sadhvi Annapurna. The reference to 100 people killing 2 million Muslims each is a clear expression of intention to destroy the entire population of 200 million Muslims in India.

Since then she has also made similar speeches on different occasions.<sup>618</sup> In response to the claims that her speech was genocidal, she has further reinforced her words by saying: '[t]he Constitution of India is wrong. Indians should pray to Nathuram Godse (Mahatma Gandhi's assassin). I am not afraid of the police'.

Based on these reports, we believe there is sufficient credible information to indicate that speeches made by Sadhvi Annapurna qualify as direct and public incitement to genocide against Muslims and the allegations must be investigated further.

## 2.3. Swami Prabodhanand Giri

Swami Prabodhanand Giri, former RSS volunteer turned ascetic and now serving as the President of Hindu Raksha Sena (Hindu Defense Force), a right-wing organisation based in Uttarakhand.<sup>619</sup>

### i.Inciting Speech

During the December 2021 Dharam Sansad event, Swami Prabodhanand Giri is reported to have made the following statement:

*'We have to make preparations. And I'll tell you what preparations those are. I will make myself clear, this is the solution, and if you follow this solution, then the path is made for you... in Myanmar, Hindus were being chased away. The politicians, government and police were just standing and watching. They started by killing them by cutting their necks, and not only this, but they began to cut them in the streets and eat them. The people watching thought we are going to die, we are not going to live.'*<sup>620</sup>

*"This is our state now. You have seen this at the Delhi border, they killed Hindus and hung them. There is no more time,*

617. Mohammed Zubair Tweet (22 December 2021) <[https://twitter.com/zoo\\_bear/status/1473581283242491904](https://twitter.com/zoo_bear/status/1473581283242491904)>

618. Devanshu Tiwari, 'Interview of Sadhvi Annapurna, who raised the sword at the Dharma Sammelan' <<https://www.bhaskar.com/local/uttar-pradesh/news/haridwar-dharma-sansad-hate-speech-updates-sadhvi-annapurna-on-hamid-ansari-and-naseeruddin-shah-129752966.html>>; 'Sadhvi Annapurna hate speech at the ongoing Dharam Sansad in Himachal Pradesh's Una || TD News 24x7 (17 April 2022) <<https://www.youtube.com/watch?v=B-Umq9vpHpc>>

619. Hindu Raksha Sena website <<http://www.hindurakshasena.com/Eng/>>

620. 'Hindutva Leaders at Haridwar Event Call for Muslim Genocide' The Wire (New Delhi, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

*the case now is that either you prepare to die now, or get ready to kill, there's no other way. This is why, like in Myanmar, the police here, the politicians here, the army and every Hindu must pick up weapons and we will have to conduct this cleanliness drive (safai abhiyan). There is no solution apart from this.'*<sup>621</sup>

## ii. Public

For the public nature of the speech, see the discussion for Yati Narsinghanand's speeches as they were made during the same three-day Dharam Sansad event in December 2021.

## iii. Direct

The words used by Swami Prabodhanand Giri are unambiguous in their call to violence and Muslims as the intended target for violent attacks. The use of words such as 'cleanliness drive', 'prepare to die or to kill', 'there is no other way' are unmistakable and direct in their call to violence.

Although the aforementioned excerpts do not explicitly use the word 'Muslims', a context-based examination of the speech suggests that the audience understood the speech to be targeted against Muslims. The speech was made in connection with other similar speeches, as discussed above, where Islam is repeatedly being touted as the enemy of Hinduism. The reference to 'Delhi border' is a reference to the February 2020 violence in North-East Delhi (bordering Uttar Pradesh) where 'they' refers to the 'Muslims' as the other group fighting against the Hindus. The use of Myanmar as an example, which is a reference to Rohingya Muslims, appears to be an attempt at creating parallels between the Muslim communities in Myanmar and India, thus calling for similar anti-Muslim violence in India.

Therefore, we believe, a linguistic context-based assessment of the speech suggests that the speech can be construed as a direct call to provoke Hindu listeners to attack and kill Muslims.

## iv. Indicators of Specific Intent to Destroy

There are several indicators that may be investigated further to determine whether specific genocidal intent can be attributed to Swami Prabodhanand Giri, such as: 1) the general context; 2) repetition of discriminatory acts and speeches; 3) his clear and direct expression of intent; and 4) support from other actors indicating the existence of a genocidal plan.

*General context:* As highlighted in the report on several occasions, the last years have seen an increased stigmatisation, dehumanisation and discrimination against Muslims in India. The organisation of these events as well as the speeches calling for public and direct violence appear to contribute to a multifaceted attack against the religious minority. More importantly, the speeches were made in the context of an event whose primary agenda was to further the mission of Hindu Rashtra (Hindu Nation).

Repetition of discriminatory acts and speeches: In addition to the speech made at Dharam Sansad 2021, Swami Prabodhanand Giri has made several other hate speeches directed at Muslims. The following list includes some examples:

- *In January 2022, at an event in Ghaziabad, Uttar Pradesh, he was reported saying: 'We will stand up against every jihadi in India and clean the country of their presence. The Prime Minister has said Swachh Bharat (Clean India), we will make it a clean and holy*

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621. 'Hindutva Leaders at Haridwar Event Call for Muslim Genocide' The Wire (New Delhi, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

*holy (pavitra) Bharat.’ Speaking to a journalist at the event, he explains ‘jihadis are those who have understood the Quran’.*<sup>622</sup>

- In June 2021, he also made similar statements in a video with Yati Narsinghanand. He said: ‘[i]n the entire world, if we want humanity to last, we will need to clean it of jihadis. There should be treatment, management for jihadis on this earth. A few days ago someone said that in Islam, rapists are born, jihadis are born – I have been saying this for some time, there is a jihadi and a terrorist in each Islamic home... Hindu society needs to stand up and find a cure for jihadis, otherwise these jihadis will find a cure for Hindus, and there will be no place on this earth for us to live... One thing is certain, if he comes into my space and I find out, he will not leave. I have lived for 14 years among jihadis, I’m not that weak... They should not think that if Narsinghanand or I are killed, you can live happily. There will be a pile of corpses, across the country you will see corpses. This is certain, nobody will stop us.’<sup>623</sup>
- In 2018, he made a speech at Shamli (Uttar Pradesh) addressing a meeting of his organisations Hindu Raksha Sena, he said that ‘only Muslims rape Hindu women’; and that if Muslims want to live in India they will have to assimilate and convert to Hinduism.<sup>624</sup>

His clear and direct expression of intent: The explicit use of words such as ‘cleanliness drive’ ‘removal’ and ‘destruction’ of Muslims

in furtherance of the mission to achieve a Hindu Rashtra (Hindu Nation) appear as direct expressions of his genocidal intent. Existence of a genocidal plan: The speeches made by Swami Prabodhanand Giri are backed by a shared ideology and plan of several connected individuals and organisations. These speeches and conduct of Hindu religious leaders such as Narsinghanand are grounded in the broader ideology of the RSS and other associated groups to make India a ‘Hindu Nation’. He is in close connection with the political leaders of the BJP including the Uttar Pradesh Chief Minister Yogi Adityanath.<sup>625</sup> Giri has publicly admitted that the two share a similar vision and he as well as his work and organisation are supported by the Chief Minister.<sup>626</sup> Similarly, a picture of the Chief Minister of Uttarakhand also surfaced where he is seen touching the feet of Prabodhanand Giri seeking his blessings.<sup>627</sup>

Swami Prabodhanand Giri leads the organisation Hindu Raksha Sena (Hindu Defense Force) and, according to its website, their official mandate is to counter the principle of secularism and promote protection and power of Hindus in India.<sup>628</sup>

Based on these reports, we believe there is sufficient credible information to indicate that speeches made by Swami Prabodhanand Giri qualify as direct and public incitement to genocide against Muslims and the allegations must be investigated further.

622. MEGHNAD BOSE, ‘Clean India of Jihadis, Whoever Understands Quran is One’: UP Hate Speech Event’ The Quint (7 January 2022)

<<https://www.thequint.com/news/india/clean-india-of-jihadis-whoever-understands-quran-is-one-up-ghaziabad-hate-speech-event#read-more>>

623. ‘Hindutva Leaders at Haridwar Event Call for Muslim Genocide’ The Wire (New Delhi, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>

624. ‘Prabodhanand Giri of Hindu Defense Army said - If you want to live in India then you have to adopt Hindu religion’ (8 January 2018)

<<https://hindi.news18.com/news/uttar-pradesh/muzaffarnagar-prabodhanand-giri-of-hindu-raksha-sena-controversial-statement-in-shamli-1224463.html>> [1]

625. ‘Hindutva Leaders at Haridwar Event Call for Muslim Genocide’ The Wire (New Delhi, 22 December 2021) <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>; PRABHJIT SINGHAND ARSHU JOHN, ‘Crime and Prejudice, the BJP and Delhi Police’s hand in Delhi violence’ Caravan (1 September 2020) <<https://caravanmagazine.in/politics/the-bjp-and-delhi-police-hand-in-the-delhi-violence>>

626. MEGHNAD BOSE, ‘Clean India of Jihadis, Whoever Understands Quran is One’: UP Hate Speech Event’ The Quint (7 January 2022)

<<https://www.thequint.com/news/india/clean-india-of-jihadis-whoever-understands-quran-is-one-up-ghaziabad-hate-speech-event#read-more>>

627. Saurabh Shukla, Deepshikha Ghosh (ed.), ‘Hate Speech-Givers In Haridwar Tell NDTV “Neither Regrets Nor Fear”’ NDTV (23 December 2021)

<<https://www.ndtv.com/india-news/viral-hate-speech-videos-haridwar-meet-spark-outrage-2667081>>

628. HINDU RAKSHA SENA website, ‘Hindu defense: Protecting the country. Army of Hindus: Hindu Defense Army’

<<http://www.hindurakshasena.com/Eng/about.php>>



#### iv. Indicators of Specific Intent to Destroy

The following indicators may be investigated further to determine whether specific genocidal intent can be attributed to Bajrang Muni Udasin: 1) repetition of discriminatory acts and speeches, and 2) direct targeting of victims on account of their membership in a particular group.

##### *Repetition of similar acts:*

- Since the incident, older videos have also emerged where Bajrang Muni is seen threatening rape and violence against Muslim women. Videos from Sitapur, Uttar Pradesh, record his public statements such as: ‘If you kill one Hindu, I will kill 10 Muslims’, ‘If you entrap one Hindu girl in love jihad, I will harass and entrap 10 Muslim girls’.<sup>637</sup>
- In another undated older video, he can be seen with state policemen standing by him, declaring to a gathering ‘If any mulla (derogatory term used by Hindu extremists for Muslims) troubles our women, then I will openly abduct his sister/daughter, take her to Sangat (his religious followers) and will ensure she is raped’.<sup>638</sup>
- In a December 2018 television interview, he commented on the Babri Masjid matter in Ayodhya town of the state, ‘Ram Mandir (temple) can be built only if Hindus pick up weapons and make a pile of corpses up to Ayodhya, of whoever comes in the way of Ram Mandir’, implying Muslims.<sup>639</sup>

- In another video from 15 August 2017, addressing a meeting of the Bajrang Dal (a right-wing Hindu group), Udasin advocated for violence for the construction of a Ram Mandir and said with a weapon in his hand, ‘Our religion won’t be defended unless Muslims are cut’.<sup>640</sup>

Selective targeting of victims on account of their membership in a particular group: His speeches are clearly directed at Muslims and build on the anti-Muslim narrative of them being a threat to Hinduism and particularly Hindu women, in this case.

It must also be noted that Bajrang Muni Udasin is associated with the BJP as he campaigned for Sitapur BJP candidate Rakesh Rathore in the 2022 Uttar Pradesh legislative assembly elections. Mishra also sought the re-election of Yogi Adityanath, BJP Chief Minister of Uttar Pradesh.<sup>641</sup> This political support may be inferred as a sign of shared ideology.

Based on these reports, we believe there is sufficient credible information to indicate that speeches made by Bajrang Muni Udasin qualify as direct and public incitement to genocide against Muslims and the allegations must be investigated further.

637. Mohammed Zubair Tweet (8 April 2022) (Paraphrased and translated) <[https://twitter.com/zoo\\_bear/status/1512373203422822404?s=20&t=6WR3qR0L78cVyoWf14Zq8A](https://twitter.com/zoo_bear/status/1512373203422822404?s=20&t=6WR3qR0L78cVyoWf14Zq8A)>

638. Kaushik Raj Tweet (8 April 2022) <<https://twitter.com/kaushikrj6/status/1512414268972761089?s=20&t=5lyJFFM4TM86It483AFFw>>

639. Kaushik Raj Tweet (8 April 2022) <<https://twitter.com/kaushikrj6/status/1512358664958771204?s=20&t=wFSp50jR8Hpv604YskFOJw>>

640. YouTube video (15 April 2017) <<https://www.youtube.com/watch?v=JiJrhjB3v5w&feature=youtu.be>>

641. YouTube video (10 February 2022) <<https://www.youtube.com/watch?v=ISGKPUFg8bU>>

## 2.5. Sadhvi Vibhanand Giri

Sadhvi Vibhanand Giri is a Hindu religious leader mainly based in Jabalpur, Madhya Pradesh. She is a disciple of late Swami Pragyanand and manages a Trust Fund organisation named after him. She is, therefore, addressed as Pragyapeetheshwar.<sup>642</sup> Among other things, she founded an educational institution in Madhya Pradesh as part of the Trust.<sup>643</sup> She is a regular preacher of Hindu learnings (often also disseminated through social media platforms such as Facebook) and she is often involved as organiser or speaker in large-scale religious congregations in the country.<sup>644</sup> The day after the event in question as discussed below, she was welcomed and garlanded and honoured by the Governor of Chhattisgarh at her office.<sup>645</sup>

### i. Inciting speech

*On 25-26 December 2021, around 20 Hindutva religious leaders met for a two-day Dharam Sansad event in Raipur, Chhattisgarh, to urge Hindus to begin preparation for the realisation of the Hindu rashtra (Hindu Nation).*<sup>646</sup>

At the event, Sadhvi Vibhanand Giri is seen making the following speech from a stage full of religious leaders:

*'Agar Hindu kanya par aankh utha kar bhi dekha, toh aaj se tumhari auratein Hinduon k bachche paida karenge, bina nikah k, bina kisi*

*phere k...'* (Your women will be impregnated by Hindus, if you cast even a glance at Hindu girls, without any Muslim or Hindu marriage rituals...)<sup>647</sup>

### ii. Public

The speech has been captured in a video that was shared widely on Twitter and other platforms. In the video, taken by someone in the audience, other religious leaders (wearing saffron robes) are seen sitting on the stage where Sadhvi is making the speech through a microphone. It is also possible to see some of the audience (also wearing saffron clothes) in the gathering applauding her call to sexual violence.<sup>648</sup> In other videos from the event, the sound and applause heard through the video and many seen people sitting in the audience,<sup>649</sup> the estimated number of people gathered for the event would be in the hundreds.<sup>650</sup>

The Raipur Dharam Sansad was organised by the NGO Neelkanth Seva Samiti and the Doodhadhari Math,<sup>651</sup> who shared the invite and programme widely before the event.<sup>652</sup> It was also attended by political leaders from the Indian National Congress as well as BJP.<sup>653</sup> Swami Prabhodanand Giri (see above, Swami Prabodhanand Giri), who had earlier made statements at the Dharam Sansad event in Haridwar, was also present at the event.<sup>654</sup> All these factors suggest that the speeches were made in public addressed to an audience that included other prominent and influential religious and political leaders.

642. Sadhvi Vibhanand Giri Facebook post <<https://www.facebook.com/people/Sadhvi-Vibhanand-Giri/100006011957061/>>

643. SPSM College website <<http://www.spsmktangi.org/>>

644. For instance, see Vishwa Dharam Samvad (World Religious Dialogue) held in January 2021, New Delhi <<https://vishwadharmsamvad.in/>>

645. Sadhvi Vibhanand Giri Facebook <[https://www.facebook.com/permalink.php?story\\_fbid=1799350493608665&id=100006011957061](https://www.facebook.com/permalink.php?story_fbid=1799350493608665&id=100006011957061)>

646. Tarushi Aswani, 'At Raipur Dharma Sansad, Hindutva Leaders Raise Call to Take Up Arms for Hindu Rashtra' (30 December 2021)

<<https://thewire.in/communalism/raipur-dharma-sansad-call-for-violence-hindu-rashtra-christian-muslim>>

647. Alishan Jafri Tweet (2 February 2022) <[https://twitter.com/alishan\\_jafri/status/1488875434783608833](https://twitter.com/alishan_jafri/status/1488875434783608833)>

648. Alishan Jafri Tweet (2 February 2022) <[https://twitter.com/alishan\\_jafri/status/1488875434783608833](https://twitter.com/alishan_jafri/status/1488875434783608833)>

649. Kumar Anshuman, 'Police questions Dharma Sansad organisers after controversial statement by participant' The Economic Times (28 December 2021)

<<https://economictimes.indiatimes.com/news/india/police-questions-organisers-of-dharma-sansad-after-controversial-statement-by-participant/articleshow/88534062.cms?from=mdr>>

650. Kaushik Raj Tweet <<https://twitter.com/kaushikrj6/status/1475138012405137409?s=20>>; Tarushi Aswani 'At Raipur Dharma Sansad, Hindutva Leaders Raise Call to Take Up Arms for Hindu Rashtra' The Wire (New Delhi, 30 December 2021) <<https://thewire.in/communalism/raipur-dharma-sansad-call-for-violence-hindu-rashtra-christian-muslim>>

651. Kaushik Raj

652. Kaushik Raj Tweet (26 December 2021) <<https://twitter.com/kaushikrj6/status/1475138285760483328/photo/1>>

653. Tarushi Aswani 'At Raipur Dharma Sansad, Hindutva Leaders Raise Call to Take Up Arms for Hindu Rashtra' The Wire (New Delhi, 30 December 2021)

<<https://thewire.in/communalism/raipur-dharma-sansad-call-for-violence-hindu-rashtra-christian-muslim>>

654. 'Chhattisgarh Dharam Sansad: Religious leader praises Godse; FIR registered' The Indian Express (27 December 2021)

<<https://indianexpress.com/article/india/chhattisgarh-dharam-sansad-religious-leader-praises-godse-fir-registered-7691838/>>

### iii. Direct

The inciting speech is clear and ambiguous in its call for impregnation of women by saying ‘women will be forced to produce Hindu babies without any marriage’. A context-based assessment suggests that the reference to absence of marriage implies absence of consent, thus making it a call to rape women.<sup>655</sup> In the aforementioned video of the speech made by Vibhanand Giri, she makes multiple references to Muslims as she said the Sansad should work towards ending ‘love jihad’ (see section on Anti-conversion laws). Vibhanand Giri also said that ‘Muslims kidnap Hindu women and molest them’, and if a Hindu girl meets a Muslim, every young Hindu man must ‘save’ her.<sup>656</sup> Moreover, the reference to ‘Nikah’ (Islamic marriage ceremony) is another reference to suggest that the call for rape, impregnation was intended to provoke a Hindu audience to target Muslim women. These factors lead us to believe that the speech was direct in nature.

### iv. Indicators of specific intent

The following indicators may be investigated further to determine whether specific genocidal intent can be attributed to Sadhvi Vibhanand Giri: 1) the general context; 2) repetition of similar acts and speeches, and 3) existence of a genocidal plan or policy.

*General context:* As highlighted in the report on several occasions, the last years have seen

an increased stigmatisation, dehumanisation and discrimination against Muslims in India. The organisation of these events as well as the speeches calling for public and direct violence appear to contribute to a multifaceted attack against the religious minority. More importantly, the reports reviewed by the Panel establish that the event where the speaker made the speech had an overarching purpose of establishing a Hindu nation.<sup>657</sup>

Repetition of similar acts and speeches: At least one report has surfaced alleging involvement of Sadhvi Vibhanand Giri in the rape of minor girls at a school run by the religious Trust Fund.<sup>658</sup>

Existence of a genocidal plan: The speeches made by Sadhvi Vibhanand Giri are backed by a shared ideology and plan of several connected individuals and organisations. These speeches and conduct of Hindu religious leaders such as Narsinghanand are grounded in the broader ideology of the RSS and other associated groups to make India a ‘Hindu Nation’. Some leaders present there were also involved with the Dharam Sansad event in Haridwar, Uttarakhand.<sup>659</sup>

Based on these reports, we believe there is sufficient credible information to indicate that the speech made by Sadhvi Vibhanand Giri at Dharam Sansad qualifies as direct and public incitement to genocide against Muslims and the allegations must be investigated further.

655. N.C. Asthana, ‘Sadhvi Vibhanand’s Call to ‘Rape’ Muslim Women With Impunity Shows Hindutva’s Politics of Fear’ The Wire (12 February 2022) <<https://thewire.in/communalism/sadhvi-vibhanands-call-to-rape-muslim-women-with-impunity-shows-hindutvas-politics-of-fear>>

656. Alishan Jafri Tweet (2 February 2022) <[https://twitter.com/alishan\\_jafri/status/1488875434783608833](https://twitter.com/alishan_jafri/status/1488875434783608833)>

657. Tarushi Aswani ‘At Raipur Dharma Sansad, Hindutva Leaders Raise Call to Take Up Arms for Hindu Rashtra’ The Wire (New Delhi, 30 December 2021)

<<https://thewire.in/communalism/raipur-dharma-sansad-call-for-violence-hindu-rashtra-christian-muslim>>Error! Hyperlink reference not valid.; ‘Chhattisgarh Dharam Sansad: Religious leader praises Godse; FIR registered’ The Indian Express (27 December 2021) <<https://indianexpress.com/article/india/chhattisgarh-dharam-sansad-religious-leader-praises-godse-fir-registered-7691838/>>

658. ‘Serial rapes at MP ashram; warrant against Sadhvi’ (13 November 2007) <<https://www.oneindia.com/2007/11/13/serial-rapes-at-mp-ashram-warrant-against-sadhvi-1194968243.html>>

659. Alishan Jaffrey, ‘Why is there softness on the ‘Dharma Sansad’ of Congress-ruled Chhattisgarh?’ (translated) BBC Hindi (4 February 2022) <<https://www.bbc.com/hindi/india-60244141>>

## V. Conclusion

In view of the aforementioned analysis based on applicable international human rights and criminal law, the Panel believes that reports of human rights violations and crimes targeting Muslim minorities must be carefully examined to identify and highlight indicators suggesting that Indian Muslims are being persecuted on the basis of their religious identity.

Given the extent and scale of violations reported from across the country and particularly BJP-ruled states, it is evident that these violations are not isolated attacks or lone incidents in a vast heterogeneous country. These reports clearly indicate an emerging pattern of discrimination and targeting of Muslims as a religious minority in the country.

It is also imperative that the legislative and executive measures taken by the current government that affect Muslims are seen in connection with each other. The legislatures (at central and state levels) have enacted laws and provisions that are explicitly discriminatory against Muslims. At the same time, existing laws, such as the Unlawful Activities Prevention Act, 1967, Public Safety Act, 1978, Armed Forces Special Powers Act, 1958 etc. are being used by law-enforcement mechanisms to further target the religious minority. On the other hand, empowered by such explicit and implicit discriminatory policy of the state, non-state actors and Hindu nationalist groups are increasingly targeting and harassing the religious minority without impunity.

Such targeting takes several forms. First, physical, exemplified by killings, torture and arbitrary deprivation for protesting and exercising other civil and political rights. Muslims are increasingly becoming victims of mob lynchings and other hate crimes by virtue of their religious status. Second, psychological, senior political leaders

belonging to the government, dictated by an ideology, are seen engaging in hate speeches against Muslims. Religious leaders have been explicit about their plans and mission to establish a Hindu nation while making direct calls to conduct a 'cleanliness drive'. Executive measures, such as the NRC, have left the citizenship status of millions in an indeterminate state. Those impacted have also endured statements suggesting that they are 'outsiders'. Such actions are bound to have a deep psychological impact on the feeling of collective safety and security of the community. Third, economic, the reports highlighted targeting of occupations that are predominantly represented by Muslims. An adverse economic impact on a specific community runs the risk of marginalising the economically vulnerable even further, thereby indirectly affecting their access to all other rights. Fourth, legal, one of the most potent ways to institutionalise discrimination appears to be under way through multifaceted legislative measures that privilege one community over the other. Exclusion from citizenship claims, attacks on the right to marry, trade, live, manifest religious beliefs and practices, are all being implemented and backed by the domestic legal framework.

All these forms of targeting become particularly concerning in view of an ineffective accountability framework in the country. Thus, while analysing the impact of human rights violations on Muslims in India, it is the cumulative effect of all these elements that must be taken into account. It may be argued that these violations were taking place well before 2019 but their systematic nature in the period of our consideration is very clear.

It is important to contextualise the human rights violations against Muslims and the rise of religious nationalism with the Hindu-nationalist political party gaining power. The fact that Muslims are severely under-

represented, not only in the Parliament and legislative assemblies but also in the judiciary and other public institutions, is itself a key marker of systematic exclusion. This increases the vulnerability of the state apparatus to such an ideological takeover. We must note that the BJP-ruled states, such as Assam, Jammu & Kashmir and Uttar Pradesh, appear to be the 'hotspots' where the situation might escalate further. These hotspots may also serve as models for other states and regions intent on undertaking similar measures. Some of the most serious violations taking place in the said regions have been discussed in the region-wise annexures which further substantiate the exclusionary, discriminatory and disproportionate targeting of Muslims in India.

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## **ANNEXURE II**

### **EXTRAJUDICIAL KILLINGS, STATELESSNESS AND OTHER VIOLATIONS AGAINST BENGALI SPEAKING MUSLIMS IN ASSAM**

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## I. Introduction

This annexure discusses human rights violations against Muslims in the north-eastern state of Assam. We have gathered information related to recurring extrajudicial killings, the implementation of the National Register of Citizens, laws and policies that are *prima facie* discriminatory, forced evictions, as well as other potential violations of human rights.

Section II provides some context and background on Assam. Section III focuses on factual information related to potential human rights violations against Muslims since 2019. Section IV identifies actors responsible for the acts discussed in Section III. Section V outlines international human rights law in relation to each set of thematic developments discussed in Section III and considers whether, based on the available information, there are credible indications of human rights violations against Muslims in Assam from 2019 onwards.

## II. Background

The state of Assam is ethnically, socio-economically and politically complex. It has, at various times since 1947,

experienced friction between various tribal communities, different linguistic groups and different religious groups.<sup>1</sup> An important post-Independence faultline has been migration into Assam from West Bengal in India as well as neighbouring Bangladesh. Many indigenous and tribal communities in Assam have viewed Bengali-speaking migrants and refugees as a cultural, economic and political threat. The partition of India in 1947 was accompanied by an influx of refugees from East Pakistan (present-day Bangladesh).<sup>2</sup> The Immigrants (Expulsion from Assam) Act, 1950, was promulgated to mandate the expulsion of illegal immigrants from Assam.<sup>3</sup> To aid in this process, a National Register of Citizens (NRC) was created in 1951.

In 1971 and the years that followed, large numbers of refugees fled the violence and atrocities taking place during Bangladesh's war of independence. The continuing migration of people from Bangladesh to Assam prompted the formation of the ethno-nationalist 'All Assam Students' Union' (AASU) and All Assam Gana Sangram Parishad (AAGSP).<sup>4</sup> These groups led a civil disobedience movement from 1979 to 1985 demanding that irregular migrants be detected, disenfranchised and deported.<sup>5</sup> This state-wide 'anti-foreigner' agitation culminated in the signing of the 'Assam

<sup>1</sup> Such as the tea tribes, Morans, Muttocks, Koch Rajbangshis, Chutiyas, and Tai Ahom in Assam fighting for recognition and Scheduled Tribes (STs).

<sup>2</sup> Government of Assam, 'White Paper on Foreigners Issue' (2015) <<http://onlineedistrict.amtron.in/web/home-and-political-department/white-paper#17>>

<sup>3</sup> Pushpita Das, 'Illegal Migration From Bangladesh: Deportation, Border Fences, and Work Permits' (Institute for Defence Studies & Analysis 2016) <<https://idsa.in/system/files/monograph/monograph56.pdf>>.

<sup>4</sup> Government of Assam, 'Martyrs of Assam Agitation' <<https://assamaccord.assam.gov.in/information-services/martyrs-of-assam-agitation>>

<sup>5</sup> Sanjib Baruah, 'Immigration, Ethnic Conflict, and Political Turmoil - Assam 1979-1985' 26 *Asian Survey* 1184. <<https://www.jstor.org/stable/2644315>>

Accord' between the leaders of the movement and then Prime Minister, Rajiv Gandhi. Under the Assam Accord, the government pledged to remove irregular migrants from Bangladesh from Assam's electoral rolls.<sup>6</sup>

The anti-foreigner agitation leaders demanded that the National Register of Citizens (NRC) be updated to detect and deport irregular migrants from Bangladesh. However, given that there was political contestation and logistical challenges, the exercise faced administrative delays and legal challenges in the decades that followed.

Almost 30 years after the Assam Accord was signed, on 17 December 2014, the Supreme Court of India ordered the Government of Assam to implement the NRC.<sup>7</sup> The Court proceeded to direct expedited implementation of a massive State-wide exercise to verify citizenship and exclude 'illegal migrants'.<sup>8</sup> On 31 August 2019, the updated NRC was finally published in Assam. When this updating exercise began in 2015,<sup>9</sup> over 33 million

people had applied for inclusion in the NRC. When the updated NRC was published, a total of 1,906,657<sup>10</sup> Assam residents – around 6 per cent of the State's population – were excluded from it. Disaggregated data is unavailable, but it is believed that those excluded were mostly Bengali speakers – primarily Muslims, but also many Hindus – who have historically been the main targets of Assam's anti-migrant movement.<sup>11</sup>

The rise of the Hindu nationalist Bharatiya Janata Party (BJP) has added a more overt sectarian colour to the anti-migrant movement in Assam. The NRC has been leveraged as a part of the BJP's 'broader ethno-nationalist project aimed at marginalising Muslims across India'.<sup>12</sup> Its former party president and now Home Minister of India, Amit Shah, has publicly referred to 'illegal migrants' as 'termites',<sup>13</sup> and openly stated that non-

<sup>6</sup> 'Problem of Foreigners in Assam: Memorandum of Settlement' <[https://assamaccord.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/assamaccord\\_medhassu\\_in\\_oid\\_3/portlet/level\\_1/files/The%20Assam%20Accord%20-%20English.pdf](https://assamaccord.assam.gov.in/sites/default/files/swf_utility_folder/departments/assamaccord_medhassu_in_oid_3/portlet/level_1/files/The%20Assam%20Accord%20-%20English.pdf)>

<sup>7</sup> This Order was given in the long-running case of *Assam Sanmilita Mahasangha & Ors. vs. Union of India*, WP(CIVIL) No. 562 OF 2012, <[http://nrcassam.nic.in/pdf/17%20Dec%202014%20Record%20Of%20Proceedings\\_SUPREME%20COURT.pdf](http://nrcassam.nic.in/pdf/17%20Dec%202014%20Record%20Of%20Proceedings_SUPREME%20COURT.pdf)>

<sup>8</sup> The NRC is estimated to have cost the federal government over Rs. 12 billion (\$171 million), and involved over 52,000 officials. See Syeda Ambia Zahan, 'Rs 1,220-Cr and 10 Years Later, NRC Leaves Group Favouring Exercise Dissatisfied, Raises Doubts over Migrant Numbers in Assam' (*Firstpost*, 3 September 2019) <<https://www.firstpost.com/india/rs-1220-cr-and-10-years-later-nrc-leaves-group-favouring-exercise-disatisfied-final-list-raises-questions-false-claims-on-migrants-7271991.html>>

<sup>9</sup> The 2019 NRC was an updation of the NRC that was published in 1951.

<sup>10</sup> Publication of final NRC, <<http://nrcassam.nic.in/pdf/English%20-Press%20Brief%2031st%20August%202019.pdf>>

<sup>11</sup> Ethnic tensions between indigenous Assamese-speakers and Bengali-speaking immigrants (from the Indian state of West Bengal and neighbouring Bangladesh, previously East Pakistan) have persisted in Assam for decades. Mass movements and armed insurgency have historically led the Indian government to acquiesce to several of the Assamese nationalists' demands. The NRC updation was one such demand.

Other state-led efforts to target and penalise alleged 'illegal migrants' in Assam include the mass disenfranchisement of over 230,000 'doubtful voters' by India's Election Commission (EC) in the 1990s, and the quasi-judicial Foreigners Tribunals (FTs) which have, between 1985 and March 2019, declared 117,164 persons in Assam as foreigners, based on cases referred to it by the Border Police or by the EC. It is these FTs which have now been empowered to hear the appeals of those excluded from the NRC.

<sup>12</sup> Talha Abdul Rahman, 'Identifying the "Outsider": An Assessment of Foreigner Tribunals in the Indian State of Assam' (2020) 2 *Statelessness & Citizenship Review* <<https://ssrn.com/abstract=3723694>>

<sup>13</sup> 'Illegal Immigrants are Like Termites, Will Throw Them Out if BJP Comes Back to Power: Amit Shah' (*India Today*, 12 April 2019) <<https://www.indiatoday.in/elections/lok-sabha-2019/story/bjp-amit-shah-hindu-refugees-mamata-bannerjee-1499691-2019-04-11>>

Muslims would be protected from the effects of exclusion from the NRC.<sup>14</sup>

Since 2016, observers allege that the BJP government in Assam has also launched a broader, multi-pronged effort targeting the State's Muslims as a whole. The persecution of Muslims appears to have intensified since May 2021 when the BJP was re-elected to power in Assam and a new Chief Minister, Himanta Biswa Sarma,<sup>15</sup> was appointed. Key elements of persecution have included an ongoing extrajudicial killing campaign; the frivolous and discriminatory invocation of national security legislation; the enactment of new discriminatory legislation and the implementation of other discriminatory policies, procedures and actions; attacks on the association, assembly and expression; forced mass evictions; hate speech, particularly targeting identity and culture; and violent hate crimes. We discuss these developments in Section III below.

### III. Factual Context

#### I. Extrajudicial Killings

Since Sarma took over as Chief Minister (CM) in May 2021, police forces under his control<sup>16</sup> have perpetrated a spate of extrajudicial killings in violent 'encounters'.<sup>17</sup> During a police conference held on 5 July 2021, Sarma stated that police should shoot suspected criminals in the leg to prevent them from fleeing.<sup>18</sup> Civil society advocates feared that type of message would encourage unlawful police violence, including fatal violence.<sup>19</sup>

Fears of police excesses were not unfounded. A news report in mid-December 2021 revealed that at least 31 men have been shot dead both in the

<sup>14</sup> 'Hindu, Buddhist, Sikh, Jain Refugees Won't Leave India, They Will Get Citizenship: Amit Shah in Bengal' (*Outlook India*, 1 October 2019) <<https://www.outlookindia.com/website/story/india-news-hindu-buddhist-sikh-jain-refugees-wont-leave-india-they-will-get-citizenship-amit-shah-in-bengal/339783>>

<sup>15</sup> Sarma, previously a leader of the opposition Indian National Congress (INC) party, is seen as being instrumental to the rise of the BJP in Assam and the rest of north-eastern India. In the previous BJP government between 2016 and 2021, Sarma held important ministerial portfolios including Finance, Health and Education. Since May 2021, Sarma has been the state's Chief Minister. See: Abhishek Saha, 'Himanta, the Driving Force Behind BJP's Rise to Power in the North-East' (*Indian Express*, 10 May 2021) <<https://indianexpress.com/article/india/himanta-the-driving-force-behind-bjps-rise-to-power-in-northeast-7308812/>>

<sup>16</sup> Since May 2021, Sarma has retained control over the state's Home & Political Department, which oversees State's police forces.

<sup>17</sup> Extrajudicial killings (EJKs) by security forces are a regular occurrence in India, even in areas that are not considered to be conflict zones. The practice, which the Indian Supreme Court remarked in 2012 is akin to 'state-sponsored terrorism', is so prevalent that the term 'encounter killing' has entered common parlance and come to mean extrajudicial executions of alleged criminals or even innocent civilians, often in orchestrated settings. See *Om Prakash & Ors. v. State of Jharkhand*, Criminal Appeal No. 1491 of 2012 <<https://indiankanon.org/doc/158339934/>>. The ongoing extrajudicial killing campaign in Assam is along the lines of a similar, ongoing campaign in Uttar Pradesh (UP), which has seen at least 150 such killings since March 2017, when current Chief Minister Yogi Adityanath assumed power. The victims of the EJK campaign in UP have also disproportionately been Muslims. See Saikia A, "'Thok Do": Adityanath Government's "Zero Tolerance" of Crime Leaves a Trail of Victims' (*Scroll.in*, 16 September 2021) <<https://scroll.in/article/1005307/thok-do-adityanath-governments-zero-tolerance-of-crime-leaves-a-trail-of-victims>>

<sup>18</sup> Utpal Parashar "'Shoot criminals in [the] leg if they try to escape from custody': Assam CM to police" (*Hindustan Times*, 6 June, 2021) <<https://www.hindustantimes.com/india-news/shoot-criminals-in-leg-if-they-try-to-escape-from-custody-assam-cm-to-police-101625511251430.html>>

<sup>19</sup> Taran Deol "Is Himanta Aping Yogi? Spotlight on Assam Police as 27 'Criminals' are Shot Dead in 5 Months" (*The Print*, 29 September 2021) <<https://theprint.in/india/governance/is-himanta-aping-yogi-spotlight-on-assam-police-as-27-criminals-are-shot-dead-in-5-months/742139/>>

open and in police custody.<sup>20</sup> A further 55 people have reportedly been injured during police shootings.<sup>21</sup> The victims of these killings, all alleged criminals according to the police,<sup>22</sup> have disproportionately been Muslim or from other ethnic minority communities. Of the 30 men who have been identified so far,<sup>23</sup> 14 (47 per cent) are Muslims and 10 (33 per cent) are from the Bodo, Dimasa or Kuki tribal communities. Of the 55 injured, at least 30 (55 per cent) are Muslims.<sup>24</sup>

In addition to encouraging the police to use lethal weapons, Sarma has stated that when he took over as Chief Minister, he was instructed by Home Minister Amit Shah to ‘work’ on three areas – rising drug abuse, cow smuggling and human trafficking – and therefore the use of the maximum possible legal force by the police against even petty crimes such as drug peddling was justified.<sup>25</sup>

In almost every case of extrajudicial killing, the police have said that the shootings took place when deceased

persons attempted to snatch police weapons or flee custody. For instance–

- In June, 2021, Bubu Konwar, who the police allege was a feared dacoit and murderer, was killed in a shootout with the police near Geleky district as he attempted to escape the police and shot at officers.<sup>26</sup>
- On 2 July 2021, 65-year-old Syed Ali alias ‘Patha’, who the police allege to be a suspect for offences of rape and murder, was shot dead while allegedly trying to escape custody and snatching a police weapon.<sup>27</sup>
- On 3 July 2021, Kanwaldeep Singh Sidhu, a former inspector in the Railways Protection Special Force and the main accused in a kidnapping case, was shot dead by the Assam Police when he allegedly attempted to escape police custody and snatched a gun from a police officer.<sup>28</sup> Assam Police *jawan* Rambabu Singh, who was another accused in the kidnapping case, was

<sup>20</sup> Rokibuz Zaman, ‘In BJP Rule, 31 Killed in Assam’s Alleged Encounters – Most Belong to Ethnic or Religious Minorities’ (*Scroll.in*, 16 December 2021) <<https://scroll.in/article/1012903/framed-most-people-killed-in-assams-alleged-encounters-belong-to-ethnic-or-religious-minorities>>

<sup>21</sup> Rokibuz Zaman, ‘In BJP Rule, 31 Killed in Assam’s Alleged Encounters – Most Belong to Ethnic or Religious Minorities’ (*Scroll.in*, 16 December 2021) <<https://scroll.in/article/1012903/framed-most-people-killed-in-assams-alleged-encounters-belong-to-ethnic-or-religious-minorities>>

<sup>22</sup> Of the 28 victims mentioned in a list revealed by police in November 2021, 11 were ‘criminals’, 11 were ‘extremists’, 4 were ‘drug peddlers’ and 2 were protesters against eviction drives. See Rokibuz Zaman, ‘In BJP Rule, 31 Killed in Assam’s Alleged Encounters...’ (*Scroll.in*, 16 December 2021) <<https://scroll.in/article/1012903/framed-most-people-killed-in-assams-alleged-encounters-belong-to-ethnic-or-religious-minorities>>

<sup>23</sup> A 31<sup>st</sup> unidentified victim was shot dead on 13 December 2021. Police claim that the man, an alleged kidnapper, opened fire first.

<sup>24</sup> According to the 2011 census, nearly 34.22 per cent of the population of Assam is Muslim. <<https://www.census2011.co.in/data/religion/state/18-assam.html>>

<sup>25</sup> PTI, ‘Attacks on Assam Police will be retaliated: Himanta on encounters’ (*eastmojo.com* 15 July, 2021) <<https://www.eastmojo.com/assam/2021/07/15/attacks-on-assam-police-will-be-retaliated-himanta-on-encounters/#bypass-sw>>

<sup>26</sup> ‘Notorious Gangster Bubu Konwar Assassinated in Gun Fight with Assam Police at Geleky, Sivasagar’ (*The Sentinel*, 24 June 2021) <<https://www.sentinelassam.com/north-east-india-news/assam-news/notorious-gangster-bubu-konwar-assassinated-in-gun-fight-with-assam-police-in-assams-sivasagar-544111>>

<sup>27</sup> Tulika Devi, ‘Opposition Calls Assam Police ‘Trigger-Happy’ as Encounter Cases Shoot Up’ (*News18*, 10 July 2021) <<https://www.news18.com/news/india/opposition-calls-assam-police-trigger-happy-as-encounter-cases-shoot-up-3946082.html>>

<sup>28</sup> ‘Ajit Das Kidnapping Case Main Accused Kanwaldeep Singh Sidhu Killed in Police Encounter’ (*NewsLive*, 3 July 2021) <<https://newslivetv.com/assam-kanwaldeep-singh-sidhu-killed-in-police-encounter/>>

also shot dead by the Assam police in the same encounter.<sup>29</sup>

- On 7 July 2021, Mohammad Akhtar Raja Khan alias Tikru Khan, who the police allege to be an accused in a cattle smuggling case, was shot dead by the police in Dibrugarh district.<sup>30</sup>
- In July 2021, 47-year-old Jainul Abedin was shot dead by the Assam police in Nagaon district. Police claimed that Abedin was a dacoit who was shot when he fired at police officers from his residence on being asked to give up arms. However, his family stated that Abedin was dragged out of his house handcuffed and later killed. The police later claimed that Abedin was a ‘history-sheeter’, i.e., had previous criminal convictions, and they were acting on information that he was planning a dacoity.<sup>31</sup>
- Abdul Khalek was shot dead by the Assam police in Chirang district when he was in custody on charges of murder. Police stated that he had been shot when he attempted to escape police custody.<sup>32</sup>
- In August 2021, 46-year-old Khairul Islam was equally shot dead by Alok

Gupta, an Officer in Charge of the Khatuwal Police Station.<sup>33</sup> Gupta claimed that Islam was a drug peddler and they had received information that his brother Bulbul has started to sell drugs again and so the police cordoned their house. Gupta further claimed that Islam had attacked him and so he was constrained to shoot in self-defence. However, his family claimed that Islam was not violent during his arrest and had been killed in cold blood.<sup>34</sup>

- In September 2021, Jwngsaw Mushahary and Janak Brahma, both 23, were killed in an encounter with police inside the Ultapani forest in Kokrajhar district. Police claim that the men were members of the United Liberation for Bodoland (ULB), an allegedly militant organisation, and had attempted to escape police custody by firing at the police during an impromptu search operation.<sup>35</sup> However, family members of the duo have alleged that the men had been injured in a motorcycle accident and

<sup>29</sup> Tulika Devi, ‘Opposition Calls Assam Police ‘Trigger-Happy’ as Encounter Cases Shoot Up’ (*News18*, 10 July 2021) <<https://www.news18.com/news/india/opposition-calls-assam-police-trigger-happy-as-encounter-cases-shoot-up-3946082.html>>

<sup>30</sup> Tulika Devi, ‘Opposition Calls Assam Police ‘Trigger-Happy’ as Encounter Cases Shoot Up’ (*News18*, 10 July 2021) <<https://www.news18.com/news/india/opposition-calls-assam-police-trigger-happy-as-encounter-cases-shoot-up-3946082.html>>

<sup>31</sup> Rishu Kalantri, ‘Two More Alleged Criminals Killed in Encounter by Assam Police’ (*EastMojo*, 11 July 2021) <<https://www.eastmojo.com/assam/2021/07/11/two-more-alleged-criminals-killed-in-encounter-by-assam-police/>>

<sup>32</sup> Rokibuz Zaman, ‘In BJP Rule, 31 Killed in Assam’s Alleged Encounters – Most Belong to Ethnic or Religious Minorities’ (*Scroll.in*, 16 December 2021) <<https://scroll.in/article/1012903/framed-most-people-killed-in-assams-alleged-encounters-belong-to-ethnic-or-religious-minorities>>

<sup>33</sup> ‘Assam Police Encounter Spree: Death Toll Rises to 16’ (*InsideNE*, 8 August 2021) <<https://www.insidene.com/assam-police-encounter-spree/>>

<sup>34</sup> *InsideNE*...

<sup>35</sup> ‘ULB Militant Outfit Organisation: Two Killed in Encounter in Kokrajhar, Slain Family Members Termed Fake Encounter, Arms Recovered’ (*SpeedNews*, 18 September 2021) <<https://speednewstoday.com/ulb-militant-outfit-organisation-two-killed-in-encounter-in-kokrajhar-slain-family-members-termed-fake-encounter-arms-recovered/>>

had already been in police custody before they were killed.<sup>36</sup>

- In September 2021, the Assam Police carried out an eviction drive in northern Assam's Darrang district, alleging that about 800 families of Bengali-speaking Muslims were illegally occupying about 7,500 acres of government land. During this drive, a video went viral of 30-year-old Moinul Haque being beaten and shot by the police when he ran out of his house with a lathi, to avoid eviction. In the video, Haque, who was protesting the evictions, can be seen being beaten up by the police even after being shot; the police stated that they acted in self-defence.<sup>37</sup> A cameraperson covering the eviction drive, Bijoy Bania, is then seen stomping on Haque's body while the police watch.<sup>38</sup>
- Also among those killed by police forces during the eviction drive was Sheikh Farid, a 12-year-old boy,<sup>39</sup> returning home from picking up his Aadhar card, an official, nationally recognised identity card.

There have also been multiple incidents of police encounters where the victims have survived the attack but have still been grievously injured, usually due to being shot at close range. In September 2020, Diwar Hussain, who the police allege was involved in a series of ATM thefts in the Hojai district, claims he was handcuffed, physically restrained and then shot at from a close distance in both his legs by police forces. While Hussain survived the attack, he is now back under police custody and has been charged under the anti-terror UAPA law.<sup>40</sup>

On 9 July 2021, 30-year-old Jeharul Islam, who the police claim was a trafficker of women, was shot at when he allegedly attempted to escape custody after snatching a police weapon.<sup>41</sup> However, his family has alleged that Islam had willingly surrendered to the police and had even agreed to meet them at a particular location to surrender. Islam survived the shooting and remains in custody.<sup>42</sup>

On 9 July 2021, 26-year-old Tapan Buragohain, who the police allege is a 'linkman' involved in the abduction, was shot in the leg when he allegedly attempted to escape custody after

<sup>36</sup> 'ULB Militant Outfit Organisation: Two Killed in Encounter in Kokrajhar, Slain Family Members Termed Fake Encounter, Arms Recovered' (*SpeedNews*, 18 September 2021) <<https://speednewstoday.com/ulb-militant-outfit-organisation-two-killed-in-encounter-in-kokrajhar-slain-family-members-termed-fake-encounter-arms-recovered/>>

<sup>37</sup> Monideepa Banerjee & Ratnadip Choudhury, "'They Killed My Son': Assam Family Mourn Man Beaten to Death on Camera' (*NDTV*, 24 September 2021) <<https://www.ndtv.com/india-news/assam-family-mourn-man-beaten-to-death-on-camera-they-killed-my-son-2552168>>

<sup>38</sup> Monideepa Banerjee & Ratnadip Choudhury, "'They Killed My Son': Assam Family Mourn Man Beaten to Death on Camera' (*NDTV*, 24 September 2021) <<https://www.ndtv.com/india-news/assam-family-mourn-man-beaten-to-death-on-camera-they-killed-my-son-2552168>>

<sup>39</sup> Arunabh Saikia, 'Moments Before a 12-Year-Old Fell to Assam Police Bullets, He Had Secured a Crucial Identity Card' (*Scroll*, 25 September 2021) <<https://scroll.in/article/1006164/moments-before-a-12-year-old-fell-to-assam-police-bullets-he-had-secured-a-crucial-identity-card>>

<sup>40</sup> Arunabh Saikia

<sup>41</sup> Tora Agarwala, '23 Shot at, 5 Dead: New Assam Govt's "Extreme Action against Criminals"' (*The Indian Express*, 13 August 2021) <<https://indianexpress.com/article/north-east-india/assam/23-shot-at-5-dead-new-assam-govts-extreme-action-against-criminals-police-encounters-7406815/>>

<sup>42</sup> Tora Agarwala, '23 Shot at, 5 Dead: New Assam Govt's "Extreme Action against Criminals"' (*The Indian Express*, 13 August 2021) <<https://indianexpress.com/article/north-east-india/assam/23-shot-at-5-dead-new-assam-govts-extreme-action-against-criminals-police-encounters-7406815/>>

snatching a police weapon. However, his family has alleged that he was first taken to a local police station and kept in custody and then on the same day, was blindfolded and taken to an open field where he was shot at, despite begging for his life.<sup>43</sup>

On 31 May 2021 and 2 July 2021, alleged cattle smugglers Shah Jamal, Mozammil Haque and Sorangi Chinnai were shot in the leg by the Assam police.

The events discussed above potentially give rise to grave human rights violations. These are discussed in [Section V.1](#) below.

## 2. CAA-NRC in Assam

As mentioned earlier, the concept of ethnic insiders and outsiders has historically been salient in Assam. It remains politically charged in the post-colonial context, due to the large influx of refugees and migrants into the state from 1947 onwards and its shared border with Bangladesh. The BJP's politics of religious nationalism has harnessed this historical anti-outsider sentiment in Assam (and other north-east Indian states) by attempting to give it a purely anti-Muslim colour. The BJP advocates citizenship verification in order to deport so-called infiltrators across India. In Assam, this Hindu-nationalist goal

dovetailed with the ethnic nationalism of the Assam Accord. However, the long-dormant goal of the NRC in the Assam Accord was implemented on the order of the Indian Supreme Court (see Section II).

On 31 August 2019, when the NRC was finally published in the state of Assam, a total of 1,906,657 Assam residents were excluded from the register, i.e., were deemed to be non-citizens. The vast majority of those excluded were Bengali speakers, who have historically been the main targets of Assam's anti-migrant movement.<sup>44</sup> The majority of the excluded were Bengali-speaking Muslims, but many Hindus were also unable to establish their citizenship to the satisfaction of NRC decision-makers.

Interestingly, the NRC list has been denounced by all political factions in Assam. The ethno-nationalist All Assam Students Union (AASU) has rejected the NRC because they believe the actual number of illegal migrants to be much higher than 1.9 million. The BJP has also condemned the NRC list<sup>45</sup> as too many Hindu Bengalis, who are their core voters in Assam, have been stripped of citizenship under the list.<sup>46</sup>

### 2.1. Issues with the NRC Process

The available information indicates that the process of the NRC in Assam has been

<sup>43</sup> Tora Agarwala, '23 Shot at, 5 Dead: New Assam Govt's "Extreme Action against Criminals"' (*The Indian Express*, 13 August 2021) <<https://indianexpress.com/article/north-east-india/assam/23-shot-at-5-dead-new-assam-govts-extreme-action-against-criminals-police-encounters-7406815/>>

<sup>44</sup> Pinku Muktiar, Prafulla Nath & Mahesh Deka, 'The Communal Politics of Eviction Drives in Assam' 53(8) *Economic & Political Weekly* (24 February 2018) <<https://www.epw.in/engage/article/communal-politics-eviction-drives-assam>>

<sup>45</sup> Abhishek Saha, 'Across Assam, Chorus Rises Among MLAs: NRC is Faulty, Many Genuine Citizens Out' (*Indian Express*, 2 September 2019) <<https://indianexpress.com/article/north-east-india/assam-nrc-mlas-faulty-genuine-citizens-out-5957268/>>

<sup>46</sup> 'Focus: Assam's Complicated Tryst with CAA' (*Mint*, 27 December 2019) <<https://www.livemint.com/mint-lounge/features/focus-assam-s-complicated-tryst-with-caa-11577418654545.html>>

riddled with procedural irregularities and bias.

Applicants for the NRC in Assam had to prove that they or their ancestors were residents of India before 24 March 1971, the year of Bangladesh's War of Independence, which was marked by a large influx of Bengali-speaking refugees into India. They were expected to establish this by furnishing two sets of documents – **List A** 'legacy' documents proving the presence of their ancestors' names in electoral rolls prior to 1971, and **List B** 'linkage' documents proving the applicants' relationship with the ancestors.<sup>47</sup> These documents were then to be 'verified' by government officials, who decided the applicants' inclusion or exclusion in the NRC.<sup>48</sup> When a Draft NRC was published on 30 July 2018, those excluded from it, i.e., impliedly declared to be illegal migrants, could file 'claims' challenging their exclusion.

In parallel, *any* person could formally object to someone's *inclusion* in the NRC on the grounds of the included person's 'legacy' or pending citizenship cases. The individual whose citizenship had been thus doubted was then required to *disprove* these 'objections'.<sup>49</sup> Those excluded from the Final NRC could file 'appeals' before quasi-judicial Foreigners Tribunals (FTs) set up for this purpose that could declare them 'foreigners' and order their incarceration in detention centres.

Every stage of the NRC process has been fraught with multiple problems. UN mandate holders such as the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in December 2018 highlighted major concerns with verification of citizenship.<sup>50</sup> These included, *inter alia*:

**a. Lack of access to required documentation:**<sup>51</sup>

Reports indicated that large numbers of people were unable to obtain documents required by the NRC authorities. This was particularly the case for those living in geographically remote areas, where record-keeping and maintenance have been historically poor. Assam is also prone to floods, which often wash entire villages away. As a result, many documents belonging to rural, impoverished families had been lost over the decades.

**b. Exclusion on technical grounds:**<sup>52</sup>

There have been reports revealing a pattern of exclusions happening due to minor errors and variations in

<sup>47</sup> 'What Is Legacy Data?' (*Office of the State Coordinator of National Registration (NRC), Assam*) <<http://nrcassam.nic.in/what-legacy.html#1>>

<sup>48</sup> 'Verification' (*Office of the State Coordinator of National Registration (NRC), Assam*) <<http://nrcassam.nic.in/field-verification.html>>

<sup>49</sup> 'Receipt and Disposal of Claims and Objections' (*Office of the State Coordinator of National Registration (NRC), Assam*) <<http://nrcassam.nic.in/receipt-claims-objections.html>>

<sup>50</sup> Working Group on Arbitrary Detention and others, 'OL IND 29/2018', 2.

<sup>51</sup> Working Group on Arbitrary Detention and others, 'OL IND 29/2018', 2.

<sup>52</sup> Working Group on Arbitrary Detention and others, 'OL IND 29/2018', 2.

documents, such as differences in spellings.<sup>53</sup>

- c. Discrimination against ‘non-original’ inhabitants:**<sup>54</sup> NRC applicants were segregated into ‘original’ and ‘non-original’ inhabitant categories. These categories were not officially defined. As a result, local authorities had considerable discretion in how they applied these categories. Bengali-speaking minorities, who made up most of the ‘non-original’ category, were reportedly subject to more stringent standards by government officials, most of whom were from the linguistic and religious majority community.<sup>55</sup>

Thereafter, UN mandate holders, in December 2018, remarked that those duly excluded from the draft NRC did not have a fair and adequate opportunity to challenge their exclusion<sup>56</sup> due to:

- a. Complex modalities:**<sup>57</sup> Modalities relating to the claims and objections stage were highlighted as having been ‘overly complex’, resulting in considerable confusion, including about what documents were acceptable to meet the strict verification standards.
- b. Mass filing of objections:** On 31 December 2019, the last day to file ‘objections’ against those included in

the Draft NRC, ethno-nationalist actors were reported to have filed objections *en masse* against over 250,000 persons.<sup>58</sup> Until then, only around 600 objections were reported to have been filed. Areas with substantial Muslim populations were reported to have seen a flurry of objections, many of which may not have been substantiated through the submission of evidence.

- c. Lack of awareness about exclusion:**<sup>59</sup> Those excluded from the draft NRC were not notified individually. Instead, applicants were required to check their status online. This disproportionately hampered the poor and marginalised who did not have easy access to the internet.
- d. Non-disclosure of grounds:** The people excluded were also required to make a separate application for information on the grounds for their rejection.<sup>60</sup>

## 2.2. Foreigner Tribunals

In May 2019, the federal Home Ministry had empowered Assam’s quasi-judicial Foreigners Tribunals (FTs) to also hear the appeals of those excluded from the NRC. The workings and failings of FTs – which hear cases where the burden of proof is on the person accused of being

<sup>53</sup> Working Group on Arbitrary Detention and others, ‘OL IND 29/2018’, 3; also see Amnesty International India, ‘Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam’ (2019) 48. <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

<sup>54</sup> Amnesty International (2019:3)

<sup>55</sup> Amnesty International (2019:4)

<sup>56</sup> Amnesty International (2019:5)

<sup>57</sup> Amnesty International (2019:4)

<sup>58</sup> Arunabh Saikia, ‘In Assam, Student Group Contests the Inclusion of Over 2.5 Lakh People in Draft NRC’ (*Scroll*, 1 January 2019) <<https://scroll.in/latest/907828/in-assam-student-group-contests-the-inclusion-of-over-2-5-lakh-people-in-draft-nrc>>

<sup>59</sup> Amnesty International (2019:3)

<sup>60</sup> Amnesty International (2019:3)

foreign – have been extensively documented by numerous legal experts and international organisations.

**a. Lack of capability:** Eligibility standards for FT members who adjudicate citizenship-related cases have been relaxed over the years, resulting in the enlisting of members who do not possess adequate judicial experience or capability. New appointees in 2015 were reported to have been required to attend only a four-day training seminar.<sup>61</sup>

**b. Lack of independence:** Legal and constitutional experts have pointed out that FTs lack both (i) decisional independence – there have been numerous reports of FT members having their services terminated for not declaring enough persons as foreigners, and of others being served warnings to increase their ‘efficiency’ by declaring more applicants foreigners<sup>62</sup> – a practice that amounts to inducement, and (ii) functional independence – FT members are appointed by the executive, and FT proceedings are ‘monitored’ by the state High Court.<sup>63</sup>

**c. Arbitrary procedure:** Unlike courts, FTs have the power to devise and regulate their procedure, which leaves them without effective oversight. International organisations have

found that this power has often been abused, and has resulted in major inconsistencies in how FTs function. For instance, FT opinions concerning 63,959 persons declared as foreigners – over half the total – were revealed to have been rendered *ex parte*, denying those divested of citizenship a reasonable opportunity to present their case.<sup>64</sup> The principle of *res judicata* is also commonly violated, with several reports of those cleared by one tribunal being forced to prove their case before another. Arbitrariness is common – people are often denied citizenship due to minor mismatches and contradictions in their documents and statements.

**d. Bias, discrimination and open hostility:** International organisations have documented numerous instances of Muslims accused of being ‘Bangladeshi’ foreigners facing open hostility from FT members adjudicating their cases.<sup>65</sup>

### 2.3. Detention Practices

UN OHCHR mandate holders have highlighted how individuals declared to be foreigners by FTs are ‘systematically detained’ in detention camps across Assam.<sup>66</sup> They have further criticised the lack of a system to review such detention.

<sup>61</sup> Working Group on Arbitrary Detention and others, 17.

<sup>62</sup> UN mandate holders in OL IND 13/2018 highlighted reports that 13,434 persons were declared as foreigners by FTs in just the first 11 months of 2017, compared to 80,194 between 1985 and 2016.

<sup>63</sup> Talha Abdul Rahman, ‘Identifying the “Outsider”’, 2(1) (2020) *The Statelessness and Citizenship Review*, 121.

<sup>64</sup> Vakasha Sachdev, ‘63,959 Declared “Foreigners” in Assam Without Hearing Since 1985’ (*The Quint*, 2 July 2019) <<https://www.thequint.com/news/india/assam-foreigners-tribunals-details-ex-parte-proceedings-parliament-question-shashi-tharoor>>

<sup>65</sup> Amnesty International India, ‘Designed to Exclude’ (2019) <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>, 48.

<sup>66</sup> Since then, the central government has unveiled plans to construct 10 more such detention camps in Assam for foreigners, beginning with one in the Goalpara district that can reportedly accommodate 3,000 people. See Tawqeer Hussain, ‘“How is it Human?” India’s Largest Detention Centre Almost Ready’ (*Al Jazeera*, 2 January 2020) <<https://www.aljazeera.com/news/2020/1/2/how-is-it-human-indias-largest-detention-centre-almost-ready>>

A report by the National Human Rights Commission in 2018 found that these detainees are kept in prison-like conditions and treated like convicted prisoners, and that children are separated from their parents.<sup>67</sup> Numerous detainee deaths have also been reported.

A year after the NHRC's report, the situation remained as dire. In November 2019, the national government told Parliament that 988 persons were detained in these centres. Assam's state government in April 2020 revealed 30 deaths since 2009, including 26 Bengali speakers, 16 Hindus, 14 Muslims and 3 women.<sup>68</sup> Human Rights Watch noted that many family members blame these deaths on poor facilities and negligence.<sup>69</sup>

Assam currently has six detention camps in operation which, in the face of criticism from human rights actors, the government has renamed 'transit camps'.<sup>70</sup>

## 2.4. The Impact of the NRC

**Disproportionate impact on the poor:** UN OHCHR mandate holders highlighted that the NRC process – and other proceedings at FTs – have disproportionately affected

poor, marginalised, rural and less educated individuals, who often come from minority communities. Numerous instances of poor families being forced to stake their life savings and minuscule assets to gather the necessary documents and prove their 'Indianness' at FTs have been documented by Amnesty and Human Rights Watch.<sup>71</sup>

**Disproportionate impact on women:** Women, particularly those with limited education, many of whom are married before the legal age of marriage and move to their husbands' villages, are also reported to have been disproportionately affected.<sup>72</sup> Official documents that serve to prove identity or connection to Assam are often in the names of men rather than women. The only official documents many rural women can provide – typically issued by village-level authorities, known as 'gram panchayat certificates' – are often deemed inadequate by FTs. FTs have sometimes insisted on the physical presence of the issuing authority, i.e., village officials, which makes demonstrating identity even more difficult, and sometimes makes it impossible. UN experts highlighted reports that around 2.25 million

<sup>67</sup> Harsh Mander, 'The Dark Side of Humanity and Legality: A Glimpse Inside Assam's Detention Centres for "Foreigners"' (*Scroll*, 26 June 2018) <<https://scroll.in/article/883936/assam-citizens-register-detention-centres-for-foreigners-offer-a-glimpse-of-the-looming-tragedy>>

<sup>68</sup> Rahul Karmakar, '30 "Foreigners" Dead in Assam's Detention Centres' (*The Hindu*, 12 April 2020) <<https://www.thehindu.com/news/national/30-foreigners-dead-in-assams-detention-centres/article31325045.ece>>

<sup>69</sup> Human Rights Watch, 'Shoot the Traitors': Discrimination Against Muslims under India's New Citizenship Policy,' (April 2020) <[https://www.hrw.org/sites/default/files/report\\_pdf/india0420\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/india0420_web_0.pdf)>

<sup>70</sup> 'NRC in Limbo, Assam Govt. Appears to Have Gone Soft on "Bangladeshi" Issue' (*The Hindu*, 23 November 2021) <<https://www.thehindu.com/news/national/other-states/nrc-in-limbo-assam-govt-appears-to-have-gone-soft-on-bangladeshi-issue/article36630488.ece>>

<sup>71</sup> See Human Rights Watch, 'Shoot the Traitors', 23; and Amnesty International India, 'Designed to Exclude', 30.

<sup>72</sup> Aman Wadud, 'Children out, Parents in: Real Test Begins Now That Final Assam NRC Is Here' (*ThePrint*, 31 August 2019) <<https://theprint.in/opinion/children-out-parents-in-the-real-challenge-begins-now-that-final-assam-nrc-is-here/284862/>>

Bengali and Nepali-speaking married women who submitted gram panchayat certificates as proof of residence were put through an additional, discriminatory and more rigorous two-step verification process after they were identified as ‘non-original inhabitants’ of Assam.<sup>73</sup>

#### **Psychological trauma and suicides:**

The fear of potential disenfranchisement and prolonged detention has been reported to have led to a spate of suicides in the state. By July 2019, Citizens for Justice & Peace (CJP), an Indian CSO, tracked 60 such suicides,<sup>74</sup> with most of them being reported after the publication of the Draft NRC.<sup>75</sup> Many such suicides have also been reported since the publication of the Final NRC.

### **2.5. Role of the Indian Higher Judiciary**

Amnesty International has criticised the role of India’s higher judiciary, particularly its Supreme Court, in ‘overlooking fair trial standards and entrenching discriminatory attitudes and practices on the ground’ during the

NRC process.<sup>76</sup> The Indian Supreme Court has played a central role in the NRC.

- a. **Initiating the NRC process:** As discussed in Section II, on 17 December 2014, the Supreme Court of India ordered the Government of Assam to implement the NRC in the context of ongoing litigation,<sup>77</sup> even though the political branches of the state in Assam had, for years, chosen not to press ahead with citizenship verification.
- b. **Reversing the burden of proof at the FTs, and legitimising the myth of ‘threats to national security’:** A Supreme Court order in 2005<sup>78</sup> struck down the Illegal Migrants (Determination by Tribunals) Act.<sup>79</sup> This statute placed the burden of proving that an individual was an illegal migrant on the state or the accuser. By striking down this law, the Supreme Court paved the way for Foreigners Tribunals in Assam, which place the burden of proof on those accused, often arbitrarily, of being foreigners, and fail in other respects as well to meet due process standards.<sup>80</sup> The Supreme Court order that ushered in this reverse burden of proof and other procedural flaws relied on a report by a Governor of Assam which had used xenophobic

<sup>73</sup> OL IND 29/2018, 3; Also see Amnesty, ‘Designed to Exclude’ for profiles of women affected by the NRC process; and Human Rights Watch, ‘Shoot the Traitors’, 26.

<sup>74</sup> Tahla Mujibi, ‘Suicides Over the NRC – Trend Analysis’ (*The Citizen*, 7 March 2020) <<https://www.thecitizen.in/index.php/en/NewsDetail/index/15/18425/Suicides-over-the-NRC--Trend-Analysis>>

<sup>75</sup> ‘Assam NRC: Are India’s “Unwanted People” Being Driven to Suicide?’ *BBC News* (28 June 2019) <<https://www.bbc.com/news/world-asia-india-48754802>>

<sup>76</sup> Amnesty International India, ‘Designed to Exclude’, 11.

<sup>77</sup> This Order was given in the long-running case of *Assam Sanmilita Mahasangha & Ors. vs. Union of India*, WP(CIVIL) No. 562 OF 2012, <[http://nrcassam.nic.in/pdf/17%20Dec%202014%20Record%200F%20Proceedings\\_SUPREME%20COURT.pdf](http://nrcassam.nic.in/pdf/17%20Dec%202014%20Record%200F%20Proceedings_SUPREME%20COURT.pdf)>

<sup>78</sup> *Sarbananda Sonowal vs Union Of India & Anr*, Supreme Court of India, WP (C) 131/2000. <<https://indiankanon.org/doc/907725/>>

<sup>79</sup> A previously existing legislation that had laid the burden of proof on the state to establish that an individual is not an Indian citizen; laid down specific procedures for the vetting and appointment of Tribunal members, and a mechanism of appeals against Tribunal opinions, etc.

<sup>80</sup> Talha Abdul Rahman, ‘Identifying the “Outsider”’, 2(1) (2020) *The Statelessness and Citizenship Review*, 136.

terms for people of Bengali origin, equating migration with ‘external aggression’. The Supreme Court’s reliance on this report, experts say, ‘set the tone in terms of both rhetoric and legal doctrine to demonise immigration’.<sup>81</sup>

- c. **Expediting NRC updation:** In December 2014, relying on an erroneous (and later clarified) government estimate that 5 million illegal Bangladeshi immigrants were present in Assam, the Supreme Court ordered the expedited updation of the NRC, and has closely monitored the process ever since.<sup>82</sup> The Supreme Court has, on multiple occasions, urged speedy verification.<sup>83</sup>
- d. **Extension of citizenship deprivation to children:** In a decision in August 2019, the SC extended the deprivation of citizenship to the children of ‘doubtful voters’, and those declared to be foreigners and whose cases were pending before FTs.<sup>84</sup>
- e. The presiding judge, in this case, Chief Justice Ranjan Gogoi, defended

the NRC while it was sub-judice, raising concerns about whether his political sympathies were influencing the Court’s orders.<sup>85</sup> Despite these concerns, the Chief Justice rejected an application for his recusal from the case.<sup>86</sup> A few months after retiring, Chief Justice Gogoi was nominated to the Upper House of the Indian Parliament by the BJP.<sup>87</sup> To our knowledge, there is no precedent in India for the Chief Justice of the Supreme Court to receive such an appointment so soon after retiring. This development coupled with Justice Gogoi’s remarks raises concerns about whether judicial scrutiny over the flaws and biases in the NRC has been as impartial and robust as necessary.

The High Court of Assam too has made decisions that have heightened the procedural unfairness and bias embedded in the NRC.

- a. **Gender discrimination:** In a 2017 case, the High Court held that *gaon panchayat* (village council) certificates could not be accepted as evidence of belonging to the List A

<sup>81</sup> Amnesty, ‘Designed to Exclude’, 13, <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

<sup>82</sup> *Assam Sanmilita Mahasangha & Ors vs Union Of India & Ors*, Supreme Court of India, WP (C) 562/2012, WP (C) 274/2009 and WP (C) 876/2014.

<sup>83</sup> *Assam Sanmilita Mahasangha & Ors. v. Union of India & Ors.*, Supreme Court of India, WP (C) No. 562/2012, order dated 26 October 2016 <[http://nrcassam.nic.in/pdf/sc\\_26oct2016.pdf](http://nrcassam.nic.in/pdf/sc_26oct2016.pdf)>; *Assam Public Works v. Union of India*, Supreme Court of India, WP (C) No. 274/2009, orders dated 27 March 2018 <<http://nrcassam.nic.in/pdf/SC%20order%20dated%2027th%20March%202018.pdf>> and 8 May 2019 <[http://nrcassam.nic.in/pdf/16113\\_2009\\_Order\\_08-May-2019.pdf](http://nrcassam.nic.in/pdf/16113_2009_Order_08-May-2019.pdf)>

<sup>84</sup> *Assam Public Works vs Union Of India*, Supreme Court of India, WP (C) 274/2009. <<https://indiankanoon.org/doc/135202420/>>

<sup>85</sup> Sangeeta Barooah Pisharoty, ‘The Relevance of Ranjan Gogoi’s Assam-Centric Statements on NRC, CAA’ (*The Wire*, 14 February 2021) <<https://thewire.in/politics/ranjan-gogoi-supreme-court-rajya-sabha-assam-nrc-caa>>; Apoorva Mandhani, ‘Why CJI Gogoi is under fire for defending Assam’s NRC when it’s still sub-judice’ (*The Print*, 6 November 2019) <<https://theprint.in/theprint-essential/why-cji-gogoi-is-under-fire-for-defending-assams-nrc-while-its-still-sub-judice/316032/>>

<sup>86</sup> ‘Harsh Mander Removed from Deportation Case, CJI Refuses to Recuse’ (*The Quint*, 3 May 2019) <<https://www.thequint.com/news/india/cji-gogoi-asked-to-recuse-himself-in-harsh-mander-deportation-case#read-more>>

<sup>87</sup> V. Venkatasana, ‘CJI Ranjan Gogoi’s Nomination to the Rajya Sabha: More than a Sinecure’ (*Frontline*, 24 April 2020) <<https://frontline.thehindu.com/the-nation/article31248619.ece>>

‘Legacy’ category of the NRC.<sup>88</sup> Amnesty has noted that this adversely affected the right to nationality for married women in Assam, particularly for women who migrated to their marital homes at a young age.<sup>89</sup>

- b. Summary citizenship determination by security forces:** In another case, the High Court held that Border Security Force personnel patrolling the India-Bangladesh border are entitled to summarily inquire into the citizenship of a person.<sup>90</sup> While the High Court laid down some guidelines for Border Security Forces to follow while investigating a person for doubtful citizenship, human rights groups note that these are not followed on the ground.<sup>91</sup>
- c. Restricting the right to appeal:** Despite the absence of an appellate tribunal to review the opinions of FTs, the High Court in Assam held that it can only be petitioned for constitutional remedies in cases involving jurisdictional errors or when the FT violates the principle of natural justice. It also refused to review the finding of facts reached by FTs unless there is an error of law apparent on the face of the record.<sup>92</sup>

## 2.6. The Current Situation

Procedurally, the next step in the NRC process is the issuance of ‘rejection slips’ to those excluded from the NRC, following which excluded persons would have 120 days to appeal their exclusion. These appeals are to be made before FTs. The Assam government has gone ahead with plans to set up over 200 more FTs in addition to the 100 that are already functional to adjudicate NRC exclusion cases. UN mandate holders have noted with concern the continuing lack of independent appellate bodies to hear these cases.<sup>93</sup>

Despite the Supreme Court’s directions, rejection slips to excluded persons have not, at the time of writing, been issued. Therefore, those excluded from the NRC cannot yet appeal their rejection.<sup>94</sup> Instead, the State Coordinator of the NRC, i.e., the senior-most bureaucrat overseeing the whole exercise, petitioned the Supreme Court in May 2021 for complete re-verification of the NRC.<sup>95</sup> The State Coordinator, who was appointed in 2019, has referred to Bengali speakers as ‘East Pakistani Muslims’ and implied that even Assamese-speaking ‘foreigners’ (referring to Muslims who speak Assamese) should be excluded from the

<sup>88</sup> *Manowara Bewa vs Union of India & Ors*, Gauhati High Court, WP (C) 2634/2016.

<sup>89</sup> Amnesty International India, ‘Designed to Exclude’, 17.

<sup>90</sup> *Idrish Ali v. Union of India & Ors.*, Writ Petition (Civil) No. 4989/2016, Gauhati High Court.

<sup>91</sup> Amnesty International India, ‘Designed to Exclude’, 17.

<sup>92</sup> *State of Assam vs Moslem Mondal & Ors*, Gauhati High Court, 2013 (1) GLT (FB) 809.

<sup>93</sup> Working Group on Arbitrary Detention and others, ‘OL IND 11/2019’, 5.

<sup>94</sup> The Centre (office of the Registrar-General of India) wrote to the Assam Home Secretary issuing directions to issue rejection slips on 23 March 2021 – however, a response by the MHA to a question in the Lok Sabha on 27 July 2021 noted that the process had been halted due to Covid-19 and floods <<https://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/LS-27072021/111.pdf>>

<sup>95</sup> ‘Assam NRC Coordinator Moves Supreme Court for Reverification of Draft’ (*Times of India*, 14 May 2021) <<https://timesofindia.indiatimes.com/india/assam-nrc-coordinator-moves-sc/articleshow/82616752.cms>>

NRC.<sup>96</sup> Observers suggest that the re-verification request is intended to address the fact that large numbers of Bengali-speaking Hindus were unable to satisfactorily document their connection to Assam and therefore deemed to be illegal migrants.

## 2.7. Concerns expressed by international actors

The NRC was condemned by high-level UN officials and by other international experts and CSOs. Genocide Watch issued a warning of a threat of genocide in Assam, against the Bengali- Muslim population, excluded by the NRC.<sup>97</sup> The UN High Commissioner for Refugees warned<sup>98</sup> that it could leave ‘large numbers of people without a nationality’ and be an ‘enormous blow to global efforts to eradicate statelessness’.

The Special Rapporteur on minority issues described<sup>99</sup> the situation as ‘grave’, with the potential to create a ‘massive humanitarian crisis’ and destabilise the whole region. These concerns, along with details of major potential breaches of international law,

were also flagged by various UN mandate holders in multiple communiques to the Indian government.<sup>100</sup> The Indian government in its response insisted that the process is ‘comprehensive, fair, objective and inclusive with multiple levels of remedies available for redressal of grievances and consideration of claims of an applicant’.<sup>101</sup>

## 2.8. State response to anti-CAA protests

Assam was the first state to witness widespread protests following the enactment of the CAA in December 2019. While anti-CAA protests in many parts of India focused on the discriminatory nature of the law (towards Muslims), protests in Assam were more focused on preserving ethno-linguistic identity. Protests were largely led by groups concerned that the CAA would facilitate an influx of non-Muslim immigrants/refugees and further alter the ethnic mix of the state.

Anti-CAA protestors faced a state crackdown marked by:

<sup>96</sup> Bismee Taskin & Regina Mihindukulasuriya, ‘Can’t Accept Foreigners Even if They Speak Assamese – New NRC Coordinator Said on Facebook’ (*The Print*, 11 November 2019) <<https://theprint.in/india/cant-accept-foreigners-even-if-they-speak-assamese-new-nrc-coordinator-said-on-facebook/319466/>>

<sup>97</sup> Gregory H Stanton, ‘Genocide Watch for Assam, India - Renewed’ (*genocidewatch*, 18 August 2019) <<https://www.genocidewatch.com/single-post/2019/08/18/genocide-watch-for-assam-india-renewed>>

<sup>98</sup> ‘UN High Commissioner for Refugees Expresses Alarm at Statelessness Risk in India’s Assam’ (*UNHCR*, 1 September 2019) <<https://www.unhcr.org/news/press/2019/9/5d6a24ba4/un-high-commissioner-refugees-expresses-alarm-statelessness-risk-indias.html>>

<sup>99</sup> UN General Assembly, ‘Report of the Special Rapporteur on Minority Issues: Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities’ UN Doc A/74/160 <[https://ap.ohchr.org/documents/E/GA/report/A\\_74\\_160.pdf](https://ap.ohchr.org/documents/E/GA/report/A_74_160.pdf)>

<sup>100</sup> Special Rapporteur on minority issues and others, ‘OL IND 13/2018’ (11 June 2018) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23884>>; Working Group on Arbitrary Detention, Special Rapporteur on freedom of religion or belief, and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, ‘OL IND 29/2018’ (13 December 2018) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24247>>; Working Group on Arbitrary Detention and others, ‘OL IND 11/2019’ (27 May 2019) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24614>>

<sup>101</sup> Permanent Mission of India to the United Nations Offices at Geneva, ‘NV. GEN/PMI/353/39/2018’ (23 August 2019).

- Five deaths, including three that the government admitted were the result of police firing;<sup>102</sup>
- Around 450 arrests of alleged protesters, and the invocation of terror and sedition charges against arrested peasant leaders who had led protests,<sup>103</sup> falsely linking them to far-left militant organisations;<sup>104</sup>
- Blanket restrictions on access to the internet, that lasted over 10 days till an intervention by the state High Court;<sup>105</sup>
- Prolonged curfews and movement restrictions across the state;<sup>106</sup> and
- An instance of police forces barging into the offices of a private television news channel and assaulting staffers with batons.<sup>107</sup>

A notice was sent from the national Ministry of Information and Broadcasting to all private satellite TV channels asking them to be cautious about broadcasting any content that ‘promotes anti-national attitudes’ or which affects the ‘integrity of the nation’. It further stated that channels should be careful not to broadcast anything that could ‘encourage or incite

violence or anything against maintenance of law and order’.<sup>108</sup>

The events discussed above potentially constitute a range of inter-linked human rights violations. These are discussed in [Section V.2.](#) below.

### 3. Misuse of National Security Laws

Assam, which accounts for just over 2 per cent of the national population, has – due to the presence of multiple armed separatist groups – historically recorded a disproportionate number of the cases registered under the anti-terror UAPA law. This trend worsened shortly after the BJP assumed power in the state, with Assam accounting for around a quarter of all the UAPA cases registered across the country in 2016 and 2018 (see Charts 1 and 2). Assam has also seen a spike in the invocation of sedition charges (see Chart 3).

<sup>102</sup> Ratnadip Choudhury, ‘Not 5, 3 Anti-CAA Protesters Killed in Police Firing: Assam Government’ (*NDTV*, 3 March 2020) <<https://www.ndtv.com/india-news/assam-government-not-5-3-anti-caa-protesters-killed-in-police-firing-2189223>>

<sup>103</sup> ‘Assam Police to Recover Cost of Damaged Properties from Anti-CAA Protesters’ (*The New Indian Express*, 19 February 2020) <<https://www.newindianexpress.com/nation/2020/feb/19/assam-police-to-recover-cost-of-damaged-properties-from-anti-caa-protestors-2105715.html>>

<sup>104</sup> Anubhav Saikia, ‘How Assam Linked CAA Protests to Maoists – to Justify Sweeping Arrests of Land Rights Activists’ (*Scroll.in*, 2 February 2020) <<https://scroll.in/article/951002/how-assam-linked-caa-protests-to-maoists-to-justify-sweeping-arrests-of-land-rights-activists>>

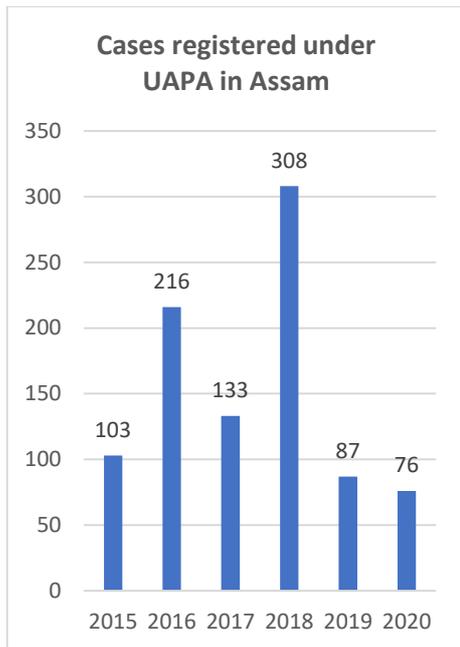
<sup>105</sup> ‘Gauhati HC Directs Assam Government to Restore Mobile Internet Services by 5 PM’ (*India TV*, 19 December 2019) <<https://www.indiatvnews.com/news/india/gauhati-high-court-directs-assam-govt-to-restore-mobile-internet-services-572444#:~:text=The%20Gauhati%20high%20court%20passed,by%205%20pm%20on%20Tuesday.&text=The%20internet%20shut%20down%20was,against%20Citizenship%20Amendment%20Act%202019>>

<sup>106</sup> Bikash Singh, ‘Assam Burns over CAB, Curfew in Guwahati, Army Deployed’ (*The Economic Times*, 12 December 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/curfew-imposed-in-guwahati-to-be-in-place-till-7-am-on-thursday-police/articleshow/72476861.cms?from=mdr>>

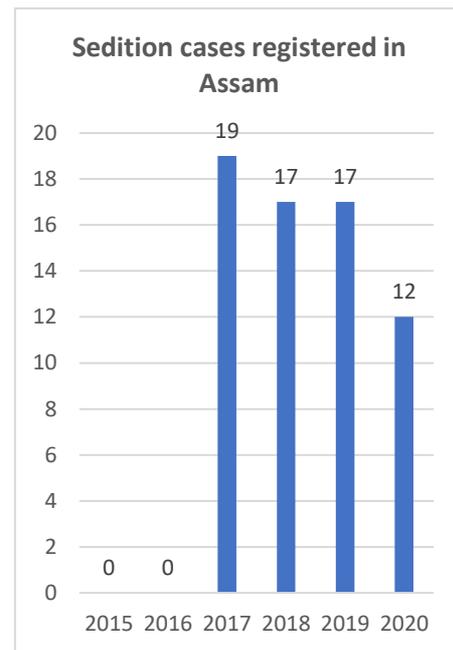
<sup>107</sup> ‘Guwahati: Assam Police Beat Up Local TV News Channel’s Staff’ (*The Wire*, 13 December 2019) <<https://thewire.in/rights/assam-guwahati-police-tv-channel>>

<sup>108</sup> ‘CAB: Don’t Broadcast “Anti-National Attitudes”, I&B Ministry Tells Channels’ (*The Wire*, 12 December 2019) <<https://thewire.in/media/ib-ministry-assam-tv-channels-cab>>

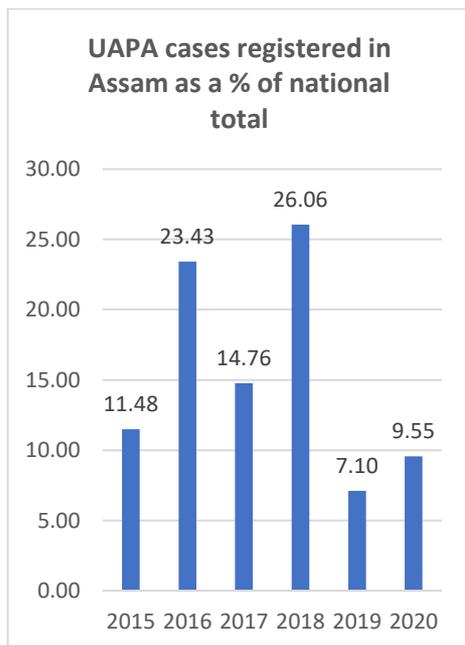
**Charts 1 and 2**



**Chart 3**



**Source: National Crime Records Bureau**



**Source: National Crime Records Bureau**

Recent examples of the UAPA being used against Muslims and other minorities in Assam include:

The arrest of 16 Muslims<sup>109</sup> across the state in August 2021 for posting or sharing social media messages that ‘favoured the Taliban’ and were ‘harmful for national security’. At least 14 of the 16 have secured bail for lack of grounds.

The arrest and invocation of terror charges against peasant leader Akhil Gogoi and three others for organising protests against the CAA in December 2019. After all four were discharged

<sup>109</sup> Tora Agarwala, ‘UAPA Slapped, 15 Held in Assam for “Pro-Taliban” Posts’ (*The Indian Express*, 22 August 2021) <<https://indianexpress.com/article/north-east-india/assam/uapa-slapped-15-held-in-assam-for-pro-taliban-posts-7464904/>>

and released<sup>110</sup> in July 2021, Gogoi alleged that National Investigation Agency (NIA) interrogators tortured him in custody, and offered him instant bail if he agreed to join the BJP.<sup>111</sup>

#### 4. Discriminatory legislation and policies

The BJP government under Chief Minister Sarma has enacted discriminatory laws and pursued policies and actions that target or disproportionately impact Assam's Muslims. These measures echo similar initiatives by the BJP in other states where it is in power.

##### 4.1. "Cow protection" law

In August 2021, the Assam State Assembly passed the Assam Cattle Preservation Act 2021<sup>112</sup> to regulate the slaughter, consumption and transportation of cattle in the state.

The new legislation replaces the Assam Cattle Preservation Act 1950<sup>113</sup> and is stricter than its predecessor. It, inter alia:

<sup>114</sup>

- Prohibits the sale and purchase of beef in areas inhabited by 'non-beef eating communities' and within a 5km radius of Hindu temples;
- Bans interstate transport of cattle to, from, and through Assam;
- Bans the slaughter of cows of any age (the previous law had banned the slaughter of cows older than 14 years); and
- Prescribes a jail term of a minimum of three and a maximum of eight years for those found in violation, plus a fine.

Similar laws enacted by BJP-led governments elsewhere in the country have crippled the livestock economy,<sup>115</sup> and enabled violent 'vigilante' groups to attack Muslims and others working with livestock.<sup>116</sup> Experts have warned of similar impacts in Assam.<sup>117</sup>

<sup>110</sup> 'Akhil Gogoi Set Free, Slams Govt. for "Misusing" NIA, UAPA' (*The Hindu*, 1 July 2021) <<https://www.thehindu.com/news/national/other-states/akhil-gogoi-set-free-slams-govt-for-misusing-nia-uapa/article35072350.ece>>

<sup>111</sup> 'Akhil Gogoi Alleges Torture in Custody, Claims NIA Offered Bail if he Joined RSS, BJP' (*The Indian Express*, 23 March 2021) <<https://indianexpress.com/article/north-east-india/assam/akhil-gogoi-jail-torture-nia-7241629/>>

<sup>112</sup> The Assam Cattle Preservation Act, 2021, <[https://prsindia.org/files/bills\\_acts/acts\\_states/assam/2021/Act%20No.%2025%20of%202021%20Assam.pdf](https://prsindia.org/files/bills_acts/acts_states/assam/2021/Act%20No.%2025%20of%202021%20Assam.pdf)>

<sup>113</sup> The Assam Cattle Preservation Act, 1950, <[https://legislative.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/legislative\\_medhassu\\_in\\_oid\\_3/menu/document/The%20Assam%20Cattle%20Preservation%20Act%2C%201951\\_0.pdf](https://legislative.assam.gov.in/sites/default/files/swf_utility_folder/departments/legislative_medhassu_in_oid_3/menu/document/The%20Assam%20Cattle%20Preservation%20Act%2C%201951_0.pdf)>

<sup>114</sup> See 'Explained: What Is Assam Cattle Preservation Bill, 2021, Its Provisions, Punishment and Why the Opposition Is against It' (*The Financial Express*) <<https://www.financialexpress.com/india-news/explained-what-is-assam-cattle-preservation-bill-2021-its-provisions-punishment-and-why-the-opposition-is-against-it/2310669/>>

<sup>115</sup> Alison Saldanha, 'Incomes Shrink as Cow-Related Violence Scuttles Beef, Leather Exports: New Report' (*IndiaSpend*, 19 February 2019) <<https://www.indiaspend.com/incomes-shrink-as-cow-related-violence-scuttles-beef-leather-exports-new-report/>>

<sup>116</sup> Human Rights Watch, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' (18 February 2019) <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

<sup>117</sup> Rajib Sutradhar, 'How Assam's Cow Protection Law Could Devastate the State's Already-Stressed Rural Economy' (*Scroll.in*, 4 September 2021) <<https://scroll.in/article/1004485/assams-cow-protection-law-could-devastate-the-states-already-stressed-rural-economy>>

#### 4.2. Attempts to control population

Hindu nationalists across the country have long blamed India's Muslims for uncontrolled population growth, which they claim is a threat to Hindus' numerical majority,<sup>118</sup> despite clear official data to the contrary. The BJP government in Assam has emphasised population control, with a particular emphasis on Muslim families. In June 2021, shortly after assuming charge as Chief Minister, Sarma blamed<sup>119</sup> Assam's 'immigrant Muslim community' for various 'social ills', and 'appealed' to Muslim women to work with the government on women's education, poverty reduction and population control. Sarma also announced his intention to mandate a two-child policy to be eligible for various welfare benefits. In July 2021, weeks after meeting a group of Muslim intellectuals and community leaders – and claiming<sup>120</sup> that the state's 'indigenous' Muslims were also concerned about population growth among 'immigrant' Bengali-speaking Muslims – Sarma's government announced in the state legislature that it would create a 'Population Army' of 1,000 youths to create awareness about family planning in Muslim-dominated areas.<sup>121</sup>

In 2018, those with more than two children were barred from contesting local government elections.<sup>122</sup> In 2019, those with more than two children were deemed ineligible for government jobs.<sup>123</sup> These measures are likely to disproportionately affect those from disadvantaged and poorer backgrounds. Moreover, the rhetoric preceding these measures strongly indicates that Bengali Muslim families will be scrutinised particularly stringently for their reproductive choices.

#### 4.3. Mandating disclosure of religion before marriage

In December 2020, the Assam government made it mandatory for all couples to disclose information about their religion and income in official documents to state authorities a month before their wedding. While Sarma – then yet to take over as CM – clarified that the law was not intended to curb interfaith marriages, he has on multiple occasions accused Muslims of waging 'love jihad'. Similar measures and laws recently rolled out in other BJP-ruled states have been used to arrest and prosecute Muslim men seeking to enter inter-

<sup>118</sup> Recent government surveys have revealed that fertility levels have declined sharply among both communities, more so among Muslims. In Assam, the fertility rate among Muslims dropped from 3.64 in 2005-06 to 2.4 in 2019-20, compared to a drop from 1.95 to 1.6 among Hindus. See Times Of India, 'Numbers Tell the Story: Assam CM Should Look at State's Fertility Data' *The Times of India* <<https://timesofindia.indiatimes.com/blogs/toi-editorials/numbers-tell-the-story-assam-cm-should-look-at-states-fertility-data/>>

<sup>119</sup> Abhishek Saha, 'Adopt Family Planning: Assam CM to "Immigrant Muslims" in State' (*The Indian Express*, 11 June 2021) <<https://indianexpress.com/article/north-east-india/assam/adopt-family-planning-assam-cm-himanta-biswa-sarma-to-immigrant-muslims-in-state-7353591/>>

<sup>120</sup> 'Indigenous Muslims Agree Population Rise a Threat to Development: Himanta Biswa Sarma' (*The Indian Express*, 5 July 2021) <<https://indianexpress.com/article/north-east-india/assam/himanta-meeting-indigenous-muslims-assam-population-7388843/>>

<sup>121</sup> Ratnadip Choudhury, 'Assam "Population Army" to Help Curb Birth Rate in Muslim-Majority Areas' (*NDTV*, 20 July 2021) <<https://www.ndtv.com/india-news/assam-to-have-population-army-says-chief-minister-himanta-sarma-2490218>>

<sup>122</sup> The Assam Panchayat (Amendment) Act, 2018, <[https://prsindia.org/files/bills\\_acts/acts\\_states/assam/2018/2018Assam3.pdf](https://prsindia.org/files/bills_acts/acts_states/assam/2018/2018Assam3.pdf)>

<sup>123</sup> Government of Assam, Population & Women Empowerment Policy of Assam, <[https://hfw.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/hfw\\_lipl\\_in\\_oid\\_3/menu/document/Population%20and%20Women%20Empowerment%20Policy%20of%20Assam.pdf](https://hfw.assam.gov.in/sites/default/files/swf_utility_folder/departments/hfw_lipl_in_oid_3/menu/document/Population%20and%20Women%20Empowerment%20Policy%20of%20Assam.pdf)>

religious marriages, and emboldened violent attacks by Hindu-nationalist vigilante groups.<sup>124</sup>

#### 4.4. Abolition of state-funded madrassas

In February 2021, when Sarma was Minister of Education, the Assam government enforced a law to abolish all 620 government-funded *madrassas*<sup>125</sup> functioning in the state and converting them to general schools that would not teach any theology.<sup>126</sup> The closure of *madrassas*, which came into effect in April 2022, is expected to affect about 98,000 students, of whom nearly half are girls. Experts and activists have warned of a mass dropout of Assam's female Muslim students.<sup>127</sup>

Simultaneously, 97 government-run Sanskrit-language centres teaching the Hindu scriptures are to be upgraded to university-level learning centres.<sup>128</sup>

#### 5. Attacks on land and livelihoods (forced evictions)

*Maati* (land) is considered one of the three core pillars of 'indigenous' Assamese identity.<sup>129</sup> As such, strengthening the claims of the 'indigenous' over land has historically been a key element of both state-led and non-state efforts to marginalise Bengali-speaking 'outsiders'.

The BJP has communalised these tensions by terming the claims and rights of Bengali-speaking settlers as 'land jihad'.<sup>130</sup> Since assuming power, the BJP government has launched mass forced evictions almost exclusively targeting poor, Bengali-speaking Muslim families. In the first six months after it came to power in June 2016, the BJP government claimed to have evicted over 3,500 families from 'illegal encroachments' across the State.<sup>131</sup> In 2017, the Assam government appointed a committee to suggest changes to existing laws in order to protect the land rights of indigenous people. Key elements of the report, which analysts noted had a 'xenophobic overview' and set forth 'an unsparingly nativist understanding of belongingness', were later codified in the form of a new Land Policy in 2019 that

<sup>124</sup> 'Interfaith Love a Risk amid India's Hindu Nationalist Surge' (*Al Jazeera*, 1 December 2021) <<https://www.aljazeera.com/news/2021/12/1/interfaith-marriages-love-jihad-india-hindu-nationalism-bjp>>

<sup>125</sup> Islamic centres of learning that teach Islamic studies and languages such as Arabic, in addition to general subjects.

<sup>126</sup> The Assam Repealing Act, 2020, <[https://legislative.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/legislative\\_medhassu\\_in\\_oid\\_3/menu/document/the\\_assam\\_repealing\\_act\\_2020\\_assam\\_act\\_no.x\\_of\\_2021.pdf](https://legislative.assam.gov.in/sites/default/files/swf_utility_folder/departments/legislative_medhassu_in_oid_3/menu/document/the_assam_repealing_act_2020_assam_act_no.x_of_2021.pdf)>

<sup>127</sup> Makepeace Sitlhou, 'In India's Assam, Ban on Madrassas May Force Girls to Drop Out' (11 March 2021) <<https://www.aljazeera.com/features/2021/3/11/shut-down-of-madrassas-in-indias-assam-could-see-girls-drop-out>>

<sup>128</sup> Makepeace Sitlhou, 'In India's Assam, Ban on Madrassas May Force Girls to Drop Out' (11 March 2021) <<https://www.aljazeera.com/features/2021/3/11/shut-down-of-madrassas-in-indias-assam-could-see-girls-drop-out>>

<sup>129</sup> Abdus Salam, 'Jati, Mati, Bheti, and Sarma's Invocations of War Glory' (*The Hindu*, 31 March 2016) <<https://www.thehindu.com/elections/assam2016/jati-mati-bheti-and-sarmas-invocations-of-war-glory/article8418898.ece>>

<sup>130</sup> 'BJP Will Enact Laws to Check "Love and Land Jihad" in Assam if Voted to Power – Amit Shah' (*The Print*, 26 March 2021) <<https://theprint.in/politics/bjp-will-enact-laws-to-check-love-and-land-jihad-in-assam-if-voted-to-power-amit-shah/629301/>>

<sup>131</sup> 'Over 3,500 Encroacher Families Evicted in 6 Months in Assam' (*Economic Times*, 6 February 2017) <<https://economictimes.indiatimes.com/news/politics-and-nation/over-3500-encroacher-families-evicted-in-6-months-in-assam/articleshow/57001688.cms>>

proposed the allotment of land to ‘indigenous landless cultivators’.<sup>132</sup>

Some major eviction drives reported in Assam since 2019 include:

- The forced eviction of over 600 Muslim families in Hojai district in February 2019, weeks before national-level elections. A 22-year-old Muslim woman, who had delivered a baby just hours before, died after being physically removed from her house by police during the eviction drive.<sup>133</sup>
- The forced eviction of over 400 Muslim families in Sonitpur district in December 2019.<sup>134</sup> During the eviction, the local mosque was vandalised by Hindu extremists.<sup>135</sup>
- The government demolished the houses of 64 Muslim families in Bharasingri village in 2020, leaving more than 500 people homeless amid the pandemic.<sup>136</sup>
- The forced eviction of over 1,200 Muslim families in Sipajhar in Darrang district in September 2021.<sup>137</sup> Three Muslims including a 12-year-old boy<sup>138</sup> were shot dead by police forces and 18 others injured during protests against the eviction drive, after which the district police chief – who is also Sarma’s brother – declared that the evictions would continue ‘even if the world were to turn upside-down’.<sup>139</sup> Defending the action, Sarma invoked previous clashes where ‘indigenous’ Assamese had died: ‘People were killed here in 1983. People have been killed here recently too, we can’t leave Assam to intruders... they have encroached on temples too.’<sup>140</sup> Sarma also blamed two Islamic organisations for orchestrating the violence.<sup>141</sup>
- 562 families were evicted from their homes in the Hojai district in November 2021.<sup>142</sup>

<sup>132</sup> Angshuman Choudhury and Suraj Gogoi, ‘The Latest Weapon Against Assam’s Muslims: Forced Evictions’ (*The Diplomat*, 5 March 2020)

<<https://thediplomat.com/2020/03/the-latest-weapon-against-assams-muslims-forced-evictions/>>

<sup>133</sup> In India’s Assam, Muslim families evicted weeks before elections | Elections News | Al Jazeera

<sup>134</sup> 426 Families Evicted in Assam, BJP MLA Claims They Are Encroachers, Bangladeshi (thequint.com).

<sup>135</sup> In Assam village, BJP MLAs target Muslims in NRC; label them “illegal settlers,” government demolishes homes (caravanmagazine.in).

<sup>136</sup> Mahibul Hoque, ‘In Assam Village, BJP MLAs Target Muslims in NRC; Label Them “Illegal Settlers”, Government Demolishes Homes’ (*Caravan*, 14 January 2021) <<https://caravanmagazine.in/communities/in-assam-village-bjp-mlas-target-muslims-in-nrc-label-them-illegal-settlers-government-demolishes-homes>>

<sup>137</sup> Muslims in India’s Assam in shock after deadly eviction drive | Police News | Al Jazeera. 29 Sept. 2021. <<https://www.aljazeera.com/news/2021/9/29/assam>>

<sup>138</sup> Arunabh Saikia, ‘Moments Before a 12-Year-Old Fell to Assam Police Bullets, He Had Secured a Crucial Identity Card’ (*Scroll*, 25 September 2021) <<https://scroll.in/article/1006164/moments-before-a-12-year-old-fell-to-assam-police-bullets-he-had-secured-a-crucial-identity-card>>

<sup>139</sup> Arunabh Saikia, ‘Why Evictions in Assam under Himanta Sarma have Left Bengali Muslims More Fearful Than Ever Before’ (*Scroll*, 3 October 2021) <<https://scroll.in/article/1006718/why-evictions-in-assam-under-himanta-sarma-have-left-bengali-muslims-more-fearful-than-ever-before>>

<sup>140</sup> Arunabh Saikia, ‘Why Evictions in Assam under Himanta Sarma have Left Bengali Muslims More Fearful Than Ever Before’ (*Scroll*, 3 October 2021) <<https://scroll.in/article/1006718/why-evictions-in-assam-under-himanta-sarma-have-left-bengali-muslims-more-fearful-than-ever-before>>

<sup>141</sup> Dibya Kumar Bordoloi, ‘PFI Hand Behind Dhalpur Attack on Assam Police: Assam CM Himanta Biswa Sarma Urges Central Govt. to Ban PFI Immediately’ (*Organiser*, 25 September 2021)

<<https://www.organiser.org/india-news/pfi-cfi-hand-behind-dhalpur-attack-on-assam-police-assam-cm-himanta-biswa-sarma-urge-central-govt-to-ban-pfi-immediately-5766.html>>

<sup>142</sup> A month and half after Dhalpur violence, Assam evicts 562 families from reserve | Latest News India - Hindustan Times.

Local activists and other residents have been quoted in media reports saying that evictions under Sarma are ‘no longer just evictions’ but ‘planned communal acts’.<sup>143</sup>

## 6. Hate Speech and Crimes

A central, strategic plank of the BJP’s political messaging and policy initiatives in Assam has been to frame Assamese identity in opposition to Muslims, particularly Bengali-speaking Muslims.<sup>144</sup> Sarma has, before and after assuming charge as Chief Minister, led this effort. Some recent examples of anti-Muslim hate, misinformation and fearmongering he has engaged in include:

- As health minister, selectively published names of Muslims who had tested positive for Covid-19 in the early days of the pandemic.<sup>145</sup> Sarma insisted that this was done in the ‘public interest’, but it may have contributed to a rise in communal tensions<sup>146</sup>, and at least one documented instance of Muslims in Assam being denied access to essential services by their Hindu neighbours.
- Characterising the 2021 elections for the State legislature as a ‘civilisational war’<sup>147</sup> to ‘save’ Assam from ‘alien’ Bengali-speaking Muslims.
- Sharing a manipulated video<sup>148</sup> that purported to show Muslim supporters of an opposition party as supporters of Pakistan – a charge that is frequently levelled by Hindu nationalists against Muslims, who they say have suspect loyalty.
- The selective targeting of Badruddin Ajmal – an opposition parliamentarian and a noted Islamic cleric – during election speeches. For example, in October 2020, Sarma accused<sup>149</sup> the ‘culture of Ajmal’ – a reference to Muslims – as waging ‘love jihad’, a debunked conspiracy theory that alleges a plot by Muslim men to seduce and convert non-Muslim women to Islam *en masse*. Sarma has also repeatedly referred to Ajmal as an ‘enemy’<sup>150</sup> of Assam.
- Selective tweeting of details of ordinary crimes where the alleged perpetrators are Muslims.<sup>151</sup> Even after assuming the Chief Ministership, Sarma continues to issue these tweets.

<sup>143</sup> Arunabh Saikia, ‘Why Evictions in Assam under Himanta Sarma Have Left Bengali Muslims More Fearful than Ever Before’ (*Scroll.in*, 3 October 2021) <<https://scroll.in/article/1006718/why-evictions-in-assam-under-himanta-sarma-have-left-bengali-muslims-more-fearful-than-ever-before>>

<sup>144</sup> ‘Deepening the Line’ (*The Indian Express*, 20 March 2021) <<https://indianexpress.com/article/opinion/editorials/assam-elections-bjp-himanta-biswa-sarma-7236390/>>

<sup>145</sup> Arunabh Saikia, ‘How Assam’s New Chief Minister is Leveraging Assamese Nationalism to Push Hindutva’ (*Scroll*, 29 June 2021) <<https://scroll.in/article/998657/how-assams-new-chief-minister-is-leveraging-assamese-nationalism-to-push-hindutva>>

<sup>146</sup> Arunabh Saikia, ‘The Other Virus: Hate Crimes Against India’s Muslims are Spreading with COVID-19’ (*Scroll*, 8 April 2020) <<https://scroll.in/article/958543/the-other-virus-hate-crimes-against-indias-muslims-are-spreading-with-covid-19>>

<sup>147</sup> ‘Top Assam Minister Himanta Biswa Sarma Opens Up about the Civilisational War Agenda of his Party’ (Indo-Asian News Service, 18 March 2021) <<https://www.youtube.com/watch?v=S06bgwVXH4>>

<sup>148</sup> Priyanka Jha, ‘BJP’s Himanta Biswa, Media Misinterpret “Aziz Khan Zindabad” as “Pakistan Zindabad”’ (*The Wire*, 9 November 2020) <<https://thewire.in/politics/bjp-himanta-biswa-media-falsely-claim-pakistan-zindabad-slogans-raised>>

<sup>149</sup> Ratnadip Choudhury, ‘Social Media a Menace, Helps Promote Love Jihad, Says Assam Minister’ (*The Wire*, 11 October 2020) <<https://www.ndtv.com/india-news/social-media-a-menace-assam-girls-falling-prey-to-love-jihad-minister-2308600>>

<sup>150</sup> Abhishek Saha, ‘Himanta Biswa Sarma: CAA Non-Issue, Ajmal “Enemy” of Assam’ (*The Indian Express*, 15 February 2021) <<https://indianexpress.com/article/north-east-india/assam/himanta-biswa-sarma-caa-non-issue-ajmal-enemy-of-assam-7188899/>>

<sup>151</sup> Himanta Biswa Sarma on Twitter, <<https://twitter.com/himantabiswa/status/1399923786598678528>>

- Bengali-speaking Muslim communities in Assam are sometimes derogatorily called ‘Miya’ (the term is used by Urdu-speakers across South Asia to mean ‘gentleman’ but has morphed into an ethnic and religious slur in Assam). Sarma has on several occasions claimed that Miya’s ‘language, culture and ethos are alien’ to Assam and the community is a ‘threat to Assam’s culture and identity’, likening the ‘fight’ between the two communities to the conflict between Israel and Palestine.<sup>152</sup>

Sarma has also practiced exclusion that falls short of hate speech but marginalises Bengali-speaking Muslims. For example, he blocked the inclusion of Bengali Muslim communities in the government-run Kalakshetra Museum in Guwahati for being alien to Assamese culture.<sup>153</sup>

Local observers have alleged that the press in Assam has been largely uncritical of Sarma and his communal utterances, allowing him to enjoy a ‘communication hegemony’<sup>154</sup> in the State. Sarma’s wife owns Assam’s most-

watched television news channel and a widely-read newspaper.<sup>155</sup>

Some recent examples of Assamese television channels spreading anti-Muslim narratives include a popular television serial that sought to demonise Bengali-speaking Muslims as drug traffickers<sup>156</sup> and a television news channel that accused a Muslim player in the Indian cricket team of being a Pakistani agent.<sup>157</sup> Preety Kongona, an Assamese actress, received threats of rape, murder and acid attacks for her role in a TV show portraying a woman fighting for social justice with the help of a Muslim man.<sup>158</sup> While the police allegedly neglected Kongona’s complaint about this harassment,<sup>159</sup> the TV show was banned in August 2021 after Hindu-nationalist groups claimed it promoted ‘love jihad’.

Social media in Assam too is teeming with anti-Muslim hate. Several studies have documented how violent, dehumanising anti-Muslim language was allowed to fester on Facebook – similar to the content that was observed in Myanmar prior to the genocide of Rohingya Muslims – and how Facebook’s

<sup>152</sup> Kaushik Deka, ‘Miyas are a Threat to Assam’s Culture and Identity: BJP’s Himanta Biswa Sarma’ (*India Today*, 4 April 2021) <<https://www.indiatoday.in/india-today-insight/story/miyas-are-a-threat-to-assam-s-culture-and-identity-bjp-s-himanta-biswa-sarma-1787104-2021-04-04>>

<sup>153</sup> Abhishek Saha, ‘Himanta Biswa Sarma Dumps MLA Panel Report, Says Won’t Allow “Miya Museum”’ (*The Indian Express*, 28 October 2020) <<https://indianexpress.com/article/north-east-india/assam/himanta-biswa-sarma-dumps-mla-panel-report-says-wont-allow-miya-museum-6906145/>>

<sup>154</sup> Arunabh Saikia, ‘How Assam’s New Chief Minister is Leveraging Assamese Nationalism to Push Hindutva’ (*Scroll*, 29 June 2021) <<https://scroll.in/article/998657/how-assams-new-chief-minister-is-leveraging-assamese-nationalism-to-push-hindutva>>

<sup>155</sup> Arunabh Saikia, ‘How Assam’s New Chief Minister is Leveraging Assamese Nationalism to Push Hindutva’ (*Scroll*, 29 June 2021) <<https://scroll.in/article/998657/how-assams-new-chief-minister-is-leveraging-assamese-nationalism-to-push-hindutva>>

<sup>156</sup> Gaurav Das & Gorky Chakraborty, ‘In Assam, Crimes of Muslims of East Bengal Origin Renews Opportunity for Targeted Communalism’ (*The Wire*, 21 June 2021) <<https://thewire.in/communalism/in-assam-crimes-by-muslims-of-east-bengal-origin-renews-opportunity-for-targeted-communalism>>

<sup>157</sup> Aman Wadud on Twitter, <<https://twitter.com/AmanWadud/status/1452692110361206792>>

<sup>158</sup> ‘Assamese TV Show Banned for 2 Months After Objection from Hindu Groups’ (*Muslim Mirror*, 28 August 2020) <<https://muslimmirror.com/eng/assamese-tv-show-banned-for-2-months-after-objection-from-hindu-groups/>>

<sup>159</sup> Ratnadip Choudhury, Assam TV Show Banned For 2 Months After Protests From Hindu Groups (NDTV, 28 August 2020) <<https://www.bing.com/search?q=preety+kongana+show+ban&cvid=f512d8a8f1ab4b559f199431a7085edf&aqs=edge..69i57.38950j1&pglt=675&FORM=ANNTA1&PC=DCTS>>

internal hate detection and control mechanisms had largely failed to address this.<sup>160</sup> In November 2021, leaked internal documents from Facebook showed<sup>161</sup> that concerns had been raised – to no avail – about the lack of a local language hate speech classifier ahead of the 2021 state elections, which were also marked by anti-Muslim rhetoric.

Reports of these incidents suggest that the police at the ground level do little to counter hate speech, even though Indian criminal law contains offences that could be used to investigate some of these incidents. By contrast, in 2019, the police registered criminal complaints against 13 poets in relation to a poem by Hafiz Ahmed titled, ‘Write it Down, I am Miyah’, that highlighted the predicament of Bengali-speaking Muslims in Assam,<sup>162</sup> for allegedly offending Assamese sentiments.

In 2019, one man was killed and 15 others injured in communal clashes<sup>163</sup> that erupted over offering Friday prayers in Hailakandi district of Assam.

In March 2020 in Baksa, a politically volatile district under the Bodoland Territorial Council, a mosque was vandalised<sup>164</sup> and several Islamic holy books, including the Quran, were burnt and destroyed. The police have yet to identify the culprits although the incident has been attributed to actors wanting to create unrest before elections in the region. Spates of violence were recorded in the run-up to elections in the Bodo region, with Muslims being the targeted community in such cases.<sup>165</sup> While the murders seemed to be politically motivated, they served the dual purpose of inciting communal tensions and furthering the rift between the minority Muslim community and the Assamese population.

After the BJP’s re-election, hate crimes appear to continue unabated, with recent reports of Muslim youths being threatened and forced to chant ‘Jai Sri Ram’,<sup>166</sup> targeted on suspicions of cattle-theft,<sup>167</sup> beaten up and forced to eat

<sup>160</sup> Avaaz, ‘Megaphone for Hate: Disinformation and Hate Speech on Facebook During Assam’s Citizenship Count’ (2019) <[https://avaazpress.s3.amazonaws.com/FINAL-Facebook%20in%20Assam\\_Megaphone%20for%20hate%20-%20Compressed%20\(1\).pdf](https://avaazpress.s3.amazonaws.com/FINAL-Facebook%20in%20Assam_Megaphone%20for%20hate%20-%20Compressed%20(1).pdf)>; Equality Labs, ‘Facebook India - Towards a Tipping Point of Violence Caste and Religious Hate Speech’ (2019) <<https://www.equalitylabs.org/facebookindiareport>>

<sup>161</sup> Sangeeta Barooah Pisharoty, ‘Before Assam Elections, Facebook was Warned of Inflammatory Content but Lacked Key Hate Speech Tool’ (*The Wire*, 13 November 2021) <<https://thewire.in/communalism/assam-elections-facebook-hate-speech>>

<sup>162</sup> ‘Writers, Academics and Activists Condemn FIRs Against and Online Harassment of Miyah Poets’ (*The Wire*, 21 July 2019) <<https://thewire.in/rights/writers-academics-and-activists-condemn-firs-against-and-online-harassment-of-miyah-poets>>

<sup>163</sup> ‘Assam: How a Group Offering Namaz on Road Led to a Communal Clash, 1 Death’ (*The Federal*, 13 May 2019) <<https://thefederal.com/news/assam-how-a-group-offering-namaz-on-road-led-to-a-communal-clash-1-death/>>

<sup>164</sup> ‘Assam Mosque Vandalised’ (*The Hindu*, 3 March 2020) <<https://www.thehindu.com/news/cities/kolkata/assam-mosque-vandalised/article30967142.ece>>

<sup>165</sup> The recorded crimes from this region include the murder of Khairul Haque, a BTC worker in Udaigiri and the murder of Lafiqul Islam Ahmed, a minority rights activist and student leader, by unidentified gunmen in Kokrajhar district. See ‘With No Trace of Assailants, Family of Khairul Haque Cries for Justice’ (*The Sentinel*, 24 March 2020) <<https://www.sentinelassam.com/north-east-india-news/assam-news/with-no-trace-of-assailants-family-of-khairul-haque-cries-for-justice/>> Abdul Kalam Azad, ‘Muslim Student Leader Lafiqul Islam Ahmed Shot Dead in Assam’ (*The Wire*, 2 August 2017) <<https://thewire.in/politics/muslim-student-leader-lafiqul-islam-ahmed-shot-dead-assam>>

<sup>166</sup> ‘Assam: Man Allegedly Involved in Forcing Muslim Youths to Chant “Jai Sri Ram” Arrested’ (*Scroll*, 24 June 2019) <<https://scroll.in/latest/928195/assam-man-allegedly-involved-in-forcing-muslim-youths-to-chant-jai-sri-ram-arrested>>

<sup>167</sup> ‘Suspected Cattle Thief Lynched, Three Injured by Mob in Assam’ (*The New Indian Express*, 16 August 2018) <<https://www.newindianexpress.com/nation/2018/aug/16/suspected-cattle-thief-lynched-three-injured-by-mob-in-assam-1858578.html>>

pork,<sup>168</sup> and other incidents of cow-related violence.<sup>169</sup>

#### IV. Persons and groups responsible

##### 1. State actors

The majority of the acts described above were committed by state actors.

##### *Assam police*

Physical violence against Muslims and other victims was largely perpetrated by the Assam state police force, acting under the control and direction of the state executive acting through the Home Department. Extrajudicial killings are the result of police operations. Disproportionate force during anti-CAA protests was inflicted by the police. Biased and arbitrary arrests and detentions under anti-terror laws also directly involve the police. In addition to frontline police personnel, senior police officers are administratively responsible for any violations committed by the police. This would include, inter alia, the Director-General of Police for the state of Assam and the Superintendent of Police in districts where abuses took place.

##### *Paramilitary forces and armed forces*

In addition to civilian police forces, Assam is also ‘policed’ by paramilitary forces operating under the aegis of the national government, and armed forces

stationed in parts of the state under the Armed Forces (Special Powers) Act. To the extent that paramilitary and armed forces personnel have participated alongside the civilian police in the acts discussed in Section III, they bear responsibility for the resulting human rights violations. It is worth noting in this regard that media reports might describe, for example, an eviction drive by “police”, but video footage of the events will show some personnel in paramilitary or armed forces uniforms. Thus, the role of paramilitary and military forces is somewhat obscured in publicly available records and bears further investigation.

##### *The legislature*

The Assam State Assembly has passed laws that have, or will tend to have, a disproportionate impact on Muslims as described in Section III.4 above.

##### *The executive branch*

Discriminatory laws and policies have been drafted by the relevant departments in the State government. The Law Department is responsible for ensuring that any legislation proposed by the government is compatible with fundamental rights in the Indian Constitution and with international law.

<sup>168</sup> ‘Muslim Man in Assam Forced to Eat Pork for Allegedly Selling Beef’ (*Mumbai Mirror*, 9 August 2019) <[https://mumbaimirror.indiatimes.com/news/india/muslim-man-in-assam-forced-to-eat-pork-for-allegedly-selling-beef/articleshow/68791300.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://mumbaimirror.indiatimes.com/news/india/muslim-man-in-assam-forced-to-eat-pork-for-allegedly-selling-beef/articleshow/68791300.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)>

<sup>169</sup> ‘India Assam Mob Kills Two Muslim Men Over “Cow Theft”’ (*BBC*, 1 May 2017) <<https://www.bbc.com/news/world-asia-india-39769172>>

During violent crackdowns in the context of extrajudicial killings, targeting anti-NRC protesters, and heightened instances of forced detention under the operation of anti-terror legislation, actions by Assam state organs accompanied the measures taken by the Assam police and paramilitary forces. The Department of Home Affairs would bear a particular responsibility in this regard.

Dr. Himanta Biswa Sarma, in his capacity both as Chief Minister and Home Minister, has held ultimate authority over the state police force since May 2021.

Chief Minister Sarma bears particular responsibility for stoking communal tensions through anti-Muslim and migrant rhetoric.<sup>170</sup> He has engaged in continuing to spread communal narratives through speeches and on social and print media<sup>171</sup> blaming Muslim women for an increase in population rates<sup>172</sup> and defended violence in the cause of forced eviction drives in the name of protecting ‘indigenous’ Assamese.<sup>173</sup> He has also expressed open support for police violence in particular instances and for bypassing judicial processes of fair trials.<sup>174</sup> Given that he leads the government, his words and actions are greater than the sum of their parts. They foment violence and a climate

of impunity for state and non-state actors, and by the same token, a climate of intimidation and terror for Muslims and Bengali speakers. Sarma is in a particularly powerful position after the BJP’s resounding electoral victory in May 2021. A fractured political opposition amplifies his influence and the BJP’s political and communication hegemony in Assam. His continuing vilification of Muslims indicates that he is responsible for the human rights violations not just in a formal sense, as the Chief Minister, but also as a practical and strategic driver of the multiple, interconnected attacks on Muslims in Assam.

### ***Office of the NRC Coordinator, State Government of Assam***

The Office of the State Coordinator of National Registration of Citizens, part of the state government of Assam, is responsible for the coordination and conducting of the NRC updating process (see above, The National Register of Citizens). This included developing the methodology and mechanisms for this process, including the determination of which legacy data would be accepted for

<sup>170</sup> Abhishek Saha, ‘Himanta Biswa Sarma Dumps MLA Panel Report, Says Won’t Allow “Miya Museum”’ (*The Indian Express*, 28 October 2020) <<https://indianexpress.com/article/north-east-india/assam/himanta-biswa-sarma-dumps-mla-panel-report-says-wont-allow-miya-museum-6906145/>>

<sup>171</sup> Arunabh Saikia, ‘How Assam’s New Chief Minister is Leveraging Assamese Nationalism to Push Hindutva’ (*Scroll*, 29 June 2021) <<https://scroll.in/article/998657/how-assams-new-chief-minister-is-leveraging-assamese-nationalism-to-push-hindutva>>

<sup>172</sup> Abhishek Saha, ‘Adopt Family Planning: Assam CM to “Immigrant Muslims” in State’ (*The Indian Express*, 11 June 2021) <<https://indianexpress.com/article/north-east-india/assam/adopt-family-planning-assam-cm-himanta-biswa-sarma-to-immigrant-muslims-in-state-7353591/>>

<sup>173</sup> Arunabh Saikia, ‘Why Evictions in Assam under Himanta Sarma have Left Bengali Muslims More Fearful Than Ever Before’ (*Scroll*, 3 October 2021) <<https://scroll.in/article/1006718/why-evictions-in-assam-under-himanta-sarma-have-left-bengali-muslims-more-fearful-than-ever-before>>

<sup>174</sup> Utpal Parashar “‘Shoot criminals in leg if they try to escape from custody’: Assam CM to police” (*Hindustan Times*, 6 June, 2021) <<https://www.hindustantimes.com/india-news/shoot-criminals-in-leg-if-they-try-to-escape-from-custody-assam-cm-to-police-101625511251430.html>>

identification purposes, as well as digitisation of the exercise. The NRC Coordinator, together with the Registrar General of India, is also responsible for issuing the rejection slips to the individuals left off the NRC list. The Office heads more than 68,000 government officials and contractors, and about 2,500 local offices.

The Registrar General of India (RGI) appointed Prateek Hajela as the State Coordinator in 2013. He served this function until November 2019, when he was transferred on deputation to his home state government of Madhya Pradesh, following a transfer order of the Supreme Court. Hajela comes from a prominent family in Bhopal in Madhya Pradesh. In November 2019, the state government appointed Hitesh Dev Sarma as the new NRC State Coordinator.

The State Coordinator Hajela has been criticised for changing which documents were legally admissible to prove one's citizenship claims during the NRC application process in 2018. Similarly, Hajela was also responsible for issuing a notice to verification officers directing them not to include on the NRC list any siblings of a person detected as an illegal citizen, which was seen as a 'predetermined move to make millions stateless'. Yet, BJP officials have blamed him for 'too many faulty inclusions' and in the process leaving out genuine Indian citizens. Investigations were lodged in 2022 by the current State Coordinator Hitesh Dev Sarma against Hajela and several data entry operators following

allegations of 'anti-national activities' and loopholes in the process of verifying documents which allowed fraudulent documents to avoid detection. This complaint against Hajela also accuses him of not ordering any quality checks during the verification process, in contradiction to his mandate to ensure an 'error free NRC'.

In 2019, Hitesh Dev Sarma was appointed as the new State Coordinator of the NRC by the Assam government. Media reports have noted xenophobic and anti-Muslim posts by Sarma on Facebook.<sup>175</sup> He has petitioned the Supreme Court for re-verification of the list of persons excluded from NRC because the BJP is unhappy that large numbers of Hindus have been unable to adequately evidence their citizenship<sup>176</sup>

### ***Supreme Court of India***

The Supreme Court of India has a central role in the preparation and updating process of the NRC in the state of Assam (see above, The National Register of Citizens). First, in 2013, the Court ordered and mandated the Union Government and Assam State Government to update the 1951 NRC list, and in a December 2014 judgement, it set a deadline for this to be completed and published by January 2016. In this judgement, the Supreme Court also took on a monitoring and supervising role over the NRC updating process. This includes the NRC

<sup>175</sup> Bismee Taskin & Regina Mihindukulasuriya, 'Can't Accept Foreigners Even if They Speak Assamese - New NRC Coordinator Said on Facebook' (*The Print*, 11 November 2019) <<https://theprint.in/india/cant-accept-foreigners-even-if-they-speak-assamese-new-nrc-coordinator-said-on-facebook/319466/>>

<sup>176</sup> 'Assam NRC Coordinator Moves Supreme Court for Reverification of Draft' (*Times of India*, 14 May 2021) <<https://timesofindia.indiatimes.com/india/assam-nrc-coordinator-moves-sc/articleshow/82616752.cms>>

Coordinator submitting reports on the process to the Supreme Court for review.

The Supreme Court has been reported as ‘the motive force’ behind the Assam NRC exercise, and while the NRC is an executive task, the Court monitoring is said to have made it a ‘judiciary-led bureaucratic exercise’. We also note that the Supreme Court has been criticised for taking on the rhetoric of ‘illegal immigrants’ and that its judgments have been geared towards expelling such migrants rather than protecting individuals who may be unfairly deprived of citizenship. The role of the Supreme Court in the NRC process has also been criticised for pressuring NRC authorities in Assam to speed up the process, and for making the details and procedures of the process opaque. This has led to serious allegations of the Supreme Court and several Justices being biased and sympathetic to the Assamese anti-foreigner movement.

For its role in the NRC process, the Supreme Court has been accused of disregarding due process, causing injury to vulnerable communities and having ‘diminished its own credibility through its overreach on matters’. More recently, the Supreme Court has seemingly retreated from its active role after the August 2019 publication of a final version of the NRC list: since then, ‘petitions from the government and Assamese nationalist groups, seeking re-examination and fresh rounds of verification of names in the NRC’ are still awaiting hearings and trials before the Supreme Court.

A key judge on the Supreme Court bench at the time of the 2013 and 2014 judgements which initiated the Assam NRC update process, was Justice Ranjan Gogoi. He was nominated to the Supreme Court in 2012 and was later appointed as Chief Justice of India in October 2018.

Justice Gogoi, who is Assamese himself, was already on the bench in 2013 during which the Supreme Court ‘started nudging the Union government to press on with the NRC’. During his term as Chief Justice, he headed a Supreme Court bench which was firm on finalising the Assam NRC.

In November 2019 he retired from this position and since March 2020, he is a member of parliament in the Rajya Sabha (the upper house of the Parliament of India). His nomination to the Rajya Sabha immediately after the end of his term, unusual for a Supreme Court judge, was seen by many as a reward for his rulings, and was criticised for having ‘disgraced the Indian judiciary’.

### ***Guwahati High Court***

Appeals from decisions of the quasi-judicial Foreigners Tribunals can only be made to the High Court or the Supreme Court. Notwithstanding its considerable powers to provide constitutional remedies, the High Court of Assam has narrowed the scope of its jurisdiction in relation to these appeals to jurisdictional errors, violations of the principle of natural justice, or errors apparent on the face of the record.<sup>177</sup> The court has thus made it difficult, *inter alia*, for the

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<sup>177</sup> *State of Assam vs Moslem Mondal & Ors*, Guwahati High Court, 2013 (1) GLT (FB) 809.

children of individuals with pending cases to appeal the automatic withdrawal of their citizenship.

## 2. Non-State Actors

Non-state actors were responsible for the hate crimes described above, targeting Muslim youth under the guise of cow vigilantism. Various media outlets have contributed to fostering an environment of anti-Muslim hate through television series and biased reportage.

## V. Legal Analysis

International human rights law (IHRL) is the body of international law, stemming from treaties or customs, which requires States to respect, protect and fulfil human rights at all times. India is a State party to several core human rights treaties relevant to the situation of Muslims in India. India is a party to the Universal Declaration of Human Rights (UDHR),<sup>178</sup> International Covenant on Civil and Political Rights (ICCPR),<sup>179</sup> Convention on the Rights of Persons with Disabilities (CRPD),<sup>180</sup> International Convention for the Protection of All Persons from Enforced Disappearance (CPED),<sup>181</sup> the Child Rights Convention (CRC),<sup>182</sup> the

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>183</sup> and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>184</sup>

Other relevant United Nations human rights standards that guided the Panel include the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred.

### I. Violations of IHRL related to extrajudicial killings

There is credible evidence to suggest that instances of extrajudicial killings in Assam are violations of India's obligations under international human rights law, particularly its obligations to respect and protect the **right to life** and

<sup>178</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)

<sup>179</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. Accession by India on 10 April 1979.

<sup>180</sup> Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3. Ratified by India on 1 October 2007.

<sup>181</sup> International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 20 December 2010) 2716 UNTS 3. Signed by India on 6 February 2007.

<sup>182</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNGA Resolution 44/25. Ratified by India on 11 December 1992.

<sup>183</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195. Ratified by India on 3 December 1968.

<sup>184</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979, entered into force on 3 September 1981). Ratified by India on 9 July 1993.

the right to a fair trial and the right to liberty and security.

### I.I. Potential violation of the right to life

Extrajudicial killings constitute an arbitrary deprivation of life, which is prohibited by international law. The right to life is a foundational and universally recognised right, applicable at all times and in all circumstances, including during armed conflict or other public emergencies. It is a norm that has attained *jus cogens* status and is protected by international and regional treaties as well as customary international law. Irrespective of the applicability of treaty provisions recognising the right to life, States are bound to ensure the realisation of the right to life when they use force - whether inside or outside their borders.<sup>185</sup>

Under Article 3 of the UDHR, everyone has the right to life, liberty and security of person. Article 6 (1) of the ICCPR, in addition to recognising this inherent right to life, also states that no one shall be *arbitrarily deprived* of their life. The ICCPR also indicates the right to life is a non-derogable right.

The substantive element of the right to life establishes the right to be free from the *arbitrary* deprivation of life. ‘Arbitrary’ has been interpreted by the

Committee on Civil and Political Rights as an action that ‘lacks a legal basis or is otherwise inconsistent with life-protecting laws and procedures’<sup>186</sup> and requires an analysis of elements of inappropriateness, injustice, lack of predictability and due process of law,<sup>187</sup> as well as elements of reasonableness, necessity and proportionality.<sup>188</sup> The procedural component is the requirement of proper investigation and accountability where there is reason to believe that arbitrary deprivation of life may have taken place. Extrajudicial killings are completely devoid of due process and present no opportunity to the victims to defend themselves in accordance with the due process and rule of law and thus are arbitrary deprivations of the right to life.

Under the right to life, certain limitations are placed on the use of force by authorities. The general rule is that no extra-legal, arbitrary and summary executions or killings shall be carried out under any circumstances including, but not limited to, situations of custodialisation, internal armed conflict, excessive or illegal use of force by a public official, or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such a person.<sup>189</sup> Moreover, governments must also prohibit orders from superior officers or public authorities authorising or inciting other persons to carry out any such

<sup>185</sup> UN Docs A/68/382, para. 43.

<sup>186</sup> UN Human Rights Committee (HRC), *General Comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, <<https://www.refworld.org/docid/5e5e75e04.html>>, (hereinafter General Comment 36) para. 11.

<sup>187</sup> *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.1; *Van Alphen v. Netherlands*, communication No. 305/1988, para. 5.8.

<sup>188</sup> General Comment 36, para. 12.

<sup>189</sup> Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, <<https://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>> Principle 1.

extra-legal, arbitrary or summary executions.<sup>190</sup>

The exception to the general rule is that the use of lethal force **in self-defence** would **not** constitute an arbitrary deprivation of life<sup>191</sup> under the following conditions:<sup>192</sup>

- i. it must be **strictly necessary** in view of the threat posed by the attacker;
- ii. it must represent a method of last resort after other alternatives have been exhausted or deemed inadequate;
- iii. the amount of force applied cannot exceed the amount strictly needed for responding to the threat;
- iv. the force applied must be carefully directed, only against the attacker; and
- v. the threat responded to must involve imminent death or serious injury.

The UN Human Rights Committee's General Comment 36 specifically states that lethal force cannot be used to prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others.<sup>193</sup> General Comment 36 further states that any loss of life occurring in custody in unnatural circumstances creates a presumption of arbitrary deprivation of life by State authorities, which can only

be rebutted based on a proper investigation that establishes the State's compliance with its obligations under Article 6.<sup>194</sup>

In the case of Assam, the instances of police killings discussed in [Section III.1](#) appear *prima facie* to be **violations of the right to life**.

The available news sources indicate that the police have stated almost in every case that the deceased person attempted to escape police custody and/or snatched the service revolvers of the police, and that the police were constrained to act in self-defence. However, news reports on these killings raise serious doubts about this recurring police narrative. First, the fact that the account of events by the police leading up to the death of the alleged accused has been nearly indistinguishable in every case, and that the counter-allegations of the relatives of the deceased have been so contrasting, casts a doubt on the veracity of the claims of the police. Second, even if it was to be believed that the police acted in self-defence in some of these cases, this cannot be said to be true of the cases of Abdul Khalek, who had allegedly only attempted to escape police custody, or Moinal Haque, who could not have been said to pose any credible threat to the police officers that could not have been diffused without shooting, or Mohammad Akhtar Raja Khan, who was shot dead by the police for allegedly running a cattle smuggling ring. Further, the killing of 12-year-old Sheikh Farid was completely

<sup>190</sup> Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, <<https://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>>, Principle 3.

<sup>191</sup> General Comment, para. 10.

<sup>192</sup> General Comment, para. 12.

<sup>193</sup> General Comment.

<sup>194</sup> General Comment, para. 29.

unprovoked and no explanation was provided by the Assam police for killing this young child.

In many of the incidents discussed in [Section III.1.](#), the police have stated that the alleged offender was armed or had snatched the weapon from the police while being led to police detention. However, there is credible evidence to suggest in many cases that the alleged offender was *already* detained in police custody for some time before the killing occurred, such as the case of Jwngsaw Mushahary and Janak Brahma, who had been injured in a motorcycle accident prior to their arrest and were stated to be in police custody, or the case of Tapan Buragohain, who had allegedly been taken to a local police station and kept in custody and then blindfolded and taken to an open field where he was shot.

In an ongoing petition before the Guwahati High Court, *Arif Jwadder v. Assam*,<sup>195</sup> it was submitted by the petitioners that the revolvers of the police are normally tied to a rope on the waist belt of arresting officers and would be difficult to access so easily and repeatedly over different cases with different factual circumstances. It was further stated that in most cases, the injured or deceased were not trained militants and were unlikely to know how to correctly use police-grade pistols. The police also outnumbered the deceased in every case and were heavily armed and prepared for arrest, and therefore it can be said that these deaths occurred in suspicious circumstances and could not all have been in self-defence. In many

cases, the police have stated that they were given information about the potential planning of a crime, such as in the case of Jainul Abedin, who police alleged to be a dacoit with previous convictions who was allegedly planning another dacoity, or of Khairul Islam, who the police suspected was dealing drugs. In such cases in particular, the police had the information necessary to prepare to conduct an arrest without having to resort to fatal violence. The deaths in these cases, therefore, appear to be highly suspect.

The Supreme Court of India, in the case *Extra-Judicial Execution Victim Families Assn. v. Union of India*,<sup>196</sup> has unequivocally stated that excessive force by the police is different from self-defence, noting that if a person (including the police or armed forces) uses excessive force or retaliatory measures in response to aggression he becomes an aggressor in turn and commits a punishable offence.<sup>197</sup> The Court had further stated that if the use of excessive force or retaliation at the hands of the State leads to the death of the original aggressor, this constitutes an extrajudicial killing, which damages the rule of law and violates the constitutional right to life. The Court also emphasised that in such cases, it does not matter whether the victim was a common person or a militant or a terrorist: the State must always retaliate to any threat with proportionate force.

Under international law, specific guidelines have been laid down with respect to the use of force and arms by

<sup>195</sup> PIL no. 833/2021.

<sup>196</sup> (2016) 14 SCC 536 <<https://indiankanoon.org/doc/83144198/>>

<sup>197</sup> (2016) 14 SCC 536 <<https://indiankanoon.org/doc/83144198/>> para. 122.

law enforcement officials. Article 3 of the Code of Conduct for Law Enforcement Officials<sup>198</sup> states that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty with strict adherence to national principles of proportionality. The use of firearms is considered an extreme measure and every effort should be made to exclude the use of firearms, even if the suspected offender offers armed resistance. Under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>199</sup> law enforcement officials shall as far as possible only apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. If the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence and the legitimate objective to be achieved, shall minimise damage and injury, and respect and preserve human life. Further, governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law. Under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>200</sup> all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person; arrest, detention or imprisonment shall only be carried out strictly in accordance

with the provisions of the law and by competent officials or persons authorised for that purpose and no person under any form of detention or imprisonment shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

In the cases of police shootings discussed in Section III.1., the use of firearms to shoot multiple times at the alleged offenders leading to their death does not appear, based on the information available, to be a proportionate response to the threat faced by the police officers. On the face of it, there is scant credible evidence to suggest that the self-defence exception applies to the police officers in these cases. No attempts, even by their own accounts, were made by the police to use any non-violent methods before resorting to the use of firearms.

The statements of the Chief Minister encouraging police officers to shoot alleged offenders, and the apparent rise in the instances of extrajudicial killings in the years since he assumed office, also suggest a climate where police have ample licence to use excessive lethal force.

In addition to the spate of extrajudicial killings discussed in Section III.1., we are also concerned about the five deaths that occurred during anti-CAA protests (see Section III.2.), including three deaths that were the result of police shooting. The available information is insufficient to conclude that these deaths were the result of disproportionate force, but bearing in mind that they occurred in the

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<sup>198</sup> Adopted by General Assembly resolution 34/169 of 17 December 1979.

<sup>199</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba on 27 August to 7 September 1990.

<sup>200</sup> Adopted by General Assembly resolution 43/173 of 9 December 1988.

context of public protests, we would urge rigorous investigation.

### **1.2. Potential violation of the right to a fair trial**

It must also be noted that any person accused of a crime has a right to a fair trial. Derogations from the fundamental principles of a fair trial, are entirely prohibited, even during a State emergency.<sup>201</sup> Article 10 of the UDHR recognises the entitlement of a person to full equality in a fair and public hearing by an independent and impartial tribunal. Article 14 of the ICCPR recognises that all persons shall be equal before courts and tribunals and be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Articles 14(2) to 14(7) of the ICCPR lay down the rights and procedures flowing from the right to a fair and equal trial, such as the presumption of innocence of the detained person.

Most importantly, under Article 14(2) of the ICCPR, all individuals have the *right to presumption of innocence* until proven guilty in accordance with the law. The presumption of innocence puts the burden of proof on the prosecution, prohibits the presumption of guilt of the accused unless the charges against them have been proved beyond reasonable doubt, and also accords the benefit of the doubt to the accused.<sup>202</sup> It is to be noted that the presumption of innocence of the accused also means that the accused

cannot be subjected to treatment that would indicate their guilt and that leads to the inference of them being dangerous criminals, and all public authorities ought to refrain from pre-judging the outcome of the trial.

Extrajudicial killings outright extinguish the deceased's right to a fair trial. It is clear from reports of police shootings that the deceased person had not been afforded any due process or convicted beyond a reasonable doubt of any of the charges levelled against them. In some cases, the charges levelled were minor, such as drug peddling and cattle smuggling, and the accused could not have been reasonably said to be a dangerous criminal. However, the police accounts demonstrably indicate that their right to presumption of innocence and right to a fair trial was violated and they were assumed to be guilty of the charges levelled against them and treated as violent offenders. They were given no opportunity to defend themselves against the charges before an independent and impartial court of law.

### **1.3. Potential violation of the right to liberty and security**

An unjustifiable infliction of bodily injury by the police on the offenders also violates the right to personal security. Various international law instruments have recognised the right to liberty and security by way of provisions against arbitrary arrest and detention, and which

<sup>201</sup> HRC, General Comment No. 29 (2001): Article 4: Derogations during a State of, UN Doc No. CCPR/C/21/Rev.1/Add.11 (31 August 2001) para. 15.

<sup>202</sup> HRC para. 30.

have been construed to constitute customary international law,<sup>203</sup> from which there can be no valid derogation.<sup>204</sup> Articles 3 and 9 of the UDHR recognise the right to life, liberty and security of a person and further state that no one shall be subjected to arbitrary arrest, detention or exile.<sup>205</sup> Article 9 of the ICCPR recognises the right to liberty and security of a person and states that no one shall be subjected to arbitrary arrest or detention or deprived of her liberty except on grounds and procedures established by law. There are several procedural safeguards envisaged against arbitrary arrest and detention. Under Article 9(2) of the ICCPR, the detained person has a right to be promptly informed of the charges against him at the time of the arrest to enable him to challenge the lawfulness of the detention and mount an effective defence.<sup>206</sup> Under Article 9(3) of the ICCPR, he also has a right to a prompt appearance before a judge<sup>207</sup> or any other officer authorised by law to exercise judicial power to bring him under judicial control and to allow for an opportunity of enquiry into the conditions of their detention.<sup>208</sup> The detained person is entitled to be informed of his rights<sup>209</sup> and a trial within a reasonable time and extremely

prolonged pre-trial detention must be strictly justified by the investigative authorities.<sup>210</sup> None of these procedures were adhered to in the cases of police shootings discussed in Section III.2. above.

States parties are tasked with taking appropriate measures to protect the right to liberty of a person against deprivation by lawful institutions, other States and third parties, including armed or terrorist groups.<sup>211</sup> The State is also responsible for ensuring the adherence of its agents or private entities to the provisions contained in Article 9 of the ICCPR to prevent misuse of power to prevent arbitrary or unlawful arrest or detention. It is a fundamental and universally applicable rule that all persons deprived of their liberty must be treated with humanity and with respect for their dignity by the State.<sup>212</sup>

By arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, the State assumes the responsibility to protect the life and bodily integrity of the detained person. The death of several alleged offenders in custody and suspicious circumstances reasonably suggests that the State has

<sup>203</sup> HRC, General Comment 24: Issues relating to reservations made on ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under Article 41 of the Covenant, UN doc. CCPR/C/21/Rev.1/Add.6 (4 November 1994) para. 8.

<sup>204</sup> HRC, General Comment 26(61): General Comments Adopted by The Human Rights Committee Under Article 40, Paragraph 4, Of The International Covenant On Civil And Political Rights, UN doc. CCPR/C/21/Rev.1/Add.8/Rev.1 (8 December 1997) para. 3.

<sup>205</sup> The Indian Constitution, which came into force on 26 January 1950 was heavily influenced by the UDHR and has also explicitly recognised the right to liberty by adopting the language of Article 9 of the UDHR as Article 21 of the Constitution of India.

<sup>206</sup> HRC 1997. para. 25.

<sup>207</sup> 24 hours in case of a child. See CmtRC, General Comment No. 24 (2019) on children's rights in the child justice system UN Doc. CRC/C/GC/24 (18 September 2019) para. 90.

<sup>208</sup> HRC, General Comment 35: Article 9 (Liberty and security of person), UN doc. CCPR/C/GC/35 (16 December 2014) para. 32.

<sup>209</sup> CmtAT, General Comment No. 2: Implementation of article 2 by States parties UN doc. CAT/C/GC/2 (24 January 2008) para. 13.

<sup>210</sup> HRC, General Comment 35: Article 9 (Liberty and security of person), UN doc. CCPR/C/GC/35 (16 December 2014) para. 37.

<sup>211</sup> HRC, General Comment 35: Article 9 (Liberty and security of person), UN doc. CCPR/C/GC/35 (16 December 2014) para. 7.

<sup>212</sup> HRC, General comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty) UN doc. Forty-fourth session (1992) para. 4.

failed to carry out its positive obligations to protect the life and bodily integrity of detainees, thereby violating its obligations under Article 9 of the ICCPR.

## 2. Violations of IHRL related to the NRC and CAA in Assam

The CAA's compatibility with international human rights law has been evaluated in Annexure 1 of this report. Here, we focus on evaluating the NRC with reference to international legal standards.

The available evidence, outlined in Section III.2., raises credible grounds to believe that the process and procedures of the NRC in Assam violate India's obligations under international human rights law, with particular reference to **the right to equality and non-discrimination, the right to a fair trial, the right against arbitrary detention, the right to nationality and against statelessness, and the right to an effective remedy.** Reports by UN mandate holders as well as reputable human rights groups have echoed our concerns that the NRC process falls far short of international standards in relation to these rights.<sup>213</sup>

### 2.1. The rights to equality and non-discrimination

Article 2 of the UDHR notes that all rights and freedoms mentioned within the UDHR are to be guaranteed equally 'without distinction of any kind', and Article 7 emphasises the entitlement to equal protection before the law.

Equality and non-discrimination are also understood as cross-cutting principles for the guarantee of all rights in the ICCPR. Under Article 2(1) and 26 of the Covenant, State parties are obliged to ensure that all individuals in their territory have their rights respected and protected regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Discrimination is prohibited in any field that is regulated and protected by public authorities and would also include law and policy regarding the acquisition or loss of nationality.<sup>214</sup> The principle of equality is the driving force behind the ICERD and CEDAW, which call upon State parties to eliminate discrimination on the grounds of race and gender respectively.

The fundamental right to equality before the law and equal protection of the law and non-discrimination would apply to refugees, regardless of their status as such. The right to acquisition of nationality also relates to naturalisation, and particular groups of non-citizens cannot be discriminated against with regard to access to citizenship or naturalisation based on any protected characteristic including, *inter alia*,

<sup>213</sup> For example, see Rohini Mohan, "Worse Than a Death Sentence": Inside India's Sham Trials That Could Strip Millions of Citizenship' (VICE, 29 July 2019) <<https://www.vice.com/en/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship>>; Siddhartha Deb, "They Are Manufacturing Foreigners": How India Disenfranchises Muslims' *The New York Times* (15 September 2021) <<https://www.nytimes.com/2021/09/15/magazine/india-assam-muslims.html>>

<sup>214</sup> HRC, CCPR General Comment No. 18: Non-Discrimination, 10 November 1989.

ethnicity, language or religion. Any deprivation of citizenship on the basis of race, colour, descent or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to a nationality.<sup>215</sup>

UN human rights bodies have noted that marginalised sections of society such as women, undocumented migrants, indigenous, minority and nomadic groups, refugees, internally displaced persons and stateless persons would typically have weaker access to documentation that could prove their identity and nationality. This could be due to the passage of time, destruction or loss due to conflict, or simply the inability to access such documentation due to poverty or geography. This can lead to restrictions on their right to vote, rights to education, healthcare, property, employment, freedom of movement, lack of access to diplomatic protection, prolonged detention pending determination of proof of identity and nationality, and finally and most devastatingly, statelessness.<sup>216</sup> Therefore, UN human rights bodies emphasise that states must not impose unreasonable conditions when it comes to documentation such as requiring proof that would be difficult for

marginalised groups to access.<sup>217</sup> States should also adopt flexible rules for evidence, such as allowing witness testimony or other sources of documentary evidence.<sup>218</sup> States must also strive to remove barriers to accessing registration procedures for marginalised communities.<sup>219</sup>

Based on the information available, we are of the view that the NRC is violative of the right to equality and against non-discrimination. Under the NRC, the people in Assam have been divided into two categories i.e., 'original' and 'non-original' inhabitants, with the latter category largely comprising linguistic and/or religious minorities.<sup>220</sup> Thereafter, 'original' and 'non-original' inhabitants were subjected to different criteria to verify and decide their claims with the former being subjected to a more lenient process and the latter being subjected to much stricter scrutiny and procedures.<sup>221</sup> This thread of discrimination runs throughout the various stages of the NRC process as has been highlighted earlier and is clearly violative of India's obligations under international law.

The documentation requirements of the NRC have disproportionately excluded people residing in geographically remote

<sup>215</sup> ICERD, General Recommendation XXX on Discrimination Against Non-Citizens; 1 October 2002. para. 1.

<sup>216</sup> CEDAW General Comment No. 32 on women in conflict prevention, conflict and post-conflict situations UN Doc CEDAW/C/GC/30 (1 November 2013) para. 58-61.

<sup>217</sup> CEDAW- General Comment No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women UN Doc CEDAW/C/GC/32 (14 November 2015) paras 52-58.

<sup>218</sup> UNGA Annual Report Of The United Nations High Commissioner For Human Rights And Reports Of The Office Of The High Commissioner And The Secretary-General Arbitrary deprivation of nationality: report of the Secretary-General; UN Doc. A/HRC/10/34 (26 January 2009) para. 59.

<sup>219</sup> HRC, Report of the Secretary-General on the Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire a nationality, *inter alia*, of the country in which they are born, if they otherwise would be stateless, UN Doc A/HRC/31/29 (16 December 2015) para. 15.

<sup>220</sup> Human Rights Watch, "Shoot the traitors" Discrimination Against Muslims under India's New Citizenship Policy'.

<sup>221</sup> Amnesty International India, '125 Civil Society Organisations condemn the exclusion of 1.9 million people from the Assam NRC' Amnesty International India (6 September 2019) <https://amnesty.org.in/news-update/amnesty-india-joint-statement-to-condemn-the-exclusion-of-1-9-million-people-from-the-assam-nrc/>; Arunabh Saikia, 'How many times will NRC test your Indian citizenship? Depends on which community you belong to' (Scroll.in, 25 July 2019) <https://scroll.in/article/931646/how-many-times-will-nrc-test-your-indian-citizenship-depends-on-which-community-you-belong-to>

areas, with a history of poor record-keeping and documentation, and women who tend to be left off many official documents (such as property deeds) or who have settled in a new area upon being married. Moreover, some of the evidentiary requirements, for example, personal testimony by village council members in certain situations, would be difficult for people from marginalised groups to fulfil.

In addition, the process of ‘objections’ whereby anyone can contest the citizenship claims of another person is highly vulnerable to – and indeed might be designed to facilitate – discriminatory outcomes. This NRC mechanism renders religious and linguistic minorities particularly vulnerable to exclusion from the citizenship rolls. It also has the potential to create an exclusionary and hostile environment for them, as starkly evidenced by *en masse* objections organised by Hindu-nationalist groups in some areas.

## 2.2. The right to a fair trial

The right to a fair trial is a fundamental right under international law. In addition to the UDHR and the ICCPR, Article 5 of the ICERD recognises the right to equal treatment before judicial authorities and all organs administering justice. Article 18 of the ICRMW recognises the right to equality before courts and tribunals and a fair and public hearing by a competent,

independent and impartial tribunal established by law.

The right to equality in the administration of justice is not incumbent on citizenship. The Committee on the Elimination of Racial Discrimination has emphasised that the right to equality before tribunals must be extended to ‘all persons living in a given State’.<sup>222</sup> The UN HRC has interpreted the right to equality before the law<sup>223</sup> to mandate substantive and procedural due process guarantees of non-discrimination to ensure a fair trial.<sup>224</sup>

It follows that States must ensure that any decision relating to the acquisition, deprivation or change of nationality is procedurally fair. This includes the provision of an effective remedy by way of a review process by a competent administrative or judicial authority who can ensure that any such deprivation is in consonance with relevant domestic and international human rights law standards.<sup>225</sup>

The Foreigners Tribunals, which are quasi-judicial authorities created by the Central Government under the Foreigners Act, do not fulfil the guarantees of procedural standards under international law. There is no clear, consistent procedure that has been laid down in the Foreigners Act for these bodies. The Foreigners Tribunals are allowed to set up their own procedures. The High Court of Assam has refused to apply the standards in the national Code

<sup>222</sup> CERD, General Recommendation XX(48) on Article 5 of the Convention UN Doc A/51/18. Forty-Eighth session (1996), para. 3.

<sup>223</sup> ICCPR, Art. 14.

<sup>224</sup> UNCHR ‘General Comment 18’ in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies’ (1994) UN Doc HRI/GEN/1/Rev.1.

<sup>225</sup> UNCHR ‘General Comment 18’ in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies’ (1994) UN Doc HRI/GEN/1/Rev.1. paras 62–63.

of Civil Procedure to Foreigners Tribunals, reiterating that these quasi-judicial bodies can formulate their own procedure. This leaves individuals who shoulder a reverse burden of proof additionally dealing with unclear, inconsistent procedural and evidentiary standards and subject to the considerable discretion enjoyed by government-appointed tribunal members.

The competence, independence and impartiality of the decision-makers is an essential element of the right to fair trial. As discussed in Section III, the national and state governments control appointments to Foreigners Tribunals. Eligibility standards for Foreigners Tribunal members have been repeatedly diluted over the years, resulting in the enlisting of members who do not possess adequate judicial experience or capability to determine something as grave as a person's citizenship status. The tenure of the lawyers appointed as tribunal members were limited to two years, extendable on the basis of 'need and performance'. Amnesty International has argued that appointees are incentivised to declare people to be foreigners.<sup>226</sup> Based on the information available, we are of the view that the Foreigners Tribunals do not fulfil the requirements of competence, independence and impartiality that form

the crux of the right to a fair trial. Their role and functioning amount to a violation of Article 14 of the ICCPR for any person who has been required to demonstrate their citizenship before these bodies.

### 2.3. The Right to Liberty

For many people, the NRC process has also resulted in interference with their right to liberty, which has been recognised by way of provisions against arbitrary arrest and detention, and which have been construed to constitute customary international law,<sup>227</sup> from which there can be no valid denunciation.<sup>228</sup> State Parties are obligated to ensure due process safeguards in order to prevent arbitrary deprivation of liberty. They are also obligated to respect the inherent dignity of the incarcerated and ensure effective remedies to challenge unlawful detention before judicial authorities.<sup>229</sup> The definition of arbitrariness includes elements of appropriateness, injustice, lack of predictability and due process of law. Therefore, detention must be for a legitimate purpose, for the shortest possible period in light of all the circumstances, and used only as a last resort. It must also not be subject to periodic review.

<sup>226</sup> Amnesty International India, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019) 25-27 <[https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf)>

<sup>227</sup> HRC, General Comment 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under Article 41 of the Covenant, UN doc. CCPR/C/21/Rev.1/Add.6 (4 November 1994) para. 8.

<sup>228</sup> HRC, General Comment 26(61): General Comments Adopted By The Human Rights Committee Under Article 40, Paragraph 4, Of The International Covenant On Civil And Political Rights , UN doc. CCPR/C/21/Rev.1/Add.8/Rev.1 (8 December 1997) para. 3.

<sup>229</sup> The ICJ has stated that "wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights". See *United States Diplomatic and Consular Staff in Tehran*, Judgment, *ICJ Reports 1980*, 42.

The Assam Government has justified detaining so-called ‘doubtful citizens’ for administrative expediency: to ensure their availability for eventual removal or deportation.<sup>230</sup> However, under the current system, the government need not give reasons for its claim that detained individuals are ‘flight risks’. We note here that UN bodies have repeatedly emphasised in relation to immigration detention that deportation or removal of the detainees can be a legitimate reason for detention only in exceptional circumstances when the nexus between deprivation of liberty and deportation is close and proximate.<sup>231</sup> With detention in Assam, the government has not demonstrated why detention is essential for deportation or removal, nor has it demonstrated (because factually, it would be unable to) that deportation is proximate.

Moreover, even if the government were to demonstrate that detained individuals were flight risks or risks to public safety, the current system allows for indeterminate, indeed indefinite detention, without routine and regular review. Detainees are held in prison-like conditions that Indian HRIs have recognised as deplorable<sup>232</sup> with little prospect of voluntary removal or even deportation. As such, ongoing detention of so-called ‘doubtful citizens’ constitutes a clear violation of the right to liberty and right to be free of arbitrary detention under Article 9 of the ICCPR. It also violates the right to be treated with

humanity and respect in detention under Article 10 of the ICCPR.

We note also that under the current system, children continue to be detained indefinitely. This is a stark violation of India’s obligations to respect and protect the best interests of the child under the CRC.

#### **2.4. The right to nationality**

Article 15 of the UDHR, states that everyone has the right to nationality and that no one should be deprived of this right arbitrarily.<sup>233</sup>

The ICCPR does not specifically recognise a right to nationality. However, it protects several ICCPR rights that are relevant to preventing and reducing statelessness and arbitrary loss of nationality. These include ICCPR provisions on non-discrimination (Article 2 and Article 26), gender equality (Article 3 and 23), the right of every child to acquire a nationality (Article 24), and the right to freedom of movement (Article 12). Article 13 of the ICCPR, which states that an alien who is residing lawfully in a State territory may not be expelled arbitrarily and even if the decision to expel has been arrived at in accordance with the law, the individual shall have the right to have such expulsion reviewed by a competent judicial authority, is also relevant. General Comments by the UN Human

<sup>230</sup> White Paper on the Foreigners’ Issue. Home and Political Department, Government of Assam, Foreigners’ Issue.

<sup>231</sup> UNHRC ‘Report of the Working Group on Arbitrary Detention to the 13th session of the Human Rights Council’ (18 January 2010) A/HRC/13/30.

<sup>232</sup> Studio Nilima, ‘Report Of Visit To District Jail, Goalpara’ (n 158). See also Sangeeta Pisharoty, ‘Bad Food, Hunger Strikes: What Life Is Like If You’re Not On Assam’s NRC List’ (n 157).

<sup>233</sup> UNGA, Resolution 50/152 adopted by the General Assembly UN Doc. A/RES/50/152(9 February 1996) para. 16. Also affirmed in HRC Resolutions 7/10, 10/13, 13/2, 20/5 and 26/14 on Human rights and arbitrary deprivation of nationality.

Rights Committee further elucidate these provisions in relation to nationality and statelessness.

Other human rights treaties to which India is a party also protect different elements of the right to a nationality. Article 5(d)(iii) of ICERD obligates State Parties to guarantee equality before the law, regardless of race, colour or national or ethnic origin, in relation to the right to nationality,

Article 9(1) of CEDAW states that women must enjoy the same rights as men to acquire, change or retain their nationality. Article 9(2) states that women have equal rights to men with respect to passing on their nationality to their children.<sup>234</sup>

Articles 7 and 8 of the CRC recognises that all children have the right to birth registration and the right to acquire a nationality. State parties must ensure the implementation of these rights in accordance with national law and international obligations, particularly in cases where the child would otherwise be rendered stateless and States should undertake to respect the right of the child to preserve their identity, which includes their nationality, without any unlawful interference. Article 8 of the CRC and Article 25(4) of the CPED both recognise the right of every child to preserve their

identity, including nationality, and also to re-establish this identity if illegally deprived of it. The UN Secretary-General has emphasised that children have a right to acquire a nationality regardless of the parents' race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>235</sup>

The UN Secretary-General has noted that while States have the right to control the acquisition and loss of citizenship for individuals within their domestic territory, this right is not absolute. States must comply with their human rights obligations as well as the principles of the pursuit of a legitimate purpose<sup>236</sup> and proportionality when granting or divesting nationality.<sup>237</sup> When States legislate on citizenship and nationality, they should do so in a manner that prevents statelessness as far as possible.<sup>238</sup>

To be non-arbitrary, deprivation of nationality must be non-discriminatory as well as reasonable in the particular circumstances of the situation and in accordance with the provisions, aims and objectives of the ICCPR.<sup>239</sup> The deprivation of nationality on discriminatory grounds such as race, sex, language, religion, colour, origins,

<sup>234</sup> Articles 1, 2 & 3 of the Convention on the Nationality of Married Women (CNMW) also contain provisions regarding the loss or acquisition of citizenship of a woman as a result of marriage, divorce or a change in the husband's nationality during marriage.

<sup>235</sup> HRC, Report of the Secretary-General on the Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire a nationality, inter alia, of the country in which they are born, if they otherwise would be stateless, UN Doc A/HRC/31/29 (16 December 2015) para. 8.

<sup>236</sup> HRC, Report of the Secretary-General on Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/13/34 (14 December 2009) para. 59.

<sup>237</sup> Official Records of the General Assembly, *Sixty-first Session, Supplement No. 10 (A/61/10)*, Chap. IV, Commentary on Article 4, para. 6.

<sup>238</sup> HRC, Report of the Secretary-General on Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/13/34 (14 December 2009).

<sup>239</sup> CCPR General Comment No. 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (8 April 1988) para. 4.

property, birth or other statutes, constitutes a violation of rights and freedoms guaranteed in the instruments highlighted above.<sup>240</sup> Discriminatory deprivation of nationality would constitute arbitrary interference with nationality.<sup>241</sup> State actions that automatically deprive a person of nationality or that deprive a person of nationality without due process and a fair hearing would also be considered arbitrary.<sup>242</sup>

Arbitrary deprivation of nationality can lead to violations of other, non-derogable rights, such as the right to freedom from torture, cruel, inhuman or degrading treatment or punishment.

It is our view that the manner in which the NRC in Assam has been conducted violates the prohibition on arbitrary deprivation of nationality. The aim, conduct and effects of the NRC have been discriminatory, as discussed earlier. It also suffers from continuing procedural unfairness and the lack of effective remedies (discussed below). As such, any deprivation of nationality that results from the NRC cannot be viewed as reasonable under international law.

We are particularly concerned and disappointed by the Indian Supreme Court's order extending the deprivation of citizenship to the children of those declared to be foreigners during the NRC process.<sup>243</sup> Bearing in mind our analysis

above about the NRC, we are of the view that extending the loss of citizenship to children violates India's obligations under Article 8 of the CRC and Article 24(3) of the ICCPR, which prescribe the independent nationality rights of children.

## 2.5. The right to freedom of movement

Article 12 of the ICCPR provides that 'everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement', and further that 'no one shall be arbitrarily deprived of the right to enter his own country'. Restrictions to this right must be prescribed by law, necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and be consistent with the other rights recognized in the Covenant.

The UNHRC has interpreted Article 12(4) beyond the limits of formal nationality in determinations such as *Warsame vs. Canada*<sup>244</sup> and *Nystrom vs. Australia*.<sup>245</sup> In both these cases, the HRC interpreted the term 'one's own country' with a focus on the individual's ties to particular geography rather than formal citizenship status. Factors used to determine 'one's own country' included family ties, the language spoken, duration of residence in the country, and intention of

<sup>240</sup> HRC, Report of the Secretary-General on Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/13/34 (14 December 2009) para. 21-22.

<sup>241</sup> CCPR General Comment No. 27: Article 12 (Freedom of Movement) UN Doc CCPR/C/21/Rev.1/Add.9 (27 February 2007) para. 34.

<sup>242</sup> HRC, Report of the Secretary-General on Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/13/34 (14 December 2009).

<sup>243</sup> *Assam Public Works vs Union Of India*, Supreme Court of India, WP (C) 274/2009.

<<https://indiankanoon.org/doc/135202420/>>

<sup>244</sup> *Jama Warsame v Canada* Comm no CCPR/C/102/D/1959/2010 (UN Human Rights Committee, 1 September 2011).

<sup>245</sup> *Nystrom v Australia* Comm no 1557/2007 (UN Human Rights Committee, 1 September 2011).

remaining (without having similar ties to another country).

Applying the HRC's approach, it is strongly arguable that persons excluded from the NRC who have been born in India or have been resident in India at least since 1971 or even 1947 undoubtedly possess strong links and socio-cultural ties to India: so much so that India could be credibly said to be 'their own country'.<sup>246</sup> The vast majority would have family ties and intend to remain in India. Large numbers would lack similar ties to Bangladesh, even if they are Bengali speakers. In this context, the expulsion of these individuals from India would violate India's legal obligation under Article 12 of the ICCPR.

The *act* of expulsion would very likely violate Article 12 of the ICCPR. In addition, the NRC's citizenship determination *framework*, which has created the risk of large-scale statelessness and thereby mass expulsion, violates Article 12 of the ICCPR.

### 3. Violations of IHRL in relation to anti-CAA protests

We evaluate the Citizenship Amendment Act with reference to international human rights law in Annexure 1 of this report.

Here, we focus on the government's response to anti-CAA protest in Assam.

As discussed in Section III.2.8, the Government of Assam imposed prolonged curfews and movement restrictions, as well as restrictions on internet access in response to anti-CAA protests in the state. The government's actions potentially violated the right to freedom of opinion and expression as well as the right to freedom of peaceful assembly.

Article 19 of UDHR recognises the right to freedom of opinion and expression. Article 19 of the ICCPR also recognises the right to freedom of opinion and freedom of expression, and specifies the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>247</sup> Article 5 of the ICERD also recognises the right to freedom of opinion and expression.<sup>248</sup> States must not interfere with the enjoyment of the right to freedom of expression and opinion. This includes not interfering with the working of journalists or media outlets. States should not punish or penalise journalists, writers, bloggers or any media personnel for their differing opinion or any kind of condemnation and denunciation of the State.

Under Article 20 (1) of the UDHR, everyone has the right to freedom of peaceful assembly and association. Article 21 of the ICCPR recognises the right of peaceful assembly and states that no restrictions may be placed on the exercise of this right other than those

<sup>246</sup> ANI, 'No Relation To Us, Says Bangladesh On Illegal Immigration Amid Assam Row' (NDTV 1 August 2018) <https://www.ndtv.com/india-news/no-relation-with-us-bangladesh-on-illegal-immigrants-in-assam-1893131>. See also PTI, 'CAA, NRC 'internal matters' of India: Bangladesh PM' The Economic Times (19 January 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/caa-nrc-internal-matters-of-indiabangladesh-pm/articleshow/73374451.cms>>

<sup>247</sup> Article 19 UDHR <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>

<sup>248</sup> Article 5 (viii) of ICERD <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>>

imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Under Article 5(ix) of the ICERD, the right to freedom of peaceful assembly and association is recognised.<sup>249</sup> Article 15(1) of the CRC recognises the rights of children to freedom of association and freedom of peaceful assembly.<sup>250</sup>

The Human Rights Committee emphasises the importance of the right of peaceful assembly for citizens to state their grievances and aspirations and influence governance.<sup>251</sup> Peaceful assembly here is to include peaceful protests and is interlinked with freedom of expression and participation in the management of public affairs.<sup>252</sup>

The right to freedom of opinion and expression as well as the right to assembly and association are both qualified rights. The right to freedom of expression can be restricted as long as restrictions are provided by law and are necessary for (a) respect of the rights or reputations of others, or (b) for the protection of national security or public order (*ordre public*), or of public health or morals.<sup>253</sup> The right to freedom of assembly may be restricted as long as such restrictions are (a) imposed in conformity with the law, and (b) 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>254</sup>

The Human Rights Committee notes that a restriction on either of these rights must meet the following criteria:<sup>255</sup>

- i. It must be provided by law, which requires not just a legal basis for the restriction but also that the relevant legal norm should be clear, precise and accessible.
- ii. The restriction should have a legitimate aim, as laid down in Article 19(3) of the ICCPR in relation to freedom of expression and Article 20 of the ICCPR in relation to freedom of assembly.
- iii. The restriction provided should be necessary to achieve this legitimate aim and proportionate to achieving that aim, i.e., it should be the least restrictive means of achieving the legitimate aim.

Clearly, internet shutdowns in Assam *prima facie* limited the right to freedom of expression.

While publicly available information is not comprehensive, we are concerned that these internet shutdowns potentially violated the right to freedom of expression. In other parts of India, the government has cited two main sources of legal authority for shutting down the internet: (i) Section 144 of the Code of Criminal Procedure 1973 and Section 5(2)

<sup>249</sup> ICERD <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>>

<sup>250</sup> CRC <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>>

<sup>251</sup> <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/Freedom-Peaceful-Assembly-Index.aspx>

<sup>252</sup> ICCPR <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>>

<sup>253</sup> Article 19(3) of the ICCPR.

<sup>254</sup> Article 20 of the ICCPR.

<sup>255</sup> CCPR, General Comment 34.

of the Telegraph Act 1885. Section 144 of the Code of Criminal Procedure 1973 can only be invoked in case of an ‘imminent threat to peace’. Section 5(2) of the Telegraph Act is only to be invoked in cases of ‘public emergency’.

It would be important to look at the specific circumstances in which these provisions were invoked to impose blanket internet bans in Assam to ascertain if these domestic law standards were met in each instance, and if so, whether the resulting restriction was *necessary* to achieve one of the legitimate aims specified in Article 19(3) of the ICCPR, and proportionate to that aim. The Siracusa Principles require that aims such as public order and national security, while legitimate in principle, should not be loosely invoked. When invoking these grounds to restrict expression or assembly, the State must show that the risks to be averted are concrete and proximate, and that rights-restrictive measures are rationally connected with averting those risks.

On the face of it, a blanket ban of the sort imposed in Assam appears to be disproportionate, and, therefore, violative of the right to freedom of expression. A closer examination of the information available to the government and reasoned justification would be necessary to reach a firmer conclusion. We note with concern, however, the resort to sweeping internet shutdowns in Delhi and Uttar Pradesh during anti-CAA protest, and in Jammu and Kashmir in 2019-2020. Human rights organisations including Article 19<sup>256</sup> and Human Rights

Watch<sup>257</sup> have noted (in relation to Jammu and Kashmir) that the national government used a sweeping internet ban to restrict information and control the political narrative emerging from Kashmir. The BJP government in Assam resorted to an information-suppression measure that BJP governments in other parts of India have also used when faced with public protest. We are concerned about what is a recurring, and seemingly disproportionate, practice.

Similarly, prolonged curfews and movement restrictions across the State, as well as the arrests for participating in protests against the CAA-NRC, are violations of the right to assembly and association as they have been imposed to restrict protests against State policies. This cannot be said to be a legitimate purpose under the ICCPR or pass the tests of necessity and proportionality.

Further, as stated earlier, a key facet of the freedom of speech and expression is respecting and protecting media freedom, particularly in relation to criticism of the State. Therefore, the notice from the national Ministry of Information and Broadcasting to TV channels asking them to be cautious about broadcasting any content which ‘promotes anti-national attitudes’ or which affects the ‘integrity of the nation’ appears, *prima facie*, to violate the right to freedom of expression. The vagueness of the directive raises serious doubts about whether it would meet the ‘prescribed by law’ requirement for any restriction on freedom of expression, which requires not just a legal basis for a

<sup>256</sup> ‘India: Restore Internet in Jammu and Kashmir’ (*Article 19*, 12 August 2019) <<https://www.article19.org/resources/india-restore-internet-in-jammu-and-kashmir/>>

<sup>257</sup> ‘India: Restore Kashmir’s Internet, Phones’ (*Human Rights Watch*, 28 August 2019) <<https://www.hrw.org/news/2019/08/28/india-restore-kashmirs-internet-phones>>

restriction but also adequate clarity and precision. Further, the broad nature of the directive strongly indicates that it was disproportionate and went further than necessary, even if it was issued in pursuit of the legitimate aim of public order or national security.

The subsequent, apparently unprovoked, attack by police on a private television news channel and assault of its staff appears to be a gross violation of the right to the freedom of speech and expression, which would have implications not just for the particular media outlet that was attacked but all media outlets in Assam.

Turning to the right to freedom of peaceful assembly, we do not have sufficiently specific information about curfews and movement restrictions in different parts of Assam. We take this opportunity to reiterate that this right is often exercised to criticise governments, and is, therefore, particularly prone to excessive restriction. The ICCPR imposes a high standard for the justifiability of restrictions on peaceful assembly, noting that such restrictions must be, *inter alia*, **necessary in a democratic society**. This implies that peaceful assembly cannot simply be restricted to suppress or deflect criticism.

#### **4. Violations of IHRL related to anti-terror laws**

The use of anti-terror laws in Assam since 2019 raises serious concerns related to **the right against arbitrary detention, the right to equality and non-discrimination,**

**the right to a fair trial, and the right to freedom of peaceful assembly.**

States have an obligation to ensure that any measures taken to combat terrorism or violent extremism comply with international human rights law.<sup>258</sup> Article 14(2) of the ICCPR and Article 11(1) of the UDHR recognise the principle of presumption of innocence till proven guilty in accordance with due process. Article 14 of the ICCPR provides that a person charged with a criminal offence has the right to be tried without undue delay as well as other due process standards.

Article 15(1) of the ICCPR requires no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Tacitly, Article 15(1) is also enshrining the principle of legal certainty', which requires that criminal laws must be sufficiently precise in defining what types of behaviour and conduct constitute a criminal offence and the consequences of committing such an offence.

India's anti-terror legislation as well as its disproportionate application to Muslim minorities arguably violates these international standards. The UAPA sits very uneasily with the principle of legal certainty by laying down vague and extremely broad definitions of terrorism that includes the death of or injuries to any person, damage to any property, an attempt to 'overawe any public functionary' by means of criminal force, and any act to compel the government or

<sup>258</sup> Human Rights Council Resolution 22/6.

any person to do, or abstain from doing, any act. It also includes any act that is 'likely to threaten' or 'likely to strike terror in people', and thus gives very wide power to the State to declare any ordinary citizen or activist a terrorist.<sup>259</sup> The UAPA allows the police up to six months to investigate a case<sup>260</sup> as compared to the usual 60 or 90 days permitted under the Code of Criminal Procedure 1973.<sup>261</sup> During this time, the accused can be held in custody without any charge or any evidence being presented against them. The threshold for bail under the UAPA is heightened such that pre-trial detention is the overwhelming norm for those charged under the Act. Rather than weighing the risk that the accused might commit an offence or abscond or intimidate witnesses if released, the court must consider whether there are reasonable grounds for believing that the accusations against the accused are prima facie true.<sup>262</sup> The bail hearing becomes an abridged, premature trial. The UAPA also significantly expands police powers to search, seize property and survey communications.<sup>263</sup>

These overly broad substantive and procedural powers appear to have been deployed unlawfully in some cases: for

example, the case of Diwar Hussain who was accused of thefts from ATMs, and charged under the UAPA after he survived a police shooting for acts that, if proved, would clearly not amount to terrorist offences. The UAPA also appears to have been used maliciously in some of the cases highlighted in Section III(C), for example to target the activist Akhil Gogoi and others for organising protests against the CAA. Official information about these arrests and charges is not publicly available. But media reporting of these cases raises concerns about potential violations of the **right against arbitrary detention, the right to a fair trial, and the right to peaceful assembly**, that need further inquiry.

If the UAPA has been frivolously or disproportionately used to arrest, investigate and charge Muslims, as some media reports indicate, this additionally raises concerns about violations of **the right to equality and non-discrimination**. It is worth noting in this regard that the disproportionate deployment of anti-terrorism laws against Muslims has been noted by researchers in other parts of India.<sup>264</sup>

<sup>259</sup> Section 15, The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India) [hereinafter UAPA]. For a discussion of the UAPA in this regard see Surabhi Chopra, 'National Security Laws in India: The Unraveling of Constitutional Constraints' (2016) 17(1) *Oregon Review of International Law* 101, 111-115.

<sup>260</sup> Section 43(D)(2), UAPA.

<sup>261</sup> Sections 436-437(1)-(2) Code of Criminal Procedure 1973. (Section 2 of the Code of Criminal Procedure divides offenses into those that are "bailable," which are less serious, and those that are "non-bailable," which are more serious. Section 436 of the Code provides a right to bail for persons accused of bailable offenses. Section 437 provides a right to bail compulsorily subject to conditions for persons accused of non-bailable offenses punishable with 7 years or more of imprisonment, but far more restrictive access to bail for persons accused of offenses punishable with death or life imprisonment).

<sup>262</sup> Section 43D(5), UAPA.

<sup>263</sup> Sections 43A-43B, UAPA. For a discussion of the UAPA in this regard see Surabhi Chopra, 'National Security Laws in India: The Unraveling of Constitutional Constraints' (2016) 17(1) *Oregon Review of International Law* 101, 117-121.

<sup>264</sup> South Asia Human Rights Documentation Centre, Alternate Report and Commentary to the United Nations Human Rights Committee on India's Third Periodic Report Under Article 40 of the International Covenant on Civil And Political Rights (1997); Ujjwal Kumar Singh, *The State, Democracy, And Anti-Terror Laws In India* 165-219. (Routledge 2007); Sabrang Communications, *People's Tribunal on The Prevention Of Terrorism Act (POTA)*: Background Document (Sabrang Communications 2004).

## 5. Violations of IHRL related to discriminatory legislation and policies

The discriminatory laws and policies of the BJP government in Assam constitute violations of India's obligations under international human rights law, particularly of the right to equality and non-discrimination, the right to work, the right to be free from torture, cruel and inhuman treatment, the right to a fair trial, the right to access to justice and the right to education.

Assam's cow protection legislation is feared to lead to the rise of right-wing Hindu cow vigilante groups which, in other parts of India, have used the stringent provisions of such law to assault and, in some cases, even lynch minorities engaged in the livestock business. Under the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), discrimination on the basis of race and ethnicity is prohibited and States are obligated to protect religious and any other minority populations and to prosecute the persons responsible for discrimination and violence on such minorities. Article 4 of the ICERD requires governments to declare "all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin" as offences punishable by law and Article 2(1) obligates States to punish all

acts of violence motivated by racial, ethnic or national origin.

Further, Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>265</sup> recognises the right to work and includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. Under Article 6(2), States are obligated to take steps to safeguard this right through appropriate policies. A core obligation of the government is to ensure non-discrimination and equal protection of employment<sup>266</sup> and to avoid any measures that result in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalised individuals and groups or weaken mechanisms for the protection of such individuals and groups, as discrimination in employment can have a considerable impact on the work situation of individuals and groups.

Cattle-related industries such as slaughterhouses and meat shops are mostly run by Muslims and jobs such as disposal of cattle carcasses are traditionally done by Dalits.<sup>267</sup> As cows are sacred to the Hindu-majority population, the primary targets of such legislation are Muslim traders.<sup>268</sup> Therefore, while the text of the cow protection law does not expressly single out religious minorities, the trajectory of such laws in other BJP-run states (discussed in more detail in Annexures I [All India] and V [Uttar Pradesh]) shows

<sup>265</sup> International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, G.A. Res. 2200A (XXI), entered into force on 3 January 1976. Ratified by India on 10 April 1979.

<sup>266</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, E/C.12/GC/18, 6 February 2006, para. 31.

<sup>267</sup> Human Rights Watch, 'Violent Cow Protection in India: Vigilante Groups Attack Minorities' (18 February 2019) <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

<sup>268</sup> Washington Post <[https://www.washingtonpost.com/world/asia\\_pacific/cows-are-sacred-to-indias-hindu-majority-for-muslims-who-trade-cattle-that-means-growing-trouble/2018/07/15/9e4d7a50-591a-11e8-9889-07bcc1327f4b\\_story.html](https://www.washingtonpost.com/world/asia_pacific/cows-are-sacred-to-indias-hindu-majority-for-muslims-who-trade-cattle-that-means-growing-trouble/2018/07/15/9e4d7a50-591a-11e8-9889-07bcc1327f4b_story.html)>

that, in *effect*, it results in **discrimination** and increased violence against minority cattle traders in violation of international human rights standards. The law also disproportionately affects **the right to work** of Muslims and Dalits. Bearing in mind the rhetoric and wider policy positions of Assam's senior political leadership, we are concerned that the law is designed to have discriminatory, impoverishing and violence-facilitating effects. To the extent that the law facilitates violence by Hindu-Right groups against Muslims, it would also violate the State's responsibility to protect individuals from **torture, as well as cruel and inhuman treatment**.

Under Article 16(e) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), men and women have been granted the same rights to decide freely and responsibly on the *number* and spacing of their children and to have access to the information, education and means to enable them to exercise these rights, which is an express recognition of the human right to reproductive choice. Article 12 of the ICESCR recognises the right to health. Reproductive health has further been recognised as an integral part of the right to health,<sup>269</sup> implying that women and men have the freedom to decide if and when to reproduce. The right to health recognises that all coercive practices in sexual and reproductive health care should be rejected and puts a duty on the states to refrain from interfering with the

individuals' right to exercise their sexual or reproductive health and 'to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to ensure the full realization of the right to sexual and reproductive health'.<sup>270</sup>

Article 25 of the ICCPR recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service in recognition of their right to self-determination. It has further been held that any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria and the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.<sup>271</sup>

The attempts of the BJP government to mandate a two-child policy as an eligibility criterion to avail benefits of government welfare schemes intervene, on the face of it, with the reproductive rights of women and men in contravention of Article 16(e) of CEDAW and Article 12 of the ICESCR. In addition, state initiatives that focus on limiting the number of children that Muslim families have are *prima facie* discriminatory on the grounds of religion. Policies barring those with more than two children from contesting local government elections and being eligible for government jobs interfere with Article 25 of the ICCPR, and the Government of Assam would need to

<sup>269</sup> CESCR General Comment 14 on the Right to Health

<sup>270</sup> General Comment No. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/GC/22.

<sup>271</sup> General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25. (General Comments).

demonstrate why these limits on the right to stand for election are objective and reasonable. In an affidavit filed before the Supreme Court in December 2020, the national government admitted that international experience shows that state coercion to have a certain number of children is counter-productive and leads to demographic distortions.<sup>272</sup> This strongly suggests that the policies restricting family size in Assam are arbitrary, coercive and discriminatory.

Under Article 16 of the UDHR, men and women of full age and with full consent have the right to marry and to found a family without any limitation due to race, nationality or religion. Article 23 of the ICCPR recognises the right of men and women of marriageable age to marry and to found a family with consent. Article 10 of the ICESCR states that the widest possible protection and assistance is to be accorded to the family, which is the natural and fundamental group unit of society. Further, Article 12 of the UDHR and Article 17 of the ICCPR recognise the right to privacy of an individual stating that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence. The expression 'arbitrary interference' has been interpreted to also include any interference provided for under the law. States must guarantee that even in cases of interference provided for by law, it should be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. The right to

privacy also envisages that competent public authorities should only be able to call for any information relating to an individual's private life, the knowledge of which is essential in the interests of society.<sup>273</sup>

The move by the Assam government to mandate disclosure of information before marriage limits **the right to privacy**. Therefore, the government is required to justify why these limits are necessary, reasonable and proportionate. Moreover, the fact that reporting obligations are placed *only* on individuals entering into an inter-faith marriage directly discriminates on the grounds of religion and therefore violates **the right to equality and non-discrimination** under the ICCPR. Further, though the Assam government may not have prohibited interfaith marriages or religious conversion consequent upon marriage, the trend in other BJP-ruled states of such 'love jihad' laws as well as Sarma's accusations against Muslim men of waging 'love jihad', lead to a troubling inference that the data about the religion of couples, collected under the aforementioned law, has the potential to be used to target interfaith couples, in violation of the rights to, *inter alia*, privacy and equality as under the UDHR and the ICCPR.

Article 16 of the UDHR and Article 13 of the ICESCR recognise the right to education both as a human right and also as an indispensable means of realising other human rights. It has been stated that

<sup>272</sup> 'Coercing People into Family Planning Would be Counter-Productive, Centre Tells Supreme Court' (*Scroll*, 13 December 2020) <<https://scroll.in/latest/981108/coercing-people-into-family-planning-would-be-counter-productive-centre-tells-supreme-court>>

<sup>273</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988, <<https://www.refworld.org/docid/453883f922.html>>

education enhances the individual's sense of dignity, enables all persons to participate effectively in a free society, and promotes understanding among all 'ethnic' groups, as well as nations and racial and religious groups. Under Article 18(4) of the ICCPR, which guarantees freedom of thought, conscience and religion, States are to respect the liberty of parents to the religious and moral education of their children in conformity with their convictions.<sup>274</sup> Education as defined under Article 13 of the ICESCR, comprises four elements: (i) availability of functioning educational institutions and programmes in sufficient quantity in the State; (ii) accessibility - under which educational institutions and programmes have to be accessible to everyone, especially the most vulnerable groups, in law and fact, without discrimination; (iii) acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; and (iv) adaptability - under which education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. One of the elements of Article 13 is that States parties must undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions, which is also in conformity with Article 18(4) of the ICCPR. As per Article 13 (2), States have obligations to respect, protect and fulfil

each of the essential features i.e., (availability, accessibility, acceptability, adaptability) of the right to education, one of the ways of which is to ensure that education is culturally appropriate for minorities and to avoid any measures that hinder or prevent the enjoyment of the right to education. States must also ensure that the right to education is exercised without discrimination of any kind and take steps that must be 'deliberate, concrete and targeted' towards the full realisation of the right to education. Further, the Committee on Economic, Social and Cultural Rights has repeatedly emphasised that States have a **non-retrogression obligation** taken in relation to the right to education.<sup>275</sup>

The decision of the Assam government to close down *madrassas*, though couched in the language of secularising school education, must be examined in the context of the aforementioned rights and obligations. The female literacy rate among Assam's Muslims is quite low and many parents are willing to send their daughters only to *madrassas*, where Islamic education is imparted along with a non-religious curriculum. The closure of the *madrassas* creates a set of circumstances that makes education inaccessible particularly to Muslim girls, limiting the rights laid out above. This move by the Assam government arguably violates Article 18(4) of the ICCPR. It also appears to contravene the State's non-retrogression obligation in relation to education. The government is obligated to justify why the closure of accessible, culturally acceptable schools does not constitute retrogression and is

<sup>274</sup> Human Rights Committee General Comment No. 22 on Article 18 ICCPR, forty-eighth session, 1993.

<sup>275</sup> General Comment No. 13: The right to education (Article 13) (1999) (Adopted by the Committee on Economic, Social and Cultural Rights at the Twenty-first Session, E/C.12/1999/10, 8 December 1999).

compatible with the right to education. Such justification would include, but not be limited to, demonstrating that alternative schooling that is genuinely accessible, acceptable and of good quality is available to students affected by the closure of madrassas. To the extent that the closure of madrassas has led any children to drop out of school, even temporarily, it prima facie violates the minimum core of their right to education.

Further, we are concerned that the closure of madrassas - a visible, official act - might encourage the further marginalisation of Muslims in Assam. While the move to close madrassas is couched in the language of defunding all religious education, we note that Sanskrit educational centres that focus on Hindu scriptures are not being shut down but are being converted to 'centres of learning and research where Indian culture, civilisation and nationalism will be studied'.<sup>276</sup> Recognising that educational policy is resource-constrained and complex, we are unable to draw conclusions from the available information. However, we also emphasise that government policy must comply with the right to equality and non-discrimination. If the policy goal of secularising education is serving as cover for the selective closure of Islamic schools, then this policy would not be compatible with the right to non-discrimination.

## 6. Violations of IHRL related to forced evictions

Forced evictions are violations of a range of international human rights and guidelines related to the right to adequate housing, food, freedom from cruel, inhuman and degrading treatment, right to liberty and security and right to freedom of movement. Forced evictions also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions

Article 11(1) of the ICESCR recognises the right of everyone to an adequate standard of living for their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. It also puts a positive obligation on the States to take appropriate steps to ensure the realisation of this right. Article 25 of UDHR states that every individual has a right to a satisfactory standard of living, as well as enjoyment of clothing, food and medical care. Article 17 of the ICCPR enshrines the right against arbitrary or unlawful interference with a person's privacy, family and home. Right to housing is also recognised under Article 5(e)(iii) of the ICERD and Article 27(3) of the CRC. Article 14 (2)(h) of the CEDAW also recognises the right of women to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications. Article 43 of the International Convention on the

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<sup>276</sup> 'No more Govt-Run Madrasas in Assam from April 1 | All You Need to Know' (*India.com*, 4 February 2021) <<https://www.india.com/news/india/assam-madrassa-news-no-more-govt-run-madrasas-in-assam-from-april-1-all-you-need-to-know-4397183/>>

Protection of the Rights of All Migrant Workers and Members of Their Families accords the right to access housing to migrant workers and their families.

Forced evictions have been defined as the ‘permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection’. It has also been noted that forced evictions occur in the context of armed conflicts, mass exoduses and refugee movements, and, in these circumstances, States must act in full compliance with Article 4 of the ICESCR so that any limitations imposed on the right to housing and against forced evictions must be ‘determined by law only insofar as this may be compatible with the nature of the [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society’.<sup>277</sup>

The definition of the right to adequate housing must include that the right must not be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence and therefore instances of forced eviction have been held to be prima facie incompatible with the requirements of the ICESCR and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.<sup>278</sup> Evictions should not result in individuals being rendered homeless or

vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the States must take all appropriate measures, to the maximum of their available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

A positive obligation has been put on the States to ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimising, the need to use force. Further, legal remedies or procedures should be provided to those who are affected by eviction orders.<sup>279</sup> In recognition of Article 2(3) of the ICCPR which requires States parties to ensure ‘an effective remedy’ for persons whose rights have been violated and the obligation on the ‘competent authorities (to) enforce such remedies when granted’, States must also ensure that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognised in both the International Covenants on Human Rights. The procedural protections which should be applied in relation to forced

<sup>277</sup> General Comment No. 7: The right to adequate housing (Art. 11 (1) of the Covenant): Forced evictions Sixteenth session (1997)\*.

<sup>278</sup> CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)

Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991 (Contained in Document E/1992/23).

<sup>279</sup> General Comment No. 7: The right to adequate housing (Art. 11 (1) of the Covenant): Forced evictions Sixteenth session (1997).

evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected person consents otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to people who need it to seek redress from the courts.

In Resolution 1993/77,<sup>280</sup> the Commission on Human Rights stated that the ‘practice of forced eviction constitutes a gross violation of human rights, in particular of the right to adequate housing’ and urged States to undertake immediate measures, at all levels, aimed at eliminating the practice of forced eviction and to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based on effective participation, consultation and negotiation with affected persons or groups.

In light of the aforementioned rights, the actions of the BJP government in carrying out a series of forced evictions under claims of illegal encroachments

across the State violate the international human rights standards under the right to adequate housing and against forced evictions. There were no alternatives explored to avoid the need for force during these evictions and which led to the deaths of three Muslims, including a 12-year-old boy. The government has stated that the need for these evictions is because Assam cannot be left to intruders, who have also encroached on Hindu temples, without any basis. This cannot be said to be an exceptional circumstance or even a legitimate claim under international law. Though evictions may be permissible under international human rights law in exceptional circumstances, they must be fully justified, authorised by law and in full compliance with relevant provisions of international human rights and humanitarian law, and subject to recourse. In this case, there has been a complete lack of process or procedure during the evictions, and none of the aforementioned procedural standards have been adhered to, leaving Muslims homeless and unable to access any justice or compensation.

## **7. Violations of IHRL related to hate speech and hate crimes**

The right to freedom of expression, while a fundamental human right, is not an absolute right, and may be limited to overriding public and private interests, such as substantive equality and public order. While there is no international definition of hate speech, it has been held to be ‘any kind of communication in

<sup>280</sup> Forced evictions Commission on Human Rights resolution 1993/77, 67th meeting (10 March 1993).

speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor'.<sup>281</sup>

Article 4 of the ICERD has far-reaching and expansive provisions on the issue of hate speech and hate crimes as-

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- b) Shall declare illegal and prohibit organisations, and also organised

and all other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in such organisations or activities as an offence punishable by law;

- c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

The article also requires governments to declare all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin” as offences punishable by law, and Article 2(1) obligates States to punish all acts of violence motivated by racial, ethnic or national origin. Though under Article 5(viii) of the ICERD, States must guarantee the right to freedom of opinion and expression, it does not allow incitement to acts of racially motivated violence.

The ICCPR, under Article 20(2) prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. While the UDHR does not specifically provide for express prohibitions on freedom of expression, Article 7 provides for protection against discrimination and against ‘incitement to discrimination’. Therefore, though States do not need to prohibit all negative statements towards national groups, races or religions, all speech that constitutes incitement to discrimination, hostility or violence must be banned.

<sup>281</sup> United Nations Strategy and Plan of Action on Hate Speech, <<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>>

The right has been interpreted expansively, with members of the HR Committee further stating:

“There may be circumstances in which the right of a person to be free from incitement to discrimination on grounds of race, religion, or national origins cannot be fully protected by a narrow, explicit law on incitement that falls precisely within the boundaries of Article 20, paragraph 2. This is the case where ... statements that do not meet the strict legal criteria of incitement can be shown to constitute part of a pattern of incitement against a given racial, religious or national group, or where those interested in spreading hostility and hatred adopt sophisticated forms of speech that are not punishable under the law against racial incitement, even though their effect may be as pernicious as explicit incitement, if not more so.”

<sup>282</sup>

There are two main ingredients of hate speech (i) intent - the statement must be made for the purpose of advocacy of hatred and with the intent of inciting hatred against a national group, race or identity, and (ii) incitement - the speech must incite a hateful act, though inciting an act is different from causing the act but international courts have looked at causation related factors while assessing whether the speech incited hatred and violence. It must be possible to reasonably anticipate a relationship between speech and the violent act,

which would satisfy the restriction on the right to freedom of speech and expression. Further, importance has been given to the context surrounding the speech and act and the facts and circumstances of each case.

The government has shown a clear pattern of anti-Muslim rhetoric, such as calling Muslims termites, characterising the Bengali-speaking Muslims as ‘aliens’ from whom Assam needs to be ‘saved’ and selectively tweeting details of ordinary crimes where the alleged perpetrators are Muslims. He has also repeatedly accused Bengali-speaking Muslims of encroaching on indigenous land and allowed the local media to characterise Bengali-speaking Muslims as drug traffickers or Pakistani agents and used violent, dehumanising anti-Muslim language in social media. It is to be noted that while each instance of the form speech or expression might not be construed as hate speech strictly, the intent, causation and context cannot be ignored. The government has fostered an environment of pervasive anti-Muslim hate and violence that has contributed to the impunity of the locals in carrying out hate crimes in the region. As stated earlier, the State has obligations under the ICERD as well as the ICCPR to ban all speech that constitutes incitement to discrimination, hostility or violence and these instances are violations of the obligations under the aforementioned international law standards.

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<sup>282</sup> See Concurring Opinion of Evatt, Kretzmer and Klein, in *Faurisson v. France*, Communication No. 550/1993, 8 November 1996, CCPR/C/58/D/550/1993.

## 8. Violations of IHRL related to denigration of Mia culture

Under Article 27 of the ICCPR, minorities are specifically given the right to cultural identity and the right and access to one's culture. Culture under ICCPR is interpreted as a direct link to an individual's identity. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities must not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. Articles 13, 14 and 15 of the ICESCR confer protection and promotion of culture stating that everyone has the right to take part in cultural life, enjoy the benefits of scientific progress and its applications, and benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. The right has been interpreted to include the individual's right to be able to choose their own cultural identity, and freedom to exercise their choice of culture and cultural practices.<sup>283</sup> It also allows for individuals to enjoy their right to freedom of expression and opinion in their choice of language, right to information and assembly, access to cultural and linguistic heritage, and to be educated of one's own culture as well of others. This also includes indigenous people and their right to culture and heritage over their ancestral land and natural resources. The non-discrimination principle, enshrined in a large number of international legal

instruments, constitutes an important legal basis for the mandate of the right to culture. It has been noted that it is generally agreed that the enjoyment of rights and freedoms on an equal footing 'does not mean identical treatment in every instance', which enables the accommodation required to respect and facilitate the expression of various cultural identities.

The right confers negative as well as positive obligations on the contracting States. The contracting States are encouraged to take measures that protect the cultural rights of minorities and indigenous groups. It recommends States to introduce legislative measures and policies that let minorities and indigenous groups freely express their cultural identity. This also includes negative obligations, wherein the State does not interfere with the right of the communities to conserve and promote their culture and identity.

This right protects the right of individuals in practicing, expressing and enjoying their culture and promotes and protects cultural pluralism. This includes encouraging States to introduce steps in the direction of protection, supervision and evolution of the culture.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has six conventions that provide for the protection of culture, cultural heritage, cultural property during armed conflict, and ownership of

<sup>283</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment no. 21, Right of everyone to take part in cultural life (Art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, <<https://www.refworld.org/docid/4ed35bae2.html>>

cultural property.<sup>284</sup> Culture has been defined as ‘the distinctive traits, including the total spiritual, material, intellectual and emotional traits that characterize a society or social group, and that includes, in addition to arts and literature, their ways of life, the manner in which they live together, their value systems, and their traditions and beliefs’.<sup>285</sup>

The Miya community in Assam has the right to their cultural identity and the State has the obligation to not interfere with the rights to the community to promote their culture. The actions of the government in rejecting the inclusion of the community into institutions of cultural significance in Assam for being ‘alien’ to Assamese culture and their claims that Miya ‘language, culture and ethos are alien’ to Assam and the community is a ‘threat to Assam’s culture and identity’, betray the reductive and nativist understanding of the State of culture and also are violations of the international legal standards in this regard and the non-discrimination principle of international law.

## 9. Violations of the right to effective remedy

The right is enshrined in Article 2(3) ICCPR. The obligation to respect, ensure respect for and implement international human rights law, includes, inter alia, the duty to: (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations; (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) Provide effective remedies to victims, including reparation.<sup>286</sup> This right is inherent in the Covenant as a whole and therefore may not be derogated from, even if it is not expressly provided for in Article 4.<sup>287</sup>

While the International Covenant on Economic, Social, and Cultural Rights (ICESCR) does not contain a similar explicit provision, the Committee on

<sup>284</sup> The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two (1954 and 1999) Protocols.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property (1970).

Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).

Recommendation concerning the Status of the Artist (1980).

Universal Declaration on Cultural Diversity (2001).

Convention on the Protection of the Underwater Cultural Heritage (2001).

UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (2003).

Recommendation concerning the protection and promotion of museums and collections, their diversity and their role in society (2015).

<<https://en.unesco.org/human-rights/cultural-life>>

<sup>285</sup> The Preamble to UNESCO’s Universal Declaration on Cultural Diversity (2001).

<sup>286</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principle 3.

<sup>287</sup> UN Human Rights Committee (UNHCR) General Comment No. 29: Article 4: Derogation during a State of Emergency (31 August 2001) UN Doc CCPR/C/21Rev.1/Add.11 para. 14.

Economic, Social and Cultural Rights (CESCR) has noted the applicability of the right to access justice to the rights contained in the ICESCR<sup>288</sup> which are not self-executing and require the institution of remedies to be effective.<sup>289</sup>

The right to remedies and equal treatment has also been reiterated in other human rights treaties to which India is a party, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);<sup>290</sup> the Convention on the Rights of the Child (CRC);<sup>291</sup> the Convention on the Rights of Persons with Disabilities (CRPD);<sup>292</sup> and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).<sup>293</sup>

It has been accepted as a general principle of international law that the breach of an international obligation gives rise to a general duty on the state to repair the harm caused.<sup>294</sup> The International Law Commission's Draft Articles on State Responsibility note that this duty occurs primarily in the form of restitution, compensation and

satisfaction<sup>295</sup> (with cessation and non-repetition being treated as independent obligations as a result of the wrongful act) to end ongoing breaches as well as to ensure that the parties' dignity and rights are respected.

Restitution calls on the state to ensure that the situation that existed prior to the commission of the breach of international law must be restored to the best possible extent. This requires, inter alia, that states ensure the restoration of liberty, citizenship and other legal rights;<sup>296</sup> the release of wrongly detained prisoners; or revoke unlawful legislative or judicial interventions.<sup>297</sup>

Compensation is the remedy most often granted to individual victims of gross violations of human rights and refers to monetary payment<sup>298</sup> that covers both material (economic damage, loss of earnings, legal and administrative costs) and moral (suffering and emotional

<sup>288</sup> UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant) (14 December 1990) UN Doc E/1991/23 para. 5.

<sup>289</sup> UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 9: The Domestic Application of the Covenant (3 December 1998) UN Doc E/C.12/1998/24 para. 9.

<sup>290</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD) Art. 5(a).

<sup>291</sup> The Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) Arts 37, 40.

<sup>292</sup> Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD) Art. 13.

<sup>293</sup> International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 (CPED) Arts. 20-24.

<sup>294</sup> International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1 Art. 1.

<sup>295</sup> International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1 Art. 34.

<sup>296</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principle 19.

<sup>297</sup> International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1 Art. 35.

<sup>298</sup> International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1 Art. 36.

distress, loss of opportunities, harm to individual reputation) injuries.<sup>299</sup>

Satisfaction refers to the need to address non-material injuries in particular,<sup>300</sup> through acknowledging and apologising for the violation of international law, arranging for rehabilitation through providing medical care and social guidance,<sup>301</sup> and pledging to ensure non-repetition in the future through undertaking disciplinary action.<sup>302</sup>

The state owes an obligation to the victim of 'gross violations of international human rights law and serious violations of international humanitarian law',<sup>303</sup> as defined in the 2005 UN General Assembly resolution adopting Basic Principles and Guidelines on the right to a remedy and reparations. These 'gross and systematic violations', while not strictly defined, are understood as acts and/or omissions which cause damage that is assessed by taking into account the type of the violated right, the nature of the violation which may be particularly cruel or depraved,<sup>304</sup> the number of victims, and

repeated occurrences or continuing violations over a significant period.<sup>305</sup>

The resolution combines rights afforded under both international human rights law and international humanitarian law to focus on a complementary body of rights<sup>306</sup> focused on an expansive victim-centric approach, ensuring that persons who 'individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights'<sup>307</sup> are entitled to domestic reparation mechanisms which guarantee effective and equal access to justice.

Therefore, the state is also tasked with undertaking 'prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and [to take] appropriate measures in respect of the perpetrators, particularly in the area of criminal justice'.<sup>308</sup>

<sup>299</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principle 20.

<sup>300</sup> International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc A/CN.4/L.602/Rev.1 Art. 37.

<sup>301</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principles 21-22.

<sup>302</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principle 23.

<sup>303</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principles 4-5.

<sup>304</sup> UNGA 'Vienna Declaration and Programme of Action' (12 July 1993) UN Doc A/CONF.157/23, para. 30.

<sup>305</sup> UN Economic and Social Council (ECOSOC) Res 1503 (XLVIII) (27 May 1970) Procedure for Dealing with Violations of Human Rights and Fundamental Freedoms, UN Doc E/4832/Add.1.

<sup>306</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice, Advisory Opinion of 9 July 2004 [2004] ICJ Reports, para. 106.

<sup>307</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principle 8.

<sup>308</sup> UN Economic and Social Council, Commission on Human Rights, Report on the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (8 February 2005) UN Doc E/CN.4/2005/102/Add.1, principle 19.

This process must be victim-centric, by ensuring victims access to knowledge regarding their rights and the progress of the proceedings that have been instituted; providing legal assistance; minimising inconvenience to victims, avoiding unnecessary delays in ensuring justice; and utilising informal or customary methods of dispute settlement where required.<sup>309</sup> States are also required to collect disaggregated data to combat discrimination<sup>310</sup> to ensure that particularly vulnerable sub-groups are not disadvantaged in the process of seeking justice.

Bearing in mind these binding treaty obligations and soft law standards, the panel is of the view that most victims of the human rights violations identified in this chapter are also highly likely to suffer a further violation of the right to an effective remedy.

The obligation to **exhaust domestic remedies** is considered to be satisfied when a good-faith attempt has been made yet the domestic process is prone to unreasonable delays (which must take into account the circumstances of the case and the nature of the violation<sup>311</sup> to decide whether the case has been unfairly prolonged, and may include instances where complainants are forced to go through multiple layers of administrative and judicial decision-

making beyond what is required by law),<sup>312</sup> there exists institutional bias and the principles of a fair trial are violated leading to unfair outcomes,<sup>313</sup> or there exists a low likelihood of success.<sup>314</sup>

Bearing these international standards and the available information in mind, we believe that the right to an effective remedy is being violated in Assam in relation to the majority of the violations discussed above.

### 9.1. Extrajudicial killings

Publicly available information indicates that the Assam government has not inquired into extra-judicial killings by the police. We have not found any credible reports of criminal investigations into such killings either, suggesting that victims' complaints are being disregarded. Effective investigations into violence by state actors are challenging in most circumstances. In an environment where the senior-most political leader in Assam appears to defend such killing, a robust investigation by the government appears unlikely.

We are aware that the High Court of Assam is currently hearing a public-interest petition on extrajudicial

<sup>309</sup> UNGA Res 40/34 (29 November 1985) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34.

<sup>310</sup> UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 1: Reporting by States Parties (27 July 1981) UN Doc E/1989/22.

<sup>311</sup> For example: Committee on the Elimination of Racial Discrimination, *Quereshi v. Denmark*, Communication 33/2003 (Views of 10 March 2004) U.N. Doc. CERD/C/66/D/33/2003, para.6.4.

<sup>312</sup> Committee on the Elimination of Discrimination against Women, *Jallow v. Bulgaria*, Communication No. 32/2011 (Views of 28 August 2012) U.N. Doc. CEDAW/C/52/D/32/2011, paras. 5.4, 7.3.

<sup>313</sup> Human Rights Committee, *Arzuaga Gilboa v. Uruguay*, Communication No. 147/1983 (Views of 1 November 1985) U.N. Doc. CCPR/C/OP/2 at 176, para. 7.2. See also: Committee on the Elimination of Racial Discrimination, *L. R. et al. v. Slovak Republic*, Communication No. 31/2003 (Views of 3 October 2005) U.N. Doc. CERD/C/66/D/31/2003, para. 9.2.

<sup>314</sup> Human Rights Committee, *Earl Pratt and Ivan Morgan v. Jamaica*, Communication No. 210/1986 and 225/1987 (Views of 6 April 1989) U.N. Doc. Supp. No. 40 (A/44/40) at 222, para. 12.3.

killing.<sup>315</sup> Thus far, however, the High Court has not ordered an inquiry or compensation for victims.

The State Human Rights Commission, following several complaints lodged with the National Human Rights Commission, took *suo moto* cognisance of an increased spate of extrajudicial killings in July 2021.<sup>316</sup> The NHRC sought a report from the police in September 2021 and transferred the case to the State Human Rights Commission in November 2021.<sup>317</sup> Six months later, the findings of the inquiry remain pending. We welcome the SHRC's attention, but are concerned that their inquiry into a seeming pattern of gross human rights violations is proceeding this slowly. Particularly where the government appears to be tolerating, and even encouraging, extrajudicial killing, HRIs should be reacting with urgency.

We note with concern the lack of information about compensation to victims' families. The absence of credible investigation and inquiry can not only undermine criminal justice, but also the fact-finding necessary for monetary compensation and other forms of reparation.

## 9.2. NRC and CAA

The NRC framework and process appear to starkly violate the right to an effective remedy.

As discussed in Section III.2.2, Foreigners Tribunals are quasi-legal bodies with decision-makers who lack adequate capacity, training and independence. The NRC process has been beset with procedural flaws and apparent gender, linguistic and religious bias. Despite these concerns, exclusion from the NRC cannot be effectively challenged given the narrowed jurisdictional scope for appeals before the High Court (as decided by the High Court itself).

Thus, appeals in individual cases would be on limited grounds and unable to effectively address flawed findings of fact, despite reports of widespread mistakes in citizenship determinations. Challenging the fairness of the NRC as a whole appears to us to be effectively foreclosed, or at least made formidably difficult, by the fact that the exercise was prompted and monitored by the Supreme Court.

We are extremely concerned about the lack of access to remedies for individuals who face indeterminate confinement in detention centres. The High Court's orders so far set a very high threshold for release, leaving large numbers of vulnerable individuals - including children - in detention. While the NHRC had undertaken a visit to detention centres in Assam and called for the State to re-examine the conditions of detention centres, follow due process, and ensure that detainees were not forcibly separated or deprived of their

<sup>315</sup> "Arif Jwadder vs. State of Assam & Ors.

<sup>316</sup> 'Assam Human Rights Commission Orders Probe into "Police Encounters"' (*Business Standard*, 13 July 2021) <[https://www.business-standard.com/article/current-affairs/assam-human-rights-commission-orders-probe-into-police-encounters-121071301445\\_1.html](https://www.business-standard.com/article/current-affairs/assam-human-rights-commission-orders-probe-into-police-encounters-121071301445_1.html)>

<sup>317</sup> Utpal Parashar, 'PIL in Gauhati High Court Seeks Independent Probe into Assam Fake Encounters' (*Hindustan Times*, 23 December 2021) <<https://www.hindustantimes.com/india-news/pil-in-gauhati-high-court-seeks-independent-probe-into-assam-fake-encounters-101640264472522.html>>

rights,<sup>318</sup> further interventions have not been made by the NHRC, even when the Covid-19 pandemic heightened risks to detainees in overcrowded, unhygienic facilities. We note with disappointment that India's National Commission for Protection of Child Rights has not advocated for the release of children in detention on an urgent basis.

### 9.3. Forced evictions, hate speech, and hate crimes

In relation to forced evictions, the international standards discussed in Section III.5 above require that the state provide those affected by evictions orders with legal remedies and legal aid.<sup>319</sup> Based on the information available, we see no evidence of accessible appeals mechanisms for those affected by eviction, nor of monetary compensation and alternative housing as required by international law.

We note further that Assam's Chief Minister has endorsed forced evictions and himself been responsible for hate

speech and denigration of Bengali Muslim culture. The Chief Minister's actions coupled with the BJP's legislative majority, his individual popularity, and closeness to the most senior BJP leaders in the national government make administrative remedies for these abuses extremely unlikely.

### 9.4. Discriminatory laws and policies

The judicial response to the CAA has been discussed in detail in Annexure 1 of this report. The Gauhati High Court has upheld the legal amendment closing down madrassas in Assam.<sup>320</sup> Repealing Act 2020 in its order dated 4 February 2022; an appeal against this decision was filed before the Supreme Court on 31 May 2022.<sup>321</sup> Based on the information available to us, there have not thus far been other significant judicial interventions in response to the discriminatory laws and policies in Assam.

<sup>318</sup> 'Report on NHRC Mission to Assam's Detention Centres from 22 to 24 January, 2018' <<https://cjp.org.in/wp-content/uploads/2018/11/NHRC-Report-Assam-Detention-Centres-26-3-2018-1.pdf>>

<sup>319</sup> General Comment No. 7: The right to adequate housing (Art. 11 (1) of the Covenant): Forced evictions Sixteenth session (1997).

<sup>320</sup> The Gauhati High Court upheld the Assam Repealing Act 2020 in its order dated 4 February 2022: 'Assam's 'Convert Madrassas to Schools' Order Challenged in Supreme Court' (NDTV, 31 May 2022) <<https://www.ndtv.com/india-news/assams-convert-madrassas-to-schools-order-challenged-in-supreme-court-3025651>>

<sup>321</sup> The Gauhati High Court upheld the Assam Repealing Act 2020 in its order dated 4 February 2022: 'Assam's 'Convert Madrassas to Schools' Order Challenged in Supreme Court' (NDTV, 31 May 2022) <<https://www.ndtv.com/india-news/assams-convert-madrassas-to-schools-order-challenged-in-supreme-court-3025651>>

## VI. Conclusion

There is credible information that suggests that a wide range of international human rights, both civil and political as well as economic, social and cultural rights have been violated by the authorities in Assam. All of those violations were either targeting Muslims or disproportionately affecting this particular minority group which shows the ideological driver behind these actions.

These state-led abuses have had a serious and long-lasting impact on the direct victims and the wider Muslim community. The ongoing NRC process has already rendered the citizenship status of large numbers of people extremely precarious. It is likely to ultimately strip thousands of people of citizenship, through a process that was arbitrary, and riddled with bias. This would not only violate the right to

nationality on a grand scale, but is also likely to disrupt regional stability.

Despite the pervasiveness and seriousness of the claims made by victims and their families, the authorities have failed to address them through effective remedies and reparation. Indeed, in relation to the NRC, we are concerned that robust judicial remedies have been foreclosed.

Finally, we note that extrajudicial killing, forced evictions, hate speech and vilification of the Bengali Muslim community have been endorsed by the Chief Minister himself. The absence of robust political opposition to the BJP regime in Assam coupled with judicial evasion means that majoritarianism could escalate unchecked. We believe the risk to Muslims in Assam deserves serious domestic and international attention, to prevent further human rights abuses.

## **ANNEXURE III**

### **HATE SPEECH, TARGETED VIOLENCE AND THE PERVERSION OF JUSTICE AGAINST MUSLIMS IN DELHI (FEBRUARY 2020)**

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## I. Introduction

This part of the report deals with the reports of human rights violations against anti-CAA protestors and Muslims in the NCT of Delhi since 2019. **Section II** offers a brief background on the governance structure and demography of Delhi and its affected areas. The reports of human rights violations essentially arise from a series of events which started with the anti-CAA protests led by Muslims. We have gathered the factual allegations arising from four key thematic episodes, listed chronologically in **Section III**. Firstly, the violent crackdown on anti-CAA protestors, mostly Muslims, by Delhi Police; secondly, the hate speeches and incitement to violence against the protestors and Muslims generally, as a part of the political campaign of BJP political leaders; thirdly, the selective and disproportionate targeting of Muslims by Hindu mobs led allegedly by BJP leaders and members, in North-East Delhi in the last week of February 2020 resulting in killings, injuries and destruction of property; and finally, the continuing misuse of anti-terror laws to criminalise anti-CAA protestors along with reprisals against the members of the Muslim community for seeking redress. **Section IV** separately delineates the role and involvement of state and non-state actors who were involved in the aforementioned incidents.

**Section V** engages in an analysis based on applicable international human rights law on whether there is credible information to suggest that serious human rights violations have been carried out against Muslims and human rights defenders who were supporting the religious minority in Delhi from 2019 onwards.

## II. Background

The federal structure of India splits the territory into states and union territories. The union territories, smaller in size and population, are directly controlled by the central government of India. Delhi, officially referred to as the National Capital Territory (NCT) of Delhi, is one of eight union territories of India.<sup>1</sup> Unlike other union territories, Delhi has its own legislative assembly, a council of ministers with the Chief Minister as its head, and a Lieutenant Governor like other federal states. The members of the legislative assembly are directly elected from territorial constituencies in the NCT of Delhi.

New Delhi, an administrative division within the NCT of Delhi, is the capital of both India and the NCT. As the simultaneous seat of the Government of India as well as of the Government of the NCT, it enjoys a unique model of administration. An important exception in the administrative model is that the law

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<sup>1</sup> The status of Jammu and Kashmir has been recently changed from state to union territory in 2021. For more details please see Annexure III. [Official Government of India Website: States and Union Territories](#)

and order of NCT of Delhi are directly controlled by the central government and fall under the purview of its Ministry of Home Affairs. As a result, the police forces and law enforcement are under the jurisdiction of the Home Ministry. Amit Shah, of the Bharatiya Janata Party (BJP), is the Minister of Home Affairs since 30 May 2019, exercising final authority and control over the Delhi police force.

The current legislative assembly of NCT of Delhi is constituted by an absolute majority of a regional political party called Aam Aadmi Party (AAP) since 2015, being re-elected in 2020. During this time, the Delhi government has been led by Chief Minister Arvind Kejriwal.

There are 11 administrative or revenue districts in Delhi.

Hinduism is Delhi's predominant religious faith, with 81.68 per cent of Delhi's population, followed by Islam (12.86 per cent).<sup>2</sup> North East Delhi is one of the 11 districts of the NCT of Delhi. It borders the Yamuna River on the West (see map below),

Ghaziabad district to the North and East, East Delhi to the South, and North Delhi to the West across the Yamuna. As per the 2011 Census, North East Delhi is the most populous district of the city. In 2011, the total population was 2,241,624, with 29.34 per cent Muslims and 16.7 per cent Dalits.<sup>3</sup> It also has the highest population density in Delhi - 36,155 persons per square kilometre. Significantly, North East Delhi has the highest concentration of Purvanchalis, Muslims and migrants from Uttar Pradesh and Bihar. Thousands of migrants live in unorganised colonies in the area, often without basic civic amenities.<sup>4</sup> There are eight Legislative Assembly seats under the North East Delhi constituency: Seemapuri, Gokalpuri, Ghonda, Seelampur, Rohtash Nagar, Babarpur, Karawal Nagar and Mustafabad. The majority of the Muslim population is concentrated in four assembly constituencies, including Ghonda, Seelampur, Mustafabad and Babarpur.<sup>5</sup>

<sup>2</sup> Census 2011 "[Delhi Religion Census 2011](https://www.census2011.co.in/data/religion/state/7-delhi.html)" <<https://www.census2011.co.in/data/religion/state/7-delhi.html>>

<sup>3</sup> Census 2011 "North East Delhi District : Population 2011-2022 data" <<https://www.census2011.co.in/census/district/170-north-east-delhi.html>>

<sup>4</sup> AM Jigeesh, "Nearly 40,000 people living in 1 sq km", The Hindu BusinessLine, 10 March 10 2020 <https://www.thehindubusinessline.com/specials/india-file/nearly-40000-people-living-in-1-sq-km/article31029604.ece>

<sup>5</sup> See Ghazala Jamil, *Accumulation by Segregation: Muslim Localities in Delhi*, Oxford University Press, 2017.

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### III. Factual Context

In keeping with the timeframe of this report (i.e. from 2019 onwards), the section begins with December 2019 as the key starting point for targeted violations against Muslims in Delhi. The early reports on alleged violations in Delhi begin immediately after the Citizenship (Amendment) Act (CAA)<sup>6</sup> was signed into law on 12 December 2019. The following sections deal with the series of events chronologically in the lead up to the targeted violence in North East Delhi in February 2020.

#### I. Violent crackdown on anti-CAA protestors by Delhi Police

On 13 December 2019, the day after the CAA was passed, about 5,000 students of Jamia Millia Islamia University in Delhi initiated the first protest march to the Indian Parliament from their university campus. Jamia Millia Islamia is a Muslim-minority central university with 50 per cent reservation for Muslims. But the first march from the university, in the exercise of the

students' right to assemble and express their political opinion, was stopped by the Delhi Police. According to media reports, the Delhi Police resorted to the use of batons and tear gas shells to control the protests on the day. Dozens of injuries, including several with bone fractures and head wounds, were reported and 50 students were detained to suppress the protest.<sup>7</sup>

On 15 December, in what appears to be an act of reprisal for the collective action, the Delhi police personnel stormed the campus of Jamia Millia Islamia, reportedly without permission of the university authorities, and attacked hundreds of unarmed students including women using batons, tear gas shells, rubber bullets and sound bombs.<sup>8</sup> More than 100 wounded students were admitted to the hospitals in the area.<sup>9</sup> These reports are corroborated by CCTV recordings along with witness testimonies.

CCTV footage from the day shows several policemen in riot gear entering the university's library and beating up the students with batons.<sup>10</sup> One of the students, an eyewitness to the attack, recounts in his testimony to a journalist:

“They [police] did not care about anything. They ransacked

<sup>6</sup> For more details on the law and its inconsistency with international norms, see Annexure I.

<sup>7</sup> PTI “50 Jamia students detained after clash with cops during CAB protest”. *The Hindu*. 13 December 2019.

<sup>8</sup> [AL IND 3/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25080) <<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25080>> (3); Kapil Mishra “Shoot the traitors” Human Rights Watch (April 2020) <<https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>> 32; Sankalp Phartiyal, Aftab Ahmed and Devjyot Ghoshal “Night of horrors’: Inside the Indian university stormed by police” <<https://www.reuters.com/article/india-citizenship-protests-university-idINKBNIYLOJP>>; Sruthisagar Yamunan “Delhi Police were ‘uncontrollable’ as they unleashed violence at Jamia Millia Islamia, students say” <<https://scroll.in/article/946933/delhi-police-were-uncontrollable-as-they-unleashed-violence-at-jamia-millia-islamia-students-say>>

<sup>9</sup> Nehal Ahmed and Grace Raju “‘We heard gunfire’: Jamia students detail police attack on campus” Aljazeera <<https://www.aljazeera.com/news/2019/12/18/we-heard-gunfire-jamia-students-detail-police-attack-on-campus>>

<sup>10</sup> [Tweet](https://www.thehindu.com/news/cities/Delhi/video-of-police-brutality-in-jamia-millia-islamia-library-goes-viral/article30834535.ece), 16 February 2020; Sidharth Ravi “Video of police brutality in Jamia Millia Islamia library goes viral” <<https://www.thehindu.com/news/cities/Delhi/video-of-police-brutality-in-jamia-millia-islamia-library-goes-viral/article30834535.ece>>

everything that came in their way and ruthlessly beat students...Inside [the library] they broke everything, beat students without any care and regard for standard operating procedure. They beat students on their heads and mostly [on the] upper part of the body.”<sup>11</sup>

As has been noted in other parts of this report, the anti-CAA movement grew in the following week with massive demonstrations continuing across Delhi and other parts of the country, attended by thousands of people.

On 16 December, reports on clashes between the police and Muslim anti-CAA protesters started to surface from Seelampur (East Delhi).<sup>12</sup> According to media reports, during the clashes, the protesters pelted stones at the police. At the same time, the police outnumbered the protesters at the site and used batons and tear gas against the Muslim anti-CAA protesters in the Seelampur area, causing dozens of injuries.<sup>13</sup>

The police authorities on 19 December announced a ban on public gatherings across Delhi in an attempt to suppress the

movement. To that effect, the Police also instructed cellular companies to cut communications in key areas where the protests were planned, citing the maintenance of law and order.<sup>14</sup> Peaceful sit-in protests and public gatherings continued despite the bans. As a result, over 1,200 people who defied the ban, including top opposition political leaders, were reported to be detained by the Delhi Police.<sup>15</sup>

On 20 December, reports indicate that the protests turned violent – a vehicle was torched by the protestors, prompting the police to retaliate by using indiscriminate force against protestors and ended up attacking peaceful protestors as well in Daryaganj (a Muslim-majority neighbourhood in central Delhi).<sup>16</sup> The police crackdown caused dozens of injuries. As one eyewitness recounts:

“I saw a middle-aged man in a skullcap (referring to his Muslim identity) drop to his knees and beg for mercy, but the police kept raining batons on him. Blood trickled from the side of his mouth

<sup>11</sup> Aljazeera “India: Footage appears to show police attack on Jamia students”

<<https://www.aljazeera.com/news/2020/2/16/india-footage-appears-to-show-police-attack-on-jamia-students>>; The Wire “Watch | Jamia Students and Eyewitnesses Recount the Horrors of Police Violence” <<https://thewire.in/rights/watch-jamia-students-and-eyewitnesses-recount-the-horrors-of-police-violence>>

<sup>12</sup> Arvind Ojha “Anti-CAA stir: Violence returns to Delhi as Seelampur turns warzone”

<<https://www.indiatoday.in/india/story/seelampur-massive-protest-delhi-1629019-2019-12-17>>

<sup>13</sup> BusinessToday.In “Seelampur protests: Agitators lathicharged, police use tear gas as violence returns to Delhi”

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

<sup>14</sup> “Police order [tweeted](#) by ANI; Joanna Slater and Niha Masih “India muzzles citizenship law protests, detaining thousands and shutting down Internet in several cities” <[https://www.washingtonpost.com/world/asia\\_pacific/india-muzzles-citizenship-law-protests-shutting-down-internet-and-detaining-protesters/2019/12/19/d5bc4ea6-21a7-11ea-b034-de7dc2b5199b\\_story.html](https://www.washingtonpost.com/world/asia_pacific/india-muzzles-citizenship-law-protests-shutting-down-internet-and-detaining-protesters/2019/12/19/d5bc4ea6-21a7-11ea-b034-de7dc2b5199b_story.html)>

<sup>15</sup> Scroll “CAA protest in Delhi: Thousands detained on Thursday morning for defying prohibitory orders”

<<https://scroll.in/latest/947284/citizenship-act-14-delhi-metro-stations-closed-ahead-of-protest-crowds-banned-around-red-fort>>

<sup>16</sup> PTI “Anti-CAA protest: 15 held for Daryaganj violence” The Hindu <<https://www.thehindu.com/news/national/anti-cao-protest-over-dozen-held-for-daryaganj-violence/article61604358.ece>>; India Today “8 minors among 40 detained after violence near Delhi Gate in Daryaganj” (20 December 2019) <<https://www.indiatoday.in/india/story/delhi-gate-daryaganj-citizenship-amendment-act-protest-violence-car-fire-police-1630163-2019-12-20>>

and his right hand. That was the most horrifying moment.”<sup>17</sup>

According to the reports, on 20 December over 40 Muslims were detained, including at least 10 children.<sup>18</sup>

In the meantime, Shaheen Bagh, another Muslim-majority neighbourhood in Delhi, emerged as the symbol of the anti-CAA protests across the country. The continuous sit-in protest in Shaheen Bagh led by Muslim women became a key site of the anti-CAA movement. Since it first caught public attention on December 15, the Shaheen Bagh protest site reportedly became the target of attack of incendiary speeches of ruling BJP leaders, with some deriding the protesters and calling them anti-national or pro-Pakistan.<sup>19</sup>

## 2. Hate speeches and incitement to violence against Muslims

Delhi legislative assembly elections were scheduled for March 2020. As a result, the months of December 2019 to February 2020 witnessed intense electoral campaigning by several political parties in Delhi. At the same time, regular demonstrations were being organised by students, and activists against CAA. These mobilisations were intensified by continuous sit-in protests led by the women in Shaheen Bagh and other Muslim concentrations throughout Delhi.<sup>20</sup>

The election campaign by the BJP candidates, party leaders and senior ministers of the central government focused its attention on targeting Muslims and anti-CAA protestors. The campaign speeches, corroborated through multiple sources, are seen equating the Muslim identity of most protestors with infiltrators and illegal migrants, questioning their right to dissent, and resorting to dehumanising and psychological “othering” of the Muslim community.<sup>21</sup> The reports suggest

<sup>17</sup> Imran A Siddiqui “‘ Brutal night in Daryaganj” <<https://www.telegraphindia.com/india/brutal-night-in-daryaganj-police-station/cid/1729278>>

<sup>18</sup> Hindustan Times ‘Minors detained during citizenship law protest in Delhi’s Daryaganj released’ <<https://www.hindustantimes.com/india-news/minors-detained-after-violence-during-delhi-s-anti-citizenship-act-protest-released/story-TMNkr8sOY0qnVA0Iv59gkI.html>>

<sup>19</sup> Mishra (n 8 above) 1.

<sup>20</sup> See Laila Kadiwal, “Feminists against Fascism: The Indian Female Muslim Protest in India.” *Education Sciences* 11.12 (2021): 793.

<sup>21</sup> The Times of India “Shaheen Bagh, Jamia are a plot to destroy harmony: PM Modi (4 February 2022) <<https://timesofindia.indiatimes.com/india/shaheen-bagh-jamia-are-a-plot-to-destroy-harmony-pm-modi/articleshow/73917319.cms>>;

Newslandry “Why are Amit Shah and Adityanath not being blamed for the Delhi carnage?” (13 March 2022) <<https://www.newslandry.com/2020/03/13/why-are-amit-shah-and-adityanath-not-being-blamed-for-the-delhi-carnage>>;

Scroll “Watch: Union minister Anurag Thakur leads ‘goli maaro saalon ko’ slogans at rally” (27 January 2020) <<https://scroll.in/video/951289/watch-anurag-thakur-minister-of-state-for-finance-lead-goli-maaro-saalon-ko-slogans-at-rally>>;

Shandilya Giriraj Singh on Twitter (6 February 2020)

<[https://twitter.com/girirajsinghbjp/status/1225268618683772928?s=20&t=IdIqRjI9T\\_IIE3SOZpRaA](https://twitter.com/girirajsinghbjp/status/1225268618683772928?s=20&t=IdIqRjI9T_IIE3SOZpRaA)>;

that on at least four occasions, the inciteful speeches led to direct attacks against Muslims, including the week-long targeted attack in February 2020 (discussed in the next section).

On 20 December 2019, Kapil Mishra, a senior BJP politician and a former member of the legislative assembly (MLA) in Delhi, posted a video from his Twitter account where he is seen leading a public march attended by over 5,000 people in support of CAA.<sup>22</sup> The prevailing slogan of the demonstration was ‘*Desh ke ghaddaron ko, goli maaron saalon ko*’ (Shoot dead the bastard traitors to the nation).<sup>23</sup> Indian Muslims are often vilified as traitors in Hindu nationalist circles. The rally was being held at Central Park in Connaught Place – the main commercial, business centre of New Delhi on a Friday late evening.<sup>24</sup> This is the first time this slogan was heard in the context of the anti-CAA

protests and would be used in various other rallies, gatherings and sites of violence in the following months. This slogan was later reported to have been used by violent Hindu mobs while killing Muslims in North East Delhi district in February 2020.<sup>25</sup>

On 26 December 2019, at an election campaign rally in Delhi, the central government Minister of Home Affairs, Amit Shah, was reported to be blaming the ‘*tukde-tukde gang*’ (a disparaging term used for protestors who are allegedly working with the agenda to ‘break’ the nation) for the anti-CAA protests, and, in his speech, he declared that the time had come to ‘teach them a lesson’.<sup>26</sup>

On 27 January 2020, in an election campaign rally being held in Rithala, on the outskirts of Delhi Anurag Thakur, a Member of Parliament and Minister of State for Finance in the central government, was seen

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Newstrack “BJP leader calls Shaheen Bagh as Shaitaan Bagh, says “Hafiz Saeed’s thoughts will not make place in India” (30 January 2020) <<https://english.newstracklive.com/news/bjp-leader-tarun-chugh-calls-shaheen-baag-as-shaitaan-baag-mc23-nu-1066291-1.html>>;

Scroll “‘Goli maaro saalo ko’: BJP’s Kapil Mishra posts video of his ‘peaceful’ march supporting the CAA” (21 December 2019) <<https://scroll.in/video/947491/goli-maaro-saalo-ko-bjps-kapil-mishra-posts-video-of-his-peaceful-march-supporting-the-caa>>;

Firstpost “‘Will remove Shaheen Bagh protesters, mosques on state land’: West Delhi BJP MP Parvesh Verma’s poll promise” (28 January 2020) <<https://www.firstpost.com/politics/will-remove-shaheen-bagh-protesters-mosques-on-state-land-west-delhi-bjp-mp-parvesh-vermas-poll-promise-7965961.html>>;

Uday Rana on Twitter (25 February 2020)

<<https://twitter.com/UdaySRana/status/1232338366986780673?s=20&t=02t6jethDxJ4TN0BFhnYHw>>;

Tajindar Pal Singh Bagga on Twitter (30 January 2020)

<<https://twitter.com/TajinderBagga/status/1222763303320969216?s=20&t=ekvP7l021EM00ry0N3rhDg>>;

The Indian Express “‘We are 80% and you just 17%’: Karnataka BJP MLA threatens anti-CAA protesters” (3 January 2020) <<https://indianexpress.com/article/india/karnataka-bjp-mla-somasekhara-reddy-threatens-anti-caa-protesters-6198602/>>;

<sup>22</sup> Scroll “‘Goli maaro saalo ko’: BJP’s Kapil Mishra posts video of his ‘peaceful’ march supporting the CAA” (21 December 2019) <<https://scroll.in/video/947491/goli-maaro-saalo-ko-bjps-kapil-mishra-posts-video-of-his-peaceful-march-supporting-the-caa>>

<sup>23</sup> Mishra (n 8 above) 33; Firstpost “Kapil Mishra leads pro-Citizenship Amendment Act protests in Delhi, crowd chants ‘shoot the traitors’” (21 December 2019) <<https://www.firstpost.com/india/kapil-mishra-leads-pro-citizenship-amendment-act-protests-in-delhicrowd-chants-shoot-the-traitors-7811131.html>>

<sup>24</sup> Firstpost (n 23 above).

<sup>25</sup> According to multiple eyewitness complaints submitted to the police, published by [The Caravan](#) (21 June 2020)

<sup>26</sup> Amit Shah says Delhi people will ‘punish’ the ‘tukde tukde’ gang in polls, [The Hindu](#) (8 June 2020)

<<https://www.thehindu.com/news/cities/Delhi/opposition-led-by-congress-created-confusion-over-caa-amit-shah/article30401111.ece>>; [Amit Shah](#)

repeatedly chanting the first half of the slogan (*'desh ke gaddaro ko...'*), and exhorting the crowd to chant the second, violent half of the slogan (*'goli maaro saalo ko!'*).<sup>27</sup> The video of Thakur leading the slogans indicates that there were about 100 people present at the rally – actively taking part in the incendiary, inflammatory speeches calling for violence. Thakur shared the video immediately with his 1.5 million followers on Twitter. The video is reported to have been viewed and further shared widely, while also being reported by print and broadcast media platforms.<sup>28</sup>

Incendiary speeches by electoral candidates and senior leaders of the BJP in Delhi became a recurring phenomenon between **December 2019 and February 2020**. We list only some examples of the incendiary speeches made at public gatherings and election rallies:

- What happened in Kashmir with Kashmiri Pandits could happen in Delhi also. Lakhs of people gather at Shaheen Bagh, they could enter houses, rape and kill your sisters and daughters. The people need to decide

now. (Parvesh Verma, Member of Parliament, January 2020)<sup>29</sup>

- This Shaheen Bagh protest is no longer an agitation. A group of suicide bombers is being raised here and a conspiracy against the country is being hatched in its capital. (Giriraj Singh, Central Cabinet Minister, February 2020)<sup>30</sup>
- We will not let Delhi become Syria and allow them to run an ISIS-like module here, where women and kids are used. They are trying to create fear in the minds of the people of Delhi by blocking the main route. We will not let this happen. (Tarun Chugh, BJP national secretary, January 2020)<sup>31</sup>
- Shaheen Bagh has become a hub of anti-nationals. On February 11, after the results, a surgical strike will be done on this hub. (Tajinder Pal Bagga, BJP candidate in Hari Nagar constituency, January 2020)<sup>32</sup>
- Whether it is Jamia or Shaheen Bagh, anti-CAA demonstrations have been going on for the last few days. Are these demonstrations random events?

<sup>27</sup> Revathi Krishnan “Days before Budget, minister Anurag Thakur chants ‘desh ke gaddaron ko, goli maaro saalon ko’ The Print (27 January 2020) <<https://theprint.in/india/days-before-budget-minister-anurag-thakur-chants-desh-ke-gaddaron-ko-goli-maaro-saalon-ko/355124/>>; Also see [Video](#).

<sup>28</sup> Indian Express (28 January 2020) ‘Shoot the traitors’ slogan raised at Union Minister Anurag Thakur’s rally, Delhi CEO seeks report” <<https://indianexpress.com/elections/delhi-in-election-rally-union-minister-anurag-thakur-leads-chants-of-shoot-the-traitors-6238005/>>

<sup>29</sup> IndiaToday “BJP’s Parvesh Verma courts controversy yet again, now calls Arvind Kejriwal a terrorist” <<https://www.indiatoday.in/elections/delhi-assembly-polls-2020/story/bjp-parvesh-verma-controversy-arvind-kejriwal-terrorist-delhi-poll-1641160-2020-01-29>>

<sup>30</sup> See [Giriraj Singh’s tweet](https://twitter.com/girirajsinghbjp/status/1225268618683772928) <<https://twitter.com/girirajsinghbjp/status/1225268618683772928>>

<sup>31</sup> Varsha Chavan India Today, 29 January 2020 - <<https://www.republicworld.com/india-news/politics/tarun-chug-wont-let-delhi-become-syria-and-allow-them-to-run-an-isi.html>>

<sup>32</sup> Ganesh Radha-Udayakumar “BJP’s Tajinder Bagga warns Shaheen Bagh of surgical strike on Feb 11” India Today <<https://www.indiatoday.in/elections/delhi-assembly-polls-2020/story/tajinder-bagga-bjp-on-shaheen-bagh-1641578-2020-01-30>>

No, they represent a politics that is designed to destroy national harmony. (Narendra Modi, Prime Minister, February 2020)<sup>33</sup>

- Your voice should reach the supporters of Shaheen Bagh. Lift your hands, clench your victorious fists, and shout with me: ‘Bharat Mata Ki Jai!’ [Victory to Mother India]... Press the [voting machine] button so hard and with such anger that the current reaches Shaheen Bagh.” (Amit Shah, Central Home Minister, January 2020)<sup>34</sup>
- The hate speeches made during the election rallies coincided with at least four accounts of armed attacks – by civilians as well as police officers - against protestors in Delhi during the months of January and February 2020.

On **6 January 2020**, dozens of students at Jawaharlal Nehru University (JNU) were violently attacked inside their hostels by masked, armed mobs, several of whom are later alleged to be

members of the BJP and the Rashtriya Swayamsevak Sangh (RSS)<sup>35</sup> student wings. RSS is the principal body of Hindu nationalist organisations and actors, of which BJP is the political wing.

The mob was allegedly armed with rods and sledgehammers as they intimidated the students by destroying campus property, entering hostel rooms and chanting slogans such as ‘Kill the leftists’, ‘Kill the Anti-Nationals’ and ‘*Desh ke Gaddaron ko, Goli Maaron Saalo Ko*’ (Shoot dead the bastard, traitors to the nation).<sup>36</sup> Multiple accounts point out that the Delhi Police was stationed right outside the campus and refused to take control of the situation and may have also provided safe passage out for the attackers.<sup>37</sup>

On **30 January 2020**, a person later identified as a 17-year-old, Rambhakt<sup>38</sup> was shot at an anti-CAA protest gathering inside Jamia Millia Islamia University.<sup>39</sup> On **1 February 2020**, an armed man, later identified as Kapil Gujjar with connections to BJP, opened fire at the Shaheen Bagh

<sup>33</sup> Times “Shaheen Bagh, Jamia are a plot to destroy harmony: PM Modi”

<<https://timesofindia.indiatimes.com/india/shaheen-bagh-jamia-are-a-plot-to-destroy-harmony-pm-modi/articleshow/73917319.cms>>

<sup>34</sup> Ayush Tiwari “In BJP’s Delhi campaign, ‘Hindu samrat’ Amit Shah sells Kashmir, Ayodhya, JNU and CAA”

<<https://www.newslaundry.com/2020/01/27/in-bjps-delhi-campaign-hindu-samrat-amit-shah-sells-kashmir-ayodhya-jnu-and-caa>>; Scroll “Delhi polls: ‘Press the button with such anger that current is felt at Shaheen Bagh,’ says Amit Shah” <<https://scroll.in/latest/951202/delhi-polls-press-the-button-with-such-anger-that-current-is-felt-at-shaheen-bagh-says-amit-shah>>

<sup>35</sup> For more details on the ideological relationship between BJP and RSS, see the political context in the main report.

<sup>36</sup> [Amnesty International India, “New Delhi/Bengaluru” Investigative Briefing, \(28 August 2020\)](https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf) <<https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>> 4

<sup>37</sup> Scroll “JNU violence: Delhi Police reject allegations of laxity, form fact-finding committee”

<<https://scroll.in/latest/948906/jnu-violence-delhi-police-register-fir-a-day-after-mob-attacks-students-teachers>>

<sup>38</sup> Soma Basu “Jamia Millia Shooting: Making of a Hindutva Terrorist” <<https://thediplomat.com/2020/02/jamia-millia-shootout-making-of-a-hindutva-terrorist/>>

<sup>39</sup> Aranya Shankar, Jignasa Sinha, Somya Lakhani “Jamia student shot at as 20 Delhi cops watch, Proctor says MoS Anurag Thakur is to blame” Indian Express (31 January 2020) <<https://indianexpress.com/article/india/jamia-student-shot-at-as-20-cops-watch-proctor-says-mos-thakur-is-to-blame-6243470/>>

protest gathering.<sup>40</sup> In both these instances, the assailants were reported to have made Islamophobic comments – echoing the sentiment of the aforementioned incendiary speeches. The video footage of the attack showed that police officers were present on site but did not take any action to prevent the attacks.<sup>41</sup>

On **10 February**, another protest rally at Jamia Millia Islamia University came under brutal attack by Delhi police. Media reports indicate that more than 30 students were hospitalised for serious injuries, including nine women.<sup>42</sup> The National Federation of Indian Women (NFIW) released a fact-finding report on the attack, detailing allegations of sexual assault made by 15 female students that blamed Delhi police personnel.<sup>43</sup> The report, primarily based on testimonies of victims and frontline medical professionals, notes:

“Women were molested by the male policemen, who attempted to tear their clothes, punched their chest or stomped on them with

their boots, as well as tried to insert their batons into their private parts. The pain, pus and blood rendered them bedridden for weeks after the assault. Women as young as 16 and as old as 60 were sexually assaulted, many of whom are suffering now from serious gynaecological complications.”<sup>44</sup>

The report further lays down testimonies revealing that the attack was carried out by the police together with armed civilians. The police personnel was reported, in these testimonies, as not having identification markers such as name plates or badges, and not being in police uniform.<sup>45</sup>

On **8 February**, polls were cast in the NCT of Delhi for its legislative assembly. Aam Aadmi Party (AAP) won the elections with an absolute majority. The BJP only secured 8 of 70 seats in the assembly.

Following the BJP defeat, media reports, eye-witness accounts and civil society documentation highlight an intensified series of

<sup>40</sup> The Wire “Man Opens Fire at Shaheen Bagh Protest, No Injuries Reported” (01 Feb 2020) <<https://thewire.in/communalism/shaheen-bagh-shooting>>; EconomicTimes “Man who had fired in air at Shaheen Bagh's anti-CAA protest site joins BJP, expelled hours later” <<https://economictimes.indiatimes.com/news/politics-and-nation/man-who-had-fired-in-air-at-shaheen-baghs-anti-caa-protest-site-joins-bjp-expelled-hours-later/articleshow/80030462.cms?from=mdr>>

<sup>41</sup> The Hindu “Shaheen Bagh incident: protesters question inaction of Delhi Police” <<https://www.thehindu.com/news/cities/Delhi/shaheen-bagh-incident-protesters-question-inaction-of-delhi-police/article30716839.ece>>

<sup>42</sup> The Print “15 women, 30 men sexually assaulted by Delhi Police at February CAA clash in Jamia, report says” <<https://theprint.in/india/governance/15-women-30-men-sexually-assaulted-by-delhi-police-at-february-caa-clash-in-jamia-report-says/479788/>>

<sup>43</sup> WordPress “Targeted Violence in Jamia: NFIW Fact Finding Report on the Events of 10 February, 2020” <<https://nfiw.files.wordpress.com/2020/08/for-press-corrected-final-fact-finding-report-jamia.pdf>>; Scroll “Delhi: More than 10 Jamia students injured as police stop CAA protest march to Parliament” <<https://indianexpress.com/article/cities/delhi/delhi-anti-cao-nrc-npr-protesters-jamia-police-clash-6261139/>>; Scroll “Delhi: More than 10 Jamia students injured as police stop CAA protest march to Parliament” <<https://scroll.in/latest/952754/delhi-more-than-10-jamia-students-injured-as-police-stop-cao-protest-march-to-parliament>>

<sup>44</sup> WordPress (n 43 above); See video testimonies, <<https://www.youtube.com/watch?v=cH7UI-cPwAo>>

<sup>45</sup> Targeted violence in Jamia <<https://nfiw.files.wordpress.com/2020/08/for-press-corrected-final-fact-finding-report-jamia.pdf>> The Print (n 42 above).

hateful and inciting speeches. These were ongoing in the lead-up to the targeted violence against Muslims in North East Delhi district from 23 February 2022:

On 22 February, in a YouTube video, a Hindu religious leader, Yati Narsinghanand Saraswati, while calling for a final war against Muslims, remarks that Islam must be removed from society, and that ‘such people cannot be given the right to live’.<sup>46</sup> Yati Narsinghanand is the same Hindu leader who organised a religious conclave (*dharam sansad*) in December 2021 where several Hindu leaders are seen calling to ‘conduct a cleanliness drive’ against Muslims and declaring that ‘if a hundred of us [Hindus] become soldiers and kill two million of them [India’s 200 million Muslims], we will be victorious’.<sup>47</sup> On another occasion, he was reported calling for Muslims to be removed ‘from the face of Earth’.<sup>48</sup>

On 23 February 2020, Ragini Tiwari, another local Hindu leader in Delhi’s North East district, is seen addressing a public rally and later, a sit-in in North East Delhi, stating:

*“Kaat daalo, jo bhi hai, kaat daalo...  
Bhimti hai kya?”* (Cut him up,  
whoever it is, cut him up. Is he a

Bhimti? – a term used to refer to ‘lower caste’ Dalits) and “*Sanataniyo baahar aao. Maro ya maar dalo. Baad mein dekhi jayegi.*” (Hindus, come out. Die or kill. The rest shall be seen later.)<sup>49</sup>

Also on 23 February 2020, BJP leader Kapil Mishra issued a call on Twitter asking his followers to rally against Muslim women that had been sitting in protest against the CAA in the Jaffrabad locality of North East Delhi, urging them to ‘prevent another Shaheen Bagh’.<sup>50</sup> Later, at around 3pm the same day, he is seen delivering an incendiary speech near the Jaffrabad metro station, threatening the police to clear anti-CAA protestors. The videos, corroborated by eye-witness accounts, indicate that the Delhi Deputy Commissioner of Police (DCP), Ved Prakash Surya, was present at the time and Kapil Mishra is also seen in the video issuing an ultimatum to the DCP to clear up the Jaffrabad protest site within three days, before the matter is taken out of the police’s hands.<sup>51</sup> Later the same evening, Kapil Mishra was seen using his earlier slogan (*‘Desh ke gaddaro ko, goli maaro saalo ko’* -

<sup>46</sup> Aditya Menon “Dasna Priest Called For ‘War On Islam’ in Run-Up to Delhi Violence”

<<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad>>

<sup>47</sup> The Economist “Hindu bigots are openly urging Indians to murder Muslims”

<<https://www.economist.com/leaders/2022/01/15/hindu-bigots-are-openly-urging-indians-to-murder-muslims>>; Scroll <<https://scroll.in/article/1003558/does-this-hindu-extremist-priest-in-up-have-the-support-of-the-rank-and-file-of-bjp>>

<sup>48</sup> Alishan Jafri “Beyond Blasphemy: Inside Yati Narsinghanand’s Militant Hindutva Machinery”

<<https://thewire.in/communalism/beyond-blasphemy-inside-yati-narsinghanands-militant-hindutva-machinery>>

<sup>49</sup> The Quint “‘Kaat Do’ Said Ragini Tiwari, ‘Eyewitness’ Saw Her Firing Bullets” (30 June 2020)

<<https://www.thequint.com/news/politics/delhi-violence-probe-riots-ragini-tiwari-hindutva-bjp-muslims?fbclid=IwARIVWLPgloRkpW-75eSEr7r-Yhy1RR76TnB57Nuxk4iLF-iFvncm05F1mlg#read-more>>; Video The Quint “‘Bhimti Hai Kya? Kaat Daalo’: The Anti-Dalit Side of Delhi Riots” (17 July 2020)

<<https://www.thequint.com/news/politics/northeast-delhi-riots-dalits-muslims-hindutva-kapil-mishra-bjp>>

<sup>50</sup> Citizens Against Hate “Darkness at noon: Incitement to Violence, Obfuscation and Perversion of Justice in Delhi”

<<https://citizensagainsthate.org/wp-content/uploads/2021/03/Darkness-at-Noon.pdf>> August 2020.

<sup>51</sup> The Indian Express “Remove CAA protesters within 3 days or we won’t listen to you: Kapil Mishra warns Delhi Police” (23 February 2020) <<https://indianexpress.com/article/cities/delhi/kapil-mishra-delhi-police-caa-protests-jaffrabad-6282870/>>

shoot dead the bastard traitors to the nation) while leading an armed mob on a rampage near a site of anti-CAA protests in the neighbouring Chand Bagh area, North East Delhi.<sup>52</sup>

As per media reports, civil society fact-findings and eyewitness testimonies, the ‘ultimatum speech’ delivered by Kapil Mishra triggered communal violence in the proximity of the area.<sup>53</sup> Violence is reported to have erupted shortly after this speech, with Mishra’s supporters pelting stones at the protest site, and fanning out to target Muslims in other, nearby localities.<sup>54</sup> Several videos from the neighbourhood show the crowds chanting the violent slogan ‘*Desh ke gaddaro ko, goli maaro saalo ko*’ (Shoot dead the bastard traitors to the nation).<sup>55</sup>

### 3. Targeted violence against Muslims in North East Delhi

From 23 to 26 February 2020 North East Delhi was engulfed by targeted violence against Muslims in areas including Shiv Vihar, Khajuri Khas, Chand Bagh, Gokulpuri, Maujpur, Karawal Nagar, Jaffrabad, Mustafabad, Ashok Nagar, Bhagirath Vihar, Bhajanpura and Kardam Puri.<sup>56</sup> According to official reports, the violence left 53 people dead, over 400 injured, close to 200 houses and over 300 shops destroyed, along with 3 schools and 301 vehicles. At least 2,000 people were left displaced.<sup>57</sup>

As per the official and civil society reports, Muslims inhabiting North East Delhi were selectively and disproportionately targeted: 40 of the 52 killed,<sup>58</sup> 288 of the 473 injured, 173 of the 300 shops destroyed were Muslim.<sup>59</sup> A total of 17 Muslim religious buildings (mosques, *madrasas*, *dargahs*, cemeteries) were vandalised, in acts of

<sup>52</sup> The New York Times “The Roots of the Delhi Riots: A Fiery Speech and an Ultimatum” (26 February 2020) <<https://www.nytimes.com/2020/02/26/world/asia/delhi-riots-kapil-mishra.html>>; #ALIND 15/2020 (9 October 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25603>> 2.

<sup>53</sup> Delhi Minorities Commission “Report of the DMC Fact-Finding Committee on North-East Delhi Riots of February 2020” (July 2020) <<https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>>

Citizens Against Hate “Darkness at Noon” <<https://citizensagainsthate.org/wp-content/uploads/2021/03/Darkness-at-Noon.pdf>>

Human Rights Watch “India: Biased Investigations 2 Years After Delhi Riot” (21 February 2022) <<https://www.hrw.org/news/2022/02/21/india-biased-investigations-2-years-after-delhi-riot>>

Al Jazeera “Why the 2020 violence in Delhi was a pogrom” (24 February 2021) <<https://www.aljazeera.com/opinions/2021/2/24/why-the-2020-violence-in-delhi-was-a-pogrom>>

Amnesty International India “India: Six months since Delhi riots, Delhi police continue to enjoy impunity despite evidence of human rights violations” (28 August 2020) <<https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>>

<sup>54</sup> According to multiple eyewitness complaints submitted to the police, published by [The Caravan “Dead and Buried”](#) (21 June 2020) <<https://caravanmagazine.in/politics/delhi-police-ignored-complaints-against-kapil-mishra-bjp-leaders-leading-mobs-delhi-violence>>

<sup>55</sup> Video by Saahil Murli Menghani on Twitter (23 February 2020) <<https://twitter.com/saahilmenghani/status/1231588967037816833?s=20&t=C1gzj6IFl17fwzvm9mJB8A>>

<sup>56</sup> [Delhi Minorities Commission, “Fact-Finding Report on North East Delhi Violence in February 2020”](#) (July 2020) <<https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>> 17.

<sup>57</sup> Affidavit in PIL No. 566 for registering a criminal case against Kapil Mishra and other politicians reported instigating violence. Siddharth Varadarajan “Delhi Police Affidavit Shows Muslims Bore Brunt of Riots, Silent on Who Targeted Them and Why” <<https://thewire.in/communalism/delhi-police-affidavit-shows-muslims-bore-brunt-of-riots-silent-on-who-targeted-them-and-why>>

<sup>58</sup> Police Report; List of the deceased <<https://www.thepolisproject.com/read/the-high-cost-of-targeted-violence-in-northeast-delhi-a-list-of-the-deceased/>>

<sup>59</sup> Delhi Minorities Commission(n 56 above) [42](#).

arson and looting.<sup>60</sup> In the same area, there are five Hindu temples, that according to reports remained intact with no signs of visible attacks.<sup>61</sup> The Saffron flag, a Hindu symbol, was raised on the minaret of a mosque in Gokulpuri. Imams and clerics were also beaten up by mobs.<sup>62</sup>

Between 23 and 29 February, mobs chanting ‘*Jai Shri Ram*’ (Victory to Hindu Lord Ram) and ‘*Hinduon ka Hindustan*’ (India for Hindus) were seen organising against Muslims in North East Delhi.<sup>63</sup> Hindu mobs reportedly checked the ID cards of men in the area and, in several instances, forced them to take down their trousers to confirm if they had signs of circumcision, before Muslims among them were physically attacked.<sup>64</sup>

Over 400 people, including women and children, are reported to have sustained grievous injuries.<sup>65</sup> A fact-finding report by a group of physicians who were in North East Delhi during the violence provides a glimpse of the gravity of the attacks, with a large number of injuries - of which 75 per cent were due to firearms

- being to the head. There were also instances of victims' private parts being removed and testicles slashed.<sup>66</sup>

According to reports, the rioters used a wide array of weapons, including sickles, machetes, swords, cooking gas bombs, petrol bombs, acid and firearms.<sup>67</sup> Not only rioters, but police forces have been alleged to be actively taking part in these violations. The following sub-sections discuss each of these factual allegations in more detail:

### 3.1. Killings

The official death toll due to the violence is 53, including 52 civilians and one policeman. Of the 52 civilians killed, 40 (77 per cent) were Muslims and 12 (23 per cent) were Hindus.<sup>68</sup>

<sup>60</sup> Delhi Minorities Commission.

<sup>61</sup> Delhi Minorities Commission 55.

<sup>62</sup> Al-Jazeera “Mosque set on fire during Delhi’s worst violence in decades” (26 February 2020) <<https://www.aljazeera.com/news/2020/02/death-toll-rises-violence-continues-day-delhi-200225054836893.html>>

<sup>63</sup> OHCHR # ALIND 15/2020 (9 October 2020)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25603>> 3.

<sup>64</sup> Citizens Against Hate (n 50 above) 17.

<sup>65</sup> According to Delhi Police’s [official figures](#), 473 civilians were injured, of which 55% were Muslims. This is believed to be a massive undercount.

<sup>66</sup> [Progressive Medicos and Scientists Forum \(PMSF\): An Inquiry into the Anti-Muslim Violence in NE Delhi by a Team of Doctors that Visited the Area, Feb. 2020](#) 9.

<sup>67</sup> According to Delhi Police’s official figures, 102 people received bullet wounds. No religious break-up is available. Among the 53 dead, at least 22 were reported to have received bullet injuries. Of these, 16 (73%) were Muslims; Hindustan Times “Delhi violence: Countrymade guns from West UP, weapons of all shapes used in riots” (27 February 2020)

<<https://www.hindustantimes.com/india-news/delhi-violence-countrymade-guns-from-west-up-weapons-of-all-shapes-used-in-riots/story-uV0k0GaAkHZCj7UHox8C3M.html>>;

The Caravan “Dead and Buried” (6 July 2020)

<<https://caravanmagazine.in/crime/widespread-under-reported-use-of-explosives-by-hindu-mobs-in-delhi-violence>>;

Scroll.in “When acid became a weapon: One month after Delhi violence, revisiting three horror stories” (23 March 2020)

<<https://scroll.in/article/956149/when-acid-became-a-weapon-one-month-after-delhi-violence-revisiting-three-horror-stories>>;

The Wire “Delhi Riots: 102 Persons Received Bullet Wounds; Most Victims Were Young Men” (5 March 2020)

<<https://thewire.in/rights/delhi-riots-bullet-injuries-police-gtb-hospital>>

<sup>68</sup> The full list is available in Delhi Police Affidavit WP (C) 566 of 2020. <<https://cdn.thewire.in/wp-content/uploads/2020/07/16051706/deadlist-1024x473.jpg>>

### a) *Killings by police*

Witnesses have accused policemen of being directly involved in at least **three killings** of Muslim men:

**Mohammad Furkan** (32-year-old) – according to at least three eyewitnesses, was shot at by sub-inspector Harveer Singh Bhati in Furkan at point-blank range twice at the Kardampuri protest site in North East Delhi on 24 February 2020.<sup>69</sup> Furkan’s post-mortem report mentions that he was hit by two bullets, one on his left thigh and the other on his lower abdomen.<sup>70</sup> Furkan had stepped out of his home in the neighbourhood to get food for his children.<sup>71</sup> He was present and unarmed near the Kardampuri protest site when the makeshift camp was set on fire by the mob. According to the three eyewitnesses, he was pushed to the ground by police constable Sonu (stationed as a patrol officer near Kardampuri protest site) and then shot by Harveer Singh Bhati, without any provocation.<sup>72</sup> The police version of events suggests that Furkan’s death was a result of mob violence. According to the investigative report brought to our notice, Furkan’s

family has alleged that the FIR filed by the police in connection with his killing is ‘fabricated’ and ‘concocted’.<sup>73</sup> Four Muslim men have been arrested in connection with the case, with no evidence or witnesses produced to corroborate the police’s version of events. The four accused Muslims were also reported to have been tortured in custody, and forced to sign ‘disclosure statements’, which is the main evidence presented by the police against them.<sup>74</sup> No investigative proceedings have been initiated by the Delhi Police against the police officers named by multiple witnesses involved in Furkan’s killing.<sup>75</sup>

**Faizan** (23-year-old) – According to widely circulated video clips, Faizan was assaulted and forced to sing the national anthem by (yet unidentified) men wearing police uniforms on 24 February 2020.<sup>76</sup> The video clip, verified by Amnesty International,<sup>77</sup> shows five severely injured men, lying on the street, being beaten by policemen as they loudly order them to sing the national anthem. One of the five, Faizan, is slumped to the side, unconscious. Faizan was reported to have died on 27 February, two days

<sup>69</sup> The Caravan “Three eyewitnesses accuse Delhi Police official of murder during Delhi violence”

<<https://caravanmagazine.in/crime/three-eyewitnesses-accuse-delhi-police-official-murder-during-delhi-violence>>

<sup>70</sup> The Caravan “Three eyewitnesses accuse Delhi Police”.

<sup>71</sup> Quint, “Father Buying Food for Kids Among Those Killed in Delhi Violence” <https://www.thequint.com/news/politics/the-civilians-killed-in-delhi-violence-CAA#read-more>

<sup>72</sup> The Caravan (n 69 above).

<sup>73</sup> The Caravan (n 69 above).

<sup>74</sup> The Caravan (n 69 above).

<sup>75</sup> Hemani Bhandari “2 years on, hope eludes riot victim’s kin” <<https://www.thehindu.com/news/cities/Delhi/2-years-on-hope-eludes-riot-victims-kin/article38389776.ece>>

<sup>76</sup> Scroll.in “Month after video of Delhi Police assault sparked outrage, four survivors have no hope for justice” (28 March 2020) <<https://scroll.in/article/957517/month-after-video-of-delhi-police-assault-sparked-outrage-four-survivors-have-no-hope-for-justice>>

<sup>77</sup> Amnesty International India “India: Six months since Delhi riots, Delhi police continue to enjoy impunity despite evidence of human rights violations” (28 August 2020) <<https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>>

after the attack. Testimonies indicate that Faizan and the rest of the men were detained by the police and taken to the police station, where they were denied medical aid and access to families.<sup>78</sup> As per an Amnesty International report, the police held him for about 36 hours, and handed him over to the family only at around 1am on 26 February, after his medical condition deteriorated. Faizan succumbed to his injuries later that night.<sup>79</sup> The report claimed police also refused to give any records documenting his detention.

The Delhi Police has responded in its defence, pointing out that Faizan and others in the video were ‘caught in a riotous situation’ and were ‘rounded up at the spot’ by personnel on duty in the area.<sup>80</sup> Delhi Police also admitted, in its statement issued nearly six months after the incident, that police officials responsible for the assault on camera were still being identified.<sup>81</sup>

**Zakir Saifi** (28-year-old) – Zakir was offering prayers at the Farooqia Mosque in Brijpuri in North East Delhi on the evening of 25 February 2020, when he was attacked by a mob.<sup>82</sup> According to several eyewitnesses, the mob contained dozens of uniformed policemen, with their name tags removed,<sup>83</sup> and men in ‘military-style uniforms’.<sup>84</sup> The attackers, according to the witnesses, entered the mosque, assaulted worshippers and those leading prayers, and set fire to the mosque after ransacking and looting the place of worship. According to reports, the policemen also set fire to an adjacent *madrasa* (Islamic seminary). Zakir, who was grievously injured in the attack, was taken to a hospital, where he was declared dead.<sup>85</sup> There is no open-source information on developments in the investigation process against the police officers and mobs involved.

<sup>78</sup> Delhi Minorities Commission [“Report of the DMC Fact-Finding Committee on North-East Delhi Riots of February 2020” \(July 2020\)](https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf) <<https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>> 78.

<sup>79</sup> Amnesty International India [“India: Six months since Delhi riots. Delhi police continue to enjoy impunity despite evidence of human rights violations” \(28 August 2020\)](https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf) <<https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>>9;

Article 14 “Mother Seeks Killers Of Son, Beaten, Forced To Sing National Anthem By Police” (13 January 2021) <<https://article-14.com/post/mother-seeks-killers-of-son-beaten-forced-to-sing-national-anthem-by-police>>

<sup>80</sup> Soibam Rocky Singh “Plea seeks court-monitored probe into custodial death of Delhi youth” <<https://www.thehindu.com/news/cities/Delhi/plea-seeks-court-monitored-probe-into-custodial-death-of-delhi-youth/article33411856.ece>>

<sup>81</sup> The Hindu “Amnesty report on Delhi riots lopsided, biased: police” <<https://www.thehindu.com/news/cities/Delhi/amnesty-report-on-delhi-riots-lopsided-biased-police/article32500328.ece>>

<sup>82</sup> Delhi Minorities Commission [“Report of the DMC Fact-Finding Committee on North-East Delhi Riots of February 2020” \(July 2020\)](https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf) <<https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>> 114.

<sup>83</sup> The Caravan “Men in uniform torched Mustafabad’s Farooqia Masjid, assaulted people inside: Locals” <<https://caravanmagazine.in/conflict/men-in-uniform-torched-mustafabads-farooqia-masjid-assaulted-people-inside-locals>>

<sup>84</sup> Delhi Minorities Commission(n 56 above) 114.

<sup>85</sup> Citizens Against Hate(n 50 above) 77.

### **b) Killings by non-state groups**

Following is a list of some of the other killings representative of the pattern of incidents.

#### **Muslim victims:**

**Aamir Ali** (30-year-old) and **Hashim Ali** (19-year-old) - two Muslim brothers were returning home on 26 February when they were stopped by a mob, assaulted, stripped, stabbed and then dumped in a nearby drain along with their motorcycle.<sup>86</sup>

Twenty persons have been reportedly arrested by Delhi Police in connection with the case, and the trial is under way. According to the police, the rioters were a part of a WhatsApp group called *Kattar Hindut Ekta* (Radical Hindu Unity), which was reportedly set up to 'mobilise rioters; keep an eye on their respective neighbourhoods; kill *mullahs* (term used as a slur against Muslims); and share arms and ammunition'. Members of the WhatsApp group have been charged with the murder of nine people, all Muslims, including: Mursaleen Malik, Aas Mohammad, Musharraf, Amin, Bhure Ali, Hamza and Akil Ahmed.<sup>87</sup>

**Akbari** (85-year-old) - a Muslim woman was burnt to death by a Hindu mob of around 100 who set

her house on fire in Gamri Extension, Khajuri Khas. Several Muslim-owned shops and houses in her locality were destroyed.<sup>88</sup> There is no further information on the police investigation into her case.

**Firoz Ahmad** (35-year-old) - a Muslim tailor whose body was found in a drain in Khajuri Khas on 9 March 2020 two weeks after he went missing. He is reported to have been assaulted and burnt alive by the mob.<sup>89</sup> The family has no information about the investigation and alleges that despite a witness naming five accused in the case, the police have refused to act.<sup>90</sup>

**Irfan** (28-year-old) - a Muslim factory worker was beaten to death by a Hindu mob in front of his mother. According to the mother, on 26 February 2020 around 7.30pm, she along with Irfan was going to fetch milk, when they were attacked by 8-10 persons in Kartar Nagar. Irfan was attacked with an iron rod, bat and iron pipes. The mother named four attackers whom she could identify as they were residents of the same locality. Two of the accused were arrested based on her statement, however, were later released on bail by the High Court citing that there was no substantial

<sup>86</sup> Indian Express "Northeast Delhi riots: One year later, wounds of violence still fresh" (8 March 2021) <<https://indianexpress.com/article/cities/delhi/northeast-delhi-riots-2020-one-year-later-victims-next-of-kin-express-series-721081/>>; Citizens Against Hate (n 50 above) 77; Delhi Minorities Commission (n 56 above) 114.

<sup>87</sup> The Wire "Tear Them Apart': How Hindutva WhatsApp Group Demanded Murder, Rape of Muslims in Delhi Riots" <<https://thewire.in/communalism/delhi-riots-hindutva-whatsapp-muslims-murder-rape>>

<sup>88</sup> IndianExpress (n 86 above).

<sup>89</sup> IndianExpress (n 86 above).

<sup>90</sup> Scroll.in "An 85-year-old woman was burnt to death in her home in Delhi's Gamri extension" (26 February 2020) <<https://scroll.in/article/954422/an-85-year-old-woman-was-burnt-to-death-in-her-home-in-delhis-gamri-extension>>

evidence linking them to the killing.<sup>91</sup>

**Jamaluddin** (33-year-old) - a Muslim man who along with his brother was attacked by an armed Hindu mob of around 30-40 people in Shiv Vihar on 26 February 2020. Jamaluddin's brother, who survived the attack, has alleged that their trousers were taken off to confirm their circumcision and hence, their Muslim identity.<sup>92</sup> Some compensation was given to the family by the Delhi Government, however, no arrests were made until a year later.<sup>93</sup>

**Aash (or Aas) Mohd** (32-year-old) - a Muslim daily-wage worker was stabbed to death by a mob while on his way to work on 28 February. Aash's body was recovered only on 9 March.<sup>94</sup> The family has received Rupees 1 million in compensation. Aash is survived by his wife and three children – aged 10, 8 and 5 – and a younger brother. The last report from February 2021 mentioned that nine arrests were made in this case.<sup>95</sup> No further

developments have been brought to our notice.

**Parvez Alam** (52-year-old) - a social worker who was trying to persuade Hindus and Muslims in his area not to participate in violence, was shot in the back and killed outside his house. Sixteen people have been arrested in connection with the case, all of whom are reported to be members of the RSS.<sup>96</sup> 16 men were reportedly arrested by police, based on the complaint of Parvez's son Sahil. Alongside those arrested and charged with the murder and rioting (and in September 2020, denied bail<sup>97</sup>) are Sushil Narayan, Jayvir Singh, Suresh Kumar, Uttam Tyagi and Naresh Tyagi.<sup>98</sup> The RSS has admitted that all 16 arrested men are active or irregular members of its local branch, but claims they are innocent and the victims of a plot hatched by a corrupt policeman in connivance with local Muslims. Devesh Mishra, the only RSS office-bearer (also vice-president of the Vishwa Hindu Parishad's local unit) named in Sahil Alam's complaint, was never arrested or charged.<sup>99</sup>

<sup>91</sup> Delhi Minorities Commission(n 56 above) 117.

The Hindu "Delhi riots: HC grants bail to two accused, says no substantial evidence" (27 May 2021) <<https://www.thehindu.com/news/cities/Delhi/delhi-riots-hc-grants-bail-to-two-accused-says-no-substantial-evidence/article34655224.ece>>

<sup>92</sup> Delhi Minorities Commission (n 56 above) 111.

<sup>93</sup> IndianExpress (n 86 above).

<sup>94</sup> Delhi Minorities Commission, p112.

<sup>95</sup> IndianExpress (n 86 above).

<sup>96</sup> Delhi Minorities Commission(n 56 above) 117; Citizens Against Hate(n 50 above) 78-79; Aishwarya S Iyer "Delhi Riots Exclusive: RSS Members Arrested for Murder, Rioting" <<https://www.thequint.com/news/india/delhi-riots-rss-vhp-members-accused-murder-rioting-arrested-delhi-police#read-more>>

<sup>97</sup> Abhinav Garg "Northeast Delhi riots: Five denied bail for killing man" <<https://timesofindia.indiatimes.com/city/delhi/ne-riots-5-denied-bail-for-killing-man/articleshow/78096183.cms>>

<sup>98</sup> News18 "Delhi Riots: Court Directs Police to Register FIR in Case of Gunshot Injury to a Man"

<<https://www.news18.com/news/india/delhi-riots-court-directs-police-to-register-fir-in-case-of-gunshot-injury-to-a-man-3013490.html>>

<sup>99</sup> Iyer (n 96 above).

**Hindu victims:**

**Ankit Sharma** (26-year-old) - an off-duty official of the Intelligence Bureau (Ministry of Home Affairs), a Hindu, was stabbed 12 times before his body was dumped in a nearby drain on 25 February. Ten arrests have been made in the case, including Tahir Hussain, a former councillor with the Aam Aadmi Party, who was accused by the police of having led the mob that killed Sharma. According to Hussain, the police already escorted him out of his house the night before and he was not in the neighbourhood on the day of the alleged incident.<sup>100</sup> Analysis of the charge sheet filed by police suggests that some Muslims may have been forced into giving false 'disclosure statements' admitting guilt.<sup>101</sup> The Wall Street Journal (WSJ) quoted Sharma's brother Ankur, saying that 'a mob came armed with stones, knives and even swords; they shouted "Jai Shri Ram"<sup>102</sup> (Victory to Hindu Lord Ram!), suggesting that the mob in question might have been Hindu. Ankur later denied making this statement, but WSJ claims to be in

possession of a recording of the same.<sup>103</sup>

**Ratan Lal** (42-year-old) - a Hindu head constable, died on 24 February and later his autopsy report ascertained that he died of a bullet injury.<sup>104</sup> He was attacked by a mob at the Chand Bagh protest site on Wazirabad Road on the afternoon of 24 February. He was immediately taken to GTB hospital but was announced dead on arrival.<sup>105</sup> The police, in its charge sheet naming 17 Muslim men as accused of killing the policeman, claims that the attack was well-planned and pre-meditated. Accused men were arrested within two weeks of the attack.<sup>106</sup> Seven of 17 were released on bail in September 2021.<sup>107</sup>

**Vinod Kumar** (51-year-old) - a Hindu who was beaten to death by a Muslim mob. His son Nitin was also injured in the attack. The family has received compensation for Vinod's death.<sup>108</sup> There is no open-source information available on the status of the investigation, or if any arrests have been made.

<sup>100</sup> Delhi Minorities Commission(n 56 above) 80.

<sup>101</sup> NewsLaundry "Ankit Sharma's murder: A ground report that tells you what several news reports didn't"

<<https://www.newslandry.com/2020/03/05/did-the-media-spotlight-on-ankit-sharma-shed-clarity-on-his-murder-no>>

<sup>102</sup> Wall Street Journal <<https://www.wsj.com/articles/indias-ruling-party-government-slammed-over-delhi-violence-11582734524>>

<sup>103</sup> The Wire "Prasar Bharati Tweet on MEA 'Asking for Deportation of WSJ Reporter' Deleted"

<<https://thewire.in/diplomacy/prasar-bharati-deportation-wsj-reporter-tweet>>

<sup>104</sup> Delhi Minorities Commission(n 56 above) 113.

<sup>105</sup> The Quint <<https://www.thequint.com/news/india/dhi-riots-ratan-lal-head-constable-delhi-police-charge-sheet>>

<sup>106</sup> Times of India <<https://timesofindia.indiatimes.com/city/delhi/head-constables-death-in-delhi-riots-police-says-seven-people-arrested/articleshow/74591336.cms>>

<sup>107</sup> Scroll "Delhi violence: One more person gets bail in case related to murder of head constable"

<<https://scroll.in/latest/1006384/delhi-violence-one-more-person-gets-bail-in-case-related-to-murder-of-head-constable>>

<sup>108</sup> Chander U Singh "Delhi riots of February 2020" <[https://www.livelaw.in/pdf\\_upload/pdf\\_upload-382465.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-382465.pdf)>; Citizens Against Hate (n 50 above).

### 3.2. Gender-based violence against women

Given that anti-CAA protests were led and initiated by women, it was women who became the first subjects of the attacks on protests. On 25 February 2020, according to eyewitnesses, three known residents of the Brijpuri area in North East Delhi, along with a police officer, attacked the women who were sitting in protest in Brijpuri. They beat up the women with batons, tridents and spears, and threw petrol bombs into the protest camp.<sup>109</sup> This resulted in the tent that was housing the gathering catching fire.<sup>110</sup>

A woman reported that a group of men shouting ‘*Jai Shri Ram!*’ (Victory to Lord Hindu Ram) came to the protest site in Chand Bagh where she was present, after which four persons from the group forcibly pulled down her pants, exposed her genitals, and said, ‘*yeh lo azadi*’ (here, take your freedom).<sup>111</sup> According to reports, women from Shiv Vihar reported that the mob on the streets was chanting: ‘*Shiv Vihar jayenge, burq-e wali layenge*’ (We

will go to Shiv Vihar and get the hijab-clad women).<sup>112</sup>

The oldest reported victim of the violence was an 85-year-old Muslim woman, whose house was set on fire by a mob of about 100 people.<sup>113</sup> Many women reported being sexually assaulted with rioters pulling scarves off the women and tearing off their clothes.<sup>114</sup> At least two pregnant Muslim women made allegations of assault by the mobs.<sup>115</sup> One of them had to deliver her child by emergency hours after the attack. A 20-year-old Muslim woman, *Ekram*, was nine months pregnant when she was attacked. She recounted:

“I have never seen such terrible things in my whole life. They threw me to the ground, kicked my stomach and my whole body. I pleaded with them not to harm my baby, I said ‘please, please’ over and over, but they kept kicking.”<sup>116</sup>

Among several instances of Muslim women being molested by both Hindu mobs and policemen, there was at least one reported incident of a woman being disfigured due to an

<sup>109</sup> Delhi Minorities Commission (n 56 above) 40, 62, 88; [Delhi Riots: Untold Stories of Sexual Violence and Attack, NewsClick \(8 March 2020\)](#)

Video testimonies of women (in Hindi).

<sup>110</sup> Delhi Minorities Commission (n 56 above) 40.

<sup>111</sup> Delhi Minorities Commission (n 56 above) 66; Naomi Barton and Srishti Srivastava, “They Took Down Their Pants, Pointed Their Genitals at Us, and Said, ‘Yeh Lo Azadi’”, *The Wire*, 3 March 2020 <<https://thewire.in/women/delhi-riots-women-sexual-harassment>>

<sup>112</sup> Delhi Minorities Commission (n 56 above) 120.

<sup>113</sup> Indian Express <<https://indianexpress.com/article/cities/delhi/northeast-delhi-riots-53-people-killed-caa-protesters-7203497/>>

<sup>114</sup> BBC “Delhi riots: Muslim women recall horror of Molotov cocktails and arson” (29 February 2020) <<https://www.bbc.com/news/world-asia-india-51670096>>

<sup>115</sup> Delhi Minorities Commission (n 56 above) 119.

<sup>116</sup> Citizens Against Hate (n 50 above) 18.

acid attack.<sup>117</sup> Two women from Karawal Nagar were compelled to jump from the first floor of their home to escape a mob that had invaded their house and was molesting them.<sup>118</sup> On 28 February 2020, the Delhi Commission for Women (DCW) announced an enquiry into sexual crimes against women which might have taken place during the violence in the preceding days.<sup>119</sup> Yet, no further records of investigations and prosecutions for sexual or gender-based violence against police or non-state actors involved have been reported.

### 3.3. Destruction of property and places of worship

The official submissions made by Delhi Police reveal that during the violence from 23 to 26 February, a disproportionate amount of property that was destroyed belonged to Muslims in North East Delhi.<sup>120</sup> Other sources suggest that this was in fact a deliberate undercount, and

that Muslims appeared to have been the target of 80-85 per cent of the attacks on shops and businesses, and 85-90 per cent of the attacks on residences.<sup>121</sup>

It has been reported that about 1,000 people, primarily Muslims, were rendered homeless during the violence and were forced to seek shelter in relief camps set up by civil society groups and by the Delhi state government,<sup>122</sup> but many were soon forced out yet again due to the Covid-19 outbreak that followed shortly.<sup>123</sup>

One of the victims, Mehtab, had his house attacked using cooking gas bottles that exploded, destroying the house. He said:

*“Humari deewarein, chhat sab chitak gayi hain... Ghar dobara banana padega (The walls and roof have developed cracks ... We will have to construct the house again).”*<sup>124</sup>

Follow-up media reports from the area revealed that many Muslims migrated out of North East Delhi, to safer areas, in the face of continuing harassment from

<sup>117</sup> Scroll.in “When acid became a weapon: One month after Delhi violence, revisiting three horror stories” (23 March 2020) <<https://scroll.in/article/956149/when-acid-became-a-weapon-one-month-after-delhi-violence-revisiting-three-horror-stories>>; NewsClick “Delhi Riots: Untold Stories of Sexual Violence and Attack” (8 March 2020) <<https://www.newsclick.in/delhi-riots-untold-stories-sexual-violence-and-attack>>

Video testimonies of women (in Hindi).

<sup>118</sup> [An Account of Fear and Impunity. Fact-Finding Report on Communally Targeted Violence in North East Delhi.](#)

<sup>119</sup> Singh, R. K. (28 February 2020) Delhi violence: DCW seeks police reports on sexual crimes reported during riots. IndiaToday. <<https://www.indiatoday.in/india/story/delhi-violence-dcw-seeks-police-report-on-sexual-crimes-reported-during-riots-1650971-2020-02-28>>

<sup>120</sup> The Guardian “Delhi protests death toll climbs amid worst religious violence for decades” (26 February 2020) <<https://www.theguardian.com/world/2020/feb/26/delhi-protests-death-toll-climbs-amid-worst-religious-violence-for-decades>>

<sup>121</sup> Varadarajan (n 57 above).

<sup>122</sup> The Indian Express “Life in relief camps after Delhi violence” (5 March 2020) <<https://indianexpress.com/photos/india-news/life-in-relief-camps-after-delhi-violence-mustafabad-maujpur-6300887/>>;

The Times of India “Delhi: Twenty-two-day old among 1,000 at relief camp” (4 March 2020) <<https://timesofindia.indiatimes.com/city/delhi/delhi-22-day-old-among-1000-at-relief-camp/articleshow/74471759.cms>>

<sup>123</sup> India Today “Charred houses, layers of dust: Delhi riot victims return home due to coronavirus outbreak” (27 March 2020) <<https://www.indiatoday.in/india/story/delhi-riot-victims-return-home-burnt-coronavirus-relief-camp-shut-1660503-2020-03-27>>

<sup>124</sup> The Wire “‘My House Was the First to Be Set on Fire’: Stories of Suffering From Shiv Vihar” (18 March 2020) <<https://thewire.in/communalism/my-house-was-the-first-to-be-set-on-fire-stories-of-suffering-from-shiv-vihar>>

Hindu neighbours, having had to sell their property at below-market rates.<sup>125</sup>

During the violence, mosques were reported to have been selectively targeted. On 24 February, people identifying as members of a Hindu nationalist organisation, torched Farooqia Mosque in Mustafabad, Brijpuri.<sup>126</sup>

A Right to Information application made to the Delhi Police in May 2020 revealed that 11 Muslim places of worship were attacked and damaged along with two Hindu places of worship. In a report, the Delhi Minorities Commission lists 22 Muslim religious buildings that were attacked, noting that Hindu buildings in the area remained largely untouched.<sup>127</sup> In one instance, a Hindu religious flag was hoisted atop a Muslim minaret. Muslim clerics and worship leaders were also reported to have been assaulted by mobs on multiple occasions.<sup>128</sup> In one such reported instance, police officials and Hindu mobs are alleged to have worked together to attack, ransack, loot and finally set fire to a mosque. One person who was injured during this incident later succumbed to his injuries.<sup>129</sup>

The state authorities responded to the violence in North East Delhi by attempting to change the narrative of events. The narrative was built by misusing the law enforcement measures and criminal legal framework in primarily two ways: one, by charging the anti-CAA protestors under

the Unlawful Activities (Prevention) Act, and two, by targeting the local Muslims in the neighbourhood who were already subjected to injuries and victimisation during the violence. Both these strategies are discussed in the next sections.

#### 4. Misuse of anti-terror laws

Delhi Police, in their accounts of the incidents recorded in the First Information Reports (FIRs) and court affidavits, explained the violence in North East Delhi as the outcome of a Muslim-led conspiracy to defame the country in the international arena.<sup>130</sup> This is despite the fact that Muslims were the overwhelming victims of the violence and calls inciting violence against Muslims were being made by BJP leaders. Claiming to act in response to the violence, Delhi police arrested and charged several student activists and other protest leaders – who had led peaceful demonstrations against the CAA – under anti-terror laws for inciting violence and unrest.

Since the beginning of April 2020, the Delhi police arrested 18 students who were leading the anti-CAA movement, including 16 Muslims, accusing them of having been involved in instigating the violence to malign the Prime Minister and the Indian state during the visit of U.S.

<sup>125</sup> The Wire “Muslims in Northeast Delhi Sell Homes Below Market Rate to Escape ‘Continuing Harassment’ (30 October 2020) <<https://thewire.in/communalism/muslims-northeast-delhi-sell-homes-harassment-riots>>

<sup>126</sup> Delhi Minorities Commission (n 56 above) 41,42, 58, 126.

<sup>127</sup> [AL IND 15/2020](#) (pg. 3); DMC, Report of the Fact-Finding Committee, 126.

<sup>128</sup> DMC, Report of the Fact-Finding Committee, 83.

<sup>129</sup> According to multiple eyewitness complaints submitted to the police, published by [The Caravan \(11<sup>th</sup> March and 25<sup>th</sup> November, 2020\)](#).

<sup>130</sup> The Quint “Delhi Riots: Is Trump Visit a Hole in Police’s Conspiracy Theory? (12 June 2020) <<https://www.thequint.com/news/india/delhi-riots-trump-visit-police-conspiracy-theory-tahir-hussain-umar-khalid#read-more>>

President Trump in Delhi.<sup>131</sup> They were arrested under counter-terrorism laws such as the Unlawful Activities (Prevention) Act, 1967 (UAPA). The UAPA, in particular, has several strict procedural provisions, including extended police and judicial custody, no right of bail, and the reversal of the burden of proof.<sup>132</sup> Concerns have been raised about UAPA's compatibility with the international human rights standards, including its use to conflate human rights and civil society activities with terrorist activities.<sup>133</sup>

Many of them had multiple FIRs registered against them and were charged with serious offences, including under UAPA. Of those arrested, only five human

rights defenders – Natasha Narwal,<sup>134</sup> Devangana Kalita,<sup>135</sup> Safoora Zargar,<sup>136</sup> Asif Iqbal Tanha, and Md. Faizan Khan – have been released on bail. Thirteen others – Sharjeel Imam,<sup>137</sup> Umar Khalid, Khalid Saifi,<sup>138</sup> Tahir Hussain, Saleem Malik, Mohd. Saleem Khan, Meeran Haider,<sup>139</sup> Shadab Ahmed, Tasleem Ahmed, Shifa Ur Rehman,<sup>140</sup> Athar Khan, and women human rights defenders Ishrat Jahan and Gulfisha Fatima<sup>141</sup> – remain in jail. Despite prolonged incarceration, the trial for their case has not commenced yet.<sup>142</sup>

<sup>131</sup> Delhi Riots: 17,500-page charge sheet filed against 15 accused, Umar Khalid, Sharjeel Imam not listed, India Today, <<https://www.indiatoday.in/india/story/delhi-riots-17-500-page-chargesheet-filed-against-15-accused-umar-khalid-sharjeel-imam-not-listed-1722452-2020-09-16>>

<sup>132</sup> For more details, see Annexure I.

<sup>133</sup> Communication by UN Mandate Holders to India #OL/IND/7/2020 (6 May 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25219>>

<sup>134</sup> Front Line Defenders “Women human rights defenders still in pre-detention after 300 days” (19 March 2021) <<https://www.frontlinedefenders.org/en/statement-report/women-human-rights-defenders-still-pre-detention-after-300-days>>; The Quint “2 years of Delhi riots: What’s the Status of UAPA Accused named in FIR 59?” (23 February 2022) <<https://www.thequint.com/news/law/2-years-of-delhi-riots-what-is-the-status-of-the-uapa-accused-named-in-fir-59>>

<sup>135</sup> Front Line Defenders “Devangana Kalita” <<https://www.frontlinedefenders.org/en/profile/devangana-kalita>>

<sup>136</sup> Front Line Defenders “Safoora Zargar” <<https://www.frontlinedefenders.org/en/profile/safoora-zargar>>

<sup>137</sup> Front Line Defenders “Sharjeel Imam” <<https://www.frontlinedefenders.org/en/profile/sharjeel-imam>>

<sup>138</sup> Front Line Defenders “Khalid Saifi” <<https://www.frontlinedefenders.org/en/profile/khalid-saifi>>

<sup>139</sup> Front Line Defenders “Meeran Haider” <<https://www.frontlinedefenders.org/en/profile/meeran-haider>>

<sup>140</sup> Front Line Defenders “Shifa ur Rehman” <<https://www.frontlinedefenders.org/en/profile/shifa-ur-rehman>>

<sup>141</sup> Front Line Defenders “Gulfisha Fatima” <<https://www.frontlinedefenders.org/en/profile/gulfisha-fatima>>

<sup>142</sup> CIVICUS, [India: Ongoing targeting of activists under anti-terror laws for their protests against citizenship law](https://www.civicus.org/india) (26 January 2022); Human Rights Watch, [End Bias in Prosecuting Delhi Violence](https://www.hrw.org/report/2020/09/16/end-bias-in-prosecuting-delhi-violence); AL IND/15/2020 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25343>>

### FIR 59/2020

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These aforementioned arrests of activists concerning the Northeast Delhi violence were made under the First Information Report (FIR) No. 59/2020. The FIR was first registered by the Crime Branch (a specialized unit of Delhi Police) on March 6, 2020, naming JNU student Umar Khalid and another person by the name of Danish as the prime accused. Subsequently, Haider, Fatima, Zargar, Rehman, Tanha (not named as defendants in the FIR) were arrested under the same FIR, in April 2020.

It was filed on the complaint of Sub-Inspector Arvind Kumar who received “secret information” from an unnamed informant that the violence that took place on February 23, 24 and 25, was a part of a ‘pre-planned conspiracy’ timed to coincide with the visit of US President to show the condition of minority rights in a bad light in the international arena. The conspiracy to spread the riots was hatched by Jawaharlal Nehru University (JNU) student Umar Khalid and his associates. The FIR originally invoked provisions of the Indian Penal Code, section 147 (rioting), section 148 (rioting with deadly weapons), section 149 (unlawful assembly), section 124 A (sedition), section 153 A (promoting enmity between different groups on grounds of religion, etc.) and section 120 B (criminal conspiracy).

As per the FIR, Danish, a resident of Bhajanpura (in Northeast Delhi), was given the responsibility of collecting women and children to block the Jaffrabad metro station to create tension in the area. This, according to the FIR, led to riots in North-East Delhi.

Whilst Danish, the first detainee, was released on bail shortly after, several other students and anti-CAA protestors were subsequently added to the list of the accused in the said FIR, and arrested – in most cases failing to abide by the prescribed procedures of arrests. When courts questioned authorities on the police’s need to keep the accused in custody – amid the COVID crisis and orders by the Supreme Court to decongest prisons. The Police, on 21 April 2020 added more serious charges: section 302 (murder), section 307 (attempt to murder) of the Indian Penal Code and sections of the Arms Act, all of which are non-bailable. Finally, the police also added sections 13,16, 17 and 18 of the UAPA. These sections include offences of unlawful activity, commission of a terrorist act, collecting funds for a terrorist act and conspiracy for committing a terrorist act. Neither the accused nor their counsels, were made aware of the additional charges.

(Sources: [AL IND 10/2020](#); Citizens Against Hate(n 50 above) ; News Reports: [Outlook \(17 Sep 2020\)](#); [The Wire \(21 August 2020\)](#))

In June 2020, UN Special Rapporteurs and Working Group on Arbitrary Detention highlighted the cases of nine human rights defenders from Delhi, and two from other states, remarking that their arrests seemed to be an attempt to silence dissent against the CAA, particularly from Muslim voices.<sup>143</sup> The **case of Safoora Zargar**, a student activist who was pregnant when she was arrested and charged under UAPA, was examined in detail in the communication that concluded that her detention was arbitrary based on the following account:<sup>144</sup>

- On 10 April 2020, Zargar was removed from her house by 10 to 12 men and 1 woman, none of them in uniform. No written warrant was produced.
- Zargar was informed that she had been detained under FIR 59/2020. She was taken to the Special Cell Police Station and detained there. However, at 10.30pm, she was arrested at the Special Cell Police Station under FIR 48/2020, which was issued on 24 February 2020, by the Jaffrabad Police Station, North East Delhi. The charges in this document did not require remand, given that the charges were bailable and the alleged offences carried a maximum penalty of less than seven years' imprisonment.<sup>145</sup> She was detained for that night at the Special Cell Police Station. Zargar was not named in either of the above-mentioned FIRs. Neither are there any specific charges against her apart from the allegation of delivering inflammatory speeches.
- On 13 April 2020, the metropolitan magistrate's court, Karkardooma District Court, granted bail to Zargar under FIR. 48/2020 with the observation that given her pregnancy, she needed proper medical care and that most of the offences levelled against her were bailable in nature. The Court also relied on the judgment of the Supreme Court of India (Writ Petition (Civil) No. 1 of 2020) regarding the decongestion of jails due to the coronavirus disease (Covid-19) pandemic. On 13 April 2020, after the release of Zargar was ordered under FIR No. 48/2020, she was immediately rearrested under FIR No. 59/2020.
- Arguably, this was done to make the bail even more difficult to obtain and to obstruct any reasoning on the grounds of Zargar's pregnancy. The additions under UAPA took place after the Metropolitan Magistrate observed on 20 April 2020 that the charges against Zargar were unclear.<sup>146</sup>
- The lockdown due to Covid-19 made a difficult situation worse for Zargar, as hearings were not held in courts but in the jail complex, making it difficult for

<sup>143</sup> OHCHR # [ALIND 10/2020 \(11 June 2020\)](https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25343) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25343>>

<sup>144</sup> A/HRC/WGAD/2020/91 (11 March 2021)

<[https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A\\_HRC\\_WGAD\\_2020\\_91.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_91.pdf)>

<sup>145</sup> The FIR quotes offences under the following sections of the Indian Penal Code: 188 (disobedience to order duly promulgated by public servant), 353 (assault or criminal force to deter public servant from discharge of his duty), 283 (danger or obstruction in public way or line of navigation), 341 (punishment for wrongful restraint), 109 (punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment), and 147 (punishment for rioting) read with section 34 (acts done by several persons in furtherance of common intention).

<sup>146</sup> A/HRC/WGAD/2020/91 (11 March 2021)

<[https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A\\_HRC\\_WGAD\\_2020\\_91.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_91.pdf)>

lawyers to appear. On 30 April 2020, the National Human Rights Commission issued directions to the Tihar jail authorities to respond within four weeks regarding Zargar's detention conditions, given that she was pregnant, had been denied medical care and a special diet, had not been allowed to meet and communicate with her family and lawyers and had been kept in solitary confinement since 10 April 2020.<sup>147</sup> She was finally granted bail in June 2020, on humanitarian grounds, then in the second trimester of her pregnancy.

The UN Working Group notes that Zargar's detention was arbitrary as it lacked any legal basis (she was arrested without warrants, the charges and FIRs under which she was detained were changed after her arrests, and neither of whom had her name as a defendant); her deprivation resulted from the exercise of universally recognised rights, in particular the right to freedoms of opinion, expression and peaceful assembly; Ms. Zargar was discriminated against on the basis of her status as a human rights defender and in violation of her right to equality before the law and equal protection of the law under article 26 of the ICCPR.<sup>148</sup>

These arrests 'constitute an attempt to silence dissent against the CAA, in

particular of minority Muslim voices' and that the arrests appeared to be 'part of a wider pattern of arrests targeting those leading and organising the anti-CAA protests'.<sup>149</sup> The Indian government, in its response to UN experts, insisted that the arrests were as per due process.<sup>150</sup>

In at least one of these cases, there have been claims of torture in custody. The police detained human rights activist **Khalid Saifi** on 26 February as he was making his way to the protest site on foot. Saifi's family claims he was tortured in custody, taken to a hospital, and then produced before the duty magistrate in the parking lot of Karkardooma Court complex in East Delhi the same night, when he was sent to jail. When Khalid Saifi was produced in court again on 11 March after his judicial custody ended, he was wheeled out by the Delhi police in a wheelchair.<sup>151</sup>

As of February 2022, 13 of the 18 activists and human rights defenders charged under UAPA and other serious offences continue to be in detention and await trials.<sup>152</sup>

<sup>147</sup> Vijayta Lalwani "I kept feeling it was a nightmare": Safoora Zargar on surviving 38 days in solitary confinement" <<https://scroll.in/article/988844/i-kept-feeling-it-was-a-nightmare-safoora-zargar-on-surviving-38-days-in-solitary-confinement>>

<sup>148</sup> A/HRC/WGAD/2020/91 –

<[https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A\\_HRC\\_WGAD\\_2020\\_91.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_91.pdf)>

<sup>149</sup> [AL IND 10/2020](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_91.pdf); AL IND 3/2020 too detailed allegations of excessive force, arrests and arbitrary detention of protesters in the context of protests against the CAA.

<sup>150</sup> Permanent Mission of India to the United Nations Offices at Geneva, 'NV. GEN/PMI/353/10/2019', 31 July 2020, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35458>>

<sup>151</sup> Amnesty International, [Investigative Briefing](#), 15.

<sup>152</sup> CIVICUS "India: Ongoing targeting of activists under anti-terror laws for their protests against citizenship law" (26 anuary 2022) <<https://www.civicus.org/index.php/media-resources/news/5561-india-ongoing-targeting-of-18-human-rights-defenders-under-anti-terror-laws-in-reprisal-for-their-protest-against-the-citizenship-amendment-act-2019>>

## 5. Reprisals for seeking redress

The second manner in which the Delhi Police responded to North East Delhi was by arresting a large number of Muslim residents from neighbourhoods where the violence took place in February 2020 – some of whom were victims of the violence themselves - while failing to act against those responsible for the mob violence, arguably in an attempt to change the narrative of events.<sup>153</sup>

The Delhi police claim that the number of people arrested from the two communities are ‘almost identical to each other’, but have failed to disclose arrest details.<sup>154</sup> However, the state authorities have provided contradictory information. In March, Home Minister Amit Shah told parliament that the violence was a ‘well-planned conspiracy’ and that the police had filed over 700 cases, and detained 2,647 people.<sup>155</sup> In a media briefing a day later, the Delhi police said that 200 people had been arrested.<sup>156</sup> In May, a public statement by the police said that more than 1,300 people had been arrested in over 750 cases.<sup>157</sup> According to the most recent status report filed by the Delhi police, 758 cases were registered, and 695 cases are being investigated by the North East Delhi police with no details on the

number of Hindus and Muslims.<sup>158</sup> Until March 2022, only three persons have been charged and one convicted for rioting, arson and trespass.<sup>159</sup>

According to Human Rights Watch, the police did not follow the procedure established under the criminal code such as producing an arrest warrant, informing the person’s family of the arrest, and providing them a copy of the First Information Report, the official police case, or ensuring that those arrested have access to legal counsel, including during interrogation.<sup>160</sup>

According to Human Rights watch, a lawyer reported that his 45-year-old client was accused of looting and burning a shop as part of a mob. On 2 April, when the man and his wife were not at home, several policemen entered their house, searched it, and took the couple’s younger son to the police station. The son was released only when the man presented himself to the police, upon which the man was detained without being told of his charges. The wife was given a copy of the First Information Report after 10 days. The man was not able to meet or speak to his lawyer until he received bail over two months later.

<sup>153</sup> Muslim victims of 2020 Delhi violence ‘losing hopes of justice’ (Al-Jazeera, 25 Feb 2021)

<<https://www.aljazeera.com/news/2021/2/25/muslim-victims-of-2020-delhi-violence-losing-hope-in-justice>>

<sup>154</sup> Delhi Riots 2020: A Chronicle of Double Standards, and an Unending Witch-Hunt (The Wire, 14 July 2020)

<<https://thewire.in/communalism/delhi-riots-2020-double-standards>>

<sup>155</sup> The Times of India “Action against Delhi riots accused will serve as example: Amit Shah” (12 March 2020)

<<https://timesofindia.indiatimes.com/india/action-against-delhi-riots-accused-will-serve-as-example-amit-shah/articleshow/74585084.cms>>

<sup>156</sup> YouTube <[https://www.youtube.com/watch?v=F\\_dkeqgDW-0](https://www.youtube.com/watch?v=F_dkeqgDW-0)>

<sup>157</sup> Delhi Police on Twitter (16 May 2020) <<https://twitter.com/DelhiPolice/status/1261653724885184513?s=20>>

<sup>158</sup> Times of India “Northeast Delhi violence: Delhi Police files fresh status re”

<[http://timesofindia.indiatimes.com/articleshow/89180492.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/89180492.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)>

<sup>159</sup> Times of India ‘Northeast Delhi violence’.

<sup>160</sup> Human Rights Watch “End Bias in Prosecuting Delhi Violence” (15 June 2020)

<<https://www.hrw.org/news/2020/06/15/india-end-bias-prosecuting-delhi-violence>>; Human Rights Watch “Biased Investigations 2 Years after Delhi Riot” (21 February 2022) <<https://www.hrw.org/news/2022/02/21/india-biased-investigations-2-years-after-delhi-riot>>

Quoting another case, Human Rights Watch reported, a 35-year-old man who was shot and injured during the violence in Delhi in February was detained without a warrant on 7 April, his lawyer said. The family visited three police stations to inquire of his whereabouts but was given no information. They were eventually informed that the man had been arrested but a copy of the First Information Report was not made available. The lawyer had to apply for the victim's records through the courts and found out that he was charged with murder. The man remains in jail.

Several other reports by victims and their lawyers indicate irregularities in the investigations and prosecutions.<sup>161</sup> Based on an analysis of about 40 FIRs, a domestic NGO accused the police of displaying communal bias against Muslims, for the following reasons: (i) several Muslim victims faced problems while trying to lodge FIRs; (ii) in the few instances where they managed to, charges were diluted and non-bailable sections against visibly Hindu names were dropped; (iii) there is evidence of a single FIR combining multiple incidents; and (iv) the police were chosen to be the complainant even in those instances where there were independent witnesses.<sup>162</sup> In May 2022, a Delhi court confirmed charges of conspiracy to riot against opposition leader Tahir Hussain along with other five Muslim men.<sup>163</sup> In

addition to the members of the Muslim community and anti-CAA protestors, the Delhi Police and other state authorities have also been intimidating NGOs, journalists and media houses who have tried to report, investigate, and thereby, indirectly challenge the narrative of the government.

According to reports, the government has often used its criminal investigative powers, including the Enforcement Directorate (ED), which investigates financial crimes, and the Central Bureau of Investigation (CBI), the country's premier criminal investigative agency, to target specific NGOs that have been vocal in their criticism of the government. The 'raids' are often conducted on the basis of FIRs filed by the police or complaints filed by government agencies, a recent example being the Enforcement Directorate's raid on the Delhi residence and NGO offices of the activist Harsh Mander.<sup>164</sup>

The ongoing farmers' protest had also spurred the government to crush organisational efforts against the movement by employing the National Investigation Agency (NIA) to raid the homes and offices of human rights activists in Andhra Pradesh and Telangana for their alleged links to left-wing extremists. The offices of an online news outlet, NewsClick, were also targeted for their involvement in

<sup>161</sup> Nitika Khaitan and Maneka Khanna "Opinion | Rampant arrests in time of lockdown"

<<https://www.thehindu.com/news/cities/Delhi/rampant-arrests-in-time-of-lockdown/article31410046.ece>>

<sup>162</sup> Vikas Kumar and Radhika Chitkara "Rescripting north-east Delhi riots – and the question of justice"

<<https://www.thehindu.com/news/cities/Delhi/rescripting-north-east-delhi-riots-and-the-question-of-justice/article31597139.ece>>; Vijayta Lalwani "In Delhi violence investigation, a disturbing pattern: Victims end up being prosecuted by police" <<https://scroll.in/article/962526/in-delhi-violence-investigation-a-disturbing-pattern-victims-end-up-being-arrested-by-police>>; <<https://scroll.in/article/1017109/>>

<sup>163</sup> The Print "Tahir Hussain was 'active rioter' in northeast violence: Delhi Court" (6 May 2022)

<<https://theprint.in/india/tahir-hussain-was-active-rioter-in-northeast-violence-delhi-court/945641/>>

<sup>164</sup> The Economic Times "ED raids Harsh Mander's Delhi residence, NGO offices" (16 September 2021)

<<https://economictimes.indiatimes.com/news/india/ed-raids-harsh-manders-delhi-residence-ngo-offices/articleshow/86272245.cms?from=mdr>>

extensively covering the protests, under the guise of a money-laundering investigation. The threat of physical, psychological and financial ruin at the hands of the state and its auxiliary institutions has deterred many from actively joining the civic space and limited the ability of existing players to make meaningful contributions.

Journalists too have been targeted using this legal provision. This includes: (i) Sidharth Vardarajan, and Ismat Ara, editor and staff reporter of The Wire respectively,<sup>165</sup> (ii) the staff at Caravan,<sup>166</sup> an investigative news magazine; and (iii) recently, against eight journalists who covered the farmers' protests in Delhi.<sup>167</sup> During the nationwide protests against CAA-NRC, several journalists were attacked and harassed by the police and Hindutva groups while they were doing the ground reporting, most of them being disproportionately from the Muslim community.<sup>168</sup>

On the contrary, as recent reports suggest, those Hindus accused in the riots have been politically active and aim to be elected representatives of the violence-affected districts in local bodies, two years after the violence.<sup>169</sup>

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<sup>165</sup> Committee Against Assault on Journalists "Fourteen journalists assaulted while covering anti-CAA protests till date! Here is the list" (21 December 2019) <<https://www.caajindia.org/2019/12/fourteen-journalists-assaulted-while.html>>

<sup>166</sup> Soutik Biswas, 'Why journalists in India are under attack', *BBC* (4 February 2020) <<https://www.bbc.com/news/world-asia-india-55906345>>

<sup>167</sup> Human Rights Watch "India: Journalists Covering Farmer Protests Charged" (2 February 2021) <<https://www.hrw.org/news/2021/02/02/india-journalists-covering-farmer-protests-charged>>

<sup>168</sup> Committee Against Assault on Journalists "Fourteen Journalists assaulted while covering anti-CAA protests till date! Here is the list" <<https://www.caajindia.org/2019/12/fourteen-journalists-assaulted-while.html>>

<sup>169</sup> Scroll.in <<https://scroll.in/article/1017109/>>

## IV. Actors and Groups Involved

Several reports indicate that the February 2020 violence mainly targeting the Muslim community was pre-meditated, pointing to pre-planned mobilisation of the mobs from other states, prepared arms and ammunition, and targeted attacks based on religion.<sup>170</sup>

### I. Delhi Police

The Delhi Police has been the subject of serious allegations concerning their use of excessive force against the anti-CAA protesters; their active complicity during the February 2020 violence; omissions in preventing the violence; and failing to effectively investigate or prosecute those responsible for targeted violence against Muslims.

#### *Omission*

There is credible evidence to suggest that the violence in North East Delhi was foreseeable with several incidents providing ample warning for the state authorities to take reasonable measures to prevent the violence.

On the day the violence began, Deputy Commissioner of Police Northeast district, Shri Ved Prakash Surya, was standing right next to Shri Kapil Mishra when he said ‘*after that we will not listen to the police...*’. At this point, the police failed to apprehend and arrest Kapil Mishra and all those gathered cheered his speech, which would have been the first and most immediate preventive step needed to avoid violence arising and protect life and property.<sup>171</sup>

Human Rights Watch reported that tensions had been building for weeks with ruling party BJP leaders openly advocating violence against anti-CAA protesters, portraying anyone who spoke out against the government as working against the nation’s interests.<sup>172</sup>

Social media platforms were being used to mobilise people and weapons. For instance, a Facebook livestream appealed to all ‘Hindu brothers to reach Maujpur in large numbers’.<sup>173</sup> Later, a WhatsApp group ‘*Kattar Hindu Ekta*’ (Orthodox Hindu Unity) was revealed to have been used to mobilise rioters, arms and ammunitions, and to kill Muslims.<sup>174</sup> The Delhi Minorities Commission<sup>175</sup> quoted several local witnesses who said that Hindu rioters were well-armed and carried a wide range of weapons, including sticks, iron rods, tear gas bombs, acid and firearms.<sup>176</sup>

<sup>170</sup> AL IND 15/2020 3. <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25603>>

<sup>171</sup> Delhi Minorities Commission(n 56 above) 99.

<sup>172</sup> Mishra (n 8 above).

<sup>173</sup> The Caravan “Delhi Violence Unmasked: Part One” (1 March 2021) <<https://caravanmagazine.in/politics/part-one-how-rss-bjp-members-invoked-hindu-identity-to-mobilise-hindutva-mobs-at-maujpur>>

<sup>174</sup> The Wire “Tear them Apart’: How Hindutva WhatsApp Group Demanded Murder, Rape of Muslims in Delhi Riots” (6 July 2020) <<https://thewire.in/communalism/delhi-riots-hindutva-whatsapp-muslims-murder-rape>>; <<https://scroll.in/article/966775/from-planning-murder-to-praising-modi-whatsapp-chats-offer-a-window-into-the-minds-of-delhi-rioters>>

<sup>175</sup> A semi-autonomous body set up under the aegis of the Government of the National Capital Territory of Delhi, which is presently led by the BJP’s opposition Aam Aadmi Party (AAP).

<sup>176</sup> Delhi Minorities Commission (n 56 above) 100.

The day before violence erupted, influential Hindu priest Yati Narsinghanand was seen calling for Islam to be ‘finished off’ in the neighbourhood. Narsinghanand, who has a history of providing arms training to young Hindus to fight Muslims, had been making a series of similar speeches in the weeks leading up to the violence.<sup>177</sup> Several of Narsinghanand’s followers were later reported to have been active in mobilising anti-Muslim mobs on 23 February,<sup>178</sup> with some – such as Ragini Tiwari and Ankit Tiwari – even livestreaming their participation in violence.<sup>179</sup>

On the one hand, no action was taken by the police against these actors for making online and offline incendiary and inciteful speeches, as well as gathering arms and weapons. On the other hand, the police failed to respond to calls for help from victims when the violence broke out.

Delhi Police reportedly received more than 13,000 calls for help during the period of violence.<sup>180</sup> Several witnesses claimed that their distress calls to police helplines were either ignored or met with open hostility.<sup>181</sup> One witness account recorded by Delhi Minorities Commission reported:

“Both the husband and wife tried to call the police several times, but the police did not arrive. The husband told the fact-finding committee that the police told him on the phone: ‘*aazadi chahiye, aazadi le lo*’ (you want freedom, take it).”<sup>182</sup>

A review of the call registers at two police stations in violence-hit areas confirmed that, in most cases, no action was taken by the police.<sup>183</sup> Numerous witness complaints have alleged that police personnel physically stationed at violence-hit sites too took little preventive action, mostly staying mute spectators while Hindu mobs wreaked havoc.<sup>184</sup> The police personnel also reportedly prevented emergency medical services from reaching Muslim victims, a situation that necessitated a midnight intervention by the Delhi High Court on 25 February.<sup>185</sup>

### ***Active Complicity***

Not only did the Delhi Police fail to prevent violence, but various testimonies, video recordings and media reports also suggest that some police officers took an active part in violent attacks against

<sup>177</sup> The Quint “Dasna Prist Called for ‘War on Islam’ in run up to Delhi Violence” (5 March 2020) <<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad>>

<sup>178</sup> The Wire “Beyond Blasphemy: Inside Yati Narsinghanand’s Militant Hindutva Machinery” (17 April 2021) <<https://thewire.in/communalism/beyond-blasphemy-inside-yati-narsinghanands-militant-hindutva-machinery>>

<sup>179</sup> The Wire “Delhi 2020, the Real Conspiracy: What the Police Chose Not to See” (28 February 2021) <<https://thewire.in/communalism/delhi-2020-the-real-conspiracy-what-the-police-chose-not-to-see>>

<sup>180</sup> AL IND 15/2020 4; Amnesty, *Investigative Briefing*, 6.

<sup>181</sup> Delhi Minorities Commission (n 56 above) 68.

<sup>182</sup> Delhi Minorities Commission.

<sup>183</sup> The Wire “Delhi 2020, the Real Conspiracy: What the Police Chose Not to See” (28 February 2021) <<https://thewire.in/communalism/delhi-2020-the-real-conspiracy-what-the-police-chose-not-to-see>>

<sup>184</sup> Amnesty “Investigative Briefing”, 28 August 2020 <<https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>>

<sup>185</sup> Live Law “Delhi Riots: At Midnight Hearing, Delhi HC Directs Police To Ensure Safe Passage Of Injured Victims To Hospitals (26 February 2020) <<https://www.livelaw.in/top-stories/delhi-riots-delhi-hc-holds-midnight-hearing-to-direct-police-to-ensure-safe-passage-of-injured-victims-to-hospitals-153148>>

Muslims in North East Delhi. We have provided details above of the three killings by the police. A fact-finding mission of doctors that visited violence-affected areas just as the violence was ebbing remarked that the police had behaved like ‘a Hindu force’, pointing to police complicity.<sup>186</sup> Various reports confirm that Delhi Police attacked Muslim-led protest sites, and at least one mosque, all in coordination with Hindu non-state actors.<sup>187</sup>

With reference to the attack on Farooqi Mosque on 24 February mentioned above, there were about 20 people praying inside the mosque when police attacked along with Hindu mobs. The Imam (priest) had locked himself in an upper room of the mosque in fear of physical attack. Reportedly, the police broke down the door, dragged the Imam out and handed him to the waiting Hindu mobs, who beat him unconscious and smashed his limbs.<sup>188</sup>

One witness account recorded by Delhi Minorities Commission in their Fact-Finding Report states:

“At this point, [Station House Officer] SHO Dayalpur started pushing the (Muslim) women

protesters and abusing them in filthy language. Police removed B.R. Ambedkar’s portrait at the protest site and started beating women.”<sup>189</sup>

Another complainant confirmed this account. He claimed that he saw Bhajanpura and Dyalpur Station House Officers (RS Meena and Tarkeshwar Singh, respectively) attacking women, and the rioters picking up the bodies of anti-CAA protesters who were killed, putting them in the vehicles belonging to a nearby hospital, and taking them away.<sup>190</sup>

A separate witness testimony indicates that the police were actively providing a shield to the rioters as if making way for them to continue the rampage.

“They just walked beside them as if they were escorting the mob. The Police did not arrest any of the perpetrators; they just made way for the couple to escape while the mob stood there with sticks and weapons in their hands.”<sup>191</sup>

During the riots, a video of five men lying on the road being beaten by armed police personnel went viral.<sup>192</sup> Kausar Ali, one of the five men beaten up by the police, stated his version of the events before the Delhi Minorities Commission’s Fact-Finding team. Below is his account:<sup>193</sup>

<sup>186</sup> Progressive Medicos and Scientists Forum, “[An Inquiry into the Anti-Muslim Violence in North-East Delhi](#)”, 20 March 2020; The Print “2020 Northeast Delhi riots: Group presents fact finding report, suggests corrective measures” (1 March 2022) <<https://theprint.in/india/2020-northeast-delhi-riots-group-presents-fact-finding-report-suggests-corrective-measures/852777/?fbclid=IwAR2Xhr75vX2dvt-IWFZADA1xtEkBBS1ys4-bI2F69hVDEZBPbFVsaewC6I>>

<sup>187</sup> Amnesty “Investigative Briefing”, 28 August 2020 <<https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>> 10-14.

<sup>188</sup> OHCHR # AL IND 15//2020 (9 October 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25603>>, 3.

<sup>189</sup> Delhi Minorities Commission (n 56 above) 75; Citizens Against Hate (n 50 above) 41.

<sup>190</sup> Citizens Against Hate (n 50 above) 42.

<sup>191</sup> Citizens Against Hate 69.

<sup>192</sup> Al Jazeera “Mosque set on fire during Delhi’s worst violence in decades” (26 February 2020) <<https://www.aljazeera.com/news/2020/2/26/mosque-set-on-fire-during-delhis-worst-violence-in-decades>>

<sup>193</sup> Delhi Minorities Commission (n 56 above) 77-79.

“Kausar Ali had gone to the Kardam Puri area in search of his son on 24 February 2020. There he was surrounded by 6-7 policemen who beat him with their boots and sticks on his head, legs and whole body. Thereafter, the police dragged him to Mohalla Clinic on the main street. Three young men who were severely injured were already lying there and bleeding. The policemen threw him at that place along with other injured men. Shortly after, the police brought one more person and threw him near them. Policemen kept beating all five of them with sticks and boots. Police told them to sing ‘*Jana Gana Mana*’ (the national anthem) and directed Kausar to say, ‘*Bharat Mata Ki Jai*’ (Long Live Mother India). While beating them, the policemen were saying, “*You want Azadi (freedom)? take this Azadi!*” According to him, one of the five men (Faizan) beaten up by the police officers at the scene later succumbed to injuries.”<sup>194</sup>

### ***Failure to investigate and prosecute***

As discussed above, the Delhi Police demonstrated a clear bias against anti-CAA protestors and members of the Muslim community who were themselves the disproportionate target of the

violence.<sup>195</sup> Several have also been charged under anti-terror laws. At the same time, members of Hindu nationalist groups, political leaders and those who made hate speeches have all mostly escaped consequences. One of the police internal memos that was obtained by the media exposed this bias. Here was a senior police officer advising station House officers to ‘take due precaution’ while arresting Hindu suspects.<sup>196</sup> The few Hindu rioters who have been arrested have mostly been local, lower-level operatives. None of the top BJP leaders named in various forms in numerous witness complaints nor any Hindu activist of consequence faced any action.

Several victims in their testimonies allege that when they tried to lodge a complaint, the police refused to file the case, unless no names were mentioned, and threatened reprisal, including lodging cases with false charges against the complainants themselves.<sup>197</sup>

In the much reported hate speech case, on 26 February, the Delhi High Court in the case of Harsh Mander v. Government of NCT Delhi & Ors. W.P.(Crl.) 565/2020, ordered the Delhi police to ‘take a conscious decision’ on filing a First Information Report against Kapil Mishra, Parvesh Verma, Anurag Thakur and Abhay Verma, another MLA who made hate speeches, within a day.<sup>198</sup> On 13 July, the police

<sup>194</sup> Delhi Minorities Commission 77.

<sup>195</sup> Mishra (n 8 above) 34; Human Rights Watch, End Bias in Prosecuting Delhi Violence (15 June 2020)

<<https://www.hrw.org/news/2020/06/15/india-end-bias-prosecuting-delhi-violence>>

<sup>196</sup> NDTV “Top Cop’s Order To Officials In Delhi Riots’ Probe “Mischievous”: Court” (1 August 2020)

<<https://www.ndtv.com/delhi-news/delhi-violence-top-cops-order-to-officials-in-riots-probe-mischievous-delhi-high-court-2272436>>

<sup>197</sup> Citizens Against Hate. Darkness at Noon: Incitement to violence; Obfuscation and Perversion of Justice in Delhi. August 2020. <<https://citizensagainsthate.org/wp-content/uploads/2021/03/Darkness-at-Noon.pdf>> 41, 76.

<sup>198</sup> Amnesty “Investigative Briefing”, 28 August 2020. <<https://www.amnestyusa.org/wp-content/uploads/2020/08/Investigative-Briefing.pdf>> 5.

filed the affidavit before the court and submitted that they had not yet found any ‘actionable evidence’ against the named leaders. The police’s official stance was that ‘as and when substantial and cogent evidence of involvement of the aforesaid persons in the commissioning of any offence surfaces, the Delhi police will take suitable steps in the already registered FIRs.’ The government’s attorney went on to claim, as the violence was still playing out, that the situation was not ‘conducive’ for registering complaints against BJP leaders.<sup>199</sup> No FIRs have been filed against the political leaders so far.

Concerning the misconduct of some of the police officers involved in the violence, there are no reports of any independent, impartial and effective investigations against the police personnel.

## 2. BJP Leaders and associated groups

As mentioned above, widespread incendiary hate speeches were being made by the BJP political leadership in the months leading up to the violence. Several witnesses’ testimonies allege that Kapil Mishra and other BJP leaders, in addition to sparking off violence with the ‘ultimatum speech’, also directly led violent, armed Hindu mobs in multiple

locations between 23 and 26 February 2020.

According to a witness named Rizvi who reportedly filed a police complaint against Kapil Mishra and his accomplices, the latter were carrying guns, swords and tridents, spears, sticks, stones and glass bottles while loudly chanting the following inciteful slogans:

*“Kapil Mishra tum lathh bajao, hum tumhare saath hai / Lambe-lambe latth bajao, hum tumhare saath hai / Kheech-kheech ke latth bajao, hum tumhare saath hai / Mullo par tum lath bajao, hum tumhare saath hai / Chamaaro par tum latth bajao, hum tumhare saath hai” (Kapil Mishra, you beat them with sticks, we are with you / Beat them with long sticks, we are with you / Beat them with full force, we are with you / Beat the Muslims, we are with you / Beat the Dalits, we are with you).”<sup>200</sup>*

Soon, the witness claimed, Mishra’s accomplices began throwing stones at peaceful anti-CAA protestors who were sitting at Kardampuri, and stopping cars, identifying Muslims and Dalits, while abusing and calling them anti-nationals, *mullahs* (used in a derogatory manner to refer to Muslims), and caste-based slurs against the Dalits. Mishra’s accomplices beat up Muslims and vandalised their cars. The witness further added:

<sup>199</sup> Live Law “[Delhi Riots] ‘Situation Not Conducive’, Says Solicitor General On Plea For FIR On Hate Speech; Delhi HC Adjourns Case Until April 13” (27 February 2020) <<https://www.livelaw.in/top-stories/situation-not-conducive-for-fir-on-hate-speech-says-solicitor-general-delhi-hc-adjourns-plea-until-april-13-153208>>

Human Rights Watch “India: End Bias in Prosecuting Delhi Violence” (15 June 2020) <<https://www.hrw.org/news/2020/06/15/india-end-bias-prosecuting-delhi-violence>>

<sup>200</sup> Citizens Against Hate (n 50 above) 136-137.

“Kapil Mishra was brandishing his gun in the air and telling all the attackers, “don't leave these fuckers. Today we will teach them such a lesson that they will forget how to protest.”<sup>201</sup>

Mishra was also accused by witnesses of having commanded police officers, via telephone and in-person, to attack a protest site.<sup>202</sup>

Another senior BJP member and former legislator from Northeast Delhi, **Jagdish Pradhan**, was reported to mobilise Hindu rioters from neighbouring UP and lead them to North East Delhi.<sup>203</sup> **Satya Pal Singh**, a sitting BJP parliamentarian and a former senior police officer, reportedly directed the police and Hindu rioters to carry out targeted religion-based attacks against Muslims.<sup>204</sup> Other local BJP leaders such as **Kanhaiya Lal**, **Nand Kishore Gujjar** and **Mohan Singh Bisht** were also alleged to have directly led violent Hindu mobs in numerous witness complaints.<sup>205</sup>

Another witness described how the youth had been mobilised by organised Hindutva groups such as the **Bajrang Dal**, through a mix of hate and fear, and with material support, to attack Muslims.<sup>206</sup> The coordinating role of other Hindu

paramilitary volunteer groups - **Rashtriya Swayamsevak Sangh (RSS)**, **Vishwa Hindu Parishad (VHP)** –was also revealed in complaints.<sup>207</sup>

Media accounts of those in the mob echo the sentiment demonstrated by the BJP leadership in the previous weeks. One excerpt of these testimonies is as follows:

“Our opposition is to the opposition of those against the CAA. How dare they (read Muslims) protest like this in our country? Is it (their) country? It is our country. Are they bigger goons than us? We are the bigger goons. We will show them their place, not allow them to remain (even) in their homes.”<sup>208</sup>

Investigative journalists revealed that the senior BJP leaders as well as BJP's local members in North East Delhi were active on social media at the same time, using the same rhetoric, deeply polarising the populace.<sup>209</sup>

The Delhi Minorities Commission's fact-finding report released in July 2020 points to a systematic and co-ordinated nature in which the so-called mobs functioned. Here is an excerpt from the report:

“Different mobs numbering anywhere between 100-1000

<sup>201</sup> Citizens Against Hate.

<sup>202</sup> According to multiple eyewitness complaints submitted to the police, published by [The Caravan](#) (21 June 2020).

<sup>203</sup> According to multiple eyewitness complaints submitted to the police, published by [The Quint](#) (30 June 2020).

<sup>204</sup> [The Caravan](#), 21 June 2020.

<sup>205</sup> The Caravan “Delhi Violence Unmasked: Part One” (1 March 2021) <<https://caravanmagazine.in/politics/part-one-how-rss-bjp-members-invoked-hindu-identity-to-mobilise-hindutva-mobs-at-maujpur>>; The Caravan “Dead and Buried” (21 June 2020) <<https://caravanmagazine.in/politics/delhi-police-ignored-complaints-against-kapil-mishra-bjp-leaders-leading-mobs-delhi-violence>>

<sup>206</sup> The Caravan “A Hindu rioter speaks: Delhi violence was “revenge” against Muslims, police gave free reign” (31 July 2020) <<https://caravanmagazine.in/crime/delhi-rioter-testimony-hindu-revenge-muslims-police-free-reign>>

<sup>207</sup> The Quint “Delhi Riots Exclusive: RSS Members Arrested for Murder, Rioting” (3 July 2020) <<https://www.thequint.com/news/india/delhi-riots-rss-vhp-members-accused-murder-rioting-arrested-delhi-police>>

<sup>208</sup> The Wire “We Burnt the Mazar Down”: Hindutva Men Talk About the Violence They Unleashed” (25 February 2020) <<https://thewire.in/communalism/delhi-violence-hindutva-mazar-burnt>>

<sup>209</sup> The Caravan “Delhi Violence Unmasked: Part Three” (1 March 2021) <<https://caravanmagazine.in/politics/how-bjp-and-youth-wing-bjym-used-delhi-elections-to-mobilise-hindutva-mobs>>;

people, chanting common slogans like 'Jai Shri Ram', and even "Har Har Modi", "Modiji, kaat do in Mullon ko [Modi, cut these Muslims into pieces]", "Aaj tumhe azadi denge [Today, we will give you freedom]", selectively identified and attacked Muslim individuals, houses, shops, vehicles, mosques and other property. The victims have repeatedly stated that though they could recognize some of the perpetrators as belonging to their residential locality, they also saw that outsiders were present. They recounted that some of these persons had made their way into their areas prior to the violence and even threatened them. The perpetrators positioned themselves strategically in the residential

areas. This points to no "spontaneity" as in the case of a riot. The testimonies reveal that the violence was planned and targeted. As stated above, the perpetrators were armed with lathis, iron rods, tear gas bombs, cylinders and firearms. The attacks were selectively targeted toward the Muslim population of the area. In some instances, victims were asked to show their ID cards and then targeted based on their faith. In response to the targeted attacks, Muslim youth pelted stones at the mobs in some places to defend community and family members. Barring one incident, there have not been reports of Muslims being armed with weapons other than stones."<sup>210</sup>

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<sup>210</sup> Delhi Minorities Commission (n 56 above) 100.

## V. Legal Analysis

### I. Violations under International Human Rights Law

International human rights law (IHRL) is the body of international law, stemming from treaties or customs, which requires States to respect, protect and fulfil human rights at all times. India is a State party to several core human rights treaties relevant to the situation of Muslims in India. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child (CRC).

Other relevant United Nations human rights standards that guided the Panel in this legal analysis include the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Rabat Plan of Action on the

prohibition of advocacy of national, racial or religious hatred.

Several provisions of these treaties and instruments are applicable to the situation of hate speech, targeted violence and denial of due process of Muslims and anti-CAA protestors in Delhi.

#### I.I. Right to life

The right to life and to not be 'arbitrarily deprived' thereof is enshrined in Article 3 UDHR and Article 6(1) ICCPR. Arbitrary deprivation of life is understood as an action that lacks a legal basis or is otherwise inconsistent with protecting laws and procedures, including when it is not strictly necessary in view of the threat posed by the attacker or disproportionate to the threat.<sup>211</sup> The notion of "arbitrariness" includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>212</sup>

The use of force by law enforcement officials should be exceptional,<sup>213</sup> and assemblies should ordinarily be managed with no resort to force. The only circumstances warranting the use of force and firearms, during demonstrations, are the imminent

<sup>211</sup> UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, [CCPR/C/GC/36](#), para. 11 and 12.

<sup>212</sup> UN Human Rights Committee (HRC), para. 10.

<sup>213</sup> See the [commentary](#) to Article 3 of the Code of Conduct for Law Enforcement Officials.

threat of death or serious injury *i.e.* in self-defence.<sup>214</sup>

Three killings are alleged to have been directly caused by the Delhi Police during the targeted violence in February 2020. According to the information gathered, there are no grounds to believe that the police would be acting in self-defence in the three listed cases.<sup>215</sup> In that sense, killings of unarmed civilians by the police could not be considered reasonable, necessary or proportional.

The obligation under Article 6 entails taking all necessary measures to prevent arbitrary deprivations of life, including by soldiers tasked with law enforcement missions.<sup>216</sup> The obligation under Article 6 also extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. State parties may be in violation of Article 6 even if such threats do not result in loss of life.<sup>217</sup>

There is sufficient credible information to suggest that the Delhi Police may also have violated the right to life of the members of the Muslim community by failing to

protect their lives from ‘reasonably foreseeable threats’<sup>218</sup> by private actors as well as political leaders and ministers. The state agents were present when violent threats were being issued to attack Muslims and other anti-CAA protestors. Moreover, some armed attacks had already taken place by the time the violence in North East Delhi broke out in February 2020.<sup>219</sup> The police failed to take reasonable measures to prevent the foreseeable deprivation of lives of dozens of Muslims. These claims deserve to be further investigated.

The relevant state authorities also appear to have failed to provide effective protection through judicial or other means to protect the lives of a marginalised group who was and continues to be in danger of being unlawfully killed.<sup>220</sup>

According to international human rights law, investigations into allegations of violation of Article 6 must always be independent, impartial, prompt, thorough, effective, credible, and transparent, and in the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the

<sup>214</sup> Join Report of the Special Rapporteurs on rights to freedom of peaceful assembly, association, etc., [A/HRC/31/66](#), paras 57 and 58. The use of lethal force *in self-defence* would *not* constitute an arbitrary deprivation of life only under the following conditions: i) must be strictly necessary in view of the threat posed by the attacker; ii) it must represent a method of last resort after other alternatives have been exhausted or deemed inadequate; iii) the amount of force applied cannot exceed the amount strictly needed for responding to the threat; iv) the force applied must be carefully directed, only against the attacker; and v) the threat responded to must involve imminent death or serious injury. HRC, General Comment 36, [CCPR/C/GC/36](#), para. 10 and 12.

<sup>215</sup> UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, <<https://www.refworld.org/docid/5e5e75e04.html>>, (hereinafter General Comment 36) para. 10.

<sup>216</sup> UN Human Rights Committee (HRC) para. 13.

<sup>217</sup> UN Human Rights Committee (HRC) para. 7.

<sup>218</sup> General Comment 36, para 7, 18.

<sup>219</sup> See General Comment 36, para. 20.

<sup>220</sup> Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, <<https://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>> Principle 4.

case, adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future.<sup>221</sup>

Allegations of the failure in the duty to investigate<sup>222</sup> and prosecute the violations in North East Delhi have been corroborated by multiple sources. Several testimonies have been brought on record furthering the claim that killings of Muslims, including those attributed to police officers, were not investigated effectively, thoroughly or expeditiously. Moreover, given the allegations of killings by beatings have been levelled against police officers, there has been no independent or impartial investigative mechanism set up to hold responsible police officers accountable.

### **1.2. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment**

The prohibition is enshrined in Article 5 UDHR and Article 7 ICCPR. Torture is understood as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the

instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.<sup>223</sup>

Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts the established international legal principles on the use of force by law enforcement of officials.<sup>224</sup> Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations to avoid the unnecessary, excessive or otherwise unlawful use of force contravenes the State's positive obligation to prevent acts of cruel, inhuman or degrading treatment within its jurisdiction.<sup>225</sup>

According to reports, in December 2019, the students of Jamia Millia Islamia University were beaten with batons and molested causing serious injuries by the Delhi Police as a reprisal for taking part in the anti-CAA protests. The said attack on 15 December was carried out when the students were in the university

<sup>221</sup> General Comment No. 36.

<sup>222</sup> See General Comment No. 3 on the Right to Life, November 2015, paras. 2, 15; Human Rights Committee, General Comment No. 31, paras. 15 and 18. See also, Minnesota Protocol.

<sup>223</sup> Article 1 [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), 1984 (CAT)

<sup>224</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report to the General Assembly, [A/72/178](#), 20 July 2017, para. 62.

<sup>225</sup> Note by the Secretary-General, Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, [UN/A/72/178](#), para. 46.

hostels and libraries, thereby, posing no threat to public order or security. Serious allegations have been made by female students of the university of being sexually assaulted by police personnel, which deserves further investigation.

On multiple occasions between 13 and 20 December 2019, the police are reported to have resorted to beating the protestors with lathis and batons resulting in injuries and hospitalisations (see section II). Such use of force against peaceful protestors appears to be excessive, unlawful, unnecessary and disproportionate, thus contravening India's obligation to prevent acts of a cruel, inhuman or degrading nature.

We must also note claims made by the family of one of the human rights defenders detained under UAPA, Khalid Saifi, that he was tortured in police custody and that he was reportedly brought to the court in a wheelchair. A review of these reports suggests that there is sufficient credible information to claim that the Delhi Police may have violated human rights defenders' and Muslims' rights under Article 7 ICCPR, which deserve to be further investigated.

### **1.3. Freedoms of expression, opinion, association and peaceful assembly**

The freedom of expression and opinion is guaranteed under Article 19 of the ICCPR. Under international human rights law, any restriction on the exercise of the right must be provided by law and be necessary and proportionate to the aim pursued. Particularly, certain types of expression should never be subject to restrictions. These include discussion of government policies and political debate; reporting on human rights and/or government activities; and engaging in peaceful demonstrations or political activities.<sup>226</sup> All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with Article 19 para. 1 to criminalise the holding of an opinion.<sup>227</sup>

Similarly, the right to freedom of association and assembly is recognised under Articles 21 and 22 of the ICCPR. The States have the obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and association are in

<sup>226</sup> [HRC Resolution 12/16](#) para. 5(p) (i)

<sup>227</sup> HRC General Comment No. 34 (2011); Particularly in the case of human rights defenders see [A/HRC/RES/25/18](#).

accordance with their obligation under IHRL.<sup>228</sup>

There is sufficient credible information from sources including civil society and media reports suggesting that in their response to the anti-CAA protestors in Delhi, the Government of India violated their freedom of assembly and association. The acts that amount to a violation of freedom of expression and peaceful assembly by the Delhi Police include the detention of students, ban on protests, excessive use of force in managing and dispersing assemblies and protests, targeted physical attacks against protesting students as a reprisal for their exercise of this right, arrests and detentions of protest leaders, and internet and cellular shutdowns. These acts indicated that not only were the anti-CAA protestors prohibited from expressing their political opinion but were also punished and discriminately treated for exercising the right to opinion and expression.

It should be noted that excessive use of force was used by the Delhi Police to disperse assemblies on several occasions, including the one on 20 December where victims reported dozens of protestors being injured from beatings by police officers. Such use of unnecessary and disproportionate force on peaceful protestors is a violation of their protected right to assembly.<sup>229</sup>

General Comment no. 37 of the Human Rights Committee explicitly stresses that ‘the possibility that a peaceful assembly may provoke adverse or even violent reaction from some members of the public is not sufficient grounds to prohibit or restrict the assembly... states are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner’.<sup>230</sup>

#### **I.4. The right not to be subjected to arbitrary arrest or detention**

As enshrined in Articles 3 and 9 of UDHR, and 9(1) ICCPR, arbitrary detention is understood as any form of confinement that has no legal basis, violates domestic law or due process of law, or is unreasonable, unnecessary or disproportionate.<sup>231</sup> Deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is arbitrary.<sup>232</sup> Due to this heightened duty of care, they must take all necessary measures to protect the lives of individuals deprived of their liberty. The duty to protect the life of all detained individuals includes providing them with necessary

<sup>228</sup> [Resolution 24/5 of the HRC.](#)

<sup>229</sup> See the commentary to Article 3 of the [Code of Conduct for Law Enforcement Officials.](#)

<sup>230</sup> [CCPR/C/GC/37.](#)

<sup>231</sup> HRC, General Comment 35, Article 9 (Liberty and security of person), UN doc. [CCPR/C/GC/35](#) (16 December 2014).

<sup>232</sup> General Comment No. 35, Article 9 (Liberty and security of person), [CCPR/C/GC/35.](#)

medical care and appropriately regular monitoring of their health.<sup>233</sup>

From April 2020 onwards, 18 human rights defenders have been arbitrarily detained by the Delhi Police under overly broad provisions of the Anti-Terror law, UAPA. There is credible information to suggest that these detentions are arbitrary on several grounds:

- i. irregular procedures of arrests carried out without arrest warrants;
- ii. the original First Information Reports did not name the defendants or any specific conduct which could form the basis of the charges and their subsequent arrests;
- iii. the arrests were made in response to their exercise of universally recognised rights, such as the right to peacefully assemble and freedom of expression and opinion as guaranteed by the ICCPR;
- iv. the human rights defenders, a large majority of whom are Muslims, are being discriminated against on the basis of their religious status or political opinion which is a violation of their right to equality before the law and equal protection of the law under Article 26 of the Covenant;

- v. failure in providing adequate medical care considering the health conditions of the detainees as well as prejudicing their health while keeping them in congested jails throughout the Covid-19 pandemic; and
- vi. the prolonged detention of 13 protestors who continue to remain in detention for almost two years since they were arrested, also appears unreasonable, unnecessary and disproportionate.

The use of counter-terrorism laws to conflate human rights advocacy with terrorist activity is a deeply alarming trend in contravention of international legal norms and standards. Therefore, we believe there is sufficient credible evidence to suggest that these detentions were in violation of the right guaranteed under Article 9 that deserve to be further investigated.

#### **1.5. The right to a fair trial**

The right is guaranteed under Article 14(2) ICCPR and 11(1) UDHR and provides that any reversal of the burden of proof by the State and undue delay in pre-trial detention is inconsistent with international legal standards. With respect to the use of counter-terrorism justifications to restrict the legitimate exercise of other rights, it must be noted that

<sup>233</sup> HRC, General Comment no. 36, Article 6 (Right to Life), 3 September 2019, [CCPR/C/GC/35](#); Human rights in the administration of justice - Report of the United Nations High Commissioner for Human Rights [A/HRC/42/20](#).

compliance with human rights treaties and standards are complementary and mutually reinforcing goals with effective counter-terrorism measures strictly guided by the principles of legality, necessity and proportionality.<sup>234</sup> International human rights standards applicable under Article 15(1) ICCPR read with Article 11 UDHR which provides for the principle of legality. This principle requires that criminal laws must be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequences of committing such an offence. This principle recognises that ill-defined and/or overly broad laws are open to arbitrary application and abuse.<sup>235</sup> In that context, protections under Article 17 ICCPR and Article 12 UDHR against unlawful interference with a person's privacy, reputation and home are also applicable.

The case of Delhi's anti-CAA protestors being charged under UAPA appears to be a violation of the principle of legality. UAPA contains overly broad and ambiguous provisions such as the definition of a terrorist act, membership of terrorist organisations that are not sufficiently precise to meet the 'principle of legal certainty' under international law.<sup>236</sup> Moreover, on the basis of these imprecise provisions, the Act gives broad

powers to the executive allowing a 'pre-crime' regulation of activity, and excludes judicial oversight and control. The offences listed under UAPA are non-bailable, thereby ensuring that once detained, those accused ought to remain in prison until the trial ends.

Moreover, the overly broad law seems to be used in a discriminatory manner against Muslims and human rights defenders, thereby particularly targeting them based on their religious or political status to intimidate them. Their detentions have been unduly continued for almost two years to restrict them from legitimately exercising other universally recognised rights. The misuse of counter-terrorism frameworks against human rights defenders would be contrary to India's obligations under the aforementioned provisions of international human rights law.

#### **1.6. Prohibition on incitement to violence**

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 20(2) of the ICCPR require the states to prohibit 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.

<sup>234</sup> United Nations Global Counter-Terrorism Strategy ([General Assembly resolution 60/288](#), annex).

<sup>235</sup> UNGA [A/70/371 \(18 September 2015\)](#) <<https://undocs.org/Home/Mobile?FinalSymbol=A%2F70%2F371&Language=E&DeviceType=Desktop&LangRequested=False>>, para. 46(c); UNGA [A/73/361 \(3 September 2018\)](#) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/274/67/PDF/N1827467.pdf?OpenElement>>, para. 34.

<sup>236</sup> OHCHR OL IND 7/2020 (6 May 2020). <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25219>>

Article 20(2) must be read in conjunction with the conditions for restrictions to the exercise of freedom of expression set out in Article 19(3) of the ICCPR. As pointed out by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, when high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy.<sup>237</sup>

Under Article 20 of ICCPR, the state has an obligation to prohibit propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, violence or hostility. The prohibition under Article 20 is assessed contextually using the six-part threshold test identified by the Rabat Plan of Action.<sup>238</sup>

The six-part threshold test considers the following: (1) the social and political *context*, (2) the *status* of the speaker, (3) *intent* to incite the audience against a target group, (4) *content* and form of the speech, (5) *extent* of its dissemination, and (6) *likelihood* of harm, including imminence.<sup>239</sup>

The reports of hate speeches highlighted above, when viewed in the context of CAA and anti-CAA

protests, along with the violence that culminated after these speeches, were made appear to meet the six-part threshold test.

The speeches were made in the context of impending Delhi legislative assembly elections specifically targeting Muslim women and their sit-in protests against the CAA. The hate speeches were made by senior BJP leaders like Kapil Mishra, Anurag Thakur, Giriraj Singh and Amit Shah, who hold powerful political positions and enjoy significant popularity among their own electoral constituencies as well as on their online platforms. In most cases, the speeches call for direct violence including derogatory words against Muslims. When indirect phrases such as ‘shoot the traitors’ are used, their meaning and target are very unambiguous and clearly understood in the context. Nevertheless, all the incendiary slogans call for direct acts of violence. Their online and offline popularity ensured wide dissemination. On at least three occasions, these speeches led to direct violence and targeting of Muslims, including according to the reports, the violence in North East Delhi in February 2020.

By not taking any preventive or responsive action against the leaders who made inciting speeches that may have sparked violence, the Delhi Police failed to ensure the

<sup>237</sup> [A/67/357](#), para. 67.

<sup>238</sup> HRC “Annual Report of the United Nations Commissioner for Human Rights” (11 January 2013) <<https://undocs.org/A/HRC/22/17/Add.4>>

<sup>239</sup> OHCHR “One-pager on ‘incitement to hatred’”

<[https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_threshold\\_test.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_threshold_test.pdf)>

right and guarantee provided to Muslims collectively as a religious group under Article 20 of ICCPR.

Considering the fact that the speeches are ongoing, it is important to note a repeat offender named Yati Narsinghanand, who has been recently calling for a 'cleanliness drive' against Muslims. Taking domestic and international actions against inciteful speeches is particularly urgent in line with the responsibility to act in the prevention of potential atrocity crimes.

### 1.7. The right to equality

The right to non-discrimination on the grounds of religion is enshrined in Article 2(1) ICCPR, Article 2(2), ICESCR and Article 5 of ICERD. The obligation to not discriminate is understood in light of Article 26 of ICCPR, which stresses that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as religion.

Article 26 of ICCPR obliges the state parties to guarantee its citizens a right to equality before the law, which includes ensuring equality before courts during trial proceedings and the entitlement to

a fair and public hearing by a competent, independent and impartial tribunal. Article 5 ICERD prohibits discrimination on the basis of race, colour, or national or ethnic origin, to equality before the law.

According to the sources reviewed by the panel, the violation of Muslims' right to non-discrimination appears to be an overlapping issue with their unequal treatment before the law manifesting in many forms in Delhi.

Firstly, the discriminatory law, i.e. Citizenship (Amendment) Act that specifically impacts Muslims on the basis of their religion, has been brought in place and has not been judicially reviewed despite national and international concerns over its explicit discriminatory nature.<sup>240</sup> Secondly, the police and law enforcement machinery failed to provide them with recourse to justice for the disproportionate violence carried out against them in the last week of February 2020. Thirdly, they are being discriminatorily targeted using the law and legal institutions contributing to their further victimisation in the form of reprisals for seeking justice and arbitrary detention. Fourthly, the fact that incendiary speeches by the senior leadership of the BJP inciting discrimination against Muslims have gone unpunished also undermines their right.

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<sup>240</sup> For a more detailed discussion see Annexure I – All India

None of these measures can be justified on the basis of a reasonable or objective criteria to justify the distinction in the treatment of Muslims and those supporting/defending the suggestion that India might be in failing to fulfil its obligations to ensure non-discrimination under ICCPR and ICERD.

#### **1.8. The right to non-discrimination in access to housing and health**

The right to adequate housing and not to be subjected to forced eviction arises from Article 11 (1) of the ICESCR, Articles 17, 23 and 27 of the ICCPR, and Article 27 (3) of the CRC, the non-discrimination provisions found in Article 14, paragraph 2 (h) of CEDAW and Article 5 (e) ICERD. Forced evictions as defined under international human rights law must be prohibited in all circumstances, regardless of the ownership or tenure status of those affected. Victims of forced evictions must receive adequate compensation, reparation and access to housing or productive land as appropriate.<sup>241</sup>

The right to health as provided under Article 12, ICESCR; Article 24, CRC; Article 5 (e) (iv), ICERD imposes on States the obligation to respect, protect and fulfil the right of everyone to the enjoyment of the

highest attainable standard of physical and mental health. In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons including prisoners or detainees, to preventive, curative and palliative health services.

Non-discrimination is an immediate and cross-cutting obligation in the ICESCR. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.<sup>242</sup>

Despite warnings of overcrowded prisons, human rights defenders and political prisoners, including Muslims, were held in detention at the peak of Covid-19 waves. Some of them have also been held in solitary detention, as mentioned above, deeply impacting their mental health.<sup>243</sup>

According to the reports reviewed by the Panel, Muslim families have been forced to leave their homes in various parts of the country owing to their religious identity. For instance, in Delhi and Uttar Pradesh, attacks against Muslims led to mass

<sup>241</sup> Guideline no. 6 in the Guidelines for the implementation of the right to adequate housing (2020) ([A/HRC/43/43](#)).

<sup>242</sup> [General Comment 20](#) (para. 7).

<sup>243</sup> The Wire “Ignored and Discriminated Against, Muslims Have Lost Their Faith in the Healthcare System” (24 April 2020) <<https://thewire.in/communalism/coronavirus-muslims-communal-healthcare>>

migration to safer havens in close and distant locations.<sup>244</sup>

### 1.9. The right to an effective remedy

The right is enshrined in Article 2(3) ICCPR. The obligation to respect, ensure respect for and implement international human rights law, includes, inter alia, the duty to: (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations; (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) Provide effective remedies to victims, including reparation.<sup>245</sup> This right is inherent in the Covenant as a whole and therefore may not be derogated from, even if it is not expressly provided for in Article 4.<sup>246</sup>

It has been accepted as a general principle of international law that the breach of an international obligation gives rise to a general duty upon the state to repair the harm caused.<sup>247</sup> The International Law Commission's Draft Articles on State Responsibility note that this duty occurs primarily in the form of restitution, compensation and satisfaction<sup>248</sup> in order to end ongoing breaches as well as to ensure that the parties' dignity and rights are respected.

The 2005 United Nations Basic Principles and Guidelines on the right to a remedy and reparations further clarify that the state owes an obligation to the victim of 'gross violations of international human rights law and serious violations of international humanitarian law'.<sup>249</sup> The Basic Principles assert that persons who 'individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights'<sup>250</sup> are entitled to domestic reparation mechanisms which guarantee effective and equal access to justice. The right to an effective remedy for individuals<sup>251</sup> requires the state to investigate and punish violations of human rights as

<sup>244</sup> [Delhi riots: How Muslims' homes were targeted and burnt](#) (BBC, 4 March 2020).

[Muslims near India's Hindu temple allege pressure to vacate homes](#) (Al Jazeera, 4 June 2021).

<sup>245</sup> [General Assembly resolution 60/147](#).

<sup>246</sup> [UN Human Rights Committee has held in its General Comment no.29](#) that this right, para. 14.

<sup>247</sup> International Law Commission (ILC) 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) UN Doc. A/CN.4/L.602/Rev.1 Art 1.

<sup>248</sup> International Law Commission (ILC) 'Draft Articles', Art. 34.

<sup>249</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principles 4-5.

<sup>250</sup> UNGA Res 60/147, principle 8.

<sup>251</sup> UNGA Res 60/147, principle 15.

well as to establish independent frameworks for monitoring and providing reparations in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>252</sup>

Bearing in mind the binding treaty obligations as well as the soft law guidance above, the panel is of the view that victims of the human rights violations identified in Section V(1.1)-(1.8) are also being denied the right to an effective remedy.

### ***Apparent failures of the criminal justice system***

The vast majority of victims of disproportionate violence by police or non-state actors (discussed in Section III) will not have the wherewithal to petition the senior judiciary. It is crucial, therefore, that the grassroots justice machinery is capable of offering effective remedies, in the form of criminal investigation and prosecution where appropriate, and compensation where appropriate. Therefore, it is with deep concern that we note serious dereliction and delay in investigating and prosecuting violent crimes against Muslims by private actors as well as the police, despite credible evidence of such crimes (see Sections III(1) and III(3)).

Documentary information as well as focus groups conducted by NGOs

with victims of violence in Delhi<sup>253</sup> indicate that victims have been rebuffed or harassed even when registering criminal complaints. Police officials have threatened or bribed victims who have tried to file complaints, and outright refused to file complaints. Victims and lawyers recount filing multiple applications to senior officials and the district courts simply to register their complaints.

In some cases, lawyers and grassroots human rights advocates have been threatened by the police or third parties acting for the police. Victims have recounted being pressured by the police even outside the courtroom to change their testimony. A man shot by the police noted that he was denied the chance to contact his family or a lawyer, and taken straight to the police station, to find that the senior official at the station was the person who had shot him. Some complainants say that the police have filed false cases against them as retaliation for refusing to withdraw their complaints. Other complainants discovered, on finally accessing copies of the reports filed by police, that crucial details had been omitted or changed. As one example, the family of a Muslim man who was lynched to death discovered that the police recorded that the victim had committed suicide.

This widespread failure to record complaints accurately or at all

<sup>252</sup> UNGA Res 60/147, principles 19-23.

<sup>253</sup> Focus groups were conducted by a Delhi-based NGO in December 2021. Here, we draw on audio recordings and transcripts of these focus groups.

would mean that even the foundation of a criminal case, the basis for investigation and prosecution, is not being laid. We also note police failure to investigate such cases, as well as the destruction of evidence. Families have recounted struggling to discover where the bodies of loved ones who were killed were being kept. Many victims also lack access to legal aid, leaving them vulnerable to being taken advantage of and defrauded by lawyers.

Reports from NGOs assisting victims indicate that criminal trials related to targeted violence against Muslims in North East Delhi have barely progressed over the past two years. Action against the police has been similarly delayed. In February 2021, a district court in Delhi dismissed a petition filed by the Jamia Millia University representatives which sought to ensure First Information Reports – the basis for a criminal complaint – be registered against the police for attacking students on the university campus.<sup>254</sup>

The obligation to exhaust domestic remedies is considered to be satisfied when a good-faith attempt has been made, yet the domestic process is prone to unreasonable delays (which must take into

account the circumstances of the case and the nature of the violation<sup>255</sup> to decide whether the case has been unfairly prolonged, and may include instances where complainants are forced to go through multiple layers of administrative and judicial decision-making beyond what is required by law),<sup>256</sup> there exists institutional bias and the principles of a fair trial are violated leading to unfair outcomes,<sup>257</sup> or there exists a low likelihood of success.<sup>258</sup>

Based on reports regarding (1) lack of responsiveness, hostility and even reprisals from the police and other institutional actors; (2) the failure to accurately record complaints and gather evidence – which lays the foundation for a low likelihood of success at trial; (3) biased prosecution and pre-trial detention of anti-CAA activists; (4) biased *lack* of prosecution of political leaders engaging in dangerous hate speech; and (5) extended delays, the Panel believes that the victims of the aforementioned human rights violations do not have access to effective domestic remedy.

<sup>254</sup> Delhi News “Court dismisses Jamia varsity plea seeking FIRs against cops for Dec violence”

<<https://www.hindustantimes.com/cities/delhi-news/court-dismisses-jamia-varsity-plea-seeking-firs-against-cops-for-dec-violence-101612376879494.html>>

<sup>255</sup> For example: Committee on the Elimination of Racial Discrimination, *Quereshi v. Denmark*, Communication 33/2003 (Views of 10 March 2004) [U.N. Doc. CERD/C/66/D/33/2003](#), para. 6.4.

<sup>256</sup> Committee on the Elimination of Discrimination against Women, *Jallow v. Bulgaria*, Communication No. 32/2011 (Views of 28 August 2012) [U.N. Doc. CEDAW/C/52/D/32/2011](#), paras. 5.4, 7.3.

<sup>257</sup> Human Rights Committee, *Arzuaga Gilboa v. Uruguay*, Communication No. 147/1983 (Views of 1 November 1985) [U.N. Doc. CCPR/C/OP/2](#) 176, para. 7.2. See also: Committee on the Elimination of Racial Discrimination, *L. R. et al. v. Slovak Republic*, Communication No. 31/2003 (Views of 3 October 2005) [U.N. Doc. CERD/C/66/D/31/2003](#), para. 9.2.

<sup>258</sup> Human Rights Committee, *Earl Pratt and Ivan Morgan v. Jamaica*, [Communication No. 210/1986](#) and [225/1987](#) (Views of 6 April 1989).

***Monetary compensation***

We must note that the Delhi state government, led by Aam Aadmi Party, had announced an Assistance Scheme to ensure the payment of Rs. 200,000 for major injuries, Rs. 500,000 for permanent incapacitation and death of a minor, and Rs. 1000,000 for the death of an adult as compensation for victims of the December 2019 – January 2020 riots. In June 2020, the Delhi High Court had ordered that compensation claims be processed expeditiously.<sup>259</sup> However, progress on compensation appears to have been slow. Reports by the Delhi Government’s Committee on the Welfare of Minorities indicate that several complaints have yet to be dealt with, with 1176 applications out of 1,500 being approved by March 2021.<sup>260</sup>

Many applicants received amounts that were incommensurate with the loss sustained; for instance, 55 shopkeepers who had claimed losses amounting to Rs. 37,158,200 received only 9.91 per cent of the amount claimed and were paid only Rs. 3,682,967 as compensation by December 2020.<sup>261</sup> Their vulnerability has been further exacerbated by the uncertainties of

the Covid-19 lockdown from 2020-21 and the need to borrow loans to remain afloat. Many applicants have also expressed difficulties in accessing payment and have been turned away by Sub-Divisional Magistrates for multiple reasons including the absence of registered FIRs and death certificates, which leaves them out of the strict eligibility criteria for claiming compensation.<sup>262</sup>

***Gaps in the law***

Regarding criminal investigations and prosecutions, we also note salient gaps in Indian law that are likely to weaken access to remedies for certain violations in this particular context. Existing statutory offences that could be used to prosecute hate speech against religious minorities are designed to maintain public order rather than protect the rights of the targeted individuals.<sup>263</sup> While these provisions serve a stop-gap function in relation to hate speech, India nevertheless currently lacks legislation that defines or enhances penalties for religious hate crimes, i.e., a crime motivated by hostility

<sup>259</sup> Live Law “Delhi HC Directs Delhi Govt To Expeditiously Process Applications Claiming Compensation For Victims of Delhi Riots” (23 June 2020)

<<https://www.livelaw.in/news-updates/delhi-hc-directs-delhi-govt-to-expeditiously-process-applications-claiming-compensation-for-victims-of-delhi-riots-158781>>

<sup>260</sup> Newslandry “Heavy debt, low compensation: 2 years after Delhi riots, damaged businesses struggle to move on” (24 February 2022) <<https://www.newslandry.com/2022/02/24/heavy-debt-low-compensation-2-years-after-delhi-riots-damaged-businesses-struggle-to-move-on>>

<sup>261</sup> Dheeraj Mishra “Delhi Riots: In Maujpur, Compensation Paid To Shopkeepers Is Only Fraction of Their Claims” <<https://thewire.in/rights/delhi-riots-massive-gap-claims-made-compensation-paid>>

<sup>262</sup> The Wire “Delhi Riots: Police, SDM Office Dithered on Compensation Claims for Months Before HC Order (23 June 2020) <<https://thewire.in/rights/delhi-riots-compensation-claims-police-sdm-office>>

<sup>263</sup> Sections 124A, 153A, 153B, 295A, 298, 505, [Indian Penal Code \(IPC\) 1860](#).

towards the actual or perceived religion of the victim.

### ***Constitutional and administrative law remedies***

The higher judiciary in India has robust powers to protect and enforce fundamental constitutional rights. State High Courts and the national Supreme Court in India are empowered to review laws for compatibility with the national constitution, and to issue prerogative writs directing lower courts and public authorities to take or refrain from taking action, in order to ensure the enforcement of fundamental rights.<sup>264</sup> For instance, courts may issue a writ of habeas corpus (in instances of illegal detainment and imprisonment); mandamus (directing public authorities to fulfil their duty); prohibition (directing public authorities to refrain from exceeding their jurisdiction); certiorari (correcting wrongful orders passed by lower courts outside the scope of their authority to do so); and quo warranto (requiring subordinate authorities to show the authority by which they hold office). The Indian judiciary also enjoys a wide range of *suo moto*

powers, enabling High Courts and the Supreme Court to take up cases of their own accord even in the absence of a formal petition.<sup>265</sup>

The Supreme Court of India and the Delhi High Court appear to have engaged sparingly with petitions pleading for remedies in response to rapidly unfolding protests and violence. The Delhi High Court on 24 December 2019 dismissed a petition which challenged the police's orders implementing a mobile services shutdown in parts of New Delhi in the previous week.<sup>266</sup>

On 17 December 2019, two days after the police entered the Jamia Millia Islamia and beat up students, several petitioners requested the Supreme Court to order the police to stop using disproportionate force against demonstrating students. The Court agreed in principle to hear the matter but said it would not conduct substantive hearings until violent protests ceased, despite the fact that over 20 Muslim youths had been killed in police firing up to that point, and large numbers of protesters injured.<sup>267</sup> When petitioners approached the Delhi High Court regarding police violence against anti-CAA protestors, the High Court did not intervene either.<sup>268</sup> In the months that

<sup>264</sup> [Constitution of India](#), Arts. 32, 226.

<sup>265</sup> [Constitution of India](#), Arts. 32, 131, 226, 227.

<sup>266</sup> Live Law "Delhi HC Dismisses Plea Challenging Internet Shutdown In Delhi Over CAA Protests" (24 December 2019), <<https://www.livelaw.in/news-updates/delhi-hc-dismisses-plea-challenging-internet-shutdown-in-delhi-over-caa-protests-151063>>

<sup>267</sup> Supreme Court of India WP (Civil) No. 1473/2019

<[https://main.sci.gov.in/supremecourt/2019/45158/45158\\_2019\\_1\\_803\\_19145\\_Order\\_16-Dec-2019.pdf](https://main.sci.gov.in/supremecourt/2019/45158/45158_2019_1_803_19145_Order_16-Dec-2019.pdf)> This was later clubbed under Writ Petition (Civil) No. 1470/2019 i.e. *Indian Union of Muslim League v Union of India*. The matter does not seem to have been listed for hearing since early 2020.

<sup>268</sup> Bar and Bench "Jamia Violence: Live updates from the hearing in Delhi High Court" (19 December 2019)

<<https://www.barandbench.com/news/jamia-violence-live-updates-from-the-hearing-in-delhi-high-court>>

followed, High Court hearings about police violence were delayed, and the Court has yet to make factual findings or take remedial action regarding police violence against protesting students.

We were heartened to note that the Delhi High Court issued an urgent order on 26 February 2020 in response to a petition demanding the safe passage of injured people in North East Delhi. Justice Muralidhar and Justice Anup Jairam ordered the Special Commissioner of Police to ensure safe passage for the injured and the deceased, as well as for the fire and ambulance services to violence-affected neighbourhoods.<sup>269</sup>

However, on the whole, the judicial response to provocative hate speech has been characterised by a lack of urgency and protracted delays, despite pressing circumstances. We also note with concern that a judge who responded promptly to speech inciting violence was swiftly transferred to another court, potentially disincentivising judicial engagement with human rights violations against Muslims. When petitioned about hate speech that precipitated mass violence in Delhi in February 2020, Justice Muralidhar of the Delhi High Court directed the police to watch video

clips of the speeches in the courtroom when the police submitted that they were unaware of what had been said, and ordered them to report within a day what action they had chosen to take. Later the same day, the national government initiated the sudden and immediate transfer of Justice Muralidhar outside Delhi. The Delhi High Court then accepted the national government's argument that 'the time was not conducive to file FIRs related to the alleged hate speeches as the priority right now is to ensure peace',<sup>270</sup> instead of mandating urgent investigation or issuing injunctions against the political leaders responsible. Two years later, no action has been taken against political leaders who publicly urged violence against Muslims.<sup>271</sup>

### ***Human Rights Institutions***

We note with concern that since 2019, the National Human Rights Commission (NHRC), which has statutory powers to summon and examine witnesses, discover and produce documents, receive evidence and requisition public records, similar to a civil court while

<sup>269</sup> Delhi High Court W.P. (CRL) 566/2020 <[http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=44288&yr=2020](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=44288&yr=2020)>

<sup>270</sup> The Wire "Delhi HC Accepts Centre's Logic, Gives 4 Weeks to Respond to Plea Seeking Hate Speech FIR" (27 February 2020), <<https://thewire.in/law/delhi-high-court-hate-speech>>

<sup>271</sup> The Delhi Police have allegedly refrained from naming certain politicians as the accused (The Hindustan Times "Politicians who addressed anti-CAA protests mentioned in Delhi riots charge sheet" (24 September 2020), <<https://www.hindustantimes.com/delhi-news/politicians-who-addressed-anti-caa-protests-mentioned-in-delhi-riots-charge-sheet/story-Toem6NtYgoLLqNXjdncKqYK.html>>) while also framing sedition charges against student leaders (The Economic Times "Anti-CAA protests: Delhi court frames sedition charges against Sharjeel Imam" (24 January 2022) <<https://economictimes.indiatimes.com/news/india/anti-caa-protest-delhi-court-frames-sedition-charge-against-sharjeel-imam/articleshow/89092797.cms?from=mdr>>).

conducting inquiries (deemed to be judicial proceedings) into alleged human rights violations,<sup>272</sup> has responded inadequately to the human rights abuse against Muslims in Delhi. Although the NHRC is statutorily empowered to take *suo moto* cognisance of violations of human rights under Section 12 of the Protection of Human Rights Act, this power has been selectively and sparingly exercised even in the face of widespread, grave violence against Muslims and anti-CAA protestors in Delhi.

The National Human Rights Commission has failed to review and advise against the CAA, as well as other laws that *prima facie* discriminate (directly or indirectly) against Muslims on the basis of religion.<sup>273</sup> The Chair of the NHRC initially claimed in a press statement that violence in Delhi in February 2020 could be described as an ‘aberration’ rather than a grave instance of targeted violence against minority groups.<sup>274</sup> In March 2020, the NHRC conducted fact-finding enquiries into anti-CAA protests at Shaheen Bagh and the Jamia Millia Islamia campus. The enquiry report emphasised that

protests by students had been unauthorised assemblies and called for an investigation into the ‘real motive’ behind the protests (thereby echoing BJP allegations that protestors were a cover for anti-national forces), but failed to recommend disciplinary action against police officials who used disproportionate force.<sup>275</sup>

We note that state-level watchdog institutions in Delhi have been more proactive in response to human rights abuse against Muslims. The Delhi Minorities Commission approached the police and the Lieutenant-Governor of Delhi to take immediate steps to impose a curfew and investigate rights violations in February 2020, but to no avail.<sup>276</sup> The Commission noted that Muslims had been disproportionately affected by violence in February 2020, and called for investigation and prosecution of the perpetrators as well as compensation for those who had lost lives and livelihoods. The Delhi Commission for Women additionally called for an inquiry into alleged sexual crimes against minority women during the 2020 pogrom.<sup>277</sup>

<sup>272</sup> [The Protection of Human Rights Act \(1993\)](#), section 13.

<sup>273</sup> The Wire “For an Already Diminished NHRC, Justice Mishra’s Appointment Spells Further Doom” (6 June 2021) <<https://thewire.in/rights/for-an-already-ailing-nhrc-justice-mishras-appointment-spells-further-doom>>

<sup>274</sup> News18 “After 22 Deaths, Human Rights Panel Chief Says Delhi Violence an ‘Aberration’, Not Communal” (26 February 2020) <<https://www.news18.com/news/india/after-21-deaths-human-rights-panel-chief-says-delhi-violence-an-aberration-not-communal-2516417.html>>

<sup>275</sup> The Wire “NHRC Blames Jamia Students for Police Violence, Wants ‘Real Motive’ of Anti-CAA Protest Probed” (26 June 2020) <<https://thewire.in/rights/nhrc-blames-jamia-students-for-police-violence-wants-real-motive-of-anti-cao-protest-probed>>

<sup>276</sup> Outlook “Delhi Minority Commission Demands More Police Deployment, Curfew In Violence-Hit Areas” (25 February 2020) <<https://www.outlookindia.com/website/story/india-news-delhi-minority-commission-demands-more-police-deployment-curfew-in-violence-hit-areas/347851>>

<sup>277</sup> India Today “Delhi violence: DCW seeks police report on sexual crimes reported during riots” (28 February 2020) <<https://www.indiatoday.in/india/story/delhi-violence-dcw-seeks-police-report-on-sexual-crimes-reported-during-riots-1650971-2020-02-28>>

We welcome these efforts, but must also note that they have not led to speedy or conscientious investigations and prosecutions or adequate compensation for the vast majority of victims of rights violations in Delhi.

The accounts (in Section IV.1) provide sufficient credible information to indicate that the Delhi Police failed to provide an effective, prompt remedy to the Muslim victims of the February 2020 violence.

## 2. International Criminal Law: Incitement to Genocide

Direct and public incitement to genocide is an inchoate crime under international law as provided in Article III (c) of the Genocide Convention and Article 25(3)(e) of the Rome Statute. In other words, under international criminal law, the crime of incitement to genocide is punishable even if the incitement does not result in genocide.<sup>278</sup>

To incite ‘publicly’ means that the call for criminal action is communicated to a number of individuals in a public place or to members of the general public at large, particularly by technological

means of mass communication, such as radio or by television.<sup>279</sup> ‘Direct’ incitement implies that incitement must assume a direct form to provoke another which is more than a vague or indirect suggestion.<sup>280</sup> A speech constitutes direct incitement if the persons for whom the message was intended immediately grasped the implication thereof,<sup>281</sup> to carry out one of the prohibited acts *inter alia* killings, causing serious bodily injuries.<sup>282</sup>

Direct and public incitement to genocide is construed as encouraging or pressurising someone to destroy, in whole or in part, a protected group by engaging in criminal conduct.<sup>283</sup> The targeting must be against a national, ethnic, racial or religious group: against members of the group *because of* their membership in the group.<sup>284</sup>

An additional requirement for the crime of incitement to genocide is that the perpetrator must have the specific intent to destroy the group in whole or in part, as such.<sup>285</sup> In the absence of a clear expression or direct proof of the specific ‘intent to destroy’ the protected group in whole or in part, and in cases where the actual genocide does not take place, the genocidal intent may be inferred from a number of

<sup>278</sup> An inchoate crime penalises the commission of certain acts capable of constituting a step in the commission of another crime, even if that crime is not in fact committed. Bryan A. Garner (ed.), *Black’s Law Dictionary*, 8th ed. (Saint Paul, Minnesota: Thomson West Publishing Company, 2004) 399.

<sup>279</sup> ICTR *Nahimana*, paras 758, 775, *Nzabonimana*, para. 1754.

<sup>280</sup> 1996 ILC Draft Code, p. 26; ICTR *Akayesu*, para. 557; ICTR *Nahimana*, ICTR *Barayagwiza*, *Ngeze*, para 692.

<sup>281</sup> ICTR *Akayesu*, para. 558, ICTR *Nahimana*, para. 701.

<sup>282</sup> ICTR *Nahimana*, para. 692; ICTR *Bikindi*, para. 417.

<sup>283</sup> ICTR *Juvénal Kajelijeli*, Appeal Judgment, 2003.

<sup>284</sup> *Akayesu*, ICTR Cecile Aptel, *The Intent to Commit Genocide in the Case Law of the International Criminal Tribunal for Rwanda. Criminal Law Forum* 13: 273–291, 2002, 279.

<sup>285</sup> *Genocide Convention*, Article 2.

indicators, including: the general context and surrounding circumstances; perpetration of other culpable acts systematically directed against the same group; the scale of atrocities committed; targeting of victims on account of their membership in a particular group; the repetition of destructive and discriminatory acts; or the existence of a plan or policy.<sup>286</sup>

Taking into account these legal criteria and based on the series of events reported in Delhi from December 2019 to February 2020, this section examines hate speeches made by three individuals: Kapil Mishra, Anurag Thakur, and Yati Narsinghanad on whether they may constitute direct and public incitement to genocide directed towards Muslims and those supporting the anti-CAA protest.

### 2.1. Kapil Mishra

Kapil Mishra is a senior BJP political leader. He is a former Member of the Legislative Assembly (MLA) in the Delhi Assembly (2015-2019) and Minister of Water Resource Management (2015-2017). He was a member of the Aam Admi Party (AAP), the party governing Delhi since 2015 before he was disqualified as MLA on account of anti-party activities under the anti-defection law. He ran for state legislative

assembly elections for the BJP in the February 2020 elections. He exercises influence over adherents of Hindutva politics through an extensive network,<sup>287</sup> and has a wide social media reach including 1.2 million Twitter followers.<sup>288</sup>

#### i. Inciting Speech

Between December 2019 and February 2020, Kapil Mishra addressed multiple public rallies where he repeatedly called for targeted killings of Muslims who constitute a religious minority in India. He used the slogan '*Desh ke ghaddaron ko, goli maaron saalon ko*' (Shoot dead the bastard traitors to the nation!) addressing crowds, rallies and shared these videos on Twitter which were widely retweeted, shared on online communication platforms such as WhatsApp, and reported by the mainstream news broadcasters. This slogan featured in at least two of his public addresses: on 20 December and then again, on 23 February a day before the targeted violence against Muslims took place in Delhi, which has been referred to as the 'ultimatum speech' by several media and NGO reports.

<sup>286</sup> *Jelisić Appeal Judgement*, paras 47-48. See also *Krstić Appeal Judgement*, para. 34; *Hategekimana Appeal Judgement*, para. 133; *Gacumbitsi Appeal Judgement*, paras 40-41.

<sup>287</sup> The Wire "‘Tear Them Apart’: How Hindutva WhatsApp Group Demanded Murder, Rape of Muslims in Delhi Riots" (6 July 2020) <<https://thewire.in/communalism/delhi-riots-hindutva-whatsapp-muslims-murder-rape>>

<sup>288</sup> As of 2 March 2022 – Kapil Mishra on Twitter <[https://twitter.com/KapilMishra\\_IND](https://twitter.com/KapilMishra_IND)>

## ii. Public

*Location:* On the first instance, 20 December 2019: Kapil Mishra posted a video from his own Twitter account where he was leading a public march in support of CAA.<sup>289</sup> The reports suggest that the rally was held at the Central Park in Connaught Place – the main commercial, business centre of New Delhi on a Friday late-evening where typically his speech, made through the loudspeaker, would have reached the public at large passing through the most frequented part of the city.

On 23 February 2020: he made a speech near the Jaffrabad metro station, North East Delhi while threatening to clear anti-CAA protestors, and hours after he was seen using the same slogan while leading a rampage by an armed mob less than 2km away in the Kardampuri area.

Jaffrabad and Kardampuri of the north-eastern city are densely populated areas. The Metro, being the primary mode of public transport that connects the city, is a busy spot with the public. The spot

where he delivered these speeches was near an anti-CAA protest site in Chand Bagh. It was attended by a Deputy Commissioner of Police, Ved Prakash Surya, to whom Mishra issued an ultimatum to clear up the protest sites within three days before the matter would be taken out of their hands. Kardampuri area, 2km away from the metro station, where Mishra was seen around 2pm raising the same slogan at the site of an anti-CAA protest.<sup>290</sup>

*Number of people addressed:* On 20 December 2019, his tweet mentioned that he was leading the rally of thousands of youths in support of the legislation. In addition to the estimated 5,000 people present as the direct audience at the rally and others on the streets, the tweet was further circulated among his 898,000\*<sup>291</sup> direct followers at the time.<sup>292</sup>

On 23 February 2020, Kapil Mishra was reported to have been addressing an armed mob of about 25 people in the Kardampuri area, present at the time carrying guns, swords and tridents, spears, sticks,

<sup>289</sup> Scroll.in “‘Goli maaro saalo ko’: BJP’s Kapil Mishra posts video of his ‘peaceful’ march supporting the CAA” (21 December 2019), <<https://scroll.in/video/947491/goli-maaro-saalo-ko-bjps-kapil-mishra-posts-video-of-his-peaceful-march-supporting-the-caa>>

<sup>290</sup> The Hindu “BJP leader gives 3-day ultimatum to Delhi Police to clear roads” (24 February 2020) <<https://www.thehindu.com/news/cities/Delhi/bjp-leader-gives-3-day-ultimatum-to-delhi-police-to-clear-roads/article30898775.ece>>; The Wire “Former Delhi Police Officer Who Let Kapil Mishra Make Fiery Speech before Delhi Riots Seeks Medal” (3 July 2021) <<https://thewire.in/government/former-delhi-police-officer-who-let-kapil-mishra-make-fiery-speech-before-delhi-riots-seeks-medal>>

<sup>291</sup> The number around the day of the incident.

<sup>292</sup> OpIndia “‘Goli maaro gaddaro ko’: Thousands of Delhiites take out Tiranga yatra in support of the Citizenship Amendment Act” (20 December 2019) <<https://www.opindia.com/2019/12/delhi-central-park-support-citizenship-amendment-act-cao/>>, The Indian Express “Has anyone killed people: Kapil Mishra on shoot-the-traitors slogan” (22 December 2019) <<https://indianexpress.com/article/cities/delhi/has-anyone-killed-people-kapil-mishra-on-shoot-the-traitors-slogan/>>, The Indian Express “At Delhi’s Connaught Place, a march in favour of the new citizenship law” (21 December 2019) <<https://indianexpress.com/article/cities/delhi/at-delhis-connaught-place-a-march-in-favour-of-the-new-citizenship-law-6177750/>>

stones and glass bottles.<sup>293</sup> In addition to these 25 people, the general public was present at the moment (in hundreds) watching him repeat the slogans and inciting the crowd to initiate violence against Muslims.<sup>294</sup>

As investigative reports detail, the said video had featured multiple times on the 'Kattar Hindu Ekta WhatsApp group' (Orthodox Hindu Unity), a group made to mobilise crowds, identify Muslims, stay updated about the situation in their neighbourhoods, share ammunition and pump up morale.<sup>295</sup>

The caption along with the video read: 'Listen to Kapil Mishra on this video, understand it and make the effort to send it across India because it is in favour of the nation. Friends, you can do this much at least'.<sup>296</sup>

According to this information, the speeches made by Kapil Mishra were evidently public: addressed to the public at large and further broadcasted by technological means such as Twitter and WhatsApp.

### iii. Direct

The slogan '*Desh ke ghaddaron ko, goli maaron saalon ko*' (Shoot dead

the bastard traitors to the nation) directly calls for violence and attack against the group as it uses the words 'shoot dead'. The literal translation of '*goli*' is bullet and the phrase '*goli maaro*' is an unmistakable clear command to shoot dead. There are no alternative interpretations of this phrase.

On 23 February, while giving the ultimatum to the Delhi Police in the public rally held next to the Jaffarabad protest site he is alleged to have chanted other slogans such as '*Kattue murdabad*' (death to the circumcised – a reference to Muslims).<sup>297</sup>

The words '*desh ke ghaddaron ko, ... saalon ko*' refers to the targeted group. The literal translation of the phrase '*desh ke ghaddaron ko*' is 'traitors to the nation' and '*saalon*' is a derogatory swear word that loosely translates to 'bastard'. Even though, the call does not explicitly refer to Muslims, in the given anti-CAA context, it was clear and unambiguous for his audience that it was a reference to Muslims leading the anti-CAA movement.<sup>298</sup>

The speeches were being made in pro-CAA rallies which were a response to the protests that erupted across the country against

<sup>293</sup> The caravan "Crime and Prejudice, the BJP and Delhi Police's hand in Delhi violence" (1 September 2020) <<https://caravanmagazine.in/politics/the-bjp-and-delhi-police-hand-in-the-delhi-violence>>

<sup>294</sup> Delhi Minorities Commission Report, 30; The Caravan "Crime and Prejudice, the BJP and Delhi Police's hand in Delhi violence" (1 September 2020) <<https://caravanmagazine.in/politics/the-bjp-and-delhi-police-hand-in-the-delhi-violence>>

<sup>295</sup> The Wire "'Tear Them Apart': How Hindutva WhatsApp Group Demanded Murder, Rape of Muslims in Delhi Riots" (06 July 2020) <<https://thewire.in/communalism/delhi-riots-hindutva-whatsapp-muslims-murder-rape>>

<sup>296</sup> The Wire "Kapil Mishra Denies Making Threats Before Delhi Riots, Says He Wanted to 'Resolve' Issue" (23 September 2020) <<https://thewire.in/communalism/kapil-mishra-delhi-police-riots-investigation>>

<sup>297</sup> The Caravan "Dead and Buried" (21 June 2020) <<https://caravanmagazine.in/politics/delhi-police-ignored-complaints-against-kapil-mishra-bjp-leaders-leading-mobs-delhi-violence>>

<sup>298</sup> *Akayesu*, ICTR, paras. 557-558.

the CAA and its discriminatory impact on Muslims. These protests were led primarily by Muslims. The BJP responded to the protests with a campaign to characterise anti-CAA protesters as ‘anti-national’ and ‘anti-social elements’, essentially referring to them as traitors to the nation. In that context, ‘*desh ke gaddaron ko, goli maaro saalo ko*’ (shoot dead the bastards, traitors to the nation) slogan became a part of the campaign.

This violent pro-CAA campaign coincided with the election for Delhi’s State Legislative Assembly. As highlighted above, BJP’s election messaging had grown increasingly hostile and explicitly Islamophobic. Prominent anti-CAA sit-in sites, led by Muslims, were described as ‘breeding grounds for suicide bombers’.<sup>299</sup> There was a clear understanding that the identified group of people to be targeted were the Muslims.

A linguistic context-based assessment of the speech suggests that the speech cannot only be construed as more than a vague or indirect suggestion, but also a direct call to provoke others to kill Muslims.

#### **iv. Indicators of specific intent to destroy**

Several indicators may be investigated further to determine whether specific genocidal intent can be attributed to Kapil Mishra, such as: 1) the scale of atrocities that followed his speech; 2) the repetition of discriminatory acts and speeches; 3) the systematic targeting of victims on account of their membership in a particular group; 4) police inaction indicating complicity as the general context in which the inciting speeches were made; and 5) his response to the accusation of incitement.

##### *Scale of atrocities following the speech:*

The venue where Kapil Mishra’s speech was made on 23 February 2022, later that day became the starting point of the week-long targeted violence against Muslims in North East Delhi leading to 53 killings, over 400 injured, close to 200 houses and over 300 shops destroyed, along with 3 schools and 301 vehicles. At least 2,000 people were left displaced.<sup>300</sup> The majority of the victims of killings, gender-based violence and other serious injuries were Muslims – as discussed above. The incendiary slogan ‘*Desh ke ghaddaron ko goli maro saalon ko* (Shoot the traitors!)’ was repeatedly shouted in the streets as the Hindus targeted the

<sup>299</sup> Firstpost “Union minister Giriraj Singh claims Shaheen Bagh training ‘suicide bombers’; calls site ‘breeding ground’ for them” (6 February 2020).

<<https://www.firstpost.com/politics/union-minister-giriraj-singh-claims-shaheen-bagh-training-suicide-bombers-calls-site-breeding-ground-for-them-8009801.html>>

<sup>300</sup> Affidavit in PIL No. 566 for registering criminal case against Kapil Mishra and other politicians reported instigating violence; Varadarajan (n 57 above).

anti-CAA protest site at Chand Bagh and Muslim residents in North East Delhi.<sup>301</sup>

*Repetition of Discriminatory Acts and Speeches:* The reports indicate that the abovementioned speeches were not isolated incidents. On 16 May 2018, Kapil Mishra tweeted implying that all terrorists were Muslims,<sup>302</sup> and on 28 October 2019, another tweet by Mishra blamed Muslims for pollution and overpopulation in India.<sup>303</sup>

On 1 April 2020, Mishra alleged that members of the Tablighi Jamaat Islamic movement were responsible for the outbreak of the Covid-19 pandemic in India, and called for them to be 'treated like terrorists'.<sup>304</sup> In November 2020, he claimed to have initiated a 'Hindu ecosystem' team with a clearly spelt out anti-Muslim agenda. Within a week of his initiating the project, he claimed to have 18,000 members added to this ecosystem.<sup>305</sup>

*Selective targeting of victims on account of their membership in a particular group:* As highlighted above, in North East Delhi, Muslims were particularly targeted because of their religious identity. Similarly,

his speeches contain several direct references to Islam. These speeches were made by Kapil Mishra in a politically charged atmosphere ridden with Islamophobia and provocative hate rhetoric during the state legislative elections. The Muslims were being consistently stigmatised and dehumanised by the political leadership.

*Police inaction indicating complicity:* It is clear from the reports that the police did not act against any of the hate speeches in the lead-up to the violence. Particularly, on the day targeted violence in North East Delhi was triggered, a senior officer of the Delhi Police, Deputy Commissioner of Police (DCP) Ved Prakash Surya was present at the site and yet did not take action to either apprehend Kapil Mishra for his incendiary speeches or to prevent further violence despite direct threats. According to reports, on 29 February the Delhi Police received more than 13,000 calls for help during the period of violence.<sup>306</sup>

*Response to the accusation of incitement:* In February 2021, a year

<sup>301</sup> The Caravan "Delhi violence: Cops shouted "Jai Shri Ram" with armed Hindu mob, charged at Muslims (25 February 2020) <<https://caravanmagazine.in/conflict/delhi-violence-cops-shouted-jai-shri-ram-with-armed-hindu-mob-charged-at-muslims>>

<sup>302</sup> Kapil Mishra on Twitter (16 May 2018) <[https://twitter.com/KapilMishra\\_IND/status/996720851247620096](https://twitter.com/KapilMishra_IND/status/996720851247620096)>

<sup>303</sup> ANI on Twitter (28 October 2019) <<https://twitter.com/ANI/status/1189075286668795910>>

<sup>304</sup> Times Now News "Kapil Mishra blasts Tablighi Jamaat members for spitting on doctors, says 'should be treated like terrorists'" (01 April 2020) <<https://www.timesnownews.com/india/article/kapil-mishra-blasts-tablighi-jamaat-members-for-spitting-on-doctors-says-should-be-treated-like-terrorists/572681>>. Also see The Guardian "Coronavirus conspiracy theories targeting Muslims spread in India" (13 April 2020)

<<https://www.theguardian.com/world/2020/apr/13/coronavirus-conspiracy-theories-targeting-muslims-spread-in-india>>

<sup>305</sup> Scroll "Why the new Hindu ecosystem that BJP leader Kapil Mishra is aiming to build sounds so menacing" (18 November 2020) <<https://scroll.in/article/978782/why-the-new-hindu-ecosystem-that-bjp-leader-kapil-mishra-is-aiming-to-build-sounds-so-menacing>>

<sup>306</sup> NDTV "'No Action', 'Case Pending': Delhi Police Call Logs Offer Clue To Why Violence Raged For 4 Days" (29 February 2020) <<https://www.ndtv.com/india-news/no-action-case-pending-delhi-police-call-logs-offer-clue-why-violence-raged-for-4-days-2187419>>; The Caravan "Crime and Prejudice, the BJP and Delhi Police's hand in Delhi violence" (1 September 2020) <<https://caravanmagazine.in/politics/the-bjp-and-delhi-police-hand-in-the-delhi-violence>>

after the targeted violence in North East Delhi unfolded, Kapil Mishra was asked to respond to accusations against him for inciting the violence through his speech made on 23 February 2020. In response, he said: ‘I’m proud of what I did on the 23rd of Feb, and if it happens like that again, I will do that again.’<sup>307</sup> He further added: ‘I don’t have any regrets, except that I couldn’t save the lives of Dinesh Khatik, Ankit Sharma [two Hindus who were killed in the violence] and many others.’<sup>308</sup>

Based on the evidence collected, we believe there is sufficient credible information to allege that Kapil Mishra engaged in direct and public incitement to genocide between December 2019 – February 2020, which deserves to be further investigated.

## 2.2. Anurag Thakur

Anurag Thakur, a political leader from the BJP, is a member of Parliament from Hamirpur, Himachal Pradesh and a Minister of Sports, Youth Affairs and Minister of Information and Broadcasting (since July 2021). From 31 May 2019 to 7 July 2021, he served as the Minister of State for Finance and Corporate

Affairs (second-in-command in the Ministry). This is his fourth term as a member of Parliament. In the 2019 elections, Thakur won 399,572 (40.41 per cent) votes from Hamirpur constituency. His online popularity is testified by his 2 million Twitter followers, indicating a broader nationwide reach. From 2010 to 2016, Thakur was the President of the Bharatiya Janata Yuva Morcha (BJYM), the BJP’s national youth wing.<sup>309</sup>

### i. Inciting Speech

On multiple occasions in the lead up to the North East Delhi violence in February 2020, Anurag Thakur addressed rallies and shared his videos online through social media where he is seen leading the slogan ‘*Desh ke gaddaro ko, goli maaro saalo ko*’ (shoot dead the bastard traitors to the nation). Particularly, on 27 January 2020, in an election campaign rally held in Rithala, Delhi, Thakur was seen repeatedly chanting the first half of the slogan (‘*desh ke gaddaro ko...*’), and exhorting the crowd to chant the second, violent half of the slogan. (‘*goli maaro saalo ko*’).<sup>310</sup>

<sup>307</sup> The Wire on Twitter (23 February 2021) <<https://twitter.com/thewire/status/1364247864621232128?lang=en>>

<sup>308</sup> Scroll.in “Delhi violence: Kapil Mishra says he has no regrets about speech, will do it again” (23 February 2021) <<https://scroll.in/latest/987653/delhi-violence-kapil-mishra-says-he-has-no-regrets-about-speech-will-do-it-again>>; Outlook “Delhi Riots! ‘No Regrets, Will Do It Again If Required’: Kapil Mishra On His Speech” (22 February 2021) <<https://www.outlookindia.com/website/story/india-news-no-regrets-will-do-it-again-if-required-kapil-mishra-on-his-controversial-speech-before-delhi-riots/375078>>

<sup>309</sup> Hindustan Times “Anurag Thakur takes over as BJP youth wing chief” (28 June 2010) <<https://www.hindustantimes.com/delhi/anurag-thakur-takes-over-as-bjp-youth-wing-chief/story-KugBMbgUV9xaSYBr6w2kV0.html>>

<sup>310</sup> The Print “Days before Budget, minister Anurag Thakur chants ‘desh ke gaddaron ko, goli maaro saalon ko’” (27 January 2020) <<https://theprint.in/india/days-before-budget-minister-anurag-thakur-chants-desh-ke-gaddaron-ko-goli-maaro-saalon-ko/355124/>>, [Video](#).

## ii. Public

Public rallies held during an election campaign serve as a platform to gather the public at large to hear out their candidates in the lead-up to the election. Therefore, the locations tend to be strategic to facilitate access to the general public. Anurag Thakur, as the Central Minister of Finance, was present at the rally held on Shamshan Ghat Road, Buddh Vihar in Rithala (New Delhi).

In the rally on 27 January, Anurag Thakur, along with Giriraj Singh, the Union Minister for Animal Husbandry and Fisheries (at the time), and Amit Shah, the Union Home, were present to support the local BJP candidate Manish Chaudhary.<sup>311</sup> The video of Thakur leading the slogans indicates that there were about 100 people present at the rally – actively taking part in the incendiary speeches.<sup>312</sup> The video was immediately shared with his 1.5 million followers at the time on Twitter. It was reported to have been viewed and shared widely, and further broadcasted by print and television media platforms.<sup>313</sup>

This information suggests that the incendiary speech by Anurag Thakur was made at a public place, addressed to the public at large, which was then further broadcasted,

including by technological means such as Twitter and television.

## iii. Direct

As the substance of Thakur's speech is the same as the calls led by Kapil Mishra, see the section above on the direct nature of incitement.

## iv. Indicators of specific intent to destroy

There are several indicators that may be investigated further to determine whether specific genocidal intent can be attributed to Anurag Thakur, such as: 1) the general context and surrounding circumstances of increasing anti-Muslim hatred; 2) the scale of atrocities that followed his speech; 3) the selective targeting of victims on account of their membership in a particular group.

As mentioned above, the *general context* of this speech was the BJP's anti-Muslim inflammatory election campaign in December 2019 and January 2020. The campaign began as a response to Muslims leading large-scale anti-CAA protests at the time, and BJP political and religious leaders were referring to Muslims as

<sup>311</sup> The Hindustan Times "Inflammatory slogan at Union minister Anurag Thakur's election meeting in Delhi" (28 January 2020) <<https://www.hindustantimes.com/cities/inflammatory-slogan-at-union-minister-s-election-meeting-in-delhi/story-gEOrnqiLEMRfsY4oYMOEDL.html>>

<sup>312</sup> Indian Express "'Shoot the traitors' slogan raised at Union Minister Anurag Thakur's rally, Delhi CEO seeks report" (28 January 2020) <<https://indianexpress.com/elections/delhi-in-election-rally-union-minister-anurag-thakur-leads-chants-of-shoot-the-traitors-6238005/>>

<sup>313</sup> Scroll.in "Watch: Union minister Anurag Thakur encourages crowd to shout 'shoot the traitors' at Delhi rally" (28 January 2020) <<https://scroll.in/latest/951317/watch-union-minister-anurag-thakur-encourages-crowd-to-shout-shoot-the-traitors-at-delhi-rally>>

‘terrorists’, ‘Pakistanis’ etc., to stigmatise and other the community. Thakur’s use of the slogan was preceded by several instances of violence against Muslim anti-CAA protesters – by state and non-state actors (listed above).

Within two days after Thakur’s speech, there were further instances of Hindutva supporters attempting violence against anti-CAA protesters in Delhi:

On 30 January 2020, in the middle of the BJP’s hate-filled state election campaign, a Hindutva adherent shot at a student of Jamia Millia Islamia university, a key anti-CAA protest site.<sup>314</sup> On 1 February, 2020, an armed man opened fire at Shaheen Bagh, another key protest site, similar to the ones that were attacked by mobs later that month.<sup>315</sup> In both these instances, the assailants were reported to have made Islamophobic comments.

Notably, on the day of the incident, Thakur repeatedly called on the crowds to chant the slogan with him, he was careful to say only the first part of the chant (traitors to the nation) and wait for the crowd to finish with the violent call (shoot the bastards).<sup>316</sup> Indicating that he not only realised the violent nature and

gravity of the statements but also used this platform as a tactic to encourage the mob.

The *scale of targeted violence* including killings, serious bodily injuries and sexual violence carried out selectively against Muslims based on their religious identity, in the weeks following Thakur’s speech, has been discussed above.

Based on these reports, we believe that the question of whether Anurag Thakur’s speech and slogans amount to direct and public incitement to genocide of Muslims deserves to be further investigated.

### 2.3. Yati Narsinghanand

Yati Narsinghanand (alias Deependra Narayan Singh) is the Chief Priest of Dasna Devi Temple, Ghaziabad (Uttar Pradesh) bordering Delhi. He is also the *mahamandaleshwar* (leader) of the influential Hindu Juna *akhara* (monastic order).<sup>317</sup> He is reported to have strong links with BJP leaders in UP and Delhi, including the abovementioned Kapil Mishra.<sup>318</sup> He features regularly as a studio commentator on the panels of leading Hindi news channels like

<sup>314</sup> The Indian Express “Jamia student shot at as 20 Delhi cops watch, Proctor says MoS Anurag Thakur is to blame” (31 January 2020) <<https://indianexpress.com/article/india/jamia-student-shot-at-as-20-cops-watch-proctor-says-mos-thakur-is-to-blame-6243470/>>

<sup>315</sup> The Wire “Man Opens Fire at Shaheen Bagh Protest, No Injuries Reported” (01 Feb 2020) <<https://thewire.in/communalism/shaheen-bagh-shooting>>

<sup>316</sup> [Video](#).

<sup>317</sup> The Print “Behind the ‘bigot’: How engineer Deependra became Dasna’s hate-spewing sadhu Yati Narsinghanand” (21 January 2022) <<https://theprint.in/india/behind-the-bigot-how-engineer-deependra-became-dasnas-hate-spewing-sadhu-yati-narsinghanand/808674/>>

<sup>318</sup> The Quint “Dasna Priest Called For ‘War On Islam’ in Run-Up to Delhi Violence” (5 March 2020) <<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad#read-more>>

News Nation, Sudarshan TV and AajTak, and is perceived as influential for a number of militant Hindutva networks on YouTube who further circulate his speeches and message among millions of people.<sup>319</sup>

### i. Inciting Speech

Yati Narsinghanand made several incendiary speeches between December 2019 and February 2020.<sup>320</sup> Only three of those speeches addressing different audiences are discussed hereunder:

On 25 December 2019, Narsinghanand addressed a public rally against the anti-CAA protests at Jantar Mantar, Delhi, where he praised the government for bringing a 'Muslims population control law like the CAA' and used abusive terms like 'soor' (pigs) and 'katuon' (circumcised) for Muslims, and then called for their eyes to be gouged out:

*"Aap sab log, dharam k liye ladne wale, ek ek sher, sawaa lakh suaron par bhari padega. Aur agar vo ye sapne dekh rahe hain ki vo desh ko kabja lenge toh ye bata do ki unki aankhein phod di jayeingi. (And all of you, you fighters for dharma, each one of you tigers is more than enough for 125,000 pigs (cheers). And if [the Muslims] are seeing dreams of taking over India, then*

*tell them that we will gouge their eyes out.)"*<sup>321</sup>

On 16 January 2020, he organised a Hindu *Dharam Sansad* (religious conclave) where he repeatedly emphasised his mission of a '*Hindu Rashtra*' (Only Hindu Nation) and urged Hindus to 'collect weapons in their houses'. He addresses the audience several times during the two-day event whose agenda, according to him, was 'to protect India from Islam and *Jihadis*' and that this was 'the final battle with Islam'.<sup>322</sup>

On 22 February 2020 (the day before the targeted violence began in NorthEast Delhi), in a viral YouTube video Yati Narsinghanand was seen calling for a final war against Muslims where his speech included the following statements (in Hindi):

*"Islam ko khatam kar ke hi manavata ko bachaya ja sakta hai (Humanity can only be saved if Islam is finished off)".*

*"Hinduon, Mahabharat k saath geeta padho aur ladkar marna seekho (Hindus, read Geeta along with Mahabharat [Hindu mythological texts] and learn how to die fighting)".*

*"Good people should live and let good people live but those who are our enemies, who are enemies of our religion, who want to wipe us out,*

<sup>319</sup> The Wire "Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed" (3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

<sup>320</sup> The Quint "Dasna Priest Called For 'War On Islam' in Run-Up to Delhi Violence" (5 March 2020) <<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad#read-more>>

<sup>321</sup> The Wire "Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed" (3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

<sup>322</sup> Satya Sanatan YouTube Video "The roar of Yati Narsinghanand in the Dharam Sansad" (translation) (14 January 2020) <[https://www.youtube.com/watch?v=groTAl\\_E2xo](https://www.youtube.com/watch?v=groTAl_E2xo)>

until we finish them off, until we remove this evil from society known as Islam, how can we survive? Live and let live can only be for civilised people, not for uncivilised thieves, not for terrorists, not for jihadis. Such people cannot be given the right to live.”<sup>323</sup>

## ii. Public

On all three occasions, the available information suggests that the speeches were made in a public place, addressed to a large number of people, and further broadcasted through social media platforms.

On 25 December 2019, Narsinghanand’s incendiary speech was made at a public rally at Jantar Mantar gathered to oppose the anti-CAA protestors. The venue has been a popular protest site since the 1990s and according to the Delhi Police guidelines, it could host 1,000 people in 2019.<sup>324</sup> In the videos of his speech, he is seen standing among at least 20 religious figures on the stage and the loud cheering of the crowds is audible.<sup>325</sup> The same day, his inciting speech was followed by a

series of video interviews on various channels.<sup>326</sup>

On 16 January 2021, he was the organiser of the Hindu religious conclave for which he had issued an open invite for Hindus to come to join them in large numbers in Haridwar, Uttarakhand, for the two-day event.<sup>327</sup> The event was attended by hundreds of people and his speeches were broadcast through YouTube channels including Satya Sanatan and his own Narsingh Vani – viewed by over 50,000 people.<sup>328</sup>

The speech was made on 22 February as part of a video that he released through his social media channels that was shared widely among the Hindutva network and viewed by thousands of people within a day.

## iii. Direct

On all three occasions, his speeches make clear unambiguous references to Muslims and call for direct violence against them.

In each of the speeches mentioned above: Yati Narsinghanand makes several clear references to Islam as the enemy of the Hindus and the

<sup>323</sup> The Quint “Dasna Priest Called For ‘War On Islam’ in Run-Up to Delhi Violence” (5 March 2020) <<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad>>

<sup>324</sup> NewsBytes “New protest guidelines: Only 1,000 allowed at Jantar Mantar” (13 September 2018) <<https://www.newsbytesapp.com/news/india/all-about-the-delhi-police-s-new-protest-guidelines/story>>

<sup>325</sup> <https://www.facebook.com/watch/?v=436697397591349> (see video from 10:00).

<sup>326</sup> The Wire “Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed” (3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

<sup>327</sup> The Wire “Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed” (3 March 2021) <<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

<sup>328</sup> Satya Sanatan Youtube Video “The roar of Yati Narsinghanand in the Dharam Sansad” (translation) (14 January 2020) <[https://www.youtube.com/watch?v=groTAl\\_E2xo](https://www.youtube.com/watch?v=groTAl_E2xo)> ; The Quint “Dasna Priest Called For ‘War On Islam’ in Run-Up to Delhi Violence” (5 March 2020) <<https://www.thequint.com/news/politics/narsinghanand-saraswati-hindutva-delhi-violence-muslims-dasna-ghaziabad#read-more#read-more>>

Hindu nation, which needs to be fought and wiped off. The aforementioned provocative speeches stigmatise and dehumanise the minority religious community by using words such as ‘pigs’, ‘circumcised’, ‘Jihadis’ who are out to ‘outnumber Hindus’ in the country, thus, ‘need to be fought, controlled, and finished’. His speeches unambiguously target Muslims by virtue of their membership in a religious group.

Direct calls to violence include: asking Hindus to collect weapons; ‘each Hindu fighter being enough to tackle 125,000 Muslims’; Hindus to learn how to die fighting; and to ‘remove Islam from society’. The day before the targeted violence against Muslims began in February 2020, he called on ‘Hindu Lions’ to come out and ‘finish them off’, ‘to remove Islam from society’ and that ‘Muslims did not have a right to live’. These phrases constitute a direct call to violence against the targeted group.

Therefore, according to these reports, incitement by Yati Narsinghanand assumed a direct form of provocation for his Hindu audience to violently target Muslims.

#### **iv. Indicators of specific intent to destroy**

According to the information available, there are several indicators that may be investigated further to examine whether specific genocidal intent can be attributed to Yati Narsinghanand, such as: 1) the general context; 2) the scale of atrocities that followed his speech; 3) repetition of discriminatory acts and speeches; and 4) his clear and direct expression of intent through calls for removal of Islam from India; and 5) support from other actors indicating the existence of a genocidal plan.

The *general context* and the scale of violence that followed the inciting speeches and videos circulated by Yati Narsinghanand remain the same as with other speakers above. One person who was directly involved in the targeting of Muslims in North East Delhi in February 2020 has stated on record that he had attended several events in the months before Yati Narsinghanand had spoken, including the one at Jantar Mantar on 25 December 2019,<sup>329</sup> potentially establishing a direct causal link between the incendiary speeches and the violence.

*Repetition of discriminatory acts and speeches:* According to reports, Yati Narsinghanand’s actions and speeches on several occasions before and after the aforementioned speeches indicate the special ‘intent to destroy’ Muslims. Here is a brief listing of such reports:

<sup>329</sup> The Wire “Beyond Blasphemy: Inside Yati Narsinghanand’s Militant Hindutva Machinery” (17 April 2021) <<https://thewire.in/communalism/beyond-blasphemy-inside-yati-narsinghanands-militant-hindutva-machinery>>

- In December 2021, he organised another *Dharam Sansad* (religious conclave) where he, along with several Hindu leaders, called on weapon holding Hindu audience to ‘conduct a cleanliness drive’ against Muslims and declared that ‘if a hundred of us [Hindus] become soldiers and kill two million of them [India’s 200 million Muslims], we will be victorious’.<sup>330</sup>
- In April 2021, another video surfaced where ‘he is calling all Hindus to keep the best weapons available, to be ready to die and kill’.<sup>331</sup> On another occasion, he was reported calling for Muslims to be removed ‘from the face of Earth’.<sup>332</sup>
- In March 2021, one of Narsinghanand’s disciples brutally beat a 14-year-old Muslim boy who had come to their temple to drink some water.<sup>333</sup>
- In December 2017, a Muslim daily wage worker, named Afrazul, was lynched by a

Hindu Shambhu Lal Regar in Rajsamand, Rajasthan. Narsinghanand was the first Hindutva leader to address a press conference glorifying Regar’s actions. He travelled to Rajasthan to extend support to the perpetrator’s family.<sup>334</sup>

- In 2017, videos surfaced where Yati Narsinghanand was seen teaching young men how to handle and operate a gun at his Dasna Devi temple in Gazhiabad (UP).<sup>335</sup>

*Clear and direct expression of intent:*

On multiple occasions, Yati Narsinghanand has explicitly referred to the eradication of Islam and Muslims from India, as a part of his ‘Hindu Rashtra’ (Hindu Nation) mission. His calls to conduct a ‘cleanliness drive’ to get rid of Islam from the nation appear as direct expressions of his genocidal intent.

*Existence of a Genocidal Plan:* The weapon training, incendiary speeches and encouragement of lone acts of violence against Muslims, do not appear as isolated accounts of hatred against Muslims from Yati Narsinghanand as an individual. These speeches

<sup>330</sup> The Economist “Hindu bigots are openly urging Indians to murder Muslims” (15 January 2022)

<<https://www.economist.com/leaders/2022/01/15/hindu-bigots-are-openly-urging-indians-to-murder-muslims>>;

Scroll.in “Does this Hindu extremist priest in UP have the support of the rank and file of BJP?” (24 August 2021)

<<https://scroll.in/article/1003558/does-this-hindu-extremist-priest-in-up-have-the-support-of-the-rank-and-file-of-bjp>>

<sup>331</sup> Sania Ahmad on Twitter (4 April 2021) <<https://twitter.com/SaniaAhmad111/status/1378639588063735809?s=20>>

<sup>332</sup> The Wire “Beyond Blasphemy: Inside Yati Narsinghanand’s Militant Hindutva Machinery” (17 April 2021)

<<https://thewire.in/communalism/beyond-blasphemy-inside-yati-narsinghanands-militant-hindutva-machinery>>

<sup>333</sup> B Taskin “Mandir was open for all before, now drinking water also crime’: Dad of thrashed UP Muslim boy’

<<https://theprint.in/india/mandir-was-open-for-all-before-now-drinking-water-also-crime-dad-of-thrashed-up-muslim-boy/621888/>>

<sup>334</sup> The Wire ‘Beyond Blasphemy: Inside Yati Narsinghanand’s Militant Hindutva Machinery’

<<https://thewire.in/communalism/beyond-blasphemy-inside-yati-narsinghanands-militant-hindutva-machinery>>

<sup>335</sup> Guns & Violence ‘How Mahant Narsimhanand’s Spewing Hate?’ | The Quint (4 October 2017)

<<https://www.youtube.com/watch?v=vEy4cGpHoOE>>

conducted by Hindu religious leaders such as Narsinghanand are grounded in the broader ideology of the RSS and other associated groups to make India a 'Hindu Nation'.

instrument for circulating incendiary speeches and mobilising resources for violence that took place in North East Delhi in February 2020.

He has been consistently supported by BJP political leaders and the police. For instance, Kapil Mishra called for donations and monetary support for Yati Narsinghanand's 'mission'.<sup>336</sup> His annual *Dharam Sansad* (religious conclaves) is attended by senior leaders of the BJP and the key religious figures speaking there have been reported to have connections with the BJP.<sup>337</sup>

Based on these reports, we believe there is sufficient credible information to indicate that speeches made by Yati Narsinghanand qualify as direct and public incitement to genocide against Muslims and the allegations must be investigated further.

In all the cases above, we are bound to note the emerging pattern in the use of social media platforms, including Facebook, YouTube and Twitter. At the time of writing this report, some of these videos were taken down by these platforms for violating their hate speech guidelines. However, these actions were delayed and inadequate. In the lead-up to and at the time when targeted violence was being carried out, the aforementioned social media platforms became a key

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<sup>336</sup> The Wire (n 327).

<<https://thewire.in/communalism/delhi-riots-conspiracy-anti-muslim-cleric-yati-narsinghanand>>

<sup>337</sup> The Wire 'Hindutva Leaders at Haridwar Event Call for Muslim Genocide' <<https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>>; Crime and Prejudice 'The BJP and Delhi Police's hand in Delhi violence' (Caravan, September 2020) <<https://caravanmagazine.in/politics/the-bjp-and-delhi-police-hand-in-the-delhi-violence>>

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## **ANNEXURE IV**

### **SUBJUGATION, EXCLUSION AND GROSS HUMAN RIGHTS VIOLATIONS AGAINST KASHMIRI MUSLIMS**

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## I. Introduction

This chapter deals with the state of Jammu & Kashmir (J&K), especially the Muslim-majority Kashmir Valley that has been witness to a history of human rights abuses,<sup>1</sup> alongside a long-standing armed conflict between India and Pakistan over its territory since the partition of British India and demands for independence from India through an insurgency by armed opposition groups since 1989.<sup>2</sup> The focus of our analysis is the period from August 2019 onwards. The measures adopted by the Indian government in August 2019 regarding Jammu & Kashmir, including the abrogation of Article 370 and 35A of the Indian Constitution, 1950, we believe, are part of an India-wide majoritarian consolidation set in motion by the Bharatiya Janata Party (BJP)-led government that finds its sharpest expression in Kashmir. In addition to the constitutional changes, authorities have systematically acted to suppress and prevent any dissent against the abrogation.

These violations, although forming the temporal basis for our analysis, cannot be dissociated from the history of conflict and violations in Kashmir since 1947. It is essentially the period before 2019 that forms the basis of the security state and its legal framework that is in operation in J&K. Therefore, we deem it imperative to begin this discussion with a detailed note

on the historical context specific to the state of J&K in Part II. Then, we lay down the factual findings enlisting incidents since August 2019 that may result in human rights violations in Part III. We have only considered violations by the state actors, as listed in Part IV. Finally, based on applicable international human rights, criminal and humanitarian law, the Panel examines whether there is credible information to suggest that violations have taken place in J&K in the time period under consideration as Part V of this annexure.

## II. Background and Historical Context

J&K has been the site of a long-standing conflict between India and Pakistan with a deeply complex history of numerous border wars since the partition of British India and demands for independence from India through an insurgency by armed opposition groups since 1989.<sup>3</sup> Thus, the origins of the conflict in Kashmir lie in the partition of former British India into two separate states of India and Pakistan in 1947.<sup>4</sup>

### I. Indian Independence in 1947

Under British rule, the Muslim-majority kingdom of J&K was one of the largest princely kingdoms in India, ruled by Maharaja Hari Singh, a Hindu king.<sup>5</sup> Under

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<sup>1</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), "Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan" (14 June 2018), <<https://www.ohchr.org/sites/default/files/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>>; OHCHR, "Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019" (8 July 2019), <[https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)>

<sup>2</sup> Lord Birdwood, "Two Nations and Kashmir" (Robert Hale: London, 1956).

<sup>3</sup> Lord Birdwood, "Two Nations and Kashmir" (Robert Hale: London, 1956).

<sup>4</sup> Lord Birdwood, "Two Nations and Kashmir" (Robert Hale: London, 1956).

<sup>5</sup> Lord Birdwood, "Two Nations and Kashmir" (Robert Hale: London, 1956).

the terms of the Indian Independence Act 1947, the princely states, which were not formally part of British India and had been allowed to govern internal matters, had the choice of retaining independence or acceding to either of the newly sovereign countries of India and Pakistan.<sup>6</sup> J&K had chosen to initially remain independent but had signed a Standstill Agreement with Pakistan.<sup>7</sup> However, a combination of factors, including a massacre of Muslims in the Jammu region of the province by J&K state troops<sup>8</sup> that contributed to apprehensions against the Maharaja in the Kashmir Valley, alongside the invasion by Pakistani Pashtun tribal militias in September and October 1947, led to the Maharaja seeking help from the then Prime Minister of India, Jawahar Lal Nehru, who agreed to the request to help, but conditional on the Maharaja signing an Instrument of Accession to India.<sup>9</sup> On 27 October 1947, the Maharaja signed the Instrument and merged J&K with India, but on the condition that J&K be permitted to retain its own Constitution.<sup>10</sup>

## 2. 1948 Conflict between India and Pakistan

This was followed by an armed conflict between Indian and Pakistani armed

forces, which India brought to the attention of the United Nations on 1 January 1948, with Pakistan also raising its concerns shortly after.<sup>11</sup> The United Nations (UN) Security Council established a UN Commission for India and Pakistan (UNCIP) to mediate the dispute and, in April 1948, expanded the mandate of the UNCIP under UN Security Council Resolution 47 to include facilitating a free and impartial plebiscite to decide whether J&K would accede to India or Pakistan, conditional on the withdrawal of the tribesmen and Pakistani fighters from the state; the resolution did not include an option to vote for independence for J&K.<sup>12</sup> A ceasefire line was established by the UNCIP dividing the state into the Muslim-majority western and northern areas of J&K, called *Azad* ('free') J&K, and Gilgit-Baltistan respectively, with India retaining control of the Kashmir Valley with its overwhelmingly Muslim population, the Hindu-majority region of Jammu in the south and Muslim-Buddhist Ladakh in the east.<sup>13</sup>

<sup>6</sup> Lord Birdwood, "Two Nations and Kashmir" (Robert Hale: London, 1956).

<sup>7</sup> The Agreement provided that all the administrative arrangements then existing between the British Crown and the state would continue unaltered between the signatory dominion (India or Pakistan) and the princely state, until new arrangements were made.

<sup>8</sup> J&K state troops, along with Hindus and Sikhs escaping massacre in Western Pakistan, are accused of the mass killings of Jammu Muslims (starting 19 October 1947). A figure of some 200,000 Muslims killed, and 13,000 Muslim women abducted is claimed. This was before the Pathan invasion of 22 October 1947, and before the Maharaja's accession to India (on 27 October 1947). The motivation, it is claimed, was revenge, but also an attempt to change the demography of the then Muslim-majority Jammu region of J&K state. The massacre led to mass exodus of Jammu Muslims to western parts of J&K, what would soon become Azad Kashmir. Civil Military Gazette reports (19 October to 18 December) cited in Christopher Snedden, "Kashmir: The Unwritten History" (Harper Collins: New Delhi, 2012) 52-53; UN Commission on India and Pakistan (UNCIP), "Report of the Sub-Committee on Western Kashmir, 1949", cited in Snedden, 2012: 49; MK Gandhi speech at prayer meeting in Delhi (25 December 1947), where he accused the Maharaja and his Dogra troops for the massacre, cited in Snedden (2012: 55).

<sup>9</sup> Abdul G Noorani, "The Kashmir Dispute 1947-2012" (Oxford University Press: Oxford, 2014).

<sup>10</sup> Venkatesh Nayak, "The Backstory of Article 370: A True Copy of J&K's Instrument of Accession" (*The Wire*, 5 August 2019), <<https://thewire.in/history/public-first-time-jammu-kashmir-instrument-accession-india>>

<sup>11</sup> OHCHR, "Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan" (14 June 2018), <<https://www.ohchr.org/sites/default/files/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>>

<sup>12</sup> UN Security Council Resolution 47 (1948), 21 April 1948, <<http://unscr.com/en/resolutions/doc/47>>

<sup>13</sup> UN Security Council Resolution 47 (1948) 21 April 1948, <<http://unscr.com/en/resolutions/doc/47>>



In November 1947, Indian Prime Minister Nehru assured the people of the Kashmir Valley that a plebiscite would be held, guided by the UN, to decide the fate of J&K once law and order had been established.<sup>14</sup> However, no plebiscite was ever held as India and Pakistan could not arrive at an agreement regarding various technical legalities of UN Security Resolution 47, particularly the extent of demilitarisation.<sup>15</sup>

### 3. 1949 Ceasefire between India and Pakistan

On 29 July 1949, India and Pakistan signed the Karachi Agreement regarding the establishment of a ceasefire line in J&K to be supervised by a subcommittee of the UNCIP, called the UN Military Observer Group in India and Pakistan (UNMOGIP).<sup>16</sup> On 30 March 1951, following the termination of the UNCIP, the UN Security Council, by Resolution 91, decided that the UNMOGIP should continue to supervise the

ceasefire in J&K.<sup>17</sup> UNMOGIP's functions were limited to observing and reporting, investigating complaints of ceasefire violations and submitting its findings to each party and to the UN Secretary-General.<sup>18</sup>

### 4. Special Autonomous Status of J&K

In order to honour the terms of the Instrument of Accession, Article 370 was inserted into the Indian Constitution, granting special autonomous status to J&K in all regional matters apart from foreign policy, defence and communications that were to be decided by the state's Constituent Assembly.<sup>19</sup> Nehru and Sheikh Abdullah, the leader of the National Conference Party of Kashmir, entered into an agreement (Delhi Agreement, 1952) which provided J&K with some unique privileges, including having a Prime Minister instead of a Chief Minister leading the state government, a separate constitution and a separate flag besides the Indian flag.<sup>20</sup> Article 370 and the associated privileges, however, were intended to be a temporary provision until a plebiscite was conducted to decide the status of J&K.<sup>21</sup>

<sup>14</sup> Lord Birdwood, "Two Nations and Kashmir" (Robert Hale: London, 1956).

<sup>15</sup> Mahesh Shankar, (2016) "Nehru's legacy in Kashmir: Why a plebiscite never happened" *India Review*, 15:1, 1-21.

<sup>16</sup> Agreement between military representatives of India and Pakistan regarding the establishment of a cease-fire line in the state of Jammu and Kashmir, S/AC.12/TC.4, 29 July 1949, <[https://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20PK\\_490729\\_%20Karachi%20Agreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20PK_490729_%20Karachi%20Agreement.pdf)>

<sup>17</sup> UN Security Council Resolution 90 (1951), 31 January 1951, <<http://unscr.com/en/resolutions/doc/91>>

<sup>18</sup> UN Security Council Resolution 90 (1951), 31 January 1951, <<http://unscr.com/en/resolutions/doc/91>>

<sup>19</sup> Mahesh Shankar, "The Reputational Imperative: Nehru's India in Territorial Conflict" (Stanford University Press: Redwood City, 2018).

<sup>20</sup> M J Aslam, "August 9, 1953: Why Sheikh Abdullah was removed" (*Kashmir Life*, 17 August 2018), <<https://kashmirlife.net/august-9-1953-why-sheikh-abdullah-was-removed-183655/>>

<sup>21</sup> Mahesh Shankar, "The Reputational Imperative: Nehru's India in Territorial Conflict" (Stanford University Press: Redwood City, 2018).

## 5. J&K Constituent Assembly and Constitution

In 1948, Sheikh Abdullah was appointed the Prime Minister of the state of J&K.<sup>22</sup> In 1951, the first elections for the J&K Constituent Assembly were held, which elected a body of representatives to formulate the state constitution. On 14 July 1954, the State Constituent Assembly decided that Article 370 should remain in force, making it a permanent feature of the Indian Constitution. However, with the dissolution of the Constituent Assembly in 1957, the only legal body that could decide the fate of Article 370, the article effectively became un-amendable.<sup>23</sup> The state of J&K enacted its own Constitution, which was formally adopted by a Constituent Assembly on 17 November 1956 and entered into force on 26 January 1957.<sup>24</sup>

India resisted holding a plebiscite, stating that by virtue of the accession, the participation of Kashmiris in the elections (despite having a Muslim majority), and the adoption of a State Constitution, the Kashmiri people had effectively ratified the accession and, therefore, a plebiscite was no longer required.<sup>25</sup> The pressure from Jan Sangh, the predecessor of the BJP, and other Hindu leaning parties, including Praja Parishad, against any concession on Kashmir influenced the changed stance on

the part of the Government of India and the Congress leadership. Prime Minister Nehru's own shifting stance, too, played a part. Praja Parishad, with a strong constituency in the Hindu-majority Jammu region, was against special status for J&K (according to Article 370), and for a full merger of Kashmir with the Indian Union.<sup>26</sup>

India also considered the presence of Pakistani forces in Kashmiri territory as an act of hostility by Pakistan and an invasion of the territory of India. On the other hand, Pakistan held that as the Maharaja had executed a Standstill Agreement with Pakistan, he had been denuded of the power to enter into any agreement with another country and thus, the Instrument of Accession was invalid.<sup>27</sup> During this time, the repressive measures undertaken by the Sheikh Abdullah government and India's repeated refusal to hold a plebiscite began to sow seeds of discontent and resentment among the Kashmiris against the Indian government.<sup>28</sup>

Thereafter, though there were several resolutions passed by the UN Security Council until 1957, the plebiscite still never took place as both sides refused to adhere

<sup>22</sup> Chitralkha Zutshi, "Languages of Belonging: Islam, Regional Identity, and the Making of Kashmir" (C. Hurst & Co. Publishers: London, 2004).

<sup>23</sup> Zaid Deva, (2020) "Basic without structure?: the Presidential Order of 1954 and the Indo-Jammu & Kashmir constitutional relationship", *Indian Law Review*, 4:2, 163-198.

<sup>24</sup> The Constitution of Jammu and Kashmir (12 March 2003), <<https://jkdnt.nic.in/pdf/Rules-Costitution-of-J&K.pdf>>

<sup>25</sup> Human Rights Watch "“Everyone Lives in Fear”: Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>

<sup>26</sup> Arun Anan, "Praja Prarishad Party – the forgotten name behind the removal of Article 370 in J&K" (*The Print*, 14 November 2020), <<https://theprint.in/india/praja-parishad-party-the-forgotten-name-behind-the-removal-of-article-370-in-jk/543732/>>; AG Noorani, "Murder of Insaniyat, and of India's Solemn Commitment to Kashmir" (*The Wire*, 13 August 2022), <<https://thewire.in/law/murder-of-insaniyat-and-of-indias-solemn-commitment-to-kashmir>>

<sup>27</sup> Mahesh Shankar (2016) "Nehru's legacy in Kashmir: Why a plebiscite never happened", *India Review*, 15:1, 1-21.

<sup>28</sup> Chitralkha Zutshi, "Languages of Belonging: Islam, Regional Identity, and the Making of Kashmir" (C. Hurst & Co. Publishers: London, 2004) 314.

to the conditions of withdrawal of their respective forces.<sup>29</sup>

## 6. 1965 and 1971 Conflicts between India and Pakistan

In 1965, forces from Pakistan entered J&K, backed by the Pakistani army under 'Operation Gibraltar', leading to another war. This war ended after a meeting of the country leaders in the Soviet Union, resulting in the signing of the Tashkent Declaration, and a ceasefire was declared through UN Security Council Resolution 211, with both armies withdrawing to the 1949 ceasefire line, with some minor changes of territory.<sup>30</sup>

In 1971, India's involvement with the Bangladesh Liberation War in East Pakistan, which had resulted in the persecution of many Bengali Hindus and their subsequent fleeing to India, led to another war between India and Pakistan, which resulted in the secession of East Pakistan and its independence as Bangladesh.<sup>31</sup> This further soured relations between India and Pakistan and fomented anti-Indian ideology in Pakistan.<sup>32</sup> The 1971 war culminated in the signing of the Shimla Agreement, which clearly defined the ceasefire line, now formally called the Line of Control (LOC), and a commitment from both countries to future bilateral negotiations on all outstanding issues, including J&K.<sup>33</sup> Thereafter, India claimed that the signing of the Shimla Agreement

and the consequent changes in the original territory rendered all previous UN Security Council resolutions redundant and that the mandate of the UNMOGIP had lapsed.<sup>34</sup> However, Pakistan still formally insisted on a plebiscite.<sup>35</sup>

Since the Shimla Agreement of 1972, India has adopted a non-recognition policy towards third parties in their bilateral exchanges with Pakistan over the question regarding the state of J&K. The military authorities of Pakistan have continued to lodge alleged ceasefire violations complaints with UNMOGIP. The military authorities of India have lodged no complaints since January 1972 limiting the activities of the UN observers on the Indian-administered side of the LOC. The last report of the Secretary-General to the UN Security Council on UNMOGIP was published in 1972.<sup>36</sup>

## 7. Establishment of Militant Groups

Internally within J&K, there was a growing feeling of resentment and discontent with the Indian government's interference in the politics of the state and a refusal to hold a plebiscite. The Indian government ignored constitutional provisions protecting J&K's separate autonomous status and continued to enact legislation

<sup>29</sup> Kritika Goel, "Kashmir Plebiscite Explained, But is the Debate Still Relevant?" (*The Quint*, 26 February 2019),

<<https://www.thequint.com/explainers/kashmir-plebiscite-india-pakistan-explained>>

<sup>30</sup> Peter Lyon, "Conflict between India and Pakistan: An Encyclopaedia" (ABC-CLIO Inc: Santa Barbara, California, 2008).

<sup>31</sup> Shahla Hussain, "Kashmir in the Aftermath of Partition" (Cambridge: Cambridge University Press, 2021).

<sup>32</sup> Human Rights Watch "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No11(C)),

<<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>

<sup>33</sup> The full text of the Shimla Agreement (2 July 1972), <<https://mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972>>

<sup>34</sup> Embassy of India, Washington D.C., "A Comprehensive Note on Jammu & Kashmir",

<[http://www.indianembassy.org/policy/Kashmir/Kashmir\\_MEA/UN.html](http://www.indianembassy.org/policy/Kashmir/Kashmir_MEA/UN.html)>

<sup>35</sup> Shahla Hussain, "Kashmir in the Aftermath of Partition" (Cambridge: Cambridge University Press, 2021).

<sup>36</sup> UNMOGIP <<https://unmogip.unmissions.org/background>>

bringing the state increasingly under the authority of the Central Government.<sup>37</sup>

Any political leaders who demanded genuine autonomy for J&K and pro-plebiscite activists were jailed on charges of sedition. As democratic channels for expressing discontent were limited, there was an increase in support for insurgents advocating for secession from India. This frustration led to the formation of the first militant group in J&K in 1964, the Jammu Kashmir Liberation Front (JKLF), which began a campaign for Kashmiri independence.<sup>38</sup>

During this time, the elections in J&K were reportedly marred by malpractices,<sup>39</sup> with Prime Minister Shaikh Abdullah's National Conference Party winning most elections unopposed and multiple impositions of the President's Rule in the state - suspension of the elected assembly and assumption of government directly by the Central government.<sup>40</sup> After the death of Shaikh Abdullah, his son, Farooq Abdullah, took charge of the National Conference Party, which faced widespread accusations of corruption.<sup>41</sup>

## 8. 1987 Elections in J&K

In 1986, Indian Prime Minister Rajiv Gandhi and Chief Minister Farooq Abdullah forged a new accord, which ensured the re-entry of Abdullah as the prime minister of J&K

with his major mission to fight subversive and pro-Pakistan forces and to bring about all-round economic development in the state.<sup>42</sup> The accord was widely criticised as a betrayal of Kashmiri interests by threatening to erode whatever remained of J&K's autonomy and led to a further loss in the credibility of the National Conference Party, further fuelling anti-India sentiments among the Kashmiris. In response, a new opposition party, the Muslim United Front (MUF), a collection of Islamic and secessionist parties that included the *Jamaat-e-Islami* (a socio-political-religious organisation), which had the support of pro-independence activists, Islamic fundamentalists and many frustrated Kashmiri youth, was launched. This party contested the March 1987 polls for seats in the State assembly.<sup>43</sup>

The 1987 elections have been regarded as a turning point in the history of J&K. The state elections were widely believed to have been rigged by the ruling party to prevent a victory by the MUF, an accusation given credence by widespread irregularities in the vote count and mass arrests of MUF candidates in the aftermath of the election.<sup>44</sup> Amid widespread protests, the National Conference Party, in coalition with the Congress Party, again took power in the state, resulting in a deepening of popular resentment against the state government that was perceived as an extension of the Indian government by the Kashmiris,

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<sup>37</sup> Shahla Hussain, "Kashmir in the Aftermath of Partition" (Cambridge: Cambridge University Press, 2021).

<sup>38</sup> Shahla Hussain, "Kashmir in the Aftermath of Partition" (Cambridge: Cambridge University Press, 2021).

<sup>39</sup> Altaf Hussein, "Kashmir's flawed elections" (*BBC News*, 14 September 2002), <[http://news.bbc.co.uk/1/hi/world/south\\_asia/2223364.stm](http://news.bbc.co.uk/1/hi/world/south_asia/2223364.stm)>

<sup>40</sup> Article 356 of the Indian Constitution, 1950.

<sup>41</sup> Shahla Hussain, "Kashmir in the Aftermath of Partition" (Cambridge: Cambridge University Press, 2021).

<sup>42</sup> Congress (I)-NCF Accord 1986 (*Kashmir Politics*), <[http://www.jammu-kashmir.com/basicfacts/politics/congress\\_ncf.html](http://www.jammu-kashmir.com/basicfacts/politics/congress_ncf.html)>

<sup>43</sup> D-Day: March 23, 1987 (24 March 2016), <<https://kashmirilife.net/d-day-march-23-1987-issue-no-01-vol-08-100032/>>

<sup>44</sup> Praveen Donthi "How Mufti Mohammad Sayeed Shaped the 1987 Elections in Kashmir" (*The Caravan*, 23 March 2016), <<https://caravanmagazine.in/vantage/mufti-mohammad-saveed-shaped-1987-kashmir-elections>>

disillusionment with electoral politics and increased support for the militants.<sup>45</sup> In 1993, these resentments would coalesce with the formation of the All Party Hurriyat Conference (APHC), a political platform of various separatist parties.<sup>46</sup>

### 9. Struggle between Militant Groups and Indian Armed Forces

Violence erupted after the 1987 elections. Armed opposition groups claimed responsibility for a range of explosions in J&K, detonating bombs at government buildings, busses and the houses of present and former state government officials. It was widely assumed that the militant groups were receiving arms, support and training in Pakistan. Thereafter, these groups also successfully organised a state-wide boycott of the November 1989 national parliamentary elections. In December 1989, JKLF abducted 23-year-old Rubaiya Sayeed, daughter of the Home Minister of India, Mufti Mohammad Sayeed, a Kashmiri, who later became the Chief Minister of J&K. In return for her safe release, the JKLF demanded the release of five detained militants, to which the government acquiesced.<sup>47</sup> This abduction, coupled with widespread popular protests against the state and central government, ushered in the launch of a massive crackdown on the militants by the central government, which

sent in paramilitary reinforcements and imposed direct rule on the state.<sup>48</sup>

In subsequent months, the Indian forces launched a brutal crackdown on militant groups in the predominantly Muslim Kashmir Valley. Long curfews were imposed for extended periods of time, and the troops conducted large-scale searches and arrested hundreds of young men leading protests against the government. There were regular protests calling for the independence of Kashmir, which were met with open fire by the paramilitary forces on unarmed demonstrators, killing scores of civilians. Summary executions of detainees and enforced disappearances became common. The crackdown from the central government was marked by widespread human rights violations against suspected militants and civilians.<sup>49</sup>

On the other hand, the militant groups also stepped up their attacks, kidnapping and assassinating government officials, civil servants and any suspected informers.<sup>50</sup> The groups also attacked any civilians as suspected informers or members of the military and paramilitary forces.<sup>51</sup> The atmosphere of violence and lawlessness was particularly heightened for the minority community of Hindus in the Kashmir Valley, known as Kashmiri Pandits.<sup>52</sup> Targeted assassinations and

<sup>45</sup> Tavleen Singh, "Kashmir: A Tragedy of Errors" (Bloomsbury Publishing House, 1996).

<sup>46</sup> Muzamil Jaleel "Hurriyat: Its History, Role and Relevance" (*The Indian Express*, 31 August 2015), <<https://indianexpress.com/article/explained/hurriyat-its-history-role-and-relevance/>>

<sup>47</sup> Asia Watch (a division of Human Rights Watch and Physicians for Human Rights, "The Human Rights Crisis in Kashmir: A Pattern of Impunity" (1993), <<https://www.hrw.org/sites/default/files/reports/INDIA937.PDF>>

<sup>48</sup> Human Rights Watch "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>

<sup>49</sup> Asia Watch (a division of Human Rights Watch and Physicians for Human Rights, "The Human Rights Crisis in Kashmir: A Pattern of Impunity" (1993), <<https://www.hrw.org/sites/default/files/reports/INDIA937.PDF>>

<sup>50</sup> Human Rights Watch "India - Arms and Abuses In Indian Punjab And Kashmir" (September 1994, Vol 6, No 10), <<https://www.hrw.org/sites/default/files/reports/INDIA949.PDF>>

<sup>51</sup> Human Rights Watch, "India - India's Secret Army in Kashmir. New Patterns of Abuse Emerge in the Conflict" (May 1996, Vol 8, No 4(C)), <<https://www.hrw.org/reports/1996/India2.htm>>

<sup>52</sup> Human Rights Watch "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>; Amnesty International, "India: "Denied": Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir", Index number: ASA 20/1874/2015 (1 July 2015), <<https://www.amnesty.org/en/documents/asa20/1874/2015/en/>>, 15.

attacks by armed groups like *Hizbul Mujaiheedin* and JKLF led Kashmiri Pandits to flee from Kashmir to Jammu and other parts of India. More than 100,000 fled Kashmir in a few months, and about 160,000 are estimated to have left the Kashmir Valley since.<sup>53</sup> Where the violence and targeted nature of killings of Kashmiri Pandits are established, there is a lack of consensus on the exact number of Kashmiri Pandits killed during the militancy.<sup>54</sup> On the one hand, a Joint Human Rights Committee on minorities in Kashmir claimed that more than 700 Hindus were killed from 1989 to 1990; on the other hand, a 2010 response by the J&K government in the legislative assembly indicated that 219 Kashmiri Pandits were killed by militants since 1989.<sup>55</sup> A reply to a recent Right to Information application put the figure in Srinagar district, the site of most killings, at 89 pandits.<sup>56</sup>

After 1990 too, Kashmiri Pandits and other religious minorities who stayed in the Valley have continued to be subjected to targeted violence. 36 Sikh men were shot dead in Chattisinghpura village of Anantnag, Kashmir, in 2000 as the President of the United States of America, Bill Clinton, was about to visit India,<sup>57</sup> and 24 Kashmiri Pandits were killed in the

village of Nadimarg in Pulwama in 2003.<sup>58</sup> In neither case, have the facts been established by an independent investigation, nor justice been delivered.<sup>59</sup>

## 10. Introduction of Special Legislation for J&K

In 1978 J&K State Government had enacted the Public Safety Act, 1978 (PSA) that allowed for administrative detention of up to two years in the case of persons 'acting in any manner prejudicial to the security of the State' and for administrative detention of up to one year where 'any person is acting in any manner prejudicial to the maintenance of public order'.<sup>60</sup> In other words, the law allowed preventive detention of up to two years where individuals could be held without a trial or charge *on mere suspicion* of acting in a manner prejudicial to the security of the state or public order with the clauses 'security of the state' or 'public order' not explicitly defined in the statute.

Additionally, in response to the violence by militants in the late 1980s, the central government introduced the Armed Forces (Jammu and Kashmir) Special Powers Act 21 of 1990 (AFSPA)<sup>61</sup> and the Jammu and Kashmir Disturbed Areas Act 4 of 1992 in

<sup>53</sup> Alexander Evans, (2002) "A departure from history: Kashmiri Pandits, 1990-2001", *Contemporary South Asia*, vol 11.1: 19-37.

<sup>54</sup> M.K. Teng and C.L. Gadoo, "White Paper on Kashmir" (New Delhi: Joint Human Rights Committee, Geoffrey Bell and Publishers, 1991), 48

<<https://koausa.org/site/wp-content/uploads/2017/02/whitepaper.pdf>>

<sup>55</sup> Shujaat Bukhari "219 Kashmiri Pandits killed by militants since 1989" (*The Hindu*, 23 March 2010),

<<https://www.thehindu.com/news/ldquo219-Kashmiri-Pandits-killed-by-militants-since-1989rdquo/article16598851.ece>>

<sup>56</sup> Muzaffar Raina, "Toll: 89 Kashmiri Pandits, 1,635 others" (*The Telegraph*, 16 December 2021),

<<https://www.telegraphindia.com/india/jammu-kashmir-muslims-bear-brunt-of-militancy/cid/1843467>>

<sup>57</sup> 18 Years since Chittisinghpura Massacre: A Long Wait for Justice (21 March 2018), <<https://www.thequint.com/news/india/remembers-chittisinghpura-anantnag-massacre>>

<sup>58</sup> 24 Hindus are shot dead in Kashmiri village (*The New York Times*, 24 March 2003), <<https://www.nytimes.com/2003/03/24/world/24-hindus-are-shot-dead-in-kashmiri-village.html>>

<sup>59</sup> Zia Mustafa Killing all but pulls the curtain down on Nadimarg Pandit massacre (The Indian Express, 25 October 2021)

<<https://indianexpress.com/article/india/zia-mustafa-killing-all-but-pulls-curtain-down-on-nadimarg-pandit-massacre-7588749/>>

<sup>60</sup> See, Amnesty International India, "Tyranny of a 'Lawless Law'. Detention without charge or trial under the J&K Public Safety Act" (2019)

<[https://www.amnesty.be/IMG/pdf/tyranny\\_of\\_a\\_lawless\\_law\\_-\\_briefing.pdf](https://www.amnesty.be/IMG/pdf/tyranny_of_a_lawless_law_-_briefing.pdf)>, 7.

<sup>61</sup> The Armed Forces (Jammu and Kashmir) Special Powers Act 21 of 1990,

<[https://www.mha.gov.in/sites/default/files/The%20Armed%20Forces%20and%20Jammu%20and%20Kashmir%29%20Special%20Powers%20Act%2C%201990\\_0.pdf](https://www.mha.gov.in/sites/default/files/The%20Armed%20Forces%20and%20Jammu%20and%20Kashmir%29%20Special%20Powers%20Act%2C%201990_0.pdf)>

1990<sup>62</sup> to aid the military in managing the armed groups. These Acts gave discretionary, draconian and very expansive powers to the military to arrest, detain, interrogate or shoot at any person of suspicion; for instance, section 4 of the AFSPA empowered both commissioned and non-commissioned officers in a 'disturbed area' to 'fire upon or otherwise use force, even to the causing of death' not only in cases of self-defence but against any person contravening laws or orders 'prohibiting the assembly of five or more persons'.<sup>63</sup> Notably, section 7 prohibits the prosecution of security forces personnel unless the Government of India grants permission or 'sanction' to prosecute after reviewing the account of the officers. These Acts have facilitated complete impunity for the military, which has effectively prevented any accountability for alleged human rights violations, which enabled them to violate human rights.<sup>64</sup>

The AFSPA has been subject to criticism by many UN experts, but the Government of India has refused to take any action to amend the Act as it states that the army has taken a strong stand against any dilution of the powers under the AFSPA, holding that the unbridled nature of the powers is essential to effectively combat militants and any investigation in the actions of the officers would severely impact the morale and integrity of the forces.<sup>65</sup>

## II. Security Forces in J&K

Various security forces operated and continue to operate in J&K. The Indian security forces included the army and the paramilitary Border Security Forces (BSF), and the Central Reserve Police Force (CRPF). In 1993, an elite army unit called the 'Rashtriya Rifles' was specifically created. There was also the J&K state police, but they were suspected by Indian officials of sympathising with the local secessionist forces and, thus, were not allowed to be involved in counter-insurgency operations. However, in 1995, a counter-insurgency division of the J&K Police, called the Special Task Force (STF), was created, which mainly consisted of non-Muslim and non-Kashmiri recruits.<sup>66</sup>

Further, in 1995, the Indian army began to recruit and train former members of armed opposition groups popularly called 'renegades', '*sarkari* militants' or the 'third force'. The army has been accused of luring and persuading former members of the opposition groups to become renegades by subjecting them to torture and detaining members of their families as hostages until they agree to work with the security forces. While these renegades were initially used as intelligence against armed opposition groups, they began to take an increasingly active part in the army operations by participating in joint patrols and carrying

<sup>62</sup> Repealed in 1992, see Jammu and Kashmir Disturbed Areas Act 4 of 1992, <<https://www.jk.gov.in/jammukashmir/sites/default/files/2154.pdf>>

<sup>63</sup> Amnesty International, "India: "Denied": Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir", Index number: ASA 20/1874/2015 (1 July 2015), <<https://www.amnesty.org/en/documents/asa20/1874/2015/en/>>

<sup>64</sup> OHCHR, "Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019" (8 July 2019),

<[https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)>

<sup>65</sup> Amnesty International India, "Briefing: The Armed Forces Special Powers Act: Time For A Renewed Debate in India on Human Rights and National Security", AI Index: ASA 20/042/2013(8 November 2013), <<https://www.amnestvusa.org/wp-content/uploads/2017/04/asa200422013en.pdf>>

<sup>66</sup> Human Rights Watch, "Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue" (1 July 1999), <<https://www.refworld.org/docid/45d0609b2.html>>

out orders given by the security officers.<sup>67</sup> The number of officers deployed to the Kashmir Valley made it one of the most heavily militarised zones in the world at the time.<sup>68</sup>

## 12. Militant Groups in J&K

With regard to non-state armed forces, the JKLF had spearheaded the movement for an independent Kashmir, but the late 1990s saw the emergence of many other militant organisations, some for Kashmiri independence and some for accession to Pakistan.<sup>69</sup> There are claims that these groups received funds, training and arms from the Pakistani military intelligence unit, the Directorate of Inter-Services Intelligence (ISI).<sup>70</sup> The most powerful of these groups was the *Hizbul-Mujaheddin*, an Islamist military group that fought for accession to Pakistan and gradually replaced the JKLF. Other groups included *Harakat-ul Ansar*, which consisted of a large number of non-Kashmiri fighters, *Al Umar*, *Al Barq*, *Muslim Janbaz Force* and *Lashkar-e Tayyiba*, which gained notoriety for having fighters from Afghanistan and Pakistan. In the early years of the conflict, rivalries and ideological conflicts between

these groups led to clashes and scattered militant operations. In the later years, the primary groups operating in Pakistan-administered Kashmir were the *Lashkar-e-Tayyiba*, *Jaish-e-Mohammed*, *Hizbul Mujahideen* and *Harakat Ul-Mujahidin*.<sup>71</sup>

Post-1990, the Kashmir Valley experienced an ever-escalating spiral of violence, with Kashmiris being trapped in an armed struggle between the Indian forces and the militant groups waging a separatist struggle with support from Pakistan.<sup>72</sup> Indian forces claimed that they were fighting to protect Kashmir from Pakistani militants and Islamist extremists, and militants claimed that they were fighting for the independence of Kashmir and defending Kashmiris from the brutality of the Indian forces.<sup>73</sup>

## 13. Human Rights Violations

In all these years, serious human rights violations have been committed by state forces against civilians. At the same time, violence and human rights abuses have also been carried out by armed groups. The allegations of human rights violations against the state forces include torture, custodial deaths, rape, enforced

<sup>67</sup> Human Rights Watch, "Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue" (1 July 1999), <<https://www.refworld.org/docid/45d0609b2.html>>

<sup>68</sup> Amnesty International, "India: Human rights abuses in the election period in Jammu and Kashmir", AI Index: ASA 20/39/96, (September 1996), <<https://www.amnesty.org/en/documents/ASA20/039/1996/en/>>

<sup>69</sup> Human Rights Watch, "Behind the Kashmir Conflict" (July 1999), <<https://www.hrw.org/reports/1999/kashmir/back.htm>>

<sup>70</sup> Amnesty International, "India: 'If they are dead, tell us' - 'Disappearances' in Jammu and Kashmir", Index Number: ASA 20/002/1999, (2 March 1999), <<https://www.amnesty.org/en/documents/asa20/002/1999/en/>>

<sup>71</sup> Ashley J Tellis, "The menace that is Lashkar-e-Taiba" (Carnegie Endowment for International Peace, March 2012), <[https://carnegieendowment.org/files/LeT\\_menace.pdf](https://carnegieendowment.org/files/LeT_menace.pdf)>

<sup>72</sup> Human Rights Watch, "Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue" (1 July 1999), <<https://www.refworld.org/docid/45d0609b2.html>>; Amnesty International, "Appeal to armed opposition groups in Jammu and Kashmir to abide by humanitarian law" (3 March 1997), <<https://www.amnesty.org/download/Documents/160000/asa200381997en.pdf>> 1-2; Amnesty International, "India: Impunity in Jammu and Kashmir" (April 2001), <<https://www.amnesty.org/download/Documents/128000/asa200232001en.pdf>> 2;

Jamal Afridi "Kashmir Militant Extremists" (*Council on Foreign Relations*, 9 July 2009), <<https://www.cfr.org/background/kashmir-militant-extremists>>; Who are the Kashmir militants? (*BBC News*, 1 August 2012), <<http://www.bbc.com/news/world-asia-18738906>>; Profiles: Armed Groups. Profiles of the main armed groups operating in and around Kashmir (*Al Jazeera*, 3 April 2012), <<https://www.aljazeera.com/indepth/spotlight/kashmirtheforgottenconflict/2011/07/2011731161726482729.html>>

<sup>73</sup> Human Rights Watch "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>; Human Rights Watch "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>

<sup>74</sup> Kashmir: Why India and Pakistan fight over it (*BBC News*, 8 August 2019), <<https://www.bbc.co.uk/news/10537286>>

disappearances, extrajudicial killings and arbitrary detentions. Since it is impossible to identify militants, any person could be taken into custody on suspicion of being one. Those arrested were then taken to special interrogation centres without notifying their families, making it impossible to find them as no records of the arrest were kept.<sup>74</sup> The detainees were often tortured and killed in custody instead of being brought to trial.<sup>75</sup> The Indian forces conducted regular searches without due warrants, usually in the middle of the night. After attacks by militants on security posts, they would storm nearby neighbourhoods, set fire to buildings and randomly beat up residents.<sup>76</sup> There were also allegations of violations of medical neutrality by the Indian forces, as doctors who were suspected of harbouring and treating militants were detained and tortured.<sup>77</sup>

There have also been several allegations against the Indian Army and other security forces of widespread rape and other forms of sexual violence.<sup>78</sup> Some of the emblematic cases include the incidence of mass rape in Konan Poshpora (1991),<sup>79</sup> Shopian (2009),<sup>80</sup> Haran, Srinagar (1992),<sup>81</sup> and Handwara (1992).<sup>82</sup>

The human rights violations committed by the Indian armed forces were bolstered by the near-complete impunity granted through laws such as the AFSPA. Further, due to the lack of action against the security forces, there was no faith in the judiciary, and anyone attempting to mount a case against the officers was subjected to threats and intimidation. Court orders to protect detainees were routinely flouted, and there was a breakdown of legal machinery in the state leading to a judge of the J&K High Court stating that the rule of law in the state had ceased to exist.<sup>83</sup> As the state Human Rights Commission operated under a limited mandate preventing it from independently investigating allegations of such violations, there was a lack of any effective recourse against the Indian forces.<sup>84</sup>

Non-state armed groups have also committed numerous human rights abuses, such as the taking and killing of hostages after having subjected them to torture, including rape.<sup>85</sup> They have assassinated or abducted politicians as well as members of their families as retribution for joining the electoral process, and engaged in targeted killings and

<sup>74</sup> Amnesty International, "India: 'An unnatural fate': disappearances and impunity in the Indian states of Jammu and Kashmir and Punjab", Index Number: ASA 20/042/1993, (15 December 1993), <<https://www.amnesty.org/en/documents/ASA20/042/1993/en/>>

<sup>75</sup> Human Rights Watch "Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>

<sup>76</sup> Human Rights Watch "Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>> Background.

<sup>77</sup> Vincent Iacopino and Patricia Grossman, "The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community" (*Physicians for Human Rights and Asia Watch – a division of Human Rights Watch*, February 1993), <<https://phr.org/our-work/resources/the-crackdown-in-kashmir/>>

<sup>78</sup> Asia Watch (a division of Human Rights Watch and Physicians for Human Rights, "Rape in Kashmir: A Crime of War" (May 1993, Vol 5, Issue 9), <<https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>>

<sup>79</sup> Essar Battol *et al.*, "Do you remember Konan Poshpora?" (Zubaan Books: New Delhi, 2016).

<sup>80</sup> Shams Irfan, "The date, the deed" (*Kashmir Life*, 2 May 2011), <<https://kashmirilife.net/the-date-the-deed-1412/>>

<sup>81</sup> Asia Watch (a division of Human Rights Watch and Physicians for Human Rights, "Rape in Kashmir: A Crime of War" (May 1993, Vol 5, Issue 9), <<https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>>

<sup>82</sup> Asia Watch (a division of Human Rights Watch and Physicians for Human Rights, "Rape in Kashmir: A Crime of War" (May 1993, Vol 5, Issue 9), <<https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>>

<sup>83</sup> Amnesty International, "A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act (2011), <[https://www.amnestyusa.org/files/asa200012011en\\_11.pdf](https://www.amnestyusa.org/files/asa200012011en_11.pdf)>

<sup>84</sup> Amnesty International, "Public Statement - India: Act with restraint during elections in Jammu & Kashmir", AI Index: ASA 20/028/2008 (13 November 2008), <<https://www.amnesty.org/en/documents/ASA20/028/2008/en/>>

<sup>85</sup> Asia Watch (a division of Human Rights Watch and Physicians for Human Rights, "The Human Rights Crisis in Kashmir: A Pattern of Impunity" (1993), <<https://www.hrw.org/sites/default/files/reports/INDIA937.PDF>>

indiscriminate attacks against civilians.<sup>86</sup> They have targeted civilians, including women and children, who they consider as traitors to their cause or those who have expressed views that are ideologically contrary to the views of the militants. Officials conducting elections or anyone that they suspect to be informers to the Indian forces have been abducted, tortured and killed.<sup>87</sup> The civilians have stated that there is often no information on whether an abduction or execution has been committed by the military, the paramilitary forces, the renegades or the militants.<sup>88</sup>

From 1992 onwards, the government intensified the crackdown on the militants by launching a 'catch and kill' policy to execute any captured militants. In August 1992, the Indian armed forces launched 'Operation Tiger' and 'Operation Shiva', which included a series of surprise raids conducted on suspicious neighbourhoods that were designed to capture and kill suspected militants and any of their civilian sympathisers.<sup>89</sup> During this operation, there was an escalation in the number of detentions, indiscriminate

attacks on civilians, and summary executions of detainees.<sup>90</sup> The security forces also engaged in arson, burning houses, shops and entire neighbourhoods.<sup>91</sup> As a result of the increased powers of the Indian forces, they were able to successfully control the major towns and villages of the Kashmir Valley, quelling militant attacks.<sup>92</sup>

By the mid-1990s, the nature of the conflict had changed, with the Kashmiri component of the battle for secession being largely subdued and the fight being taken up by foreign fighters drawn from the waning Afghan war.<sup>93</sup> These fighters did not have any accountability to the local population as they operated openly out of Pakistan with the support of the Pakistan army and intelligence services, with the Pakistani army helping arrange the infiltration of the militants across the LOC.<sup>94</sup> The Indian authorities accused Pakistan of backing separatist militants in the Kashmir Valley who committed various human rights abuses and targeted civilians and officers, but Pakistan explicitly denied these allegations.<sup>95</sup> Amanullah Khan, the chairman of the JKLF, has acknowledged

<sup>86</sup> Human Rights Watch "‘Everyone Lives in Fear’: Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>

<sup>87</sup> Human Rights Watch, "India's Secret Army in Kashmir: New Patterns of Abuse Emerge in the Conflict" (1 May 1996), <<https://www.refworld.org/docid/3ae6a8558.html>>

<sup>88</sup> Human Rights Watch, "India's Secret Army in Kashmir: New Patterns of Abuse Emerge in the Conflict" (1 May 1996), <<https://www.refworld.org/docid/3ae6a8558.html>>

<sup>89</sup> Vincent Iacopino and Patricia Grossman, "The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community" (*Physicians for Human Rights and Asia Watch – a division of Human Rights Watch*, February 1993), <<https://phr.org/our-work/resources/the-crackdown-in-kashmir/>>

<sup>90</sup> Vincent Iacopino and Patricia Grossman, "The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community" (*Physicians for Human Rights and Asia Watch – a division of Human Rights Watch*, February 1993), <<https://phr.org/our-work/resources/the-crackdown-in-kashmir/>>

<sup>91</sup> Vincent Iacopino and Patricia Grossman, "The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community" (*Physicians for Human Rights and Asia Watch – a division of Human Rights Watch*, February 1993), <<https://phr.org/our-work/resources/the-crackdown-in-kashmir/>>

<sup>92</sup> Human Rights Watch, "Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue" (1 July 1999), <<https://www.refworld.org/docid/45d0609b2.html>>

<sup>93</sup> Human Rights Watch "‘Everyone Lives in Fear’: Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>

<sup>94</sup> Human Rights Watch "‘Everyone Lives in Fear’: Patterns of Impunity in Jammu and Kashmir" (September 2006, Vol 18, No 11(C)), <<https://www.hrw.org/sites/default/files/reports/india0906web.pdf>>

<sup>95</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), "Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan" (14 June 2018), <<https://www.ohchr.org/sites/default/files/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>>

that weapons are smuggled across the Pakistani border to his forces in Indian Kashmir. High-ranking Pakistani government officials have also acknowledged the existence of training camps.<sup>96</sup>

#### 14. 1999 Conflict between India and Pakistan

The escalating tensions between India and Pakistan in the 1990s, as well as nuclear tests conducted by both in 1998, led to the signing of the Lahore Declaration in 1999, where both countries promised to arrive at a peaceful and bilateral solution to the Kashmiri conflict.<sup>97</sup> However, the same year, Indian troops discovered that soldiers from the Pakistani Army had infiltrated the territory on the Indian side of the LOC in the Kargil district of J&K under 'Operation Badr', allegedly to sever the link between Kashmir and Ladakh and force India to re-negotiate a settlement with regards to the Kashmir dispute. The Indian forces mobilised, resulting in an international armed conflict between the two countries, referred to as the Kargil War.<sup>98</sup>

With the Pakistani forces outnumbered and bested by the Indian armed forces, Pakistan sought the help of then U.S. President Bill Clinton, who refused to intervene until Pakistan removed all their forces from the Indian territory. This resulted in the signing of the Washington

Accord in July 1999, with Pakistan agreeing to withdraw all troops from the Indian territory.<sup>99</sup> However, some Pakistani forces refused to withdraw and were determined to keep fighting. In response, India launched Operation 'Safed Sagar', which was successful in securing a complete withdrawal of the Pakistani forces from Indian territory, thereby restoring the LOC to the territories as decided in the Shimla Agreement.<sup>100</sup>

On 13 December 2001, five militants allegedly belonging to the *Lashkar-e-Taiba* and *Jaish-e-Mohammed* infiltrated the Indian Parliament and opened fire, killing eight people.<sup>101</sup> India demanded that Pakistan arrest the organisations' leaders and cease the funds that were allegedly being provided to these groups. Though the attack led to a large mobilisation of Indian and Pakistani forces at the J&K border, it did not escalate into an armed conflict.<sup>102</sup>

There was an improvement in the security situation after a prolonged state crackdown and cross-border dynamics by about 2004, resulting in militant groups active in J&K being significantly denuded. At the same time, militants also lost much credibility among Kashmiris due to heightened insecurity and human rights violations by armed groups. For the next years – there was a lull in the violence, with the situation in the Kashmir Valley improving significantly. Yet from 2008, and

<sup>96</sup> Human Rights Watch, "India - Arms and Abuses in Indian Punjab and Kashmir" (September 1994, Vol 6, No 10), <<https://www.hrw.org/sites/default/files/reports/INDIA949.PDF>>

<sup>97</sup> Lahore Declaration (2 February 1999), <<https://www.mea.gov.in/in-focus-article.htm?18997/Lahore+Declaration+February+1999>>

<sup>98</sup> Surinder Singh, "The Truth about the Kargil War is Bitter But it Must be Told" (*The Wire*, 26 July 2021), <<https://thewire.in/security/kargil-war-vijay-divas-truth>>

<sup>99</sup> Human Rights Watch, "India: Arms and Abuses in Indian Punjab and Kashmir" (September 1994, Vol 6, No 10), <<https://www.hrw.org/sites/default/files/reports/INDIA949.PDF>>

<sup>100</sup> Amarinder Singh, "A Ridge Too Far: War in the Kargil Heights" (Motibagh Palace: Patiala, 2001), xii.

<sup>101</sup> Explained Desk, "Explained: 2011 Parliament attack, and what happened after" (*The Indian Express*, 13 December 2019), <<https://indianexpress.com/article/explained/explained-2011-parliament-attack-and-what-happened-after-6164195/>>

<sup>102</sup> Alex Stolar, "To The Brink: Indian Decision-Making and the 2001-2002 Standoff" (*Stimson*, 11 March 2008), <<https://www.stimson.org/2008/brink-indian-decision-making-and-2001-2002-standoff-0/>>

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especially by 2010, the sentiments changed significantly, when the anti-India mood set in again among youth, fuelling a spiral of protests and conflicts that continue to this day. Observers have claimed this return to anti-India mood was the result of state authorities continuing to maintain the structures of repressions on the civilian population (from the insurgency days of the 1990s) throughout the intervening years, despite significant improvement in the ground situation. This included roadblocks, checkpoints, night raids, actions of 'special forces', and other violations enabled by the security state. Moreover, daily humiliations acted to push civilians to the brink. Youth-led, this round of challenging the authorities relied on civilians protesting on the streets, and challenging state forces.<sup>103</sup>

#### 15. Protests in J&K

In 2010, the Kashmir Valley witnessed massive protests sparked by the killing of three men by the Indian army in the Machil district of Kashmir. The Indian officers claimed that the men had breached the LOC and were armed Pakistani militants. However, it later emerged that the men were local Kashmiris who had been lured by the Indian officers under the guise of an offer of employment as porters for the Indian army and shot dead, their faces painted black and guns planted on their

bodies in order to claim a cash reward.<sup>104</sup> The police used massive force in quelling the protests against the killings, leading to the death of 17-year-old Tufail Ahmad Mattoo by teargas. This killing sparked even bigger protests across the Valley.<sup>105</sup>

Thereafter, Kashmir was caught in a vicious cycle as the attacks by the Indian armed forces became increasingly brutal, leading to more protests, in which several youths lost their lives. The protesters pelted stones and bricks at the security forces, who responded with the use of tear gas, rubber bullets and live ammunition resulting in the death of unarmed protesters. Blanket curfews were enforced by the government across Srinagar and other towns, which were defied by the protestors, leading to an escalation of violence.<sup>106</sup> Amnesty International called on the Indian forces to cease the use of guns against unarmed protesters.<sup>107</sup>

The 2010 protests led to a resurgence in separatist sentiments in Kashmir, with pro-independence slogans being raised at protests and stone-pelting and other attacks by Kashmiris on the security forces.<sup>108</sup> The unrest subsided only after the government announced a series of moves in September 2010 to defuse tension in Kashmir, such as freeing of jailed protesters and a reduction in the number of

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<sup>103</sup> David Devadas, "The Generation of Rage in Kashmir (Oxford University Press: New Delhi, 2018), Chapter 1.

<sup>104</sup> Mudasar Ahmad, "As Institutions Fail Kashmiris, Machil Fake Encounter Victims' Families Vow to Keep Fighting" (*The Wire*, 29 July 2017), <<https://thewire.in/government/machil-fake-encounter-armed-forces-tribunal-verdict-kashmir>>

<sup>105</sup> A Youth's Death in Kashmir Renews a Familiar Pattern of Crisis" (*The New York Times*, 12 July 2010), <<https://www.nytimes.com/2010/07/12/world/asia/12kashmir.html>>

<sup>106</sup> Associated Press in Srinagar, "Kashmir protests erupt into violence after government troops kill four" (*The Guardian*, 13 August 2010), <<https://www.theguardian.com/world/2010/aug/13/kashmir-protests-killed-ramadan>>

<sup>107</sup> Amnesty International, "India: Urgent Need For Government To Act As Death Toll Rises In Kashmir", AI: Index: ASA 20/027/2010 (17 September 2010), <<https://www.amnestyusa.org/press-releases/india-urgent-need-for-government-to-act-as-death-toll-rises-in-kashmir/>>

<sup>108</sup> Meenakshi Ganguly, "Letter from Srinagar – What Lies Behind the Resurgent Violence in Kashmir?" (*Human Rights Watch*, 3 September 2010), <<https://www.hrw.org/news/2010/09/03/letter-srinagar>>

checkpoints in Srinagar.<sup>109</sup> In 2014, the Indian army convicted seven officers of staging the Machil fake encounters described above and sentenced them to life imprisonment. In 2017, however, an Armed Forces Tribunal suspended the sentence of life imprisonment against the officers.<sup>110</sup>

From 2013 to 2015, there were a series of border skirmishes at the LOC between India and Pakistan. In 2013, Pakistan claimed that Indian forces had attacked a Pakistani border post, resulting in the death of one soldier, and India accused Pakistani forces of crossing the LOC, killing two Indian soldiers. The conflict escalated and resulted in the deaths of soldiers and civilians on both sides and jeopardised ongoing peace talks.<sup>111</sup>

## 16. BJP Rule from 2014 Onwards

In 2014, there were clashes between the Indian BSF and the Pakistan Rangers, forces responsible for patrolling the border along the LOC. Pakistan appealed to the UN for help in de-escalation, but the situation calmed after both sides agreed to not violate ceasefire obligations.<sup>112</sup> In 2014, the Bhartiya Janta Party (BJP), a Hindu nationalist party, formed the government in Delhi. Prime Minister Narendra Modi,

during a visit to Kargil, blamed Pakistan for waging a ‘proxy war of terrorism’ against India through Kashmir.<sup>113</sup> It is to be noted that the BJP had, as far back as 1984, declared that it wanted to delete Article 370 from the Indian Constitution, a promise that was reiterated repeatedly over the years.<sup>114</sup> In its 2009 manifesto, BJP had declared that Article 370 posed a psychological barrier to the full integration of the people of J&K with India.<sup>115</sup> The BJP promised to revoke Article 370 and resettle Kashmiri Pandits.<sup>116</sup>

In 2016, Kashmir once again erupted into protests and unrest after the death of Burhan Wani, the 22-year-old leader of the militant group *Hizbul Mujahideen*, during an encounter with the Indian forces. Wani had been a popular militant and had been widely regarded as ushering in a resurgence of support for the militant forces.<sup>117</sup> The protests were of an unprecedented scale, and the government responded by imposing a strict curfew in most parts of the Kashmir Valley, with schools, shops and banks remaining shut, all mobile and internet services remaining suspended and no access to medical care.<sup>118</sup> Indian security forces responded to demonstrations with excessive force leading to unlawful killings and injuries,

<sup>109</sup> India to free protestors in Kashmir peace move (*Reuters*, 29 September 2010), <<https://www.reuters.com/article/idINIndia-51833120100929?edition-redirect=in->

<sup>110</sup> Muzamil Jaleel, “Macchil killings: Tribunal suspends life sentence of five Army personnel” (*The Indian Express*, 27 July 2017), <<https://indianexpress.com/article/india/machil-fake-encounter-armed-forces-tribunal-suspends-life-imprisonment-of-five-armymen->

<sup>111</sup> Jason Burke and Jon Boone, “India and Pakistan trade accusations after Kashmir border skirmishes” (*The Guardian*, 10 January 2013), <<https://www.theguardian.com/world/2013/jan/10/india-pakistan-kashmir-border-skirmishes>>

<sup>112</sup> Katherine Houreld, “Pakistan says 12 dead in border clashes with India, appeals to UN” (*Mint*, 12 October 2014), <<https://www.livemint.com/Politics/dDNn0MsV0i013B2tErB0P0/Pakistan-says-12-dead-in-border-clashes-with-India-appeals.html>>

<sup>113</sup> Fayaz Bukhari, “Modi accuses Pakistan of waging proxy war” (*Reuters*, 12 August 2014), <<https://www.reuters.com/article/india-modi-pakistan-idINKBN0GCO0A20140812>>

<sup>114</sup> Nikhil Rampal, “Article 370: Revisiting election manifestos, BJP’s push and Congress’s silence” (*India Today*, 5 August 2019), <<https://www.indiatoday.in/diu/story/jammu-and-kashmir-article-370-revisiting-election-manifestos-bjp-push-and-congress-silence-1577579-2019-08-05>>

<sup>115</sup> Full Text: BJP manifesto for General Election 2009 (*News18*, 3 April 2009), <<https://www.news18.com/news/politics/full-text-bjp-manifesto-for-general-elections-2009-312867.html>>

<sup>116</sup> Nikhil Rampal, “Article 370: Revisiting election manifestos, BJP’s push and Congress’s silence” (*India Today*, 5 August 2019), <<https://www.indiatoday.in/diu/story/jammu-and-kashmir-article-370-revisiting-election-manifestos-bjp-push-and-congress-silence-1577579-2019-08-05>>

<sup>117</sup> Shujaat Bukhari, “Why the death of militant Burhan Wani has Kashmiris up in arms” (*BBC News*, 11 July 2016), <<https://www.bbc.co.uk/news/world-asia-india-36762043>>

<sup>118</sup> Kashmir profile – Timeline (*BBC News*, 6 August 2019), <<https://www.bbc.com/news/world-south-asia-16069078>>

particularly with the use of the pellet-firing shotgun that fired metal bullets and caused numerous injuries.<sup>119</sup> The authorities also imposed restrictions on journalists and media.<sup>120</sup> Thereafter, cross-border attacks between India and Pakistan across the LOC continued, with both countries routinely promising a ceasefire but renegeing on their word.<sup>121</sup>

Tensions between India and Pakistan escalated again after a suicide bombing in Pulwama, a district of J&K, when a vehicle with an improvised explosive device struck a convoy of Indian security forces resulting in the death of 40 soldiers of the CRPF on 14 February 2019.<sup>122</sup> In response, India claimed that its air force had bombed a *Jaish-e-Mohammed* training camp in Balakot, Pakistan, and killed ‘a very large number of *Jaish-e-Mohammed* terrorists, trainers, senior commanders and groups of jihadis who were being trained’.<sup>123</sup> The Pulwama incident was a turning point in the BJP’s use of its messaging on Kashmir nationally to catapult itself back to power nationally in the 2019 national elections, and then carry out the significant changes to laws and policies in Kashmir on the back of the

enhanced mandate it obtained in the elections, from August 2019 onward.<sup>124</sup>

On 5 August 2019, the autonomy granted to J&K under Article 370 of the Indian Constitution was revoked by the BJP government, stating that they wanted to ‘correct [this] historical blunder’, dividing the erstwhile state into two union territories under a Lieutenant-Governor, with J&K retaining a state legislative assembly and Ladakh being administered by the Union government.<sup>125</sup>

### III. Factual Findings

In light of the extensive and comprehensive reports on the human rights situation in J&K published by international and local civil society, as well as UN agencies in the past, the factual findings of this report will focus on the situation from 5 August 2019 onwards when the central government made a significant change to the status of J&K (see below [Abrogation of Article 370](#)) which led to heightened tensions.<sup>126</sup> This section looks at two sets of facts: (1) the treatment of anyone opposing or perceived to oppose the status change, and (2) the treatment of civilians suspected to be separatist militants in the long-standing

<sup>119</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), “Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan” (14 June 2018), <<https://www.ohchr.org/sites/default/files/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>>

<sup>120</sup> Fayaz Bukhari, “Indian police says shoot dead military leader in Jammu & Kashmir” (*Reuters*, 8 July 2016), <<https://www.reuters.com/article/us-india-militant-idUSKCN0Z024F>>

<sup>121</sup> Christophe Jaffrelot, “Ceasefire Violations in Kashmir: A War by Other Means?” (*Carnegie Endowment for International Peace*, 24 October 2018), <<https://carnegieendowment.org/2018/10/24/ceasefire-violations-in-kashmir-war-by-other-means-pub-77573>>

<sup>122</sup> OHCHR, “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019” (8 July 2019), <[https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)>

<sup>123</sup> India says struck biggest Jaish camp in Pakistan, killed many militants” (*Reuters*, 26 February 2019), <<https://www.reuters.com/article/uk-india-kashmir-foreignsecretary-idAFKCN1QF0K1>>

<sup>124</sup> Jaime Hinton and Milan Vaishnav, “How Pulwama shaped 2019” (*Hindustan Times*, 7 November 2021), <<https://www.hindustantimes.com/opinion/how-pulwama-shaped-2019-101636290231305.html>>

<sup>125</sup> Deepshikha Ghosh, “Historical Blunder Corrected’: Arun Jaitley as Article 370 Scrapped” (*NDTV*, 5 August 2019), <<https://www.ndtv.com/india-news/historical-blunder-corrected-says-arun-jaitley-as-article-370-for-jammu-and-kashmir-scrapped-2080453>>

<sup>126</sup> AG Noorani, “Murder of Insaniyat, and of India’s Solemn Commitment to Kashmir” (*The Wire*, 13 August 2022), <<https://thewire.in/law/murder-of-insaniyat-and-of-indias-solemn-commitment-to-kashmir>>

confrontation between non-state armed groups and the armed forces of India. The findings of this report do not purport to be comprehensive but are limited to information contained in sources available to the authors.<sup>127</sup>

## I. Legislative and Policy Changes Since 2019

### I.I. Abrogation of Article 370

Since the 1950s, it has been one of the official agendas of the Rashtriya Swayamsevak Sangh (RSS), the ideological fountainhead of the BJP, and its affiliates to strip J&K of its special status in order to ensure its full integration with India.<sup>128</sup> Kashmiris believed that the move that purported to give J&K the same status as the rest of the states in India was, in fact, an action toward the fulfilment of the RSS-BJP goal to change the demographic character of the Muslim-majority region.<sup>129</sup> On 5 August 2019, India's Minister of Home Affairs tabled the bill "The Constitution (Application to Jammu and Kashmir) Order, 2019" in the Upper House (Rajya Sabha) of Parliament, revoking key provisions of Article 370 and Article 35A of the Indian Constitution, which gives J&K special autonomous status.<sup>130</sup> On 6 August 2019,

the Bill was also passed by the Lower House (Lok Sabha) of Parliament.<sup>131</sup>

Article 370 of the Constitution of India is described as a 'temporary provision' that grants the state of J&K a special autonomous status within the Indian union.<sup>132</sup> It provides that for matters, except for defence, foreign affairs and communications, the laws made by the Indian Parliament will apply to J&K only with the concurrence of its state government.<sup>133</sup> Other matters in the legislative subject lists can apply to J&K only with the 'concurrence of the Government of the State' through a presidential order. Article 370(1)(d) stipulates that other constitutional provisions may be applied to the state from time to time, 'subject to such modifications or exceptions' made by the President of India, also through a presidential order, as long as they do not fall within the matters referred to above and except with the concurrence of the state government. Article 370(3) gives the President of India the power to amend or repeal Article 370 itself through a public notification (declaring that this article 'shall cease to be operative or shall be operative only with such exceptions and modifications'), provided that 'the recommendation of the Constituent Assembly of the State' is given before the President issues such a

<sup>127</sup> We note that in the months prior to the release of this report, a number of targeted killings against Hindus have been taking place in the Kashmir Valley. Although these killings are not discussed here separately in the following sections (as they are beyond the remit of this report), we believe that these incidents must also be thoroughly investigated, and responsible actors/individuals should be held accountable following due process. See As Kashmir's Hindus face targeted killings, hundreds flee valley" (*Aljazeera*, 2 June 2022),

<<https://www.aljazeera.com/news/2022/6/2/as-kashmir-hindus-face-targeted-killings-hundreds-flee-valley>>

<sup>128</sup> Srijan Shukla, "How erasing Article 370 became an article of faith for RSS and BJP" (*The Print*, 5 August 2019),

<<https://theprint.in/india/how-erasing-article-370-became-an-article-of-faith-for-rss-and-bjp/272688/>>

<sup>129</sup> Article 370: What happened with Kashmir and why it matters (*BBC News*, 5 August 2019), <[www.bbc.com/news/world-asia-india-49234708](http://www.bbc.com/news/world-asia-india-49234708)>

<sup>130</sup> Ministry of Law and Justice (Legislative Department), "Article 370 scrapped: Constitution (Application to Jammu and Kashmir) Order, 2019 (5 August 2019), <<https://taxguru.in/corporate-law/constitution-application-jammu-kashmir-order-2019.html>>

<sup>131</sup> Article 370: What happened with Kashmir and why it matters (*BBC News*, 5 August 2019), <[www.bbc.com/news/world-asia-india-49234708](http://www.bbc.com/news/world-asia-india-49234708)>; Srijan Shukla, "How erasing Article 370 became an article of faith for RSS and BJP" (*The Print*, 5 August 2019),

<<https://theprint.in/india/how-erasing-article-370-became-an-article-of-faith-for-rss-and-bjp/272688/>>

<sup>132</sup> Government of India, Constitution of India. <<https://legislative.gov.in/constitution-of-india>>

<sup>133</sup> Indian Parliament, <<https://parliamentofindia.nic.in/>>

notification.<sup>134</sup> However, the Constituent Assembly was dissolved on 25 January 1957, without recommending the abrogation of Article 370.<sup>135</sup> Several decisions by the High Court of Jammu and Kashmir and the Supreme Court of India have held that, despite it being referred to as a ‘temporary provision’ in the marginal note, the article ‘will continue to be in force’ and has effectively acquired a permanent status in the Indian Constitution.<sup>136</sup>

Article 35A of the Constitution allows the state of J&K to define permanent residents of the state and contains certain ‘special rights and privileges’ attached to such residency, including the power to restrict settlement of outsiders in the state and acquire immovable property.<sup>137</sup>

In the first address to the people of India after the abrogation of Article 370, Indian Prime Minister Narendra Modi said that the article was the biggest hurdle in the development of J&K as it prevented private and global investment into the state.<sup>138</sup> The Home Minister of India, Amit Shah, stated that Article 370 is the root cause of corruption and terrorism in the state of

J&K.<sup>139</sup> However, Mehbooba Mufti, president of Peoples Democratic Party and Ex-Chief Minister of erstwhile J&K state, claimed that the situation in Kashmir has worsened post-abrogation of the article and further says that the Indian state, by abrogation of the article, played with the dignity and honour of the people of J&K.<sup>140</sup>

Prior to the passage of the abrogation Act, the central government had ordered the deployment of additional troops in the Valley<sup>141</sup> and advised tourists to leave the state. It has been reported that in the early days of August 2019, about 70,000 additional troops were deployed to J&K.<sup>142</sup>

Following the abrogation of the special status, the central government issued a notification amending the J&K Development Act of 1970 dropping the ‘permanent residents’ phrase. With this change, outsiders could now easily buy land in J&K. The special status allowed J&K to have its own flag. After the special status was abrogated, government offices, including the civil secretariat, hoisted only

<sup>134</sup> Proclamation of 1 May 1951 on Jammu and Kashmir Constituent Assembly,

<[https://www.satp.org/satporetp/countries/india/states/jandk/documents/papers/proclamation\\_may\\_1\\_1951.htm](https://www.satp.org/satporetp/countries/india/states/jandk/documents/papers/proclamation_may_1_1951.htm)>

<sup>135</sup> J&K High Court says Article 370 is Permanent, Can't Be Abrogated (*The Wire*, 11 October 2015), <<https://thewire.in/law/jk-hc-says-article-370-is-permanent-cant-be-abrogated>>

<sup>136</sup> Kelly Buchanan, “FALQs: Article 370 and the Removal of Jammu and Kashmir’s Special Status” (*Library of Congress*, 3 October 2019), <<https://blogs.loc.gov/law/2019/10/falqs-article-370-and-the-removal-of-jammu-and-kashmir-special-status/>>; Balu Nair, “Abrogation of Article 370: Can the President act without the recommendation of the Constituent Assembly”, *Indian Law Review*, 3(3):254-279; Zaid Deva, (2020) “Basic without structure?: the Presidential Order of 1954 and the Indo-Jammu & Kashmir constitutional relationship”, *Indian Law Review*, 4:2, 163-198; Gautam Bhatia, “The Article 370 Amendments: Key Legal Issues” (*Indian Constitutional Law and Philosophy*, 5 August 2019), <<https://indconlawphil.wordpress.com/2019/08/05/the-article-370-amendments-key-legal-issues/>>

<sup>137</sup> Lok Sabha Secretariat Reference Note, No. 43/RN/Ref/October/2017,

<<http://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/Article%2035A%20of%20the%20Constitution-%20An%20overview.pdf>>

<sup>138</sup> PM Narendra Modi speech Updates: Article 370 was a hurdle for development of Jammu & Kashmir, says PM (*Business Today*, 8 August 2019), <<https://www.businesstoday.in/latest/economy-politics/story/pm-narendra-modi-speech-live-updates-prime-minister-to-address-nation-8-pm-219371-2019-08-08>>

<sup>139</sup> Rakesh Mohan Chaturvedi, “Article 370 cause of corruption and terrorism: Amit Shah” (*The Economic Times*, 6 August 2019), <[https://economictimes.indiatimes.com/articleshow/70546744.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/articleshow/70546744.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)>

<sup>140</sup> Situation in J&K worsened after abrogation of Article 370: Mehbooba (The Hindu, 19 December 2021)

<<https://www.thehindu.com/news/national/other-states/situation-in-jk-worsened-after-abrogation-of-article-370-mehbooba/article37990884.ece>>

<sup>141</sup> Peerzada Ashiq, “25000 More Troops being Deployed in J&K, (*The Hindu*, 2 August 2019), available at

<<https://www.thehindu.com/news/national/25000-more-troops-being-deployed-in-jk/article61588831.ece>>

<sup>142</sup> Muzaffar Raina, “Iron fist’ in rural Kashmir” (*The Telegraph online*, 18 August 2019), <<https://www.telegraphindia.com/india/iron-fist-in-rural-kashmir/cid/1698688>>

the Indian national flag on their buildings. J&K's flag was missing.<sup>143</sup>

The Home Ministry claimed that the region had witnessed reduced violence in the aftermath of the abrogation, with incidences of 'terrorism' dropping by 59 per cent in 2020 and by a further 32 per cent in June 2021.<sup>144</sup> However, targeted killings have continued to occur, with state sources claiming a number of new anonymous, home-grown 'hybrid' or part-time militant groups such as the United Liberation Front of Kashmir (ULFK) or the People's Anti-Fascist Force (PAFF)<sup>145</sup> rising in protest against the events of 2019. The usage of social media by these hybrid groups to spread dissent continues, with the government's policies being looked on with distrust.<sup>146</sup> The restrictions imposed on the state for months following the abrogation, as well as the Covid-19 pandemic from early 2020, have resulted in the state's economy suffering severe losses.<sup>147</sup>

## 1.2. Jammu and Kashmir Reorganization Act of 2019

A few days after the abrogation of Article 370, on 9 August 2019, the J&K Reorganization Act (2019) was passed by the Indian Parliament.<sup>148</sup> The Act divided J&K, then a semi-autonomous federal state with its own legislative assembly and

government, into two "Union Territories" to be administered directly by the central government, leaving the province which once had a special autonomous status with lesser autonomy than that enjoyed by other states in India. As other states have their own legislative assemblies and as per the federal structure of India, they have exclusive powers of certain matters pertaining to the state.<sup>149</sup> On the contrary, a Union Territory is directly ruled by the central government with no division of powers and functions. Although the Act provides for an exception in this case, that J&K, as a Union Territory, would have its own legislative assembly, elections have not been held since 2019, leaving the people from J&K with no representation in the matters of their administration.

Home Minister, Amit Shah, on his first visit to J&K after the 5 August 2019 decision, announced that the statehood of J&K shall be restored after 'delimitation' of the constituencies and local elections based on the delimitation.<sup>150</sup> However, no Delimitation Commission was set up by the government of J&K after the 2001 census as the J&K Assembly passed a law putting a freeze on the fresh delimitation of seats until 2026. This freeze was upheld by the Supreme Court.<sup>151</sup> The J&K Assembly, at

<sup>143</sup> Press Trust of India, "Jammu and Kashmir state flag removed from civil secretariat building" (*Business Standard*, 26 August 2019), <[https://www.business-standard.com/article/pti-stories/j-k-state-flag-removed-from-civil-secretariat-119082500539\\_1.html](https://www.business-standard.com/article/pti-stories/j-k-state-flag-removed-from-civil-secretariat-119082500539_1.html)>

<sup>144</sup> Two Years Since Article 370 Abrogation: What has Changed in Jammu & Kashmir? (*The Times of India*, 5 August 2021), <<https://timesofindia.indiatimes.com/india/two-years-since-article-370-abrogation-what-has-changed-in-jammu-kashmir/articleshow/85057707.cms>>

<sup>145</sup> Aamir Peerzada, "Article 370: Why more locals in Kashmir are becoming militants" (*BBC*, 5 August 2021), <<https://www.bbc.com/news/world-asia-india-58025062>>

<sup>146</sup> Roshni Kapur, "A New Phase of Militancy in Kashmir: Challenges for India" (*Mei@75*, 17 February 2022), <[https://www.mei.edu/publications/new-phase-militancy-kashmir-challenges-india#\\_ftn1](https://www.mei.edu/publications/new-phase-militancy-kashmir-challenges-india#_ftn1)>

<sup>147</sup> Kaisar Andrabi, "A Year after Article 370's End, A Dangerous Silence in Kashmir" (*The Diplomat*, 4 August 2020), <<https://thediplomat.com/2020/08/a-year-after-article-370s-end-a-dangerous-silence-in-kashmir/>>

<sup>148</sup> The Gazette of India, <<https://egazette.nic.in/WriteReadData/2019/210407.pdf>>

<sup>149</sup> Schedule VII of the Indian Constitution, 1950.

<sup>150</sup> Naseer Ganai, Amit Shah's Roadmap for Jammu & Kashmir: Delimitation, Elections, Statehood" (*Outlook India*, 24 October 2021), <<https://www.outlookindia.com/website/story/india-news-amit-shahs-roadmap-for-jammu-kashmir-delimitation-elections-statehood/398572>>

<sup>151</sup> SC upholds freeze on delimitation in J&K till 2026 (*The Hindu*, 9 October 2010), <<https://www.thehindu.com/news/SC-upholds-freeze-on-delimitation-in-JampK-till-2026/article15680525.ece>>

that time, had 87 seats: 46 in Kashmir, 37 in Jammu and 4 in Ladakh.<sup>152</sup>

### 1.3. Land and Residency Laws

The central government, on 18 May 2020, issued the J&K Grant of Domicile Certificate (Procedure) Rules (Domicile Rules) for the purpose of receiving residency benefits regarding education, employment and land ownership in J&K.<sup>153</sup> The Domicile Rules removed most legal differences between permanent residents of the state and persons from any other part of India, who have lived in the region for a limited period. The process of awarding domicile certificates to individuals from outside J&K appears to have been excessively simplified, with little or no scope of verification.<sup>154</sup> According to the UN mandate-holders, the Domicile Rules, the revision of residency rights of J&K's local population, as well as the changes to the sale and ownership of land 'may alter the demographic composition of the former state of J&K, especially the Muslim dominated Kashmir Valley may result in political disenfranchisement, and significantly reduce the degree of political participation and representation of the Kashmiri and other minorities'.<sup>155</sup>

All these changes are a stark reminder to the Kashmiri populace that their political aspirations have no place in the Hindu nationalist ideology, in addition to leaving the Muslim-majority region vulnerable to demographic engineering by the BJP. Five UN mandate-holders, in their letter to the Government of India, noted that 'while other states have been allowed to preserve their special autonomy status under the Constitution with protections for their native ethno-linguistic groups, the former state of Jammu and Kashmir, as the only state in India where Muslims form the greater part of the population, may have been singled out because of this'.<sup>156</sup>

### 1.4. Delimitation Commission Award

The Delimitation Commission, a federal statutory body, in May 2022, submitted its report to the Government, mapping electoral constituencies for J&K, paving the way for its notification. The gazette notification increases the number of constituencies from the current 83 to 90. The Muslim-dominated Valley's 6.9 million residents, based on the 2011 census, will be represented by 47 legislators (up from the current 46), while the Jammu region's 5.4 million will have 43 (up from current 37). Even though 34.1 per cent of Jammu's

<sup>152</sup> Ritika Chopra, "Delimitation in Jammu & Kashmir: how, why" (*The Indian Express*, 22 June 2021), <<https://indianexpress.com/article/explained/delimitation-in-jk-how-why-pm-modi-jammu-kashmir-leaders-meeting-special-status-7369580/>>

<sup>153</sup> Peerzada Ashiq, "J&K notifies amended domicile certificate rules" (*The Hindu*, 18 May 2020), <[www.thehindu.com/news/national/jk-notifies-amended-domicile-certificate-rules/article31617453.ece](http://www.thehindu.com/news/national/jk-notifies-amended-domicile-certificate-rules/article31617453.ece)>

<sup>154</sup> Kashmir Muslims fear demographic shift as thousands get residency (*Aljazeera*, 28 June 2020), <<https://www.aljazeera.com/news/2020/6/28/kashmir-muslims-fear-demographic-shift-as-thousands-get-residency>>

<sup>155</sup> Mandates of the Special Rapporteur on minority issues, the Special Rapporteur on the promotion and protection to the right to freedom of opinion and expression; the Special Rapporteur on the right to freedom of peaceful assembly and of association; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance and the Special Rapporteur on freedom of religion or belief, AL IND 21/2020 (10 February 2021), <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25807>>

<sup>156</sup> Mandates of the Special Rapporteur on minority issues, the Special Rapporteur on the promotion and protection to the right to freedom of opinion and expression; the Special Rapporteur on the right to freedom of peaceful assembly and of association; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance and the Special Rapporteur on freedom of religion or belief, AL IND 21/2020 (10 February 2021), <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25807>>

population is Muslim, the region's Muslim-majority seats have fallen from 13 to 10.<sup>157</sup>

To many in Kashmir, this is further evidence that the BJP is undermining democracy in a bid to institutionalise Hindu-majoritarian rule.<sup>158</sup> The Commission has not made public exactly how it arrived at its decision.<sup>159</sup> Political parties in Kashmir have slammed the report, calling it 'unconstitutional' and 'a sinister plan to dis-empower and disenfranchise the people of the Valley'.<sup>160</sup> Critics see a BJP design behind the delimitation award by installing a Hindu majority with a Hindu chief minister in the Muslim-majority Kashmir.<sup>161</sup> Leaders in the Valley have also called the delimitation an attempt to increase the "Hindu footprint" in J&K. Moreover, it has also been argued that the delimitation of J&K contravenes the Supreme Court orders by which delimitation has been frozen for the rest of India until 2026.<sup>162</sup> The Organisation of Islamic Conference has alleged that the award contravenes 'relevant UN Security

Council resolutions and international law, including the 4th Geneva Convention'.<sup>163</sup>

## 2. Crackdown on Opposition to Legislative Changes

As set out above, the Indian government, on 5 August 2019, unilaterally abrogated Article 370 of its Constitution that provided autonomous status to the disputed region of J&K. The Indian government took several actions before and after the abrogation to suppress opposition to this contested decision. As a result, there have been very few protests following the legislative change compared to the past.<sup>164</sup>

### 2.1. Detentions and Arrests

A large number of individuals were reportedly arrested and detained on and after 5 August 2019.<sup>165</sup> Days prior to the abrogation, more than 250 people linked to the separatist movement were reportedly detained<sup>166</sup> over the protestations of the international human rights community.<sup>167</sup> On 4 August 2019, several leading political figures in J&K were placed under house

<sup>157</sup> Tribune News Service, "J-K delimitation panel award notified: Kashmir to have 47 Assembly seats, Jammu 43" (*The Tribune India*, 5 May 2022), <<https://www.tribuneindia.com/news/j-k/delimitation-panel-signs-final-order-for-redrawing-assembly-seats-in-jammu-and-kashmir-392063>>

<sup>158</sup> See Kaisar Andrabi, "Foreign Policy, Modi is Trying to Engineer a Hindu Majority in Kashmir" (*Foreign Policy*, 11 August 2021), <<https://foreignpolicy.com/2021/08/11/modi-is-trying-to-engineer-a-hindu-majority-in-kashmir/>>

<sup>159</sup> Praveen Swami, "Delimitation shows India's democracy continues to struggle in the face of Kashmir challenge" (*The Print*, 8 May 2022), <<https://theprint.in/the-fineprint/delimitation-shows-indias-democracy-continues-to-struggle-in-the-face-of-kashmir-challenge/946478/>>

<sup>160</sup> Ananya Bhardwaj, "Power balance or bid to disenfranchise Valley? J&K delimitation report kicks up furor" (*The Print*, 6 May 2022), <<https://theprint.in/india/power-balance-or-bid-to-disenfranchise-valley-jk-delimitation-report-kicks-up-furor/944361/>>

<sup>161</sup> Umer Maqbool, "Why J&K's Proposed Delimitation Is Being Viewed as Unfair to Kashmir" (*The Wire*, 21 December 2021), <<https://thewire.in/government/why-jks-proposed-delimitation-is-being-viewed-as-unfair-to-kashmir>>; Kaisar Andrabi, "Foreign Policy, Modi is Trying to Engineer a Hindu Majority in Kashmir" (*Foreign Policy*, 11 August 2021), <<https://foreignpolicy.com/2021/08/11/modi-is-trying-to-engineer-a-hindu-majority-in-kashmir/>>

<sup>162</sup> Samanwaya Rautray, "Petition challenges J&K delimitation for violation of right to equality" (*The Economic Times India*, 29 March 2022), <<https://economictimes.indiatimes.com/news/india/petition-challenges-jk-delimitation-for-violation-of-right-to-equality/articleshow/90526469.cms?from=mdr>>

<sup>163</sup> Anirban Bhaumik, "Delimitation of J&K: OIC expresses 'deep concern'" (*Deccan Herald*, 16 May 2022), <<https://www.deccanherald.com/national/delimitation-of-jk-oic-expresses-deep-concern-1109871.html>>

<sup>164</sup> Muzaffar Raina, "Iron fist' in rural Kashmir" (*The Telegraph Online*, 18 August 2019), <<https://www.telegraphindia.com/india/iron-fist-in-rural-kashmir/cid/1698688>>

<sup>165</sup> Muzaffar Raina, "Iron fist' in rural Kashmir" (*The Telegraph Online*, 18 August 2019), <<https://www.telegraphindia.com/india/iron-fist-in-rural-kashmir/cid/1698688>>

<sup>166</sup> Devjyot Ghoshal and Alasdair Pal, "Thousands detained in Indian Kashmir crackdown, official data reveals" (*Reuters*, 12 September 2019), <[www.reuters.com/article/india-kashmir-detentions/thousands-detained-in-indian-kashmir-crackdown-official-data-reveals-idINKN1VX12W?edition=india](https://www.reuters.com/article/india-kashmir-detentions/thousands-detained-in-indian-kashmir-crackdown-official-data-reveals-idINKN1VX12W?edition=india)>

<sup>167</sup> Press Trust of India, "UN human rights chief urges India to ease lockdown, curfew in Kashmir" (*Business News*, 10 September 2019), <[www.business-standard.com/article/pti-stories/un-rights-chief-asks-india-pakistan-to-respect-and-protect-human-rights-of-kashmiris-119090900622-1.html](http://www.business-standard.com/article/pti-stories/un-rights-chief-asks-india-pakistan-to-respect-and-protect-human-rights-of-kashmiris-119090900622-1.html)>

arrest.<sup>168</sup> In addition, more than 100 prominent Kashmiri political leaders were pre-emptively detained from 5 August 2019, including former Chief Ministers Omar Abdullah, Farooq Abdullah and Mehbooba Mufti, all under the PSA.<sup>169</sup>

Following the scrapping of Article 370, India, in its own government report dated 6 September 2019, i.e. merely a month after the abrogation, stated that about 3,800 people have been arrested post-abrogation.<sup>170</sup> In a letter to the then Chief Justice of India, SA Bobde, written by the executive committee of the Kashmir High Court Bar Association that detailed the plight of multiple *habeas corpus* petitions (elaborated [below](#)), it was noted that about 13,000 people had been arrested and hundreds booked under the PSA, after 5 August 2019.<sup>171</sup> An independent body co-chaired by former Supreme Court judge Justice Madan B. Lokur and former Kashmir interlocutor Radha Kumar, in its second report on the rights situation in the Union Territory (Indian Administered Kashmir), covering the period from August 2020 to January 2021, said that arbitrary detentions continue, public assembly is still prohibited and hundreds, including minors and several elected legislators of

J&K, remain under preventive detention.<sup>172</sup> Civil society groups claimed that the number of those detained since August 2019 was close to 8,000.<sup>173</sup>

Several of those arrested have been detained under stringent laws like the UAPA or PSA.<sup>174</sup>

### The Jammu & Kashmir Public Safety Act, 1987

The PSA is a J&K specific preventive detention law that allows for the detention of individuals on mere suspicion without charge or trial for up to two years for a wide range of vaguely defined activities, including “acting in any manner prejudicial to the security of the State” or for “acting in any manner prejudicial to the maintenance of public order”.<sup>175</sup> The law allows administrative authorities to evade judicial oversight. The PSA has been often used to target not only journalists and NGOs but also the general populace, including children in J&K. According to official police data, 699 people were detained under the PSA in 2019 and 160 in 2020.<sup>176</sup> In 2021, 95 people were detained under PSA by the end of July, of whom 284

<sup>168</sup> See [Case List C: Arbitrary Arrest and Detention](#).

<sup>169</sup> Rifat Fareed, “Key Kashmir Political Leaders Arrested by India since August 5” (*Al Jazeera*, 17 August 2019),

<<https://www.aljazeera.com/news/2019/8/17/key-kashmir-political-leaders-arrested-by-india-since-august-5>>

<sup>170</sup> India jailed thousands in Kashmir crackdown – official data (12 September 2019), <<https://www.trtworld.com/asia/india-jailed-thousands-in-kashmir-crackdown-official-data-29730>>

<sup>171</sup> Apoorva Mandhani, “99% habeas corpus pleas filed in J&K since Article 370 move are pending, HC Bar tells CJI” (*The Print*, 28 June 2020), <<https://theprint.in/judiciary/99-habeas-corpus-pleas-filed-in-jk-since-article-370-move-are-pending-hc-bar-tells-cji/450281/>>

<sup>172</sup> Rights violations continue in Jammu & Kashmir: independent body led by former SC judge (*The Hindu*, 14 February 2021),

<<https://www.thehindu.com/news/national/other-states/rights-violations-continue-in-jammu-kashmir-independent-body-led-by-former-sc-judge/article33832600.ece>>

<sup>173</sup> 609 people currently under detention in J&K: Home ministry (*India Today*, 20 November 2019), <[www.indiatoday.in/india/story/609-people-currently-under-detention-in-j-k-home-ministry-1620884-2019-11-20](http://www.indiatoday.in/india/story/609-people-currently-under-detention-in-j-k-home-ministry-1620884-2019-11-20)>

<sup>174</sup> Naveed Iqbal, “2,300 booked under UAPA in J&K since 2019, nearly half still in jail” (*The Indian Express*, 5 August 2021),

<<https://indianexpress.com/article/india/2300-booked-under-uapa-in-jk-since-2019-nearly-half-still-in-jail-7438806/>>

<sup>175</sup> The Jammu and Kashmir Public Safety Act, 1978 (Act No. VI of 1978),

<[https://www.indiacode.nic.in/bitstream/123456789/10406/1/public\\_safety\\_act%2C\\_1978.pdf](https://www.indiacode.nic.in/bitstream/123456789/10406/1/public_safety_act%2C_1978.pdf)>

<sup>176</sup> Naveed Iqbal, “2,300 booked under UAPA in J&K since 2019, nearly half still in jail” (*The Indian Express*, 5 August 2021),

<<https://indianexpress.com/article/india/2300-booked-under-uapa-in-jk-since-2019-nearly-half-still-in-jail-7438806/>>

continue to remain under detention.<sup>177</sup> The UN Human Rights Committee noted that the PSA contravenes the rights enshrined in the International Covenant on Civil and Political Rights, such as the rights to liberty and to a free and fair trial.<sup>178</sup> The UN Office of the High Commissioner for Human Rights' (OHCHR) 2018 and 2019 reports noted that the existence of legislations such as the PSA remained a key obstacle to accountability, thus perpetuating "chronic" impunity for security forces, causing "untold suffering" to millions of people.<sup>179</sup>

The PSA is applied in concert with the Unlawful Activities (Prevention) Act (UAPA, 1967), India's principal anti-terror law, which gives state agencies sweeping powers to arrest, search and detain suspects and has stringent bail provisions and creates a presumption of the guilt of the accused, and enables their pre-trial detention for up to 180 days.<sup>180</sup> Once a detention order under PSA passed by the concerned District Magistrate is quashed by the High Court of J&K, authorities detain

them under the UAPA, and the incarceration continues.<sup>181</sup>

The Government of India informed the Parliament, in December 2021, that 787 cases under UAPA were registered, while 750 persons were arrested in J&K between 2018 and 2020.<sup>182</sup> Two minors were charged in March 2020, one under UAPA, for 'misusing' social media.<sup>183</sup> The J&K Police booked the father and family members of the 11th class student who was killed by Indian forces in Srinagar on 30 December 2020, under the draconian UAPA, for organising a protest where they demanded the return of the body of the minor.<sup>184</sup> In December 2021, J&K Police announced that if anyone posted any content on social media that promoted violence, they should be booked under UAPA.<sup>185</sup>

The idea, it seems, was to remove, at one go, the entire civic leadership of the state, and anyone able to influence public opinion, organise people and raise a voice.<sup>186</sup> As mentioned, this included three former elected Chief Ministers, members of 'mainstream' and 'separatist' political

<sup>177</sup> Naveed Iqbal, "2,300 booked under UAPA in J&K since 2019, nearly half still in jail" (The Indian Express, 5 August 2021), <<https://indianexpress.com/article/india/2300-booked-under-uapa-in-jk-since-2019-nearly-half-still-in-jail-7438806/>>

<sup>178</sup> United Nations Human Rights Committee, "Consideration Of Reports Submitted By States Parties Under Article 40 Of The Covenant: Concluding observations of the Human Rights Committee" (4 August 1997), <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/79/Add.81&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/79/Add.81&Lang=En)>

<sup>179</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), "Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan" (14 June 2018), <<https://www.ohchr.org/sites/default/files/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>>; OHCHR, "Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019" (8 July 2019), <[https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)>

<sup>180</sup> The Unlawful Activities (Prevention) Act, 1967, <<https://www.mha.gov.in/sites/default/files/A1967-37.pdf>>

<sup>181</sup> Naseer Ganai, "UAPA and PSA Go Side by Side in Kashmir" (*Outlook India*, 11 July 2021), <<https://www.outlookindia.com/website/story/india-news-uapa-and-psa-go-side-by-side-in-kashmir/387821>>

<sup>182</sup> Jammu & Kashmir: 750 arrested, 787 cases registered under UAPA in JK between 2018 to 2020: GoI" (*Free Press Kashmir*, 16 December 2021), <<https://freepresskashmir.com/news/2021/12/16/750-arrested-787-cases-registered-under-uapa-in-jk-between-2018-to-2020-go/>>

<sup>183</sup> Safwat Zargar, "In Kashmir, A Spree of Arrests for Alleged 'Misuse' of Social Media and Masking Apps" (*Scroll.in*, 1 March 2020), <<https://scroll.in/article/954711/in-kashmir-a-spree-of-arrests-for-alleged-misuse-of-social-media-and-vpns>>

<sup>184</sup> Maktoob Staff, "Kashmir: Father booked under Uapa for demanding son's body" (*Maktoob*, 7 February 2021), <<https://maktoobmedia.com/2021/02/07/kashmir-father-booked-under-uapa-for-demanding-sons-body/>>

<sup>185</sup> Scroll staff, "In newspaper ads, Jammu and Kashmir Police warn social media users of cases under UAPA" (*Scroll.in*, 13 December 2021), <<https://scroll.in/latest/1012737/in-newspaper-ads-jammu-and-kashmir-police-warn-social-media-users-of-cases-under-uapa>>

<sup>186</sup> The South Asia Collective, "South Asia State of Minorities Report 2020", (2020), <<https://minorityrights.org/publications/sac-report-2020/>>, introduction,

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parties, and heads of traders' associations, among others.<sup>187</sup>

[Case List C](#) contains descriptions of nine representative cases which show how the arrests and detentions violated domestic laws, e.g. by refusing the defendant legal representation or detaining victims without charges. Others were detained on the basis of domestic national security laws, such as the UAPA and the PSA, that violate international fair trial rights due to their vague grounds for detention and the possibility of prolonged detentions without bail.<sup>188</sup>

While many of those arrested in August 2019 have now been released, a large number continue to remain in detention at the time of writing this report, lodged in prisons mostly outside J&K, in Delhi, Agra, Kanpur, Chandigarh and other Indian cities.<sup>189</sup> By August 2020, a majority of the detained politicians were yet to be released from house arrest after having been repeatedly detained every six months.<sup>190</sup> The central government claimed in September 2020 that while a few leaders had been released, other leaders continued to be detained but had not been placed

under house arrest.<sup>191</sup> However, multiple politicians have since been detained yet again in December 2020.<sup>192</sup>

### Detention of Minors

Post-abrogation of Article 370 and subsequent lockdown, according to the National Federation of Indian Women, 13,000 children were detained in Kashmir in the early months of the 2019 lockdown.<sup>193</sup> Other reports confirm these accounts.<sup>194</sup> The minors were forced to report to their local police stations and then arrested and detained without any authorisation lasting several days.<sup>195</sup> They were released after their parents or elders signed undertakings that they would not take part in protests.<sup>196</sup> It has been reported that youth detained from the districts of Shopian and Pulwama were kept behind bars without any formal charges against them.<sup>197</sup>

### Transfer to remote prisons

After 5 August 2019, the largest recent transfer of detained Kashmiris - including politicians, lawyers and activists - to prisons outside the erstwhile state

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<sup>187</sup> India: Free Kashmiris Arbitrarily Detained (*Human Rights Watch*, 16 September 2019), <[www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained](http://www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained)>

<sup>188</sup> The Jammu and Kashmir Public Safety Act, 1978 (Act No. VI of 1978),

<[https://www.indiacode.nic.in/bitstream/123456789/10406/1/public\\_safety\\_act%2C\\_1978.pdf](https://www.indiacode.nic.in/bitstream/123456789/10406/1/public_safety_act%2C_1978.pdf)>

<sup>189</sup> Coronavirus: Kashmiris Fear for Safety of Kin in 'Cramped' Jails (*Al Jazeera*, 14 April 2020),

<<https://www.aljazeera.com/news/2020/04/coronavirus-kashmiris-fear-safety-kin-cramped-jails-200413103319099.html>>

<sup>190</sup> Peerzada Ashiq, "A Year on, Several Jammu and Kashmir Leaders Remain Confined" (*The Hindu*, 2 August 2020),

<<https://www.thehindu.com/news/national/a-year-on-several-jammu-and-kashmir-leaders-remain-confined/article32254824.ece>>

<sup>191</sup> Jammu and Kashmir: No Political Leader under House Arrest, 223 Remain in Detention, says Centre (*Scroll.in*, 15 September 2020),

<<https://scroll.in/latest/973175/jammu-and-kashmir-no-political-leader-under-house-arrest-223-remain-in-detention-says-centre>>

<sup>192</sup> Reuters, Srinagar, "75 Political Leaders Detained in Kashmir after DDC Elections" (*Deccan Herald*, 26 December 2020),

<<https://www.deccanherald.com/national/north-and-central/75-political-leaders-detained-in-kashmir-after-ddc-elections-931766.html>>

<sup>193</sup> Young Boys Tortured in Kashmir Clampdown as New Figures Show 13,000 Teenagers Arrested (The Telegraph, 25 September 2019),

<<https://www.telegraph.co.uk/news/2019/09/25/young-boys-tortured-kashmir-clampdown-new-figures-show-13000/>>

<sup>194</sup> Kashmir Caged (*NewsClick*, 14 August 2019), <<https://www.newsclick.in/kashmir-caged>>

<sup>195</sup> IANS, Srinagar, "Over 7,000 people, mostly youth, arrested during Kashmir unrest" (*Hindustan Times*, 23 October 2016),

<<https://www.hindustantimes.com/india-news/over-7-000-people-mostly-youth-arrested-during-kashmir-unrest/story-R53iis5k9erkeXYaFtAizUP.html>>

<sup>196</sup> IANS, Srinagar, "Over 7,000 people, mostly youth, arrested during Kashmir unrest" (*Hindustan Times*, 23 October 2016),

<<https://www.hindustantimes.com/india-news/over-7-000-people-mostly-youth-arrested-during-kashmir-unrest/story-R53iis5k9erkeXYaFtAizUP.html>>

<sup>197</sup> International Federation for Human Rights, "Update on human rights violations in Indian-administered Jammu & Kashmir since August 2019" (26 September 2019), <[https://www.fidh.org/IMG/pdf/20190926\\_india\\_j\\_k\\_bp\\_en.pdf](https://www.fidh.org/IMG/pdf/20190926_india_j_k_bp_en.pdf)>

began.<sup>198</sup> A report by prominent human rights groups reveals that nearly 37.4 per cent of detainees in PSA cases were shifted to jails in various states across India.<sup>199</sup> An emblematic case is that of Mian Abdul Qayyoom, aged 76, President of J&K Bar Association, who was detained on the night of 4 August 2019 and transferred to Agra, more than 1,000km away.<sup>200</sup> Qayyoom suffers from multiple serious ailments but was denied medical care until his condition worsened and he had a heart attack. Pleas made by his family to have him shifted to a jail in Srinagar were ignored by the judiciary. He was finally released after almost a year of detention.

## 2.2. Abuse and Death in Custody

After the events of 5 August 2019, news gradually trickled out of night-time raids by the police and military during which young men, and sometimes minor boys, were picked up from their homes and taken to police stations or army bases to be physically and mentally abused.<sup>201</sup> The whereabouts of some of the individuals arrested or abducted, including children, are unknown.<sup>202</sup>

[Case List A](#) contains detailed descriptions of nine representative examples of abuse and death in custody in six different locations. The victims of all of these cases are Muslims and include activists but also members of the general public. In two cases, the victims were minors at the age of 14 and 15, respectively.

In all cases, the alleged perpetrators were members of the police or military or special security forces. Most of the cases were allegedly committed while the victim was in the custody of the police or the military. In one incident, several victims were first taken to a public place in front of a Mosque and attacked there.

The common forms of physical and mental abuse consisted of being held at sub-zero temperatures, deprived of sleep, kicked, slapped, punched, beaten with rods/canes/gun butts/batons/cable wire, stripped naked, hung upside down or from a pole, electric shocks to genitals or other parts of the body, and water-boarding. In some cases, the abuse took on a sexualised form where the victim's skin around the penis was pulled with a plier or several victims were piled up on each other while naked. In one case, the victim suspects

<sup>198</sup> Muhammad Raafi, "As Covid-19 Rages, J&K Moves Prisoners to Jails in Worse-Off States" (*Article 14*, 14 May 2021, <<https://www.article-14.com/post/as-covid-19-rages-j-k-moves-prisoners-to-jails-in-worse-off-states>>

<sup>199</sup> Auqib Javeed, "Families Demand Release of Kashmiri Detainees Over Coronavirus Risks" (*The Wire*, 14 March 2020), <<https://thewire.in/rights/kashmir-coronavirus-prison>>

<sup>200</sup> Mandates of the Special Rapporteurs on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UA IND 4/2020 (27 February 2020), <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25083>>

<sup>201</sup> Pheroze L Vincent, "Kashmiri children taken away by forces, say Jean Dreze and team" (*The Telegraph*, 14 August 2019), <<https://www.telegraphindia.com/india/kashmiri-children-taken-away-by-forces-say-jean-dreze-and-team/cid/1697905>>; Kashmir Caged 13 August 2019), <<https://peoplesdispatch.org/wp-content/uploads/2019/08/Kashmir-Caged-final-report.pdf>>; People's Union for Civil Liberties (PUC), "Imprisoned Resistance – 5<sup>th</sup> August and its aftermath" (12 November 2019), <<https://www.pucl.org/sites/default/files/reports/Imprisoned%20Resistance-final%20for%20dissemination.pdf>> (PUC report 2019) 41;

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, UA IND 16/2020 (16 August 2019), <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24803>>

<sup>202</sup> Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, UA IND 16/2020 (16 August 2019), <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24803>>

having been sexually assaulted while naked and unconscious. This possibility of boys and men being raped while in custody has been alluded to by family members in other cases as well.<sup>203</sup>

The treatment resulted in serious injuries, such as fractured bones and deafness. In two cases, it appears that the victims died as a consequence of the abuse suffered as family members witnessed severe injury marks on the body, even though the police claim that one committed suicide and the other died trying to escape.

The victims appear to have been targeted in order to punish or intimidate them for suspected participation in protests or stone-pelting, or as intimidation to the wider community to prevent protests following the abrogation of Article 370.

### **2.3. Deaths during Protests**

While authorities said there had been no civilian deaths during these protests, a report by civil society organisations documented at least six cases where the victim died as a consequence of the methods used to disperse protests in 2019 following the abrogation of special status.<sup>204</sup> The deaths in three of these cases were due to the use of tear gas by armed forces; a school student succumbed to his injuries after being hit by pellets and a tear gas shell. Another student died after falling

into a river while being chased by security forces.

On 9 August 2019, Fahmeeda Shagu (34 years old, resident of Srinagar) died from suffocation caused by tear gas in her house.<sup>205</sup> On that day, protests and stone-pelting were ongoing around the paramilitary Shastra Seema Bal camp close to her neighbourhood. In response, the J&K police resorted to firing tear gas shells to disperse protesters. Raiq, Fahmeeda's husband, was at home along with his brother, sister, father, cousin, paternal aunt and Fahmeeda. Some windows had already been broken by the police earlier in the week. Around 6:30pm, while Fahmeeda was in the kitchen, more than a dozen tear gas shells were fired by police around the house. As a result, the house filled up with tear gas, and Fahmeeda fainted while trying to escape the house. She was taken to hospital and was declared dead by 7:40pm. The police refused to register an FIR despite repeated requests made by her husband, who was then offered the position of Special Police Officer, to stay quiet.<sup>206</sup>

Another case reported occurred on 22 August 2019, when a 65-year-old resident of Lalusheshgaribagh, Srinagar, died reportedly due to tear gas inhalation at his home.<sup>207</sup> There had been a small protest on 20 August 2019 in the neighbourhood, which resulted in heavy shelling near the house. Youth protesting against governments' actions were being chased by

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<sup>203</sup> PUCL Report, 2019 44.

<sup>204</sup> PUCL Report, 2019 37; Muzzafar Raina, "6 Jammu and Kashmir deaths tied to security forces" (*The Telegraph* Online, 31 December 2019), <<https://www.telegraphindia.com/india/6-jammu-and-kashmir-deaths-tied-to-security-forces/cid/1731902>>

<sup>205</sup> PUCL Report, 2019 38.

<sup>206</sup> PUCL Report 2019.

<sup>207</sup> PUCL Report, 2019 39.

the police and CRPF. A tear gas canister fell inside the deceased's house around 3:45pm. Due to the lockdown in place at the time, family members could not take the victim to hospital and instead took him to the local doctor. His health consistently deteriorated, and they were able to move him to hospital the following day. He died there on 22 August 2019.<sup>208</sup>

The use of excessive force to quell protests continued in 2020. In May 2020, Jahangir Yousuf Wani, 32 years old, was hit in his neck after state forces opened fire on youth protesting the killing of Riyaz Naikoo, chief of the Hizbul Mujahideen group.<sup>209</sup> Besides Wani, four others received bullet injuries, and 21 others were injured.<sup>210</sup>

#### 2.4. Use of Pellet Guns

On 9 August 2019, despite the lockdown in place, an estimated 10,000 citizens protested in Srinagar city in J&K.<sup>211</sup> Indian security forces opened fire on them using live ammunition, rubber bullets, pellet guns and tear gas, causing significant injuries.<sup>212</sup> Pellet-firing shotguns were the security forces' weapon of choice to contain ensuing protests.<sup>213</sup> One month

after the lockdown began, Governor Satyapal Malik of the erstwhile state of J&K admitted at a press meet, that 36 people were injured by pellet guns during police action against protesters post-abrogation of Article 370 – the first admission of these weapons' use in Kashmir.<sup>214</sup> Pellet guns are categorised as 'non-lethal', but cause serious injuries and a disturbingly large number of people have been permanently blinded in Kashmir as a result of their use over the years.<sup>215</sup> In 2019 the UN OHCHR found that '[...] despite international concerns at the alarming numbers of deaths and life-altering injuries caused by the security forces' regular use of shotguns as a means of crowd control – even though they are not deployed elsewhere in India – they continue to be employed, leading to further deaths and serious injuries'.<sup>216</sup> For example, as reported by civil society and media,<sup>217</sup> on 4 September 2019, Asrar Ahmad Khan (17-year-old, resident of Elahibagh, Srinagar) succumbed to pellet-gun injuries at a Srinagar hospital. According to his friends and family, Asrar, who was preparing for his medical studies entrance examination, was injured on the evening of 6 August 2019 when state forces attacked him and his friends with pellet

<sup>208</sup> PUCL 2019.

<sup>209</sup> TKW Staff, "Pulwama gunfight: Civilian shot dead in protests" (*The Kashmir Walla*, 7 May 2020),

<<https://thekashmirwala.com/2020/05/pulwama-gunfight-civilian-shot-dead-in-protests/>>

<sup>210</sup> TKW Staff, "Pulwama gunfight: Civilian shot dead in protests" (*The Kashmir Walla*, 7 May 2020),

<<https://thekashmirwala.com/2020/05/pulwama-gunfight-civilian-shot-dead-in-protests/>>

<sup>211</sup> Reuters, Thousands protest in India Kashmir over new status despite clampdown, 9 August 2019, <<https://www.reuters.com/article/us-india-kashmir-idUSKCN1U200T>>

<sup>212</sup> Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders. REFERENCE: UA IND 16/2019, 16 August 2019, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?tid=24803>>

<sup>213</sup> Kaisar Andrabi, 'Kashmir: Government Using Pellet Guns To Suppress Protests' (*HuffPost*, 9 August 2019)

<[www.huffpost.com/archive/in/entry/article-370-kashmir-protests-pellet-guns-in-5d4d6a1e4b09e7297450516](http://www.huffpost.com/archive/in/entry/article-370-kashmir-protests-pellet-guns-in-5d4d6a1e4b09e7297450516)>

<sup>214</sup> Vijaita Singh, '36 suffered pellet injuries since August 5: official' (*The Hindu*, 28 August 2019) <[www.thehindu.com/news/national/36-suffered-pellet-injuries-since-august-5-official/article29280622.ece](http://www.thehindu.com/news/national/36-suffered-pellet-injuries-since-august-5-official/article29280622.ece)>

<sup>215</sup> 'Key human rights issues of concern in Indian-Administered Jammu & Kashmir' (*International Federation for Human Rights*, March 2019)

<[www.fidh.org/IMG/pdf/20190315\\_kashmir\\_briefing\\_note\\_-\\_final.pdf](http://www.fidh.org/IMG/pdf/20190315_kashmir_briefing_note_-_final.pdf)>

<sup>216</sup> No steps taken by India or Pakistan to improve human rights situation in Kashmir – UN

OHCHR, 8 July 2019, <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24799&LangID=E>>

<sup>217</sup> Imprisoned Resistance 5th August and its aftermath, <<https://www.pucl.org/sites/default/files/reports/Imprisoned%20Resistance-final%20for%20dissemination.pdf>>, 39

; Ahmad, M. (2019). 'Can a Stone Do This?': Family of Srinagar Youth Who Died Refutes Police Version.

<<https://thewire.in/rights/srinagarkashmir-pellet-gun-death>>

guns while he was playing with friends outside his house. He was taken to hospital but the doctors suggested that he needed further treatment which was not available at the government hospital. The doctor's diagnosis mentions the cause of wounds as tear gas shell and pellet injury on his head and face. Asrar's family did not have the means to afford a private hospital as he succumbed to his injuries at the government hospital. According to the police statement during the press conference after the incident, Asrar was a regular stone pelted. The family claimed he never pelted stones and on the day of the incident, there were no stones in the playground where the boys were attacked. Asrar's parents further stated that earlier that month, CRPF tried to enter the village but were stopped by a group of villagers and this attack could be a retaliation for that incident.

## 2.5. Lockdown and Communication Shutdown

On 4 August 2019, a day before the abrogation of Article 370, in order to pre-empt any protests, the authorities put the entire region of J&K under strict lockdown and imposed a complete communication blackout including suspension of internet,

mobile, and landline phone services.<sup>218</sup> TV cable and Kashmiri television channels too were cut off, completely alienating Kashmiris from the world.<sup>219</sup> Only the security forces retained satellite phones for communication.<sup>220</sup> Shops and educational institutions remained closed, and roads were barricaded,<sup>221</sup> although some protests still occurred.<sup>222</sup> UN experts, in a press release on 22 August 2019, characterised the shutdown as 'inconsistent with the fundamental norms of necessity and proportionality' amounting to 'a form of collective punishment of the Kashmiri people...without even the pretext of a precipitating offence'.<sup>223</sup> Broadband and mobile data services remained blocked in Kashmir Valley for over four months.<sup>224</sup>

The Supreme Court ruled in January 2020 that the continued communications shutdown and delays in implementing the planned phased restoration of services could not be continued indefinitely.<sup>225</sup> It was only then that restricted access to the internet was allowed, with some 1,674 so-called 'white-listed' websites being made available to users in February 2020.<sup>226</sup> All social media sites including Facebook and WhatsApp remained banned for the general population, ostensibly to curb their

<sup>218</sup> Kashmir in Lockdown after Autonomy Scrapped', *BBC* (6 August 2019), <<https://www.bbc.com/news/world-asia-india-49246434>>; <https://www.pucl.org/sites/default/files/reports/Imprisoned%20Resistance-final%20for%20dissemination.pdf>, 19.

<sup>219</sup> 'Kashmir Has Become an Open Air Prison, Says Iltija Mufti, Mehbooba Mufti's Daughter', *Gulf News*, October 3, 2019, <<https://gulfnews.com/world/asia/india/kashmir-has-become-an-open-air-prison-says-iltija-mufti-mehbooba-muftis-daughter-1.66880000>>

<sup>220</sup> 'Jammu and Kashmir: A Timeline of Recent Events', *The Hindu* (6 August 2019) <<https://www.thehindu.com/news/national/jammu-and-kashmir-a-timeline-of-events-leading-to-imposition-of-144-crpc-and-house-arrest-of-leaders/article61587382.ece>>

<sup>221</sup> Aijaz Hussain & Sheikh Saaliq, 'No Phone Calls, No Groceries: Kashmir on Edge under Lockdown', *The Associated Press* (9 August 2019) <<https://apnews.com/article/india-ap-top-news-pakistan-international-news-reinventing-faith-9491eada41bf49d184d4fac5f7d7794a>>

<sup>222</sup> 'Thousands Protest in Occupied Kashmir over New Status Despite Clampdown', *Dawn* (9 August 2019) <<https://www.dawn.com/news/1498973/thousands-protest-in-occupied-kashmir-over-new-status-despite-clampdown>>

<sup>223</sup> 'UN rights experts urge India to end communications shutdown in Kashmir', (*United Nations Office of the High Commissioner for Human Rights*, 22 August 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24909&LangID=E>>

<sup>224</sup> 'Kashmir Has Become an Open Air Prison, Says Iltija Mufti, Mehbooba Mufti's Daughter', (*Gulf News*, 3 October 2019)

<<https://gulfnews.com/world/asia/india/kashmir-has-become-an-open-air-prison-says-iltija-mufti-mehbooba-muftis-daughter-1.66880000>>

<sup>225</sup> *Anuradha Bhasin v Union of India*, Writ Petition (Civil) No. 1031 of 2019 [Supreme Court of India].

<sup>226</sup> Greater Kashmir, Kashmir logs into social media after 7 months, 4 March 2020, <<https://www.greaterkashmir.com/todays-paper/kashmir-logs-into-social-media-after-7-months>>

misuse by ‘miscreants for propagating false information and rumours’.<sup>227</sup>

After January 2020, access to high-speed mobile internet remained restricted, with most areas only having 2G connectivity.<sup>228</sup> It is only recently that Internet services have improved.

India has frequently resorted to Internet shutdowns in Kashmir, recording at least 180 instances of internet blockades since 2012;<sup>229</sup> the post-370 abrogation blackout being the longest ever in a democratic country.<sup>230</sup> In her address to the Human Rights Council in February 2020, the United Nations High Commissioner for Human Rights stated that ‘authorities continue to impose excessive restrictions on the use of social media’.<sup>231</sup> Eventually, 4G services were restored in phases from August 2020 to February 2021.<sup>232</sup> A two-day communications curfew was imposed once again on the first anniversary of the abrogation in August 2020,<sup>233</sup> and again for a few days in September 2021, following the

death of a prominent separatist leader, Syed Ali Shah Geelani.<sup>234</sup>

The lack of adequate internet access has had serious consequences:<sup>235</sup> students are unable to fill in admission forms for entrance exams or access online material,<sup>236</sup> businesses are unable to work, and banking applications and payment of bills online have been obstructed.<sup>237</sup> Schools and colleges functioned for barely 100 days between 2019 and 2020 in Kashmir.<sup>238</sup> The Kashmir Chamber of Commerce and Industries estimated that the first three months of the lockdown cost the economy more than US\$2.4 billion, for which no redress has been provided.<sup>239</sup>

Internet shutdown and lockdown had severe economic impact on Kashmiris as the losses suffered by various businesses during the first five months alone were estimated at Rs 178.78 billion, with more than 500,000 people having lost their jobs in the valley within the period.<sup>240</sup> In addition to businesses that rely primarily on the internet, the impact of the prolonged shutdown was

<sup>227</sup> ‘Govt Slaps UAPA on Those “Misusing” Social Media in Kashmir, Owaisi Says New Records of Cruelty’, (*India Today*, 18 February 2020), <<https://www.indiatoday.in/india/story/govt-slaps-uapa-on-those-misusing-social-media-in-kashmir-owaisi-says-new-records-of-cruelty-1647469-2020-02-18>>

<sup>228</sup> 2G mobile internet services restored in Kashmir from midnight. (*The Times of India*, 25 January 2020)

<<https://timesofindia.indiatimes.com/india/2g-mobile-internet-restored-in-kashmir-from-midnight/articleshow/73603262.cms>>

<sup>229</sup> ‘Internet Shutdown Tracker’, Software Freedom Law Center, <<https://internetshutdowns.in>>

<sup>230</sup> ‘India’s Internet shutdown in Kashmir is the longest ever in a democracy’ (*The Washington Post*, 16 December 2019)

<[www.washingtonpost.com/world/asia-pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da\\_story.html](http://www.washingtonpost.com/world/asia-pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da_story.html)>; Arshad R. Zargar, ‘The Longest Internet Blackdown Ever Imposed in a Democratic Nation is Easing, Slowly’, (*CBS*, 15 January 2020) <<https://www.cbsnews.com/news/india-kashmir-longest-internet-blackout-ever-democratic-nation-eases-slowly-but-not-over-today-2020-01-15/>>

<sup>231</sup> ‘UN Rights Chief Highlights Concern Over CAA, Anti-Muslim Violence, Police Force’ (*The Wire*, 27 February 2020)

<<https://thewire.in/rights/caa-kashmir-violence-unhcr>>

<sup>232</sup> ‘4G Internet Services to Resume Across J&K for the First Time Since August 2019’, (*The Wire*, 5 February 2021)

<<https://thewire.in/rights/jammu-kashmir-internet-4g>>

<sup>233</sup> ‘Curfew in Kashmir Ahead of Autonomy Revocation Anniversary’, (*Al Jazeera*, 4 August 2020)

<<https://www.aljazeera.com/news/2020/8/4/curfew-in-kashmir-ahead-of-autonomy-revocation-anniversary>>

<sup>234</sup> ‘India Extends Kashmir Lockdown after Separatist Icon’s Death’, (*Al Jazeera*, 3 September 2021)

<<https://www.aljazeera.com/news/2021/9/3/india-kashmir-lockdown-syed-ali-shah-geelani-death>>

<sup>235</sup> JKCCS, ‘Kashmir’s Internet Siege - an Ongoing Assault on Digital Rights’ (*Jammu Kashmir Coalition of Civil Society*, 1 August 2020)

<<https://jkccs.net/report-kashmir-internet-siege/index.html>>

<sup>236</sup> ‘Kashmir: Slow Internet Speeds Frustrate Students Trying to Register to Colleges’ (*The Wire*, 21 March 2020)

<<https://thewire.in/rights/kashmir-2g-internet-students>>

<sup>237</sup> ‘Kashmiri entrepreneur who told Modi internet ban ruined her business now hopes for better’ (*ThePrint*, 11 March 2020)

<<https://theprint.in/india/kashmiri-entrepreneur-who-told-modi-internet-ban-ruined-her-business-now-hopes-for-better/379120/>>

<sup>238</sup> Kashmir lockdowns, slow internet rob students of their education (*DW 17 March 2021*), <<https://www.dw.com/en/kashmir-lockdowns-hurt-students/a-56904725>>; <<http://valleyonline.in/kashmir-schools-colleges-saw-less-than-100-academic-days-in-2019/>>

<sup>239</sup> Fayaz Bukhari, ‘Indian Kashmir sees more than \$2.4 billion losses since lockdown: group’ (*Reuters*, 18 December 2019)

<[www.reuters.com/article/us-india-kashmir-economy/indian-kashmir-sees-more-than-2-4-billion-losses-since-lockdown-group-idUSKBN1M0S8](http://www.reuters.com/article/us-india-kashmir-economy/indian-kashmir-sees-more-than-2-4-billion-losses-since-lockdown-group-idUSKBN1M0S8)>

<sup>240</sup> Kashmir’s Internet Siege, <<https://kashmirscholars.files.wordpress.com/2020/08/kashmir-internet-siege-jkccs-report-august-2020.pdf>>

disproportionately felt by the most economically vulnerable sections of society, including those who rely on social security programmes such as public works scheme - Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).

Internet and other information restrictions have also impacted the management of the Covid-19 response in the state:<sup>241</sup> Doctors were unable to access guidelines updated regularly by the Indian Council for Medical Research or videos posted by the WHO and communicate effectively with their colleagues to prepare guidelines or launch awareness campaigns online. Telemedicine initiatives (video conferencing and uploading of reports) as alternative to the shutting down of outpatient departments in hospitals, as well as the functioning of mental health services – all critical in a conflict zone in times of coronavirus outbreak – being used increasingly in the rest of India, have all been non-starters in Kashmir.<sup>242</sup>

A survey conducted by Doctors Without Borders in 2015 reported that almost one in five Kashmiris show symptoms of post-traumatic stress disorder and nearly 45 per cent of the Kashmiri population are under ‘significant mental distress’.<sup>243</sup> The

repression and isolation after 5 August 2019 worsened these conditions.<sup>244</sup> Mental health workers confirmed that Kashmir witnesses an alarming increase in instances of depression, anxiety and psychotic events.<sup>245</sup> Women are among the most distressed of the population.<sup>246</sup>

Since the population in the Kashmir Valley is almost entirely Muslim, the valley faced complete and prolonged lockdown. This was not the case in Jammu region with a Hindu majority, where the lockdown and communication shutdown were not as extensive and less prolonged.<sup>247</sup>

## 2.6. Restrictions on Civic Space

As set below, in the lead-up to and following 5 August 2019, authorities imposed various measures to curb civic space by restricting gatherings, media reporting and civil society organisations.

### (a) Assemblies

In the lead-up to the events of 5 August 2019, Section 144 of the Code of Criminal Procedure was used to implement a curfew in the whole of J&K, prohibiting gatherings of more than four people, which resulted in a blanket ban on peaceful assembly. These restrictions were lifted in the Jammu

<sup>241</sup> ‘Is 4G Ban Failing Kashmir’s Covid-19 Fight Back?’ (*Kashmir Observer / Kashmir Latest News*, 16 April 2020)

<<https://kashmirobsvr.net/2020/04/16/is-4g-ban-failing-kashmir-covid-19-fight-back/>>

<sup>242</sup> Muddasir Ali, ‘Slow Internet Is Speeding the Spread of the Coronavirus in Kashmir’ (*Foreign Policy*, 13 April 2020)

<<https://foreignpolicy.com/2020/04/13/slow-internet-speeding-spread-coronavirus-kashmir-india-lockdown/>>

<sup>243</sup> ‘Muntazar: Kashmir Mental Health Survey Report 2015’ (*MSF*, 2016) <[www.msfindia.in/sites/default/files/2016-10/kashmir\\_mental\\_health\\_survey\\_report\\_2015\\_for\\_web.pdf](http://www.msfindia.in/sites/default/files/2016-10/kashmir_mental_health_survey_report_2015_for_web.pdf)>

<sup>244</sup> The New York Times, Kashmir Under Siege, <<https://www.nytimes.com/2020/04/26/world/asia/kashmir-india-mental-health-coronavirus.html>>

<sup>245</sup> Sameer Yasir and Atul Loke, ‘Kashmir, Under Siege and Lockdown, Faces a Mental Health Crisis’ (Published 2020) (*The New York Times*, 26 April 2020) <[www.nytimes.com/2020/04/26/world/asia/kashmir-india-mental-health-coronavirus.html](http://www.nytimes.com/2020/04/26/world/asia/kashmir-india-mental-health-coronavirus.html)>

<sup>246</sup> Shoaib Mir, Parthu Venkatesh P, ‘The Silent Mental Health Crisis Among Women in Kashmir - Women’s Media Center’ (*Women’s Media Center*, 4 December 2020) <<https://womensmediacenter.com/women-under-siege/the-silent-mental-health-crisis-among-women-in-kashmir/>>

<sup>247</sup> Restrictions eased in five more districts of Jammu region, life limping back to normal (*The Economic Times* 17 August 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/restrictions-eased-in-5-more-districts-of-jammu-region-life-limping-back-to-normal/articleshow/70715689.cms>>; further Section 144 lifted in Jammu, curfew relaxed in Doda, Kishtwar (*The Economic Times* 17 August 2019)

<<https://economictimes.indiatimes.com/news/defence/kashmir-restrictions-to-be-eased-for-friday-prayers-security-forces-on-high-alert/articleshow/70601688.cms>>

region, barring some Muslim concentrated pockets there, and Ladakh soon after,<sup>248</sup> but continued to be in place in the Kashmir Valley for extended periods.<sup>249</sup>

### (b) Press

Before 5 August 2019, journalists spoke of extensive control by authorities of the material that is published, including scrutiny of content, occasional interrogations, as well as thorough leveraging of advertising revenue.<sup>250</sup> In the initial days after the abrogation of Article 370, state-controlled information was disseminated through national television channels.<sup>251</sup> In June 2020, government announced a new media policy for J&K that seeks to regulate media reporting, empowering authorities to decide what is 'anti-social' and 'anti-national' news, and prescribing actions on outlets deemed to be publishing 'objectionable' news.<sup>252</sup> As a consequence, in January 2021, authorities barred some 30 media organisations in J&K from receiving state advertising, a major source of income for Indian media outlets, as punishment for

violating the new media policy.<sup>253</sup> At the order of District Magistrates even WhatsApp group admins have been directed to register their groups, failing which they would be liable for legal action.<sup>254</sup>

The news media came to a complete standstill, particularly in the Kashmir Valley,<sup>255</sup> with the Committee to Protect Journalists (CPJ) noting that journalists were unable to report on the lockdown due to pre-emptive arrests and being denied movement for reportage owing to the curfew restrictions.<sup>256</sup> In the first half of 2020, criminal proceedings and investigations were initiated by Indian authorities under UAPA against four Kashmiri journalists, Mr. Gowher Geelani; Ms. Masrat Zahra; Mr. Naseer Ganai; and Mr. Peerzada Ashiq, due to their coverage of the post-5 August situation in Kashmir.<sup>257</sup> UN mandate-holders noted that these incidents expose a pattern of silencing independent reporting of the situation through criminal sanction.<sup>258</sup> Another example is the case of Sajad Gul, a trainee reporter who was arrested days after he

<sup>248</sup> Section 144 imposed in Kargil, Drass, Sankoo; travellers advised to exercise caution (*Time Travel*, 9 August 2019) <<https://timesofindia.indiatimes.com/travel/destinations/section-144-imposed-in-kargil-drass-sankoo-travellers-advised-to-exercise-caution/as70600117.cms>>; further Sec 144 imposed in Srinagar; J-K leaders including Omar Abdullah, Mehbooba Mufti under house arrest (*The New Indian Express*, 5 August 2019) <<https://www.newindianexpress.com/nation/2019/aug/05/sec-144-imposed-in-srinagar-omar-abdullah-mehbooba-mufti-allegedly-under-house-arrest-2014130.html>>; Update on human rights violations in Indian-administered Jammu & Kashmir since August 2019 (*International Federation For Human Rights*, 26 September 2019) <<https://www.fidh.org/en/region/asia/india/update-on-human-rights-violations-in-indian-administered-jammu>>

<sup>249</sup> Kashmir under lockdown: All the latest updates (Aljazeera, 27 October 2019) <<https://www.aljazeera.com/news/2019/10/27/kashmir-under-lockdown-all-the-latest-updates>>

<sup>250</sup> Muhammad Raafi, 'Govt's Ad Ban on Kashmir Dailies Seen as Yet Another Attempt at Media Coercion' (*The Wire*, 10 March 2019) <<https://thewire.in/media/kashmir-media-ad-ban-blank-front-pages>>

<sup>251</sup> Silence in the Valley: Kashmiri Media After the Abrogation of Article 370 <<https://www.epw.in/engage/article/silence-valley-kashmiri-media-after-abrogation>>

<sup>252</sup> Safwat Zargar, 'Jammu and Kashmir's new media policy is aimed at demolishing the local press, editors say' (*Scroll.in*, 24 June 2020) <<https://scroll.in/article/964900/jammu-and-kashmir-s-new-media-policy-is-aimed-at-demolishing-the-local-press-editors-say>>

<sup>253</sup> Bilal Hussain, 'India Cuts Off Government Advertising to Over 30 Kashmiri Outlets' (*VOA*, 25 January 2021) <[www.voanews.com/a/press-freedom-india-cuts-government-advertising-over-30-kashmiri-outlets/6201187.html](http://www.voanews.com/a/press-freedom-india-cuts-government-advertising-over-30-kashmiri-outlets/6201187.html)>

<sup>254</sup> Kishtwar Police issues notices to 21 Whatsapp group admins. <<https://www.greaterkashmir.com/chenab-valley/kishtwar-police-issues-notices-to-21-whatsapp-group-admins>>; <<https://www.moneycontrol.com/news/india/whatsapp-admins-told-to-register-with-government-keep-tab-on-fake-news-in-jks-kupwara-3615141.html>>

<sup>255</sup> Muzaffar Raina, 'Crushing Blockade on Flow of Information in Srinagar', (*The Telegraph*, 7 August 2019) <<https://www.telegraphindia.com/india/crushing-blockade-on-flow-of-information-in-srinagar/cid/1696279>>

<sup>256</sup> Kunal Majumder & Aliya Iftikhar, 'In Kashmir, Obstruction, Confiscated Equipment, and Hand-Carrying Stories and Photos on Flash Drive', (*Committee to Protect Journalists*, 8 August 2019) <<https://cpj.org/2019/08/in-kashmir-obstruction-confiscated-equipment-and-h/>>

<sup>257</sup> Mandate of the Special Rapporteur on the promotion and protection of the right to freedom opinion and expression; the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of Human Rights Defenders. Reference AL/IND 8/2020 (12 May 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25237>>

<sup>258</sup> Reference AL/IND 8/2020 (12 May 2020)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25237>>

posted a video of family members and relatives raising anti-India slogans after the killing of their kin, a militant, in a gunfight in Srinagar (see case description in [Case List C](#)).<sup>259</sup> Cases were also registered against him by the police for reporting on the demolition of allegedly illegal houses by the authorities on 9 February 2021.<sup>260</sup> Yet another example is that of Fahad Sha, editor of the Kashmir Walla, remains in custody for over 4 months, arrested firstly under UAPA, then when bailed out, rearrested bailed and arrested again, and finally arrested under PSA.<sup>261</sup> This had followed his being interrogated by Police in the previous months, where he had been warned to report ‘cautiously’ about matters related to ‘national security’.<sup>262</sup>

The crackdown on media and free speech continued months after the abrogation of Article 370. On 8 September 2021, police raided the homes of Hilal Mir, Shah Abbas, Azhar Qadri, and Showkat Motta, editor of the Kashmir Narrator magazine, and detained them for interrogation.<sup>263</sup> Three of the four detained journalists contribute to foreign publications. Reporters Sans

Frontières termed the detentions ‘crude intimidation’.<sup>264</sup>

In a significant ruling in April 2022, the High Court of Jammu & Kashmir and Ladakh held that statements that Kashmir was occupied by the military or that people of the region have been reduced to slaves would not be protected by the right to freedom of speech and expression under Article 19(1)(a) of the Constitution.<sup>265</sup>

### (c) Civil Society Organisations

The UAPA has been used by the Indian state to ban various socio-political organisations including *Dukhtaran-i-Millat* and *Jamat-e-Islami*.<sup>266</sup> A few months before the abrogation of Article 370, socio-religious organisation *Jamat-i-Islami* was banned for five years under the UAPA and most of its basic members and office bearers were put under arrest.<sup>267</sup> The organisation has been accused of being involved in activities intended at disrupting India's integrity.<sup>268</sup> However, it functions on social as well as religious platforms. Recently, its affiliate, the Falaah-Aam Trust-run schools have been ordered to shut.<sup>269</sup> The Falai Aam Trust started in 1972 working under the

<sup>259</sup> Court grants bail to journalist Sajad Gul after nine days in custody (the Kashmir Walla, 15 January 2022)

<<https://thekashmirwalla.com/court-grants-bail-to-journalist-sajad-gul-after-nine-days-in-custody/>>

<sup>260</sup> Article 14, Why Kashmiri Journalist Sajad Gul Faces Police Cases For Doing His Job, 29 December 2021, <<https://article-14.com/post/why-kashmiri-journalist-sajad-gul-faces-police-cases-for-doing-his-job-61cbcd7784b6>>

<sup>261</sup> Statement: Fahad Shah our editor completes two months' in imprisonment. (The Kashmir Walla, 5 April 2022)

<<https://thekashmirwalla.com/statement-fahad-shah-our-editor-completes-two-months-imprisonment/>>

<sup>262</sup> Communication by the mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Working Group on Arbitrary Detention, AL IND 9/2021, 3 June 2021,

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26390>>

<sup>263</sup> The Hindu, <<https://www.thehindu.com/news/national/4-journalists-detained-freed-in-kashmir/article36372527.ece>>

<sup>264</sup> ‘4 journalists detained, freed in Kashmir’ (*The Hindu*, 9 September 2021) <[www.thehindu.com/news/national/4-journalists-detained-freed-in-kashmir/article36372527.ece](http://www.thehindu.com/news/national/4-journalists-detained-freed-in-kashmir/article36372527.ece)>

<sup>265</sup> Bar and Bench, No free speech protection for statement that people of Kashmir are slaves, under military occupation: J&K High Court, 25 April 2022, <<https://www.barandbench.com/news/no-free-speech-protection-for-statement-that-people-of-kashmir-are-slaves-under-military-occupation-jk-high-court>>

<sup>266</sup> The Hindu, J&K's Jamaat-i-Islami banned, 28 February 2019, <<https://www.thehindu.com/news/national/govt-imposes-ban-on-jamaat-e-islami-jammu-and-kashmir/article26400681.ece>>

<sup>267</sup> The Hindu, J&K's Jamaat-i-Islami banned, 28 February 2019, <<https://www.thehindu.com/news/national/govt-imposes-ban-on-jamaat-e-islami-jammu-and-kashmir/article26400681.ece>>

<sup>268</sup> What is Jamaat-e-Islami that has been banned in Jammu and Kashmir (India Today, 2 March 2019)

<<https://www.indiatoday.in/fyi/story/what-is-jamaat-e-islami-jammu-and-kashmir-1469144-2019-03-02>>

<sup>269</sup> J&K Govt. orders Jamaat Affiliate Falah-e-Aam Trust schools to shut. (The Wire, 15 June 2022). <<https://thewire.in/government/jk-govt-orders-jamaat-affiliate-falah-e-aam-trust-schools-to-shut>>

patronage of *Jamat-i-Islami*, is an educational trust running hundreds of high and middle schools in Kashmir. It has provided education economically to poor and rural people as well as far-flung areas in Kashmir. The Trust has spread education even beyond the reach of government in the past 34 to 40 years. The Trust disseminates modern scientific education along with religious education for Muslim youth.<sup>270</sup> Compared to the government-run schools, the quality of education provided by the Trust schools was admired by non-Muslims who prefer their children to study in Trust-run schools.<sup>271</sup>

Besides imposing bans on organisations, several bodies/associations have not been allowed to function by subtly putting curbs on them. In one such incident, the Jammu & Kashmir High Court Bar Association (JKHCBA) has not been allowed to hold internal elections because the administration has been seeking clarification from the lawyers' body on whether it considers Kashmir a 'dispute' or an integral part of India.<sup>272</sup> JKHCBA is a representative body for lawyers in J&K providing free legal aid to victims of human rights violations, prisoners and others.<sup>273</sup> Another association, known as the Kashmir Press Club, a body with over 300 journalist members which reports on human rights issues, including harassment of journalists, was not able to hold internal elections

because its registration had been put under abeyance.<sup>274</sup> It is the same body which openly demanded the release of Sajad Gul (see case described [above](#)).<sup>275</sup>

On 28 October 2020, the National Investigation Agency (NIA) – a federal agency tasked with anti-terrorism investigations – with the police and armed forces conducted raids at the office of the Association of Parents of Disappeared Persons (APDP) (an NGO documenting cases of enforced disappearances and campaigning for an end to this practice) and the house of its Chair, Parveena Ahangar; the premises of the NGO, namely Athrout (voluntary organisation providing a wide range of humanitarian services); the office of the daily newspaper Greater Kashmir (one of the most widely read newspapers in J&K, both in English and in Urdu); the office of Jammu Kashmir Coalition of Civil Society (JKCCS) (a union of non-profit organisations which collects data, provides legal advice and advocates against human rights violations), and the houses of its Coordinator Khurram Parvez; and against journalist Parvaiz Ahmad Bukhari.<sup>276</sup> Invoking the UAPA, authorities employed their counter-terrorism financing regulations powers arbitrarily to intimidate and harass civil society actors, human rights defenders, NGOs and newspapers.<sup>277</sup>

<sup>270</sup> A comprehensive study on the role of 'Falai Aam Trust' imparting education among poor sections of Kashmiri children, <[http://educationindiajournal.org/home\\_art\\_avi.php?path=&id=304](http://educationindiajournal.org/home_art_avi.php?path=&id=304)>.

<sup>271</sup> Falai Aam Trust: Providing Education for All. <<https://www.greaterkashmir.com/todays-paper/falai-aam-trust-providing-education-for-all>>

<sup>272</sup> J&K HC Bar Association denied nod for polls over reference to Kashmir as a 'dispute'. <<https://theprint.in/india/governance/jk-hc-bar-association-denied-nod-for-polls-over-reference-to-kashmir-as-a-dispute/541026/>>

<sup>273</sup> Jammu & Kashmir High Court Bar Association website, <<http://jkbarassociation.com/about-jkhcba/>>

J&K Government puts Kashmir Press Club registration in abeyance.

<sup>274</sup> The Hindu, <<https://www.thehindu.com/news/national/other-states/jk-govt-puts-kashmir-press-clubs-registration-in-abeyance/article38272232.ece>>

<sup>275</sup> J&K Government puts Kashmir Press Club registration in abeyance, <<https://www.thehindu.com/news/national/other-states/jk-govt-puts-kashmir-press-clubs-registration-in-abeyance/article38272232.ece>>

<sup>276</sup> AL IND 20/2020 (22 December 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25773>>

<sup>277</sup> AL IND 20/2020 (22 December 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25773>>

## 2. Treatment of Suspected Separatist Militants

As set out above, there has been a long-running armed struggle for independence by non-state armed groups since 1964.<sup>278</sup> Serious human rights abuses against civilians have been reported throughout this time.<sup>279</sup> There is credible evidence to show that following 5 August 2019, some of these practices continue against civilians who are suspected to be members of militant groups or have links to them.

### 2.7. Abuse in Detention

[Case List B](#) contains detailed descriptions of three individual cases where victims were physically and mentally abused by the military, including members of the Rashtriya Rifles. The victims were all male Muslims who were taken from their homes by the military to an army base and beaten. Two were also hung upside down and stripped naked, while one was water-boarded. In all instances, they were targeted in order to turn them into informers and/or because of their suspected ties to militants. Their civilian status does not seem to be contested. The reason for their treatment was either that they were suspected of having links to militants and/or because the military pressured them to become informants.

### 2.8. Killings

[Case List D](#) sets out three incidents where a total of nine individuals (three per incident) were killed by the army comprising the special unit of Rashtriya Rifles, in tandem with police forces, including the Central Reserve Police Forces. All victims were male Muslims. In all the cases, the authorities claim that the victims were separatist militants or had links to them and were killed in self-defence during a shoot-out (so-called encounter killing). However, testimonies of witnesses, family members, and in one instance a court inquiry, contradict this narrative and show that the victims were not militants and were highly likely executed.

According to a new government policy, suspected Kashmiri rebels killed in gun battles with the security forces are buried in faraway graveyards to prevent large gatherings or mass protests on their funerals.<sup>280</sup> In some cases, authorities have also refused to hand over the bodies of civilians killed by security forces.<sup>281</sup>

Independent journalists reporting on killings of suspected militants are regularly harassed or arrested by the police. For example, on 11 October 2021, Sajad Gul, working as a trainee reporter for the Kashmir Walla, reported on an encounter between the police and Imtiyaz Ahmad Kakroo, who had been killed in the fight on 10 October 2021.<sup>282</sup> The police alleged that

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<sup>278</sup> See above [Background and Historical Context](#).

<sup>279</sup> See above [Background and Historical Context](#).

<sup>280</sup> Civilians among four killed in Kashmir, families demand bodies (Aljazeera, 17 November 2022) <<https://www.aljazeera.com/news/2021/11/17/india-kashmir-civilians-killed-human-shields>>

<sup>281</sup> Civilians among four killed in Kashmir, families demand bodies (Aljazeera, 17 November 2022) <<https://www.aljazeera.com/news/2021/11/17/india-kashmir-civilians-killed-human-shields>>

<sup>282</sup> Article 14, Why Kashmiri Journalist Sajad Gul Faces Police Cases For Doing His Job, 29 December 2021, <<https://article-14.com/post/why-kashmiri-journalist-sajad-gul-faces-police-cases-for-doing-his-job-61cbcd7784b6>>

Kakroo was a militant in The Resistance Force (TRF) in Bandipura but his family refuted these claims, stating that Kakroo had been dragged from his home and killed in a fake encounter by the police.<sup>283</sup> On 13 October 2021, the police arrived at Gul's house in Shahgund and asked his family to stop Gul from reporting and publishing 'such stories'.<sup>284</sup> When Gul presented himself at the police station on the same day, he was threatened with 'dire consequences' and instructed to cover only the police and army's version of events, on threat of making circumstances 'difficult' for him but no case was filed against him.<sup>285</sup>

In May 2020, Fahad Shah, editor of the Kashmir Walla, was interrogated twice for hours without legal representation by the Srinagar police for reporting on an encounter in downtown Srinagar on 19 May 2020.<sup>286</sup> Later on 4 February 2020, he was arrested by the police over a report on an encounter that led to the killing of a teenage boy and three alleged militants (see description in [Case List C](#)).

### 3. Obstacles to Seeking Justice

#### 3.1. Lack of Investigations and Prosecutions

Claims of human rights violations in J&K have a history of being ignored by the

authorities. As set out above, this is one of the main obstacles to genuine and independent investigations and prosecutions in the application of the AFSPA.<sup>287</sup>

#### The Armed Forces (Jammu and Kashmir) Special Powers Act 1990 (AFSPA)

AFSPA, 1990 prohibits the prosecution of security forces personnel under criminal law without permission by the central government. This enables the State to provide them immunity against prosecution for any human rights violation,<sup>288</sup> thus escaping accountability for its actions in J&K.<sup>289</sup>

Between 2001 and 2018, the Government of India denied sanction in all 50 cases referred to it under the AFSPA, which included "killing after abduction", "outraging the modesty of a woman" and "the disappearance of civilians, rape, and torture and killing".<sup>290</sup>

The Act has been challenged in the Supreme Court of India several times. Whenever the supreme court has to rule on cases of allegations of violations in Jammu & Kashmir, it has systematically held the legislation to be valid. Meanwhile, when the matter concerned

<sup>283</sup> Article 14, Why Kashmiri Journalist Sajad Gul Faces Police Cases For Doing His Job, 29 December 2021, <<https://article-14.com/post/why-kashmiri-journalist-sajad-gul-faces-police-cases-for-doing-his-job-61cbcd7784b6>>

<sup>284</sup> Article 14, Why Kashmiri Journalist Sajad Gul Faces Police Cases For Doing His Job, 29 December 2021, <<https://article-14.com/post/why-kashmiri-journalist-sajad-gul-faces-police-cases-for-doing-his-job-61cbcd7784b6>>

<sup>285</sup> Article 14, Why Kashmiri Journalist Sajad Gul Faces Police Cases For Doing His Job, 29 December 2021, <<https://article-14.com/post/why-kashmiri-journalist-sajad-gul-faces-police-cases-for-doing-his-job-61cbcd7784b6>>

<sup>286</sup> Day Before Bail Hearing, J&K Journalist Fahad Shah Booked Under Public Safety Act (The Wire, 14 March 2022) <<https://thewire.in/media/uapa-fahad-shah-jammu-and-kashmir-police-media>>

<sup>287</sup> See above [Armed Forces \(Jammu and Kashmir\) Special Powers Act 1990 \(AFSPA\)](#).

<sup>288</sup> Human Rights Watch, "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir' (11 September 2006) <<https://www.hrw.org/report/2006/09/11/everyone-lives-fear/patterns-impunity-jammu-and-kashmir>>

<sup>289</sup> The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 Act No. 21 Of 1990, <[https://www.mha.gov.in/sites/default/files/The%20Armed%20Forces%20%28Jammu%20and%20Kashmir%29%20Special%20Powers%20Act%2C%201990\\_0.pdf](https://www.mha.gov.in/sites/default/files/The%20Armed%20Forces%20%28Jammu%20and%20Kashmir%29%20Special%20Powers%20Act%2C%201990_0.pdf)>

<sup>290</sup> Naseer Ganai, 'In 20 Years, Centre Denied Prosecution Sanction Under AFSPA In All Cases Recommended By J&K Govt Against Armymen' (*Outlook India*, 20 January 2018) <[www.outlookindia.com/website/story/in-20-years-centre-denied-prosecution-sanction-under-afspa-in-all-cases-recommen/307132](http://www.outlookindia.com/website/story/in-20-years-centre-denied-prosecution-sanction-under-afspa-in-all-cases-recommen/307132)>

allegations in the state of Manipur, which has a similar version of AFSPA in force, the same supreme came up with a different ruling. There the court ruled that the armed forces cannot justify excessive use of force under the AFSPA, and ordered that such cases must be “thoroughly investigated”.<sup>291</sup> There has been no judicial intervention calling for such investigations in the case of Jammu & Kashmir.

The UN Office of the High Commissioner for Human Rights’ (OHCHR) 2018 and 2019 reports noted that the existence of legislations such as AFSPA and PSA remained a key obstacle to accountability thus perpetuating “chronic” impunity for security forces, causing “untold suffering” to millions of people.<sup>292</sup>

The Indian Army in 2010 claimed that 97 per cent of the reports of human rights abuses have been found to be ‘fake or motivated’.<sup>293</sup> However, a report by the US State Department critiqued the Indian authorities for “using the AFSPA to avoid holding its security forces responsible for the death of civilians in Jammu and Kashmir.”<sup>294</sup> The Ex-Chief Minister of Indian-administered Kashmir, Mehbooba Mufti, while demanding the removal of the

AFSPA, stated that fake encounters committed by the Indian army are being brushed under the carpet while in other areas of India such incidents are probed and looked into.<sup>295</sup>

The immunity that AFSPA provides to armed forces in J&K is, in smaller measure also provided to other state actors, including police as well as civilian officers, under the UAPA and PSA. Both laws, that are key tools for unlawful detention and torture in J&K, grant immunity from prosecution to any officer for actions taken under the Act.

Some other recent changes in laws in Jammu & Kashmir have made it more difficult to demand accountability for human rights violations. The Right to Information Act (RTI Act) of the erstwhile state of J&K was repealed by the Central Right to Information Act. The RTI Act 2009 (now repealed), was similar to the RTI Act 2005 (Central Act) but had strong provisions for time-bound disposal of appeals.<sup>296</sup> This provision for disposals does not exist in the RTI Act 2005, and is the reason for the thousands of appeals remaining pending before the central and

<sup>291</sup> Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India, SCC OnLine SC. 743 (*Indian Kanoon*, 14 July 2017) <<https://indiankanoon.org/doc/51378140/>>

<sup>292</sup> Office of the High Commissioner for Human Rights, United Nations, ‘Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan’ (14 June 2018) <<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>> ; OHCHR, ‘Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019’ (8 July 2019) <[https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)>

<sup>293</sup> 1,514 FIRs against Army personnel in J&K, 97% cases false (*The Economic Times*, 20 October 2010)

<<https://economictimes.indiatimes.com/news/politics-and-nation/1514-firs-against-army-personnel-in-jk-97-cases-false/articleshow/6781665.cms?from=mdr>>

<sup>294</sup> US report cites widespread rights violations in India-held Kashmir (*Dawn*, 8 June 2022) <<https://www.dawn.com/news/1469981>>

<sup>295</sup> Mehbooba seeks removal of AFSPA from J&K, NE areas where militancy has reduced (*Hindustan Times*, 8 December 2021)

<<https://www.hindustantimes.com/india-news/mufti-seeks-removal-of-afspa-from-j-k-ne-areas-where-militancy-has-reduced-101638934877609.html>>

<sup>296</sup> Replacing J&K RTI Act With Centre’s Law Has Weakened People’s Right to Know (*The Wire*, 13 May 2021) <<https://thewire.in/rights/jammu-and-kashmir-rti-act>>

state information commissions across India.<sup>297</sup>

An avenue for investigations are magisterial inquiries but they have also proven to be ineffective: The International Forum for Justice and Human Rights filed a petition before the State Human Rights Commission in 2018 seeking details about magisterial inquiries ordered since 1990 and found that over 500 magisterial inquiries had been ordered, of which only one inquiry was completed and the report was never submitted.<sup>298</sup> The inadequacy of such an inquiry becomes apparent in the case of the killings of four people by the military in a so-called encounter at Hyderpora Sringar on 15 November 2021 (see description of case in [Case List D](#)) where a magisterial inquiry was ordered and a Special Investigation Team (SIT) was headed by Deputy Inspector General of Police Srinagar Sujit Kumar.<sup>299</sup> On 28 December 2021, the SIT exonerated the security forces in their report.<sup>300</sup> NGOs have argued that this was a ‘government ritual to divert attention from the civilian killings’.<sup>301</sup>

### 3.2. Closure of State Human Rights Commission

In October 2019, the J&K State Human Rights Commission which has the mandate to investigate and report on human rights violations was closed by the central government.<sup>302</sup> Following the closure, the central government halted the probe of 10,500 cases of human rights violations at the hands of Indian armed/Police forces that were pending before the State Human Rights Commission.<sup>303</sup>

In July 2020, nine UN mandate-holders voiced serious concerns over this move that left Kashmiri people with limited legal recourse to seek justice for human rights violations committed by Indian forces against them.<sup>304</sup> In March 2020, the National Human Rights Commission was put in charge for J&K, but NGOs fear it will be difficult for the people of J&K to approach them because of the hostile environment against Kashmiris at the national level and the remoteness of the body in New Delhi.<sup>305</sup>

<sup>297</sup> Replacing J&K RTI Act With Centre's Law Has Weakened People's Right to Know, <<https://thewire.in/rights/jammu-and-kashmir-rti-act>>

<sup>298</sup> Why AFSPA In Jammu And Kashmir Is Not Just A Defence Act, <<https://thewire.in/government/why-magisterial-inquiries-into-encounter-killing-in-kashmir-invariably-run-aground>>

<sup>299</sup> Probe ordered into J&K encounter (*The Hindu*, 18 November 2021) <<https://www.thehindu.com/news/national/other-states/jk-administration-orders-magisterial-probe-into-hyderabad-encounter-in-srinagar/article37554949.ece>>

<sup>300</sup> Hyderabad encounter: SIT gives clean chit to forces, PAGD says ‘old story’ repeated (*The Hindustan Times*, 28 December 2021) <<https://www.hindustantimes.com/india-news/hyderabad-encounter-sit-gives-clean-chit-to-forces-pagd-says-old-story-101640707691686.html>>

<sup>301</sup> Civilians among four killed in Kashmir, families demand bodies (Aljazeera, 17 November 2021) <<https://www.aljazeera.com/news/2021/11/17/india-kashmir-civilians-killed-human-shields>>

<sup>302</sup> Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. Reference AL IND 11/2020 (1 July 2020) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25346>>

<sup>303</sup> Centre halts probe in over 10,500 allegations of human rights violations against security forces in Kashmir (*First Post*, 16 August 2019) <<https://www.firstpost.com/india/centre-halts-probe-in-over-10500-allegations-of-human-rights-violations-against-security-forces-in-kashmir-8717041.html>>

<sup>304</sup> Centre halts probe in over 10,500 allegations of human rights violations against security forces in Kashmir (*First Post*, 16 August 2019) <<https://www.firstpost.com/india/centre-halts-probe-in-over-10500-allegations-of-human-rights-violations-against-security-forces-in-kashmir-8717041.html>>, 304.

<sup>305</sup> The Wire, J&K No Longer Has its Own Rights Body. Here's Why Experts Think That's a Bad Idea, 17 April 2020, <<https://thewire.in/rights/kashmir-human-rights-nhrc>>

### 3.3. Slow or No Response by the Judiciary

As described below, both the highest court of the land, the Supreme Court and the Jammu & Kashmir and Ladakh High Court have been slow in responding to victims and others seeking legal remedies.

#### (a) Supreme Court

There are significant legal and constitutional questions to the manner in which Article 370 was unilaterally revoked.<sup>306</sup> 25 petitions challenging the validity of the J&K Reorganisation Act, 2019, and the nullification of Article 370, remain pending before the Supreme Court despite requests by petitioners for early hearings due to the irreparable impact these two pieces of legislation would have on the rights of people in J&K.<sup>307</sup> With the first petition filed on 9 August 2019,<sup>308</sup> no decision has been taken for nearly three years at the time of writing this report. The petitions were referred to a five-judge Bench in August 2019 and the case was last listed on 2 March 2020.<sup>309</sup> In April 2022, the Supreme Court Bench once again postponed the hearing until July 2022, and thus far no substantial hearings have been

held on the issue of the constitutionality of the abrogation and related legislations.<sup>310</sup>

In a ruling on 10 January 2020 on petitions challenging the blanket internet shutdown, the Supreme Court deemed that access to internet was not an absolute right and could be restricted by the State, including through a ‘complete prohibition of speech in certain circumstances’.<sup>311</sup> The only relief offered by the Supreme Court was to request the government to conduct periodic reviews of whether internet shutdown was still necessary.<sup>312</sup> In contrast, various UN resolutions have stated that the same rights that people have offline must also be protected online, in particular freedom of expression, and called upon all States to promote and facilitate access to the internet.<sup>313</sup>

On the questions of rights of children, the Supreme Court hearing a plea seeking inquiry into the illegal incarceration of children by security forces since August 2019, dismissed the petition in December 2019, concluding that there had been no illegal detention at all.<sup>314</sup> This was despite the police in its own report to the SC claiming that some detainees were in fact minors.<sup>315</sup>

<sup>306</sup> Gautam Bhatia, ‘The Article 370 Amendments: Key Legal Issues’ (*Indian Constitutional Law and Philosophy Blog*, 5 August 2019) <<https://indconlawphil.wordpress.com/2019/08/05/the-article-370-amendments-key-legal-issues/>>

<sup>307</sup> Satya Prakash, ‘25 pleas challenging Art 370 abrogation pending in SC’ (*Tribune India*, 25 June 2021) <[www.tribuneindia.com/news/j-k/25-pleas-challenging-art-370-abrogation-pending-in-sc-273484](http://www.tribuneindia.com/news/j-k/25-pleas-challenging-art-370-abrogation-pending-in-sc-273484)>

<sup>308</sup> The Print, ‘A year & counting – clock ticking, but SC verdict yet awaited on over 20 pleas on Article 370 scrapping’, 3 January 2021, <<https://theprint.in/judiciary/a-year-counting-clock-ticking-but-sc-verdict-yet-awaited-on-over-20-pleas-on-article-370-scrapping/577946/>>

<sup>309</sup> Shruti Kakkar, ‘Article 370: Former MLA Tarigami Seeks Early Hearing Of Petitions In Supreme Court Challenging Abrogation Of J&K Special Status’ (*Live Law*, 28 August 2021) <[www.livelaw.in/top-stories/article-370-former-mla-tarigami-seeks-early-hearing-of-petitions-in-supreme-court-challenging-abrogation-of-jk-special-status-180470](http://www.livelaw.in/top-stories/article-370-former-mla-tarigami-seeks-early-hearing-of-petitions-in-supreme-court-challenging-abrogation-of-jk-special-status-180470)>

<sup>310</sup> The Wire, <<https://thewire.in/law/article-370-jammu-and-kashmir-supreme-court-pending>>

<sup>311</sup> V Venkatesan, ‘Verdict on Internet curbs in J&K in defence of free speech, but relief remains elusive’ (*Frontline*, 11 January 2020) <<https://frontline.thehindu.com/dispatches/article30542427.ece>>

<sup>312</sup> Apoorva Mandhani, ‘Must be temporary’ – what Supreme Court judgment says on Kashmir internet shutdown’ (*The Print*, 10 January 2020) <<https://theprint.in/judiciary/must-be-temporary-what-supreme-court-judgment-says-on-kashmir-internet-shutdown/347772/>>

<sup>313</sup> CCPR/C/GC/34 para. 12; UN General Assembly resolution 68/167; Human Rights Council Resolutions 26/13 and 32/13; Report by the Special Rapporteur on the Freedom of Expression A/HRC/35/22 paras. 76 and 77.

<sup>314</sup> Mahtab Alam, ‘J&K Police Denied Media Reports of Illegal Arrests of Minors. Its Own List Is Proof to Contrary’ (*The Wire*, 6 November 2019) <<https://thewire.in/rights/kashmir-minors-2>>

<sup>315</sup> Scroll, <<https://scroll.in/latest/946743/satisfied-with-jammu-and-kashmir-hc-panels-report-that-no-minors-are-illegally-detained-says-sc>>

## (b) High Court

Between 5 August 2019 and the end of June 2020, more than 600 *habeas corpus* petitions, a legal action seeking judicial review of the lawfulness of detention, were filed before the High Court of J&K at Srinagar but not even 1 per cent of such cases were decided.<sup>316</sup> On average, in cases where the detention order was finally quashed, the J&K High Court took between 211 and 252 days (around 7-8 months) to rule on the *habeas corpus* petition.<sup>317</sup> Over 30 per cent of the cases became moot because the government had released the detainee by the time their petition was heard in court while 65 per cent of the cases remained pending a year later; in other words, a year after the person was detained.<sup>318</sup> In addition, according to lawyers in Shopian District Court, many families have been hesitant to apply for the release of their detained family members for fear that they might be arrested under the PSA.<sup>319</sup> Attempts by concerned citizens to ban the use by security forces of pellet-firing shotguns against unarmed protesters were rejected by the J&K High Court in March 2020, arguing that the use of violence was inevitable when there is violence by unruly mobs.<sup>320</sup>

## IV. Groups and Actors Responsible

This section solely considers the conduct and involvement of state actors. With the passing of the Jammu and Kashmir

Reorganisation Act, 2019 (see description [above](#)), J&K is now a Union Territory (UT) under the direct control of the central government. The government directly appoints the Lieutenant Governor, who is the administrator and the representative of the President of India. Under the Act, J&K has been designated as a UT with a legislature, that is an exception from a typical UT administrative structure, which allows partial status of a state with a modicum of local representation, as per Article 239A of the Constitution of India.<sup>321</sup> However, no elections have taken place since 2019 for the J&K legislature to come into effect.

It must be noted that due to the long history of conflict with Pakistan and with non-state armed groups, J&K has a large and complex network of security apparatus in place.<sup>322</sup> Members of the Indian Army, paramilitary forces and the J&K Police Forces have had a large presence in the region, thus played a prominent role in committing the acts described in sections above. While the Army and central paramilitary forces are under the control of the central government, J&K state police forces are controlled by the Union Territory (UT) Administration.

Due to the UT Administration being directly under the rule of the Indian central government, with no elected government in place since August 2019, it is the central

<sup>316</sup> The Print, 99% habeas corpus pleas filed in J&K since Article 370 move are pending, HC Bar tells CJ, 28 June 2020, <<https://theprint.in/judiciary/99-habeas-corpus-pleas-filed-in-jk-since-article-370-move-are-pending-hc-bar-tells-cji/450281/>>

<sup>317</sup> Rhythm Buaria, 'Law, Liberty And The Lack Of Urgency In Dealing With Habeas Corpus Petitions By The Jammu & Kashmir High Court' (*Live Law*, 13 February 2021) <[www.livelaw.in/columns/jammu-and-kashmir-high-court-habeas-corpus-liberty-justice-writ-169807](http://www.livelaw.in/columns/jammu-and-kashmir-high-court-habeas-corpus-liberty-justice-writ-169807)>

<sup>318</sup> The Judicial Abrogation of Rights & Liberties in Kashmir (*Article 14*, 25 September 2020) <<https://www.article-14.com/post/the-judicial-abrogation-of-rights-liberties-in-kashmir>>

<sup>319</sup> Update on human rights violations in Indian-administered Jammu & Kashmir since August 2019, <[https://www.fidh.org/IMG/pdf/20190926\\_india\\_j\\_k\\_bp\\_en.pdf](https://www.fidh.org/IMG/pdf/20190926_india_j_k_bp_en.pdf)>

<sup>320</sup> Zulfikar Majid, 'J&K High Court refuses to ban use of pellet guns by security forces' (*Deccan Herald*, 11 March 2020) <[www.deccanherald.com/national/north-and-central/jk-high-court-refuses-to-ban-use-of-pellet-guns-by-security-forces-812797.html](http://www.deccanherald.com/national/north-and-central/jk-high-court-refuses-to-ban-use-of-pellet-guns-by-security-forces-812797.html)>

<sup>321</sup> The Gazette of India, <<https://egazette.nic.in/WriteReadData/2019/210407.pdf>>

<sup>322</sup> See above [Background and Historical Context](#).

government and the Union Ministry of Home Affairs that is in effective control of all law and order and security operations, while the Defence Ministry oversees the operations of the Indian Army. In addition, civil members of the central and UT administration, secretaries of relevant departments and field officers are responsible for enabling the security apparatus as well as specifically, ordering arbitrary detentions, under preventive detention laws. The following sub-sections deal with each of these commanding authorities and their involvement in the acts reported above in Part III in more detail.

### I. Ministry of Home Affairs, Government of India

The Ministry of Home Affairs (MHA, also known as the Home Ministry) of the Government of India is responsible for inter alia national internal security, border management and centre-state relations.<sup>323</sup> The Home Ministry is headed by the Home Minister who is supported by three Ministers of State and the Home Secretary, and numerous departments and divisions.<sup>324</sup> The Home Minister is one of the most senior officers in the Union Council of Ministers and the position is regarded as the third highest in seniority after the Prime Minister and Defence Minister.<sup>325</sup> Since 30 May 2019 the incumbent Home

Minister is Amit Shah.<sup>326</sup> Prior to that, Shah served as the President of the BJP, from 2014 to 2020, and has been a close aide of Prime Minister Modi.<sup>327</sup>

The Ministry of Home Affairs has a dedicated J&K Affairs Department, which is responsible for the following matters: legal and constitutional questions (including Article 370, autonomous statehood of J&K); political and security; counter-terrorism, counter-insurgency including implementation of legislations such as AFSPA, etc.<sup>328</sup>

Thus, acting in his capacity as Home Minister, on 5 August 2019, Mr Shah tabled the resolution for abrogation of Article 370 before the Indian Parliament.<sup>329</sup> Similarly, he also introduced a Reorganisation Bill in the Indian Parliament, seeking to divide the state into two UTs to be governed by a lieutenant governor and a unicameral legislature. A day before the resolutions were tabled, the Home Minister (who is responsible for law and order) met with the National Security Advisor Ajit Doval, and the Home Secretary (at the time) Rajiv Gauba in the lead-up to the abrupt internet shutdowns and mass arrests of mainstream political leaders reported on 5 August 2019 (see above).<sup>330</sup>

Since August 2019, as a Union Territory, the law and order of J&K falls under the

<sup>323</sup> Ministry of Home Affairs, Government of India, 'About Us - About the Ministry' <<https://www.mha.gov.in/about-us/about-the-ministry>>

<sup>324</sup> Ministry of Home Affairs, Government of India, 'About Us - About the Ministry' <<https://www.mha.gov.in/about-us/about-the-ministry>>

<sup>325</sup> Government of India, 'Who's Who - Council of Ministers' <<https://www.india.gov.in/my-government/whos-who/council-ministers>>

<sup>326</sup> India Today, 'Amit Shah takes charge as home minister: 5 challenges he faces ahead' (*India Today*, 1 June 2019) <<https://www.indiatoday.in/india/story/amit-shah-takes-charge-home-minister-5-challenges-he-faces-ahead-1540133-2019-06-01>>

<sup>327</sup> Ministry of Home Affairs, Government of India, 'Union Home Minister' <<https://www.mha.gov.in/about-us/meet-the-minister/union-home-minister>>; Business Standard, 'Who is Amit Shah' <<https://www.business-standard.com/about/who-is-amit-shah>>

<sup>328</sup> Division-wise Allocation (Ministry of Home Affairs) <<https://www.mha.gov.in/about-us/division-wise-allocation>>; <[https://www.mha.gov.in/sites/default/files/Divisionwiseallocation\\_04072017.pdf](https://www.mha.gov.in/sites/default/files/Divisionwiseallocation_04072017.pdf)>

<sup>329</sup> Article 370 Revoked: J&K Leaders Detained, PM Modi Praises Amit Shah (*The Wire*, 5 August 2019) <<https://thewire.in/security/kashmir-curfew-internet-house-arrest>>

<sup>330</sup> J&K: Amit Shah chairs meeting with officials, Kashmiri politicians meet at Farooq Abdullah's home (*Scroll.in*, 04 August 2019) <<https://scroll.in/latest/932795/home-minister-amit-shah-meets-nsa-ajit-doval-and-top-officials-amid-tensions-in-j-k>>

Department of Jammu, Kashmir and Ladakh Affairs of Ministry of Home Affairs.<sup>331</sup> The responsible officer for this department is the Additional Secretary (Piyush Goyal, as of December 2021). Goyal reports to the Home Secretary (Ajay Kumar Bhalla, as of December 2021) who is then accountable to Ministers of State and the Home Minister as the final authority over administration of the UT.<sup>332</sup> Moreover, the Ministry directly commands authority and control over Central Reserve Police Force (CRPF) and Border Security Force (BSF).<sup>333</sup> The CRPF's primary role lies in assisting the State/Union Territories in police operations to maintain law and order and counter insurgency,<sup>334</sup> while the BSF serves as India's border guarding organisation on its border with Pakistan.<sup>335</sup>

## 2. Central Reserve Police Force (CRPF)

The CRPF derives its mandate from the Central Reserve Police Force Act, 1949 (CRPF Act).<sup>336</sup> It functions under the authority of the Ministry of Home Affairs.<sup>337</sup> The CRPF website states that its role consists of crowd and riot control, counter militancy / insurgency operations, dealing with 'Left Wing Extremism' and co-ordination of large-scale security arrangement

especially with regard to elections in disturbed areas, among others.<sup>338</sup>

The Director General of the Force is the head of the CRPF and appointed by the Central Government, Ministry of Home Affairs.<sup>339</sup> The Director General must administer the Force in accordance with the instructions of the Home Minister and Ministry of Home Affairs.<sup>340</sup> All other officers, such as the Additional Director General as well as the Inspector General are subject to the supervision, control and directions of the Director General.<sup>341</sup>

The CRPF is one of the largest forces under the Central Armed Police Forces (CAPF).<sup>342</sup> The CAPF consists of seven central police organisations, including the Assam Rifles, Border Security Forces, Central Reserve Police Force, Central Industrial Security Force, Indo Tibetan Border Police, National Security Guard and Sashastra Seema Bal.<sup>343</sup>

As described above, members of the CRPF have been responsible for encounter killings in tandem with the military.<sup>344</sup>

## 3. J&K Union Territory Administration

Since the reorganisation of Jammu & Kashmir, and still under the President's rule, the administrative set up is headed by

<sup>331</sup> Jammu, Kashmir and Ladakh Affairs (*Ministry of Home Affairs*) <[https://www.mha.gov.in/division\\_of\\_mha/Jammu-Kashmir-and-Ladakh-Affairs](https://www.mha.gov.in/division_of_mha/Jammu-Kashmir-and-Ladakh-Affairs)>

<sup>332</sup> Jammu, Kashmir and Ladakh Affairs (*Ministry of Home Affairs*) <[https://www.mha.gov.in/division\\_of\\_mha/Jammu-Kashmir-and-Ladakh-Affairs](https://www.mha.gov.in/division_of_mha/Jammu-Kashmir-and-Ladakh-Affairs)>

<sup>333</sup> Central Armed Police Forces (*Ministry of Home Affairs*) <<https://www.mha.gov.in/about-us/central-armed-police-forces>>

<sup>334</sup> [The Central Reserve Police Force Act, 1949.](https://www.mha.gov.in/sites/default/files/crpf_rules1955.pdf)

<sup>335</sup> [The Border Security Force Act, 1968 No. 47 of 1968.](https://indiankanoon.org/doc/1033710/)

<sup>336</sup> The Central Reserve Police Act, 1949, <<https://indiankanoon.org/doc/1033710/>>

<sup>337</sup> The Central Reserve Police Force Rules/Regulations/Scheme,1955 (Ministry of Home Affairs (Department of Central Reserve Police Force) <[https://www.mha.gov.in/sites/default/files/crpf\\_rules1955.pdf](https://www.mha.gov.in/sites/default/files/crpf_rules1955.pdf)>

<sup>338</sup> Introduction & Role of CRPF (*Central Reserve Police Force*) <<https://crpf.gov.in/role-of-crpf.htm>>

<sup>339</sup> Section 4(1) CRPF Act.

<sup>340</sup> The Central Reserve Police Force Rules/Regulations/Scheme,1955 (Ministry of Home Affairs

(Department of Central Reserve Police Force) <[https://www.mha.gov.in/sites/default/files/crpf\\_rules1955.pdf](https://www.mha.gov.in/sites/default/files/crpf_rules1955.pdf)>

<sup>341</sup> Introduction & Role of CRPF (*Central Reserve Police Force*) <<https://crpf.gov.in/writereaddata/images/CRPFRULES.pdf>>

<sup>342</sup> History of CRPF (*Central Reserve Police Force*) <<https://crpf.gov.in/history-crpf.htm>>

<sup>343</sup> Website of Ministry of Home Affairs, Central Armed Police Forces, <<https://www.mha.gov.in/about-us/central-armed-police-forces>>; <<https://www.mha.gov.in/sites/default/files/OM2-020513.pdf>>

<sup>344</sup> See above [Killings](#).

the Lieutenant Governor,<sup>345</sup> supported by advisors, who are all political appointees of the central government, with portfolios (different administrative departments) distributed among them. Each department is headed at the administrative level by permanent secretaries, with a chief secretary being the head of the permanent bureaucracy, and the principal administrative liaison with the Lieutenant Governor.

The Home Department and Law, Justice, and Parliamentary Affairs Department are charged with relevant laws, policies, as well as enabling human and financial resource required for implementing laws and policies and programmes.<sup>346</sup> The Home Department's charge is the entire law and order machinery of J&K, which includes matters involving local police, detentions and prosecutions, as well as its liaison with central security agencies, including the army and paramilitary forces.<sup>347</sup> The Law, Justice and Parliamentary Affairs Department is responsible for maintaining the legal framework and liaison with relevant legislative bodies. Like all other departments, they are both headed by senior Indian Administrative Service Officers. The current Lieutenant Governor of J&K is Manoj Sinha, assisted by Chief Secretary Arun Kumar Mehta. The two civil officers who are in-charge of the Home and Legislative Affairs Departments are Additional Chief Secretaries Raj Kumar

Goyal<sup>348</sup> and Achal Sethi<sup>349</sup> respectively (as of May 2022).

#### 4. Divisional Commissioners and District Magistrates

As described above, the J&K police have been responsible for arbitrary detentions and arrest under the national security laws, such as the UAPA, use of pellet guns against protesters and civilians, custodial deaths, torture and encounter killings of suspected militants.

The Union Territory is divided into administrative divisions and further into administrative districts, the latter being the basic unit of administration. Divisions are headed by Divisional Commissions and districts by Deputy Commissioners, who perform their law and order function, including in quasi-judicial roles as District Magistrates.

Under Section 8(2) of the PSA, detention orders are issued by the Divisional Commissioners (DC) or District Magistrates (DM), which are then executed by the J&K police. In this function, DC and DM are part of the executive branch with the DM reporting to the DC. Section 22 of the Act grants immunity from prosecution to any officer for actions taken under the Act.

The district specific lockdowns due to Covid or under Section 144 of the Code of Criminal Procedure<sup>350</sup> are also declared by the DM<sup>351</sup>

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<sup>345</sup> Organisational Chart of the General Administration Department of the Jammu & Kashmir Administration <[https://jkgad.nic.in/leftMenu/Organization\\_Chart.aspx](https://jkgad.nic.in/leftMenu/Organization_Chart.aspx)>

<sup>346</sup> Orders (Department of Law, Justice and Parliamentary Affairs) <<http://www.jklaw.nic.in/>>

<sup>347</sup> Distribution of work (Home Department) <<http://www.jkhome.nic.in/Distributionofwork.html>>

<sup>348</sup> Contact list (Home Department) <<http://www.jkhome.nic.in/contactlist.html>>

<sup>349</sup> Orders (Department of Law, Justice and Parliamentary Affairs) <<http://www.jklaw.nic.in/>>

<sup>350</sup> Order under section 144 of the criminal procedure for the safety and security of the general public of the union territory of Jammu and Kashmir <<https://cdn.s3waas.gov.in/s3918317b57931b6b7a7d29490fe5ec9f9/uploads/2022/04/2022040685.pdf>>

<sup>351</sup> Order under section 144.

and communication shutdowns are declared by the Principal Secretary,<sup>352</sup> who is an officer of the Indian Administrative Services and who reports to the Chief Secretary, who in turn reports to the Lieutenant Governor,<sup>353</sup> who falls under the ultimate control and authority of the Home Minister.

## 5. Jammu and Kashmir Police

The Jammu and Kashmir Police also comes under the administrative control of the Home Department of the J&K Administration, headed by the Lieutenant Governor with an administrative secretary at the top of its civil service hierarchy.<sup>354</sup> The newly created Department of Jammu Kashmir and Ladakh affairs of the central Ministry of Home Affairs is the overall controlling department for the J&K Police.<sup>355</sup>

The Jammu and Kashmir Police, a department under the J&K Home department, is headed by the Director General of Police (DGP).<sup>356</sup> The DGP is in charge of police administration which includes, besides operations and intelligence, recruitment, discipline, internal economy and administration in the State of J&K.<sup>357</sup> The J&K State has been divided into two Zones, Jammu Zone and

Kashmir Zone, each headed by a Zonal Inspector General of Police (IGP) who is in-charge of law-and-order in the respective zones.<sup>358</sup> The two zones are further sub-divided into Ranges, each headed by an officer of the rank of a Deputy Inspector General of Police (DIG).<sup>359</sup>



Source: J&K Police Website, J&K Police Zones<sup>360</sup>

## 6. Indian Army and Ministry of Defence, Government of India

Ever since the partition of India, the Indian Army has been deployed in the region due to sporadic but continuous border skirmishes between India, Pakistan and China, as well as for anti-insurgency operations.<sup>361</sup> The highest ranking officer of the Indian Army is the Chief of Army Staff,<sup>362</sup> who is the advisor to the Ministry of Defence as well as the President of India,

<sup>352</sup> Temporary suspension of Telecom Services - directions reg; Government Order No: Home - 05 - (TSTS) of 2020 Dated: 24.01.2020 (Government of Jammu and Kashmir Home Department) <[http://jkhome.nic.in/pdf/Home-05\(tsts\)%20of%202020\\_0001.pdf](http://jkhome.nic.in/pdf/Home-05(tsts)%20of%202020_0001.pdf)>

<sup>353</sup> Organisational Chart of General Administration Department <<https://www.jkgaad.nic.in/pdf/OrgChart.pdf>>

<sup>354</sup> General Overview Of J&K Police Organisational Structure (Jammu and Kashmir Police) <<http://www.jkpolice.gov.in/Organisation-Structure>>

<sup>355</sup> Jammu, Kashmir and Ladakh Affairs (Ministry of Home Affairs) <[https://www.mha.gov.in/division\\_of\\_mha/Jammu-Kashmir-and-Ladakh-Affairs](https://www.mha.gov.in/division_of_mha/Jammu-Kashmir-and-Ladakh-Affairs)>

<sup>356</sup> General Overview Of J&K Police Organisational Structure (Jammu and Kashmir Police) <<http://www.jkpolice.gov.in/Organisation-Structure>>

<sup>357</sup> Jammu & Kashmir Police Formations (Jammu and Kashmir Police) <<http://jkpolice.gov.in/Police-Formations>>

<sup>358</sup> General Overview Of J&K Police Organisational Structure (Jammu and Kashmir Police) <<http://www.jkpolice.gov.in/Organisation-Structure>>

<sup>359</sup> Chapter 2 Particulars of Organisation, Functions and Duties, RTI Act 2009

Handbook of Information under the Right to Information Act 2009 <<http://www.jkpolice.gov.in/Files/Public-Services/RTI-ACT/RTI-POFD.pdf>>

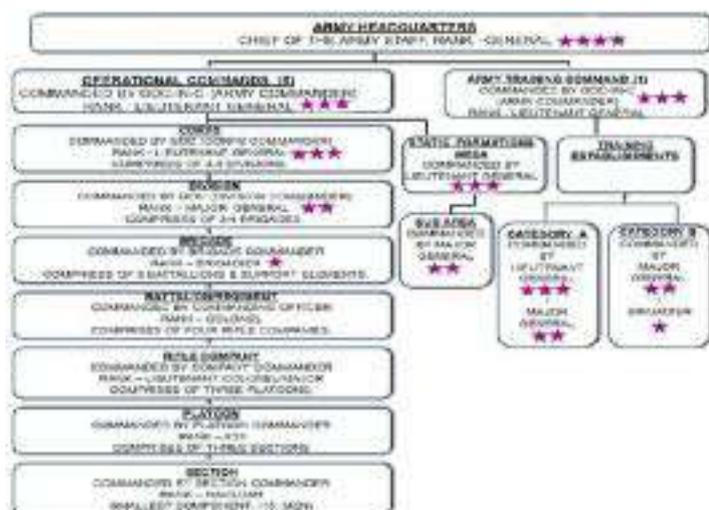
<sup>360</sup> General Overview Of J&K Police Organisational Structure (Jammu and Kashmir Police) <<http://www.jkpolice.gov.in/Organisation-Structure>>

<sup>361</sup> See above [Background and Historical Context](#).

<sup>362</sup> Website of Indian Army, Organisation of Ministry of Defence, <<https://indianarmy.nic.in/site/formTemplate/frmtempimple.aspx?MnId=L6Y8gW9Cx+8+vuYiqorqfA=&ParentID=Ru0+vVM57FirJYXrHRLBHA==>>>

the Supreme Commander of the Defence forces.

The responsibility for national defence rests with the Cabinet. This is discharged through the Ministry of Defence, which provides the policy framework and wherewithal to the Armed Forces to discharge their responsibilities in the context of the defence of the country. The Raksha Mantri (Defence Minister) is the head of the Ministry of Defence. While the Chief of Army Staff has operational control over the Indian Army, the Ministry of Defence is responsible for policy and budget matters.<sup>363</sup>



Source: The Structure of the Indian Army on the Indian Army Website<sup>364</sup>

The powers of the Indian army in J&K are wide-ranging: Under the AFSPA, an officer of an area that has been designated as ‘disturbed’ enjoys special powers under

Section 4 that allow for firing and use of force, arrests without warrant and extremely wide search and seize powers.<sup>365</sup> The power to declare areas as disturbed has been granted under Section 3 to the Governor of the State or the Central Government by notification in the Official Gazette. All of Kashmir Valley and parts of the rest of the UT are ‘disturbed’ areas.

## 7. Rashtriya Rifles

The Rashtriya Rifles are a counter-insurgency force, created in the 1990s, that form one of the branches of the Indian Army. They are headed by the Additional Director General of the Rashtriya Rifles and consist entirely of soldiers of the Indian Army, who are made to undergo special training to deal with insurgents at high altitudes. The Rashtriya Rifles are currently deployed in the Union Territories of Jammu and Kashmir and Ladakh and comprise 65 battalions.<sup>366</sup> They routinely carry out search operations, raids and seizures.<sup>367</sup> As described above, members of the Rashtriya Rifles have been allegedly responsible for encounter killings of suspected militants as well as torture and arbitrary detentions.

## V. Legal Analysis

### I. International Human Rights Law

Based on the reports examined by the Panel, the following provisions under international human rights law treaties

<sup>363</sup> About the Ministry (Ministry of Defence) <<https://www.mod.gov.in/about--ministry>>

<sup>364</sup> Structure of the army (*Indian army*)

<<https://indianarmy.nic.in/site/formTemplate/frmTempSimple.aspx?MnId=3AzZJlrjSjmC8o9mdujeoA==&ParentID=XL8vDEcHfkTMUxmvMeS5v0==&flag=8CKP966uze96kLov0aWdf0==>>

<sup>365</sup> The Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 Act No. 21 Of 1990 [10th September, 1990.]

<[https://www.mha.gov.in/sites/default/files/The%20Armed%20Forces%20%28Jammu%20and%20Kashmir%29%20Special%20Powers%20Act%2C%201990\\_0.pdf](https://www.mha.gov.in/sites/default/files/The%20Armed%20Forces%20%28Jammu%20and%20Kashmir%29%20Special%20Powers%20Act%2C%201990_0.pdf)>

<sup>366</sup> The Military Balance, 2010, The International Institute for Strategic Studies, 361.

<sup>367</sup> The Eurasian Times, <<https://eurasianimes.com/rashtriva-rifles-indian-armys-elite-counter-insurgency-unit-vows-revenge/>>

and customary international law are applicable on the situation in J&K from August 2019 onwards.

### **I.1. Right to life**

The right to life and to not be ‘arbitrarily deprived’ thereof is enshrined in Article 3 Universal Declaration of Human Rights (UDHR) and Article 6(1) International Covenant on Civil and Political Rights (ICCPR). Arbitrary deprivation of life is understood as an action that lacks a legal basis or is otherwise inconsistent with protecting laws and procedures, including when it is not strictly necessary in view of the threat posed by the attacker or disproportionate to the threat.<sup>368</sup> The notion of ‘arbitrariness’ includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>369</sup> The use of force by law enforcement officials should be exceptional,<sup>370</sup> and assemblies should ordinarily be managed with no resort to force. The only circumstances warranting the use of force and firearms during demonstrations is the imminent threat of death or serious injury, i.e. in self-defence.<sup>371</sup>

In response to protests, use of pellet guns and tear gas resulting in deaths and serious injuries of civilians described above

amounts to excessive use of force by law enforcement officials.<sup>372</sup> Similarly, at least two custodial deaths were reported since 2019 as a result of the mistreatment and use of force in detention.<sup>373</sup> In neither of the situations, the use of force by the army or police officers could be claimed to be necessary or proportional. It is of particular concern that as per the information available publicly none of the deaths resulting from excessive use of force have been subjected to thorough, prompt and effective investigations.<sup>374</sup> We believe these allegations must be investigated further as there is credible evidence to suggest that they may amount to violations of right to life.

### **I.2. Prohibition of arbitrary arrest or detention**

As enshrined in Articles 3 and 9 of UDHR, and 9(1) ICCPR arbitrary detention is understood as any form of confinement that has no legal basis, violates domestic law or due process of law, or is unreasonable, unnecessary or disproportionate.<sup>375</sup> The right also includes the right to know the reasons for one’s detention and charges, if any,<sup>376</sup> the right to be brought before a judge within a reasonable time following arrest or detention, and the right to appeal to a court of law to review the arrest or detention.<sup>377</sup> Deprivation of liberty resulting from the

<sup>368</sup> UN Human Rights Committee (HRC), General Comment no. 36, Article 6 (Right to Life), 3 September 2019, [CCPR/C/GC/36](#), para. 11 and 12.

<sup>369</sup> UN Human Rights Committee (HRC), General Comment no. 36, Article 6 (Right to Life), 3 September 2019, [CCPR/C/GC/36](#), para 10.

<sup>370</sup> See the [commentary](#) to Article 3 of the Code of Conduct for Law Enforcement Officials.

<sup>371</sup> Joint Report of the Special Rapporteurs on rights to freedom of peaceful assembly, association etc., [A/HRC/31/66](#), paras. 57 and 58. The use of lethal force *in self-defence* would *not* constitute an arbitrary deprivation of life only under the following conditions: i) must be strictly necessary in view of the threat posed by the attacker; ii) it must represent a method of last resort after other alternatives have been exhausted or deemed inadequate; iii) the amount of force applied cannot exceed the amount strictly needed for responding to the threat; iv) the force applied must be carefully directed, only against the attacker; and v) the threat responded to must involve imminent death or serious injury. HRC, General Comment 36, [CCPR/C/GC/36](#), para. 10 and 12.

<sup>372</sup> See above [Deaths during Protests and Use of Pellet Guns](#).

<sup>373</sup> See [Case List A: Torture as Crime Against Humanity](#).

<sup>374</sup> See Communications by UN Special Rapporteurs [UA IND 4/2021](#) (31 March 2021).

<sup>375</sup> HRC, General Comment 35: Article 9 (Liberty and security of person), UN doc. [CCPR/C/GC/35](#) (16 December 2014).

<sup>376</sup> Article 9(2) ICCPR.

<sup>377</sup> Article 9 (4) ICCPR.

exercise of the rights or freedoms guaranteed by the ICCPR is arbitrary.<sup>378</sup> Due to this heightened duty of care, authorities must take all necessary measures to protect the lives of individuals deprived of their liberty. The duty to protect the life of all detained individuals includes providing them with necessary medical care and appropriately regular monitoring of their health.<sup>379</sup>

As highlighted above, the PSA and UAPA have reportedly been widely and systematically used by the authorities in J&K to stifle dissent and target human rights defenders, journalists, political leaders and people involved in protests.<sup>380</sup> In many of these cases, fundamental rights of the defendant were violated, such as the refusal of legal representation or detention without charges. In addition, most arrests and detentions were in violation of the international fair trial rights due to their vague grounds for detention and the possibility of prolonged detentions without bail, rendering the detention arbitrary.<sup>381</sup>

### **1.3. Prohibition of torture and cruel, inhuman or degrading treatment or punishment**

The prohibition is enshrined in Article 5 UDHR and Article 7 ICCPR. Torture is understood as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person

for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.<sup>382</sup>

The treatment of civilians in the days following the abrogation of Article 370 amounts to torture.<sup>383</sup> The cases described in [Case List A](#) and [Case List B](#) show that the physical abuse meted out to the victims including minors, resulted in severe physical and mental pain or suffering, including broken limbs, loss of consciousness and other serious injuries. These abuses were inflicted by the officials of the Indian army, paramilitary forces or the police.

The way in which the victims were gathered in a public place or called to the army camps, and that their screams were broadcasted through loudspeakers, clearly shows that the abuse was inflicted with the intention to intimidate the residents of the valley and prevent them from initiating or participating in protests against the abrogation of the special status of Kashmir. In one of the cases, the victims were released on undertaking by the neighbourhood residents that they would not protest indicating an intention to intimidate. Acts of torture against human rights defenders during interrogation further reinforce the claim that torture is being used as a tactic in J&K to silence

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<sup>378</sup> General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>.

<sup>379</sup> HRC, General Comment no. 36, Article 6 (Right to Life), 3 September 2019, [CCPR/C/GC/35](#); Human rights in the administration of justice - Report of the United Nations High Commissioner for Human Rights [A/HRC/42/20](#).

<sup>380</sup> See above [Detentions and Arrests](#).

<sup>381</sup> Communication by UN mandate holders to the Government of India [UA IND 4/2020](#) (27 February 2020); [UA IND 4/2021 \(31 March 2021\)](#); [AI IND 9/2021 \(3 June 2021\)](#).

<sup>382</sup> Article 1 [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), 1984 (CAT).

<sup>383</sup> Communications by UN Special Rapporteurs [UA IND 4/2021](#) (31 March 2021); [UA IND 6/2020](#) (4 May 2020).

dissent and opposition to the government. In addition, the targeting of civilians suspected of links with separatist militants were intended to punish the victims or coerce them into becoming informers. In view of these factors, the Panel believes that credible information exists to indicate that the state armed forces have violated the prohibition of torture, and cruel, inhuman or degrading treatment or punishment.

#### **1.4. Freedoms of peaceful assembly**

The right to freedom of association and peaceful assembly is recognised under Articles 21 and 22 of the ICCPR. The States have the obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others seeking to exercise or promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligation under international human rights law.<sup>384</sup>

As set out above, in the lead-up to 5 August 2019, any gatherings of more than four people were prohibited in the Kashmir Valley and Kargil.<sup>385</sup> Such blanket bans on the right to freedom of peaceful assembly are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed

assembly.<sup>386</sup> Moreover, they were imposed selectively in only those regions affected by the abrogation of special status that were primarily inhabited by Muslims. The imposition of curfew only in places in J&K with a Muslim majority, but not in Jammu with a Hindu majority, indicates discriminatory limitations on the freedom of assembly. As noted by UN Special Rapporteurs, such measures constitute restrictions on the freedom of assembly.<sup>387</sup>

#### **1.5. Freedom of expression and opinion**

The freedom of expression and opinion is guaranteed under Article 19 of the ICCPR. Under international human rights law, any restriction on the exercise of the right must be provided by law and be necessary and proportionate to the aim pursued. Particularly, certain types of expression should never be subject to restrictions. These include discussion of government policies and political debate; reporting on human rights and/or government activities; and engaging in peaceful demonstrations or political activities.<sup>388</sup> Similarly, the right to freedom of association and assembly is recognised under Articles 21 and 22 of the ICCPR. The States have the obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others seeking to exercise or promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the

<sup>384</sup> Resolution 24/5 of the HRC.

<sup>385</sup> See above [Restrictions on Civic Space](#).

<sup>386</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, [A/HRC/23/39](#), para. 63.

<sup>387</sup> Communications by UN Special Rapporteurs AL IND [21/2020](#) (17 February 2020).

<sup>388</sup> HRC Resolution 12/16 para. 5(p) (i), <https://www.right-docs.org/doc/a-hrc-res-12-16/>

rights to freedom of peaceful assembly and of association are in accordance with their obligation under international human rights law.<sup>389</sup>

The communication blackout (described [above](#)) imposed on Kashmir from the night of 4 August 2019 to January 2020 that banned internet access, mobile phone networks, phone landlines, and cable and Kashmiri television channels is a violation of the freedom of expression and opinion. Despite the Supreme Court's ruling that such a complete shutdown was legitimate,<sup>390</sup> UN experts characterised the shutdown as 'inconsistent with the fundamental norms of necessity and proportionality' amounting to 'a form of collective punishment of the Kashmiri people...without even the pretext of a precipitating offence'.<sup>391</sup>

As described above, independent media was hampered through a new restrictive media policy, criminal charges and arrests of journalists, and raids of news outlets.<sup>392</sup> The goal was to ultimately deter other journalists and civil society from reporting on issues of public interest and human rights in the region. UN Special Rapporteurs have found this conduct to restrict freedom of expression.<sup>393</sup> In addition, civil society organisations have been banned or their operations interrupted in an attempt to silence critical

voices.<sup>394</sup> These acts do not meet the requirements of necessity and proportionality to justify any restrictions on freedom of speech and expression, thus violate India's obligations under ICCPR.

### 1.6. Right to fair trial

The right to a fair trial is guaranteed under Article 14(2) ICCPR and 11(1) UDHR. With respect to counter-terrorism measures to restrict the legitimate exercise of other rights, they must be strictly guided by the principles of legality, necessity and proportionality.<sup>395</sup> International human rights standards applicable under Article 15(1) ICCPR read with Article 11 UDHR which provide for the principle of legality. This principle requires that criminal laws must be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequences of committing such an offence. This principle recognises that ill-defined and/or overly broad laws are open to arbitrary application and abuse.<sup>396</sup>

The misuse of the UAPA to detain civilians (as described [above](#)) does not meet the requirements of legality, necessity and proportionality and violates the right to fair trial. The same framework is being used to conflate human rights work as terrorist activity and, once put on trial, human rights activists are being denied

<sup>389</sup> Resolution 24/5 of the HRC, <<https://cambodia.ohchr.org/sites/default/files/Relevants/HRC%20reso%2024-5%20on%20FAA%20dated%2026%20September%202013.pdf>>

<sup>390</sup> V Venkatesan, 'Verdict on Internet curbs in J&K in defence of free speech, but relief remains elusive' (*Frontline*, 11 January 2020)

<<https://frontline.thehindu.com/dispatches/article30542427.ece>>

<sup>391</sup> 'UN rights experts urge India to end communications shutdown in Kashmir', (*United Nations Office of the High Commissioner for Human Rights*, 22 August 2019). <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24909&LangID=E>>

<sup>392</sup> See above [Restrictions on Civic Space](#).

<sup>393</sup> [AL IND 21/2020](#) (10 February 2021); [AL IND 9/2021](#) (3 June 2021); [AL IND 20/2020](#) (22 December 2020); [AL IND 6/2020](#) (4 May 2020).

<sup>394</sup> See above [Restrictions on Civic Space](#).

<sup>395</sup> United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288, annex),

<<https://www.jewishvirtuallibrary.org/un-general-assembly-resolution-60-288-september-2006>>

<sup>396</sup> A/70/371, para 46(c), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/284/90/PDF/N1528490.pdf?OpenElement>; A/73/361, para 34, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/274/67/PDF/N1827467.pdf?OpenElement>.

guarantees of due process as mandatory under international human rights law. In addition, the ban on religious organisations and civil society organisations under UAPA without any recourse to judicial review appears arbitrary.

The PSA (describe [above](#)) is vaguely defined, allows arrests without serving arrest warrants, and does not provide for a mandatory judicial review of detention, and in many cases the families are unaware of the location of the detainees. The Act thus allows authorities to take measures without respecting the criminal legal system in place in the region, as cases of people being detained after paying bail or being subjected to a second arrest after the first one was cancelled by the judicial authority, creating a ‘revolving-door detention’ system.<sup>397</sup>

On all these counts, large-scale detentions under PSA made by state authorities to prevent unrest constitute a violation of the right to a fair trial. Moreover, these policies, only enacted in a region where Muslims represent the majority of the population, can only contribute to the targeted discrimination exercised by the authorities on a national scale towards Muslim people.

### 1.7. Right to equality

The prohibition of discrimination on the grounds of religion is enshrined in Article 2(1) ICCPR, Article 2(2) ICESCR and Article 5 of ICERD. The obligation to not discriminate is understood in light of Article 26 of ICCPR which stresses that all persons are equal

before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as religion. Moreover, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides that states shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.<sup>398</sup>

It can be argued that while other states, with similar status, have been allowed to preserve their special autonomy under the Constitution with protections for their native ethno-linguistic groups, the former state of J&K, as the only state in India where Muslims form the greater part of the population, may have been singled out because of this.<sup>399</sup> As has been noted by UN mandate holders, the abolition of constitutional autonomy under Article 370 and implementation of Domicile Rules and other legislations, ‘suggests that the population of Jammu & Kashmir, and particularly its minority communities, are treated less favourably than minorities in other parts of the country’.<sup>400</sup> A specific instance of such singling out of J&K was recently also challenged before the Supreme Court of India. In March 2022, a petition was filed arguing that delimitation of the region that was being carried out as

<sup>397</sup> Amnesty International India ‘Tyranny of a ‘Lawless Law’ <[https://www.amnesty.be/IMG/pdf/tyranny\\_of\\_a\\_lawless\\_law\\_-\\_briefing.pdf](https://www.amnesty.be/IMG/pdf/tyranny_of_a_lawless_law_-_briefing.pdf)> (2019) 29-30.

<sup>398</sup> Article 1(1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.

<sup>399</sup> [AL IND 21/2020](#) (10 February 2021).

<sup>400</sup> Reference [IND \(21.2020\) \(ohchr.org\)](#), 10 February 2021.

a result of aforementioned amendments was violative of the right to equality as delimitation has been frozen for the rest of India until 2026 and there are no reasonable or objective grounds for why J&K should be treated differentially.<sup>401</sup>

Thus, the materials brought before us suggest that the right to equality of the people of Kashmir may have been violated as the preferential treatment given to minorities within the rest of the state is not being offered to the people in J&K, arguably based on their religious identity. They are being singled out without any justifiable differentiating criterion offered by the state.

### **1.8. Right to health**

The right to health as provided under Article 12 ICESCR, Article 24 CRC and Article 5(e) (iv) ICERD imposes on States the obligation to respect, protect and fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons to health services.<sup>402</sup>

As described above, the long communication shutdowns and curfews had significant impact on the physical and mental health of the people in the Kashmir Valley.<sup>403</sup> This has led to an indirect violation of India's obligation to protect the

right to mental and physical health of people living in the Kashmir Valley. Moreover, the right to health was violated due to the negative impact of restrictions on Covid-19 crisis management.

### **1.9. Right to education**

The right to education is recognised under Article 13 of the ICESCR which ensures that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

As mentioned above, with the imposition of shutdown from August 2019 onwards, education was also disrupted on a large scale.<sup>404</sup> These excessive restrictions impacted students in Kashmir disproportionately and in a discriminatory manner.

### **1.10. Right to work**

The right to work and livelihood is recognised in Article 6(1) of ICESCR, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

As set out above, the livelihood consequences of the shutdown of August 2019 were severe.<sup>405</sup> Non-discrimination is a cross-cutting obligation for all the rights guaranteed under ICESCR. The

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<sup>401</sup> Petition challenges J&K delimitation for violation of right to equality (*The Economic Times*, 29 March 2022) <<https://economictimes.indiatimes.com/news/india/petition-challenges-jk-delimitation-for-violation-of-right-to-equality/articleshow/90526469.cms?from=mdr>>

<sup>402</sup> E/C.12/2000/4, para. 34.

<sup>403</sup> See above [Lockdown and Communication Shutdown](#).

<sup>404</sup> See above [Lockdown and Communication Shutdown](#).

<sup>405</sup> See above [Lockdown and Communication Shutdown](#).

aforementioned legislative and executive acts have not only arbitrarily deprived people of their livelihood and work but also discriminated against those at the intersections of vulnerability in the Kashmir Valley.

### **I.II. Right to effective remedy**

The right to effective remedy for any serious violations of human rights is enshrined in Article 2(3) ICCPR. The obligation to respect, ensure respect for and implement international human rights law, includes, inter alia, the duty to: (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations; (b) investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; (c) provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) provide effective remedies to victims, including reparation.

In J&K, none of the four aspects of the right to effective remedy are being adequately addressed:

- Despite repeated calls by national and international institutions, including the OHCHR, the AFSPA which stands in the way of investigations and prosecutions (see [above](#)) has not been repealed or

amended. Legislative changes in these actions could have significant impact in disincentivising excessive use of force and other related violations carried out by the armed forces, as identified above.

- As set out above, in the period under review, magistral inquiries have been ineffective in investigating alleged abuses by the police or military.<sup>406</sup> There have been no reports of effective, prompt and thorough investigations or prosecutions by any other independent body. To the contrary, the State Human Right Commission was closed.<sup>407</sup>
- *Habeas corpus* petitions before the J&K High Court, a form of remedy for arbitrary detentions, have also proven to be ineffective due to delays in deciding on them.<sup>408</sup>
- Measures such as reparations have not been reported even in cases involving serious human rights violation.

Emblematic cases of this denial of effective remedy are the Supreme Court's dismissal of Masooda Parveen's writ, demanding compensation for the custodial killing of her lawyer husband<sup>409</sup>; as well as of allowing the armed forces to try personnel accused of gross human rights violations in their own military courts rather than in

<sup>406</sup> See above [Lack of Investigations and Prosecutions](#).

<sup>407</sup> See above [Closure of State Human Rights Commission](#).

<sup>408</sup> See above [Slow or No Response by Judiciary](#).

<sup>409</sup> Countering Patriarchy, one feminist judgement at a time. (Newslick, 9 October 2018) <<https://www.newslick.in/countering-patriarchy-one-feminist-judgement-time>

civilian courts, in the Pathribal<sup>410</sup> and Zahid Shaikh<sup>411</sup> cases.<sup>412</sup>

The judicial response of the Supreme Court has been passive also in the matter concerning abrogation of special status of J&K by way of a constitutional amendment. Dozens of petitions challenging the constitutionality of the abrogation, dilution of Article 370 and subsequent bifurcation of the state were filed in August 2019. The Supreme Court not only refused to issue a stay order as an interim relief, but also has not held any substantial hearings on this constitutional question for almost three years.<sup>413</sup> Similarly, the decision by the Supreme Court to allow the blanket communication shutdown of Kashmir for months also appears concerning.

At the international level, India has refused to engage with reports raising violations of international human rights in J&K. The OHCHR's detailed reports on the human rights situation in Kashmir – the first of its kind, published in 2018 and July 2019 – were dismissed by the Indian government as a 'violation of India's sovereignty and territorial integrity', and accused of being filled with 'bias and prejudice' and 'false and motivated narrative'.<sup>414</sup>

## 2. International Criminal Law

The factual findings above can be categorised into two distinct sets of facts: (1) the treatment of people opposing or perceived to oppose the abrogation of Art. 370, and (2) the treatment of civilians suspected to be separatist militants in the confrontation between armed non-state separatist groups and India. This section assesses these two sets of facts separately as they may give rise to different international crimes.

### 2.1. Crimes Against Humanity

There is credible evidence to suggest that crimes against humanity, as defined in Article 7 of the Rome Statute of the International Criminal Court,<sup>415</sup> were committed by members of the armed forces and the police starting on 4 August 2019 and continuing at the time of writing this report, with the goal to suppress any opposition to the abrogation of Art. 370 which changed the autonomous status of J&K. To achieve this purpose, various entities of the state apparatus, including the police, military and local administration, resorted to unlawful and violent means. As a result of these concerted efforts, protests or any other expression of opposition to the Art. 370 abrogation was quelled at the outset.

<sup>410</sup> SC's Pathribal ruling, A set back for victims: Amnesty. (Hindustan Times, 2 May 2012) < <https://www.hindustantimes.com/india/sc-s-pathribal-ruling-a-setback-for-victims-amnesty/story-49miK14p1B3uFFqnHZvgzK.html>>

<sup>411</sup> Amnesty Report: The Zahid Farooq Shaikh case. (Kashmir Life, 1 July 2015). < <https://kashmirlife.net/amnesty-report-the-zahid-farooq-sheikh-case-81532/>>

<sup>412</sup> For a review of the failures of accountability in J&K, please see Amnesty International, 'Denied: Failures in accountability for human rights violations by security force personnel in Jammu & Kashmir'. 2015. < <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA2018742015ENGLISH.pdf>>

<sup>413</sup> The Wire, < <https://thewire.in/law/article-370-jammu-and-kashmir-supreme-court-pending>>. See above [Slow or No Response by Judiciary](#).

<sup>414</sup> Kallol Bhattacharjee, 'United Nations Human Rights Report Legitimises Cross-Border Terrorism: India' (*The Hindu*, 8 July 2019) < <https://www.thehindu.com/news/national/india-slams-un-rights-office-report-on-jk-as-continuation-of-false-narrative/article28320189.ece>>

<sup>415</sup> Rome Statute of the International Criminal Court, 1 July 2002, < <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>>

## (a) Underlying crimes

### i. Unlawful imprisonment

As set out above, 8,000 to 13,000 arrests and detentions were reported by NGOs since August 2019, including a large number of children, which could amount to imprisonment in violation of fundamental rules of international law as defined in Article 7(1)(e) of the Rome Statute (unlawful imprisonment).<sup>416</sup> In many of these cases, fundamental rights of the defendants were violated. As described in [Case List C](#), some victims were arrested and detained by security forces in violation of domestic laws, such as the refusal of legal representation or detention without charges. Others were detained on the basis of domestic national security laws that violate international fair trial rights due to their vague grounds for detention and the possibility of prolonged detentions without bail, such as the UAPA and the PSA. All victims were political figures, journalists and activists who were likely to voice criticism against the central government or did actually express it.

In cases number 1-6 listed in [Case List C](#), the victims were arrested and detained before they could express their opposition to the Art. 370 abrogation, for openly expressing criticism, or reporting on issues related to the abrogation. The arrests started on 4 August 2019, a day prior to the Art. 370 abrogation, and some have been held until the time of writing this report. It is noteworthy that in at least two cases, the victims were targeted following their

engagement with UN bodies to report on the human rights situation in J&K following the Art. 370 abrogation.<sup>417</sup>

### ii. Torture

NGOs have documented physical and mental abuse of civilians in the aftermath of 5 August 2019 that could amount to torture as defined in Article 7(1)(f) of the Rome Statute.<sup>418</sup> Nine representative examples of abuse and death at the hands of the police, set out in [Case List A](#), show that the victims were all Muslims and included activists but also members of the general public. In two cases, the victims were minors at the age of 14 and 15 respectively.

In all cases, the alleged perpetrators were members of the police. Most of the cases were allegedly committed while the victim was in the custody of the police. In one incident, several victims were first taken by police from their homes to a public place in front of a Mosque and attacked there. During this episode, the victims were not allowed to leave and thus were under the control of the police.

The common forms of physical and mental abuse consisted of being held at sub-zero temperatures, deprived of sleep, kicked, slapped, punched, beaten with rods/canes/gun butts/batons/cablewire, stripped naked, hung upside down or from a pole, electric shocks and waterboarding. In some cases, the abuse took on a sexualised form where the victim's skin around the penis was pulled with a plier or

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<sup>416</sup> See above [Detentions and Arrests](#).

<sup>417</sup> See cases 1 and 2 in [Case List C](#).

<sup>418</sup> See above [Abuse and Death in Custody](#).

several victims were piled up onto each other while naked or where the genitals were electrocuted. In two cases, it appears that the victims died as a consequence of the abuse suffered as family members witnessed severe injury marks on the body, even though the police claim that one committed suicide and the other died trying to escape. This goes to show that the police intentionally inflicted severe pain or suffering on the victim not arising from lawful sanctions. The statements of the alleged perpetrators and witnesses indicate that these abuses were committed either as punishment for suspected participation in protests or stone-pelting or as intimidation to the wider community to prevent protests.

### iii. Sexual violence

As mentioned above, in some instances the abuse in detention took on a sexualised form where the victim's skin around the penis was pulled with a plier or several victims were piled up onto each other while naked or where the genitals were electrocuted. These acts constitute sexual violence as defined in Article 7(1)(g) of the Rome Statute because they are acts of a sexual nature specifically targeting sexual organs and they were committed against the victims by force and within the coercive environment of detention. The severity of the pain and mental anguish inflicted and the impact on the dignity of the victim speak to the fact that they are of comparable gravity as, for instance, rape.

### iv. Persecution

An argument for persecution as defined in Article 7(1)(h) of the Rome Statute could be made since the victims of the crimes mentioned above were targeted based on their political opinion on the status of J&K and possibly their religion. As set out above, other violations of fundamental rights against the same group include infringement of freedom of expression and press and freedom of assembly and association in the form of prohibition of gatherings, banning of civil society organisations, and a complete communication black-out that shut down internet, mobile phones and TV broadcasting services between 5 August 2019 and January 2020, to suppress any organisation of protests or reporting of abuses.<sup>419</sup>

#### (b) Attacks against civilian population pursuant to state policy

The attacks encompass the multiple underlying crimes (see above) that were committed from 4 August 2019 onwards. All victims were civilians. The crimes were prepared and implemented in an organised manner (see below on [Systematic Nature](#)) which indicates a state policy. The state policy had the objective to prevent and suppress any opposition against the abrogation of Art. 370.

This forms part of a wider state policy in place since 1989 to violently suppress any opposition to the central government's control over the territory and people, as

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<sup>419</sup> See above [Lockdown and Communication Shutdown](#).

well as any expression, action or support to the movement for self-determination.<sup>420</sup> The period from 5 August 2019 onwards has seen an increase in intensity and scale of the oppression but the fundamental nature of the state policy has remained the same. The effective control lies with the political and military power at the central government. The system on the ground in J&K is organised, disciplined and follows a clear command structure. The state policy is implemented through militarisation<sup>421</sup> and control over the territory by the central armed forces as well as control by the central government over local political power.<sup>422</sup>

### (c) Systematic nature of the attack

The attack can be argued to be systematic in nature as it appears to have been planned and prepared, and then executed in a uniform manner against a common target with coordination between different state authorities and directed at suppressing opposition to the abrogation of Art. 370. To this end, various arms of the state machinery – police, armed forces and civilian administration at various levels – were reportedly mobilised and activated throughout the length and breadth of the state of J&K. In the period when crimes were committed, the central government deliberately and systematically suppressed independent monitoring and reporting, and alleged perpetrators were not

investigated and prosecuted to cover up the attack.

#### i. Planning and preparation

In anticipation of opposition, on the night of 4 August 2019 before Art. 370 was abrogated, several political leaders and activists who would oppose the change were arrested and detained.<sup>423</sup> On the same day, a lockdown was declared in order to prevent gatherings of protesters, and all means of communication were shut down to inhibit mobilisation of rallies and other forms of expression of dissent.<sup>424</sup> As established by the various UN human rights agencies, none of these measures were necessary to address actual threats.<sup>425</sup> In addition, around 850 companies of paramilitary forces were deployed to J&K shortly before 5 August 2019.<sup>426</sup> It can be inferred that, in addition to pre-empting any protests, these measures were also intended to create an information black-out where an attack against the civilian population could take place.

#### ii. Common target of the attack

Another indicator that speaks to the systematic nature of the attack is the common profile of the victims. Two categories of victims can be distinguished: First, the visible and high-profile group included anyone who openly opposed or potentially would oppose the abrogation of Art. 370, in particular political leaders, civil

<sup>420</sup> See above [Background and Historical Context](#).

<sup>421</sup> See e.g. UN OHCHR report, <<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>>, 2018, 10, para. 40: "A large number of Indian security forces were subsequently deployed to Kashmir with allegations of resulting serious human rights violations. Civil society and media often cite the figure of 500,000 to 700,000 troops which would make Kashmir one of the most militarized zones in the world".

<sup>422</sup> See section on Groups and Actors Involved.

<sup>423</sup> See below [Case List C: Arbitrary Arrest and Detention](#).

<sup>424</sup> See above [Lockdown and Communication Shutdown](#).

<sup>425</sup> See above [Lockdown and Communication Shutdown](#).

<sup>426</sup> See above [Revocation of Article 370](#).

society activists and journalists.<sup>427</sup> The second group included common members of the Muslim community who were attacked as a warning and deterrence to the rest of the community, no matter if the victims were actually expressing any dissent.<sup>428</sup> The second group's basis for targeting appears to be the fact that they are Muslims.

### iii. State suppression of reporting on situation

Following 4 August 2019, the government authorities systematically suppressed any public reporting on the criminal conduct of the police and military: One measure used was to transfer high-profile detainees to remote prisons to cut them off from contact with their local constituencies and limit their influence on their supporters.<sup>429</sup> In addition to the complete communication shut-down that severely inhibited reports of serious human rights abuses, the central government also introduced a media policy in June 2020 to regulate any media coverage.<sup>430</sup> Finally, civil society organisations and associations that usually monitor and report on the human rights situation were banned or dissolved.<sup>431</sup>

### iv. Impunity for police and military

Another indication that the attack was systematic can be gleaned from the efforts

of covering up the criminal conduct by hampering effective and impartial investigations and prosecutions.<sup>432</sup> As described above, legislation that requires approval from central government for prosecution of armed forces for crimes in J&K has in practice led to impunity.<sup>433</sup> Since 5 August 2019, it is reported that the central government has halted 10,500 cases of alleged human rights violations.<sup>434</sup>

### v. Coordination between different authorities

The execution of the above-mentioned crimes required the involvement and coordination of different state actors. District Magistrates, quasi-judicial authorities, issue preventive arrest / detention orders under national security laws that violate international human rights (PSA and NSA) based on police requests, often without sufficient evidence.<sup>435</sup> In many cases, subsequent detention orders are issued based on different laws to circumvent releases on bail.<sup>436</sup> These orders are then enforced by members of the police or military who also administer physical and mental abuse amounting to torture in detention.<sup>437</sup> The UAPA, on the other hand, allows police to arrest and detain suspects, which often is used against victims as a form of intimidation and harassment without

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<sup>427</sup> See above [Crackdown on Opposition to Article 370 Abrogation](#) and [Case List C: Arbitrary Arrest and Detention](#).

<sup>428</sup> See [Case List A: Torture as Crime Against Humanity](#).

<sup>429</sup> See above [Detentions and Arrests](#).

<sup>430</sup> See above [Restrictions on Civic Space](#).

<sup>431</sup> See above [Restrictions on Civic Space](#).

<sup>432</sup> See above [Failure of Police to Investigate](#).

<sup>433</sup> See above [Armed Forces \(Jammu and Kashmir\) Special Powers Act, 1990 \(AFSPA\)](#).

<sup>434</sup> See above [Armed Forces \(Jammu and Kashmir\) Special Powers Act, 1990 \(AFSPA\)](#).

<sup>435</sup> See above [Detentions and Arrests](#).

<sup>436</sup> See below [Case List C: Arbitrary Arrest and Detention](#).

<sup>437</sup> See above [Abuse and Death in Custody](#).

sufficient evidentiary basis.<sup>438</sup> Members of the police and military are then protected from investigation and prosecution by the central government which has the power to approve proceedings against them under existing laws but in nearly all cases refuses such approvals.<sup>439</sup> In addition, the central government through its administrative bodies in J&K ordered the prohibition of gatherings, communication black-out and shutdown of civil society organisations to cut off reporting.<sup>440</sup>

#### (d) Widespread nature of the attack

The number of arbitrary detentions, with estimates ranging from 8,000 to 13,000 victims across J&K, indicate the widespread nature of the attack.

## 2.2. War Crimes

There is credible evidence to suggest that the war crime of murder<sup>441</sup> was committed against nine civilians, and the war crimes of torture<sup>442</sup> against three civilians in connection to the non-international armed conflict between the Government of India and separatist armed groups. The number of victims could be higher but due to the communication shutdown and the banning of civil society organisations, information on cases from 2019 onwards was difficult to obtain.

## 2.3. Existence of international or non-international armed conflict

The Geneva Academy argues that there is an ongoing international armed conflict between Pakistan and India, and at the same time a non-international armed conflict between the Government of India and non-state armed groups.<sup>443</sup> The information reviewed for this report does not allow an in-depth assessment as to the existence of an armed conflict. Additional investigation into the existence and nature of an armed conflict is required. However, the following analysis is based on the premise that the Geneva Academy's characterisation is accurate.

## 2.4. Underlying crimes

### (a) Torture of civilians

[Case List B](#) describes in detail three cases of torture of civilians at the hands of the military. The treatment they experienced, including beating, waterboarding and being hung upside down, resulted in severe physical and mental pain or suffering.<sup>444</sup> There are indications that the perpetrators' purpose was to punish them for their suspected links to militants, to obtain information about militant groups and to coerce them into becoming informants. All victims were civilians at the time.

### (b) Murder of civilians

As set out in [Case List D](#), nine individuals were reportedly killed at the hands of

<sup>438</sup> See above [Detentions and Arrests](#).

<sup>439</sup> See above [Armed Forces \(Jammu and Kashmir\) Special Powers Act, 1990 \(AFSPA\)](#).

<sup>440</sup> See above [Lockdown and Communication Shutdown](#) and [Restrictions on Civic Space](#).

<sup>441</sup> As defined Article 8(2)(c)(i) Rome Statute.

<sup>442</sup> As defined Article 8(2)(c)(i) Rome Statute.

<sup>443</sup> See <<https://www.rulac.org/browse/conflicts/international-armed-conflict-between-pakistan-and-india#collapse3accord>>

<sup>444</sup> See above [Abuse in Detention](#).

military working in tandem with the police. The authorities claim that they were militants engaged in a shoot-out, which would render them combatants under international humanitarian law, who generally are not protected from being killed in an armed conflict. However, testimonies of witnesses, family members, and in one case a court inquiry, show that the shoot-out likely did not happen and that none of the victims were militants or had links to them. This indicates that all victims were civilians at the time of their death and therefore their killing may amount to the war crime of murder.

**(c) Connection to non-international armed conflict**

The above mentioned crimes only amount to war crimes if they are connected to the armed conflict. This is the case when the armed conflict plays a major part in the perpetrator's decision, in his or her ability to commit the crime or the manner in which the crime was ultimately committed.<sup>445</sup> Such a nexus can be determined by examining the status of the perpetrator and victim; whether the act may be said to serve the ultimate goal of a military campaign; and whether the crime is committed as part of, or in the context of, the perpetrator's official duties.<sup>446</sup>

The killing of civilians wrongly suspected to be militants can be linked to the non-international armed conflict since the operations that led to the killing were conducted with a goal to eliminate

separatist armed groups. The cases of torture of civilians appear to be linked to the non-international armed conflict because they were committed while the victims were seen as potential informants for the army and/or suspected of ties with militants. In addition, the abuses were committed by armed forces and at army compounds.

**3. International Humanitarian Law Violations**

The war crimes mentioned above (murder, torture) also constitute violations of international humanitarian law (Article 3 of the Fourth Geneva Convention and Article 4(2) of Protocol I to the Fourth Geneva Convention).

**VI. Conclusion**

There is credible information that suggests that since August 2019 a wide range of international human rights, both civil and political as well economic, social and cultural rights have been violated by the authorities in J&K. In addition, some episodes of violence may amount to crimes against humanity and war crimes and constitute violations of international humanitarian law. All of those violations were targeting individuals based on their political opinion or perceived political allegiance, but they disproportionately affected Muslims.

These state-led abuses have had serious and long-lasting impact on the victims and the wider Muslim community of J&K. The

<sup>445</sup> Trial Chamber II, *The Prosecutor v. Germain Katanga*, Judgment pursuant to Article 74 of the Statute, 7 March 2014, para. 1176; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 142.

<sup>446</sup> Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 143.

high number of children affected is particularly concerning. Despite the pervasiveness and seriousness of the claims made by victims and their families, the authorities have failed to address them through effective remedies and reparation.

## VII. CASE LISTS

### Case List A: Torture as Crime Against Humanity

1. **Waheed Para**<sup>447</sup> (35-year-old Muslim, resident of Naira, Pulwama) is a grassroots political and social activist. He is a member of the Women's Alliance for Security Leadership and serves as the youth President of the People Democratic Party, an opposition political party. He has also previously worked as a journalist raising alarm about human rights violations of Kashmiris. On 30 July 2020, Para engaged with current and future members of the UN Security Council (UNSC) in a virtual closed meeting where he raised concerns about the treatment of Muslim minorities in India, particularly in Kashmir by the Government of India. On 25 November 2020, Para was arrested by the National Investigative Agency (NIA), the primary counter-terrorism task force of India, to investigate alleged links with one of the two Hizbul Mujahideen militants arrested earlier last year and was held in their custody for one month at their headquarters in New Delhi. While in custody, Para was subjected to interrogations, which lasted 10-12 hours at a time, where he was questioned about his participation at the aforementioned UNSC event. He was held in a dark underground cell at sub-zero temperature, was deprived of sleep, kicked, slapped, beaten with rods, stripped naked and hung upside down. On 9 January 2021, he was released by an NIA court and within a few hours of his release, he was arrested again in Jammu and detained by the Counter-Intelligence wing of the Kashmir Police on charges under the Unlawful Activities Prevention Act, for providing financial support to terrorist groups. At the time of this report, he continues to remain in detention in Srinagar central jail despite repeated appeals made on grounds of his health, after reports of him falling unconscious in the jail were released. He is being treated at the police hospital.
  
2. **Mohammad Yasin Bhat**<sup>448</sup> (22-year-old Muslim, resident of Pulwama District): On the night of 5-6 August 2019, hours after the announcement of the Article 370 abrogation, Bhat was dragged out of his house by members of Indian armed forces. He was stripped naked and made to stand in line outside a mosque in Parigram, Pulwama, with 11 other naked male civilians. Bhat, along with others, was repeatedly kicked and beaten with canes and gun butts. When Bhat and other men would faint due to the beatings, they were woken up by electric shocks to their genitals, so the beatings could resume.

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<sup>447</sup> Communication by Special Rapporteurs, UA IND 4/2021(31 March 2021)  
<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26181>>; Hindustan Times, "Kashmiri leaders demand Waheed Para's release", (4 February 2022)

<<https://www.hindustantimes.com/cities/chandigarh-news/kashmiri-leaders-demand-waheed-para-s-release-101643916803206.html>>

<sup>448</sup> Independent, "With meticulous planning then mass arrests and 'torture', Kashmir's autonomy was lost, (1 September 2019)

<<https://www.independent.co.uk/news/world/asia/kashmir-crisis-latest-india-article-370-autonomy-torture-claims-planning-a9086611.html>>; Association of Parents of Disappeared Persons, "120 Days: 5th August to 5th December – A Report by APDP"

<<https://apdpkashmir.com/ebmedia/sitename/eb/wp-content/uploads/2019/12/APDP-Report-9.12.19.pdf>>, 18;

Al Jazeera, "Kashmir lockdown: Stories of torture and arbitrary arrests (4 September 2019),

<<https://www.aljazeera.com/news/2019/9/4/kashmir-lockdown-stories-of-torture-and-arbitrary-arrests>>;

Independent, "With meticulous planning then mass arrests and 'torture', Kashmir's autonomy was lost, (1 September 2019)

<<https://www.independent.co.uk/news/world/asia/kashmir-crisis-latest-india-article-370-autonomy-torture-claims-planning-a9086611.html>>

Reportedly, when one of them requested water, he was made to drink muddy water from the drain. After the soldiers finished beating them, all of the naked civilians were made to lie face-down on top of each other in a pile to humiliate them further. He then was sent back home along with others. According to the fact-finding reports, the acts of torture in a public place were meant to intimidate the neighbours and prevent opposition to the abrogation of Article 370.

3. **Shabir Ahmad Sofi** (25-year-old Muslim) and **Muzaffar Ahmad Sofi** (23-year-old Muslim) (sons of Sanaulla Sofi and residents of Parigram, Pulwama):<sup>449</sup> The two brothers were picked up from their home on 6 August 2019. The family runs a bakery and the boys did not have any previous criminal charges against them. The Sofi brothers along with Mohammad Yasin Bhat (see case 2 above) and others were beaten outside the mosque in Pulwama with cables and sticks from about 12.30am to 3am. When they fell unconscious from the beatings, they were given electric shocks to revive them. When family members tried to intervene, the army threatened to beat them even more brutally. According to testimonies, the two brothers could not stand or walk because of the injuries sustained and had to crawl their way home. The next morning the boys were taken to the Government Hospital for Bone and Joint Surgery, Barzulla, Srinagar. In the following days, the families tried to file an FIR in Pulwama but the local police stations were closed and fenced off with barbed wire. Reportedly, the acts of torture by the army intended to suppress anticipated unrest after the abrogation of Article 370.
4. **Abid Khan**<sup>450</sup> (26-year-old Muslim, resident of Hirpora, Shopian): On 13 August 2019 a group of soldiers led by an army officer entered Khan's house. A few soldiers grabbed his youngest brother, Suhail, and gave him an electric shock in the chest with the help of a handheld device. While Suhail fainted in the courtyard and was let off, the soldiers pushed Abid into a vehicle, blindfolded him, and took him to the camp designated as 66 Rashtriya Rifles - B Company, Chowgam, about 8km from Abid's house. In the camp, Abid Khan was stripped naked, water-boarded and forced to drink large amounts of a 'horribly smelly' liquid. Two soldiers punched him in the gut until he vomited and urinated. Khan's hands and ankles were tied with a rope and he was then hung from a pole. Four soldiers took short run-ups to hit his buttocks, hips and back with batons. He was given electric shocks after being dunked in water multiple times. As a result, Abid fell unconscious. Skin around his penis was pulled by a plier, while some soldiers rubbed salt on his wounds. According to Abid, some of these acts were filmed by the

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<sup>449</sup> Excerpted from a fact-finding report dated October 2019, filed by Nandini Sundar, sociologist and Nitya Ramakrishnan, lawyer <<https://www.jamhoor.org/read/2019/10/18/dispatches-from-the-valley-kashmiris-mark-the-150th-anniversary-of-gandhis-birthday-with-satvagraha>>; Jammu & Kashmir Solidarity Group, "The Siege: A year since abrogation" (August 2020) <<https://counterviewfiles.files.wordpress.com/2020/08/report-the-siege-a-year-since-abrogation.pdf>> 62; Independent, "With meticulous planning then mass arrests and 'torture', Kashmir's autonomy was lost, (1 September 2019) <<https://www.independent.co.uk/news/world/asia/kashmir-crisis-latest-india-article-370-autonomy-torture-claims-planning-a9086611.html>>

<sup>450</sup> The New York Times, "In Kashmir, growing anger and misery" (30 September 2019) <<https://www.nytimes.com/2019/09/30/world/asia/kashmir-lockdown-photos.html>>; Jammu & Kashmir Solidarity Group, "The Siege: A year since abrogation" (August 2020) <<https://counterviewfiles.files.wordpress.com/2020/08/report-the-siege-a-year-since-abrogation.pdf>> 60; TRT World, "India's torture methods: new claims emerge from disputed Kashmir" (17 September 2019) <<https://www.trtworld.com/magazine/india-s-torture-methods-new-claims-emerge-from-disputed-kashmir-29879>>

soldiers and he suspects that he may have been sexually assaulted by the soldiers and filmed while he was unconscious. Khan was released later that evening. He was threatened by the officers that if he visited any doctor or filed a complaint with the police, all his family members would be detained. Four other men from the same village were reported to be tortured at the same camp around the same time to intimidate the residents and stop them from protesting.

5. **Bashir Ahmad Fafoo**<sup>451</sup> (60-year-old Muslim) and his son **Irfan Ahmad Fafoo** (20-year-old Muslim): The two street fruit vendors were arrested on 16 August 2019 after the police entered their home, broke their windows and beat up Irfan Ahmad and his mother. Irfan Fafoo was taken away by the police and forced to walk barefoot on the broken glass spread on the ground. Both of them were released two days later after an undertaking by the Mohalla Committee members that there would be no more incidents of stone-pelting or protest assemblies on the streets.

### Minors

6. **Shahid Mustafa**<sup>452</sup> (14-year-old Muslim, resident of Natipora, Srinagar): The police framed Shahid in an open FIR as a stone pelter. On 21 August, around 4:30pm, Shahid was arrested by police from Azad Basti, Natipora. According to his father Ghulam Mustafa, Shahid - a 9<sup>th</sup> grade student - was returning after his prayers at the local mosque. A neighbourhood woman had seen Shahid being bundled into a Rakshak (armoured personnel carrier). Shahid tried to resist arrest and was hit with a gun butt and fell unconscious. He was taken to Chanpora police station and found himself with 27 others in a cell measuring 10ft x 8ft with a toilet in the corner. He was held there for two days before being shifted to the Bhagat police station. Once there, a police officer showed him a video captured from atop a Rakshak and asked him to identify the masked boys in the video. 'If I had identified anyone, they would surely have picked him up and I would have been branded [as an] informer,' Shahid said, according to reports. When he refused, he was reportedly beaten with a cable wire, non-stop for five minutes. The policemen beat him especially on his left ear, where his father had begged the police not to touch because of prior health problems. While in detention, he was forced to cut grass and perform forced labour, along with others. After 13 days in detention, Shahid was released. Shahid has a hearing disability now.
7. **Name unknown**<sup>453</sup> (15-year-old Muslim, resident of Budgam): On 6 August 2019, there was an incident of stone pelting by those protesting the abrogation of Article 370 in the

<sup>451</sup> AL IND 6/2020, 4 May 2020, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25208>>

<sup>452</sup> Jammu & Kashmir Solidarity Group, "The Siege: A year since abrogation" (August 2020) <<https://counterviewfiles.files.wordpress.com/2020/08/report-the-siege-a-year-since-abrogation.pdf>>, 64; Umar Mukhtar, 'A Minor Story' in *Kashmir Life* (11 December 2019) <<https://kashmirilife.net/a-minor-story-issue-36-vol-ii-220380/>>

<sup>453</sup> Jammu & Kashmir Solidarity Group, "The Siege: A year since abrogation" (August 2020) <<https://counterviewfiles.files.wordpress.com/2020/08/report-the-siege-a-year-since-abrogation.pdf>>, 65; People's Union for Civil Liberties, "Imprisoned Resistance: 5<sup>th</sup> August and its aftermath"

<<https://www.pucl.org/sites/default/files/reports/Imprisoned%20Resistance-final%20for%20dissemination.pdf>>, 34-35.

neighbourhood. The victim, a 9th grade student at the local government school and his father, a driver, had stepped out at 4pm to see what was happening. The Deputy Superintendent of Police (DSP) of Budgam Police Station, approached the father and son along with other policemen and caught the minor by his neck. They dragged him for half a kilometre and beat him on his back and neck with a drainpipe and the butt of a gun. This was witnessed by several passersby. The policemen later took him to (Humhama) Post-Budgam Police Station, Airport Road and beat him again. While in detention, the Station House Officer (SHO) would repeatedly come and ask for the names of the boys who had pelted stones on the day. There were about nine boys in the police station detained along with him. When the families approached the police station, the policemen acknowledged that the boys had been arrested because they had abused the police. The parents were denied any FIRs or other documents as a proof of their arrest. The victim's family was also asked to pay INR 15,000 for the boy's release and INR 1,000 for their food in custody. His elder brother had to provide a *maafinama* (an apology) and sign a bond, the contents of which was not shown to him. On 11 August 2019, the victim was released after being detained for six days in police custody. He sustained several injuries on the arms, back and left leg due to the beatings when he was dragged on the street. Two days after his release, the minor attempted to commit suicide. According to the victim's testimony, one of the other boys in detention was also beaten up, resulting in fractured legs.

### Deaths resulting from torture

8. **Riyaz Ahmad Tikrey/Thickrey** (28-year-old Muslim, resident of Kupwara): On 2 September 2019, a police raid was carried out at the house of Tikrey following a protest regarding abrogation of Article 370 earlier that day. He was arrested and detained at Qalamabad police station for four days. On 6 September, Tikrey was brought home dead from the local police station. According to the police, he had committed suicide. However, it is reported that the family witnessed his body had a number of injuries to the skull and nose and the family suspects that he was tortured.<sup>454</sup> The family members allege that they saw the victim hanging upside down from the ceiling in the police station and that his throat was strangulated.<sup>455</sup>
9. **Irfan Ahmad Dar** (23-year-old Muslim, resident of Sopore): On 15 September 2020, Dar, a shopkeeper, was arrested near his home by Jammu and Kashmir Police Special Operations Group (SOG), an anti-insurgency task force. The SOG personnel arrived in a civilian vehicle, wearing plain clothes. Dar was detained at the Sopore Police Station without an arrest warrant. A few hours later, the SOG officers raided his house without a search warrant and also detained his elder brother, Javid. During the raid, his family

<sup>454</sup> AL IND 6/2020, 4 May 2020, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25208>>; Jammu & Kashmir Solidarity Group, "The Siege: A year since abrogation" (August 2020)

<<https://counterviewfiles.files.wordpress.com/2020/08/report-the-siege-a-year-since-abrogation.pdf>>, 63.

<sup>455</sup> People's Union for Civil Liberties, "Imprisoned Resistance: 5<sup>th</sup> August and its aftermath"

<<https://www.pucl.org/sites/default/files/reports/Imprisoned%20Resistance-final%20for%20dissemination.pdf>>, 40; AL IND 6/2020, 4 May 2020, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25208>>

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members were beaten and their house vandalised. On 16 September, the family received the news of the death of Dar and the police claimed that he was killed while he was trying to escape their custody. However, while performing the last rites on his body, the family reported that his facial bones had been fractured, his front teeth were broken and his head appeared to have bruises of blunt force trauma. His family was only allowed to see his body for 10 minutes before burial.<sup>456</sup> In response to the protests against his killing, the district administration suspended two police officers from their duty for 'negligence of duty' for allowing him to escape. However, no one has been held accountable for his death.<sup>457</sup>

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<sup>456</sup> Communication by SR's, UA IND 4/2021, 31 March 2021,

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26181>>

<sup>457</sup> Communication by SR's, UA IND 4/2021, 31 March 2021,

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26181>>; <<https://thewire.in/government/jk-police-deny-post-mortem-report-to-family-of-slain-man-saying-it-would-impede-probe>>

### Case List B: Torture as war crime

1. **Idris Malik**<sup>458</sup> (27-year-old Muslim, resident of Bagander, Shopian): On the night of 7 August 2019, Malik was taken by the Indian army to 66 Rashtriya Rifles B Company, Chowgam, following a raid at his house. At the camp, he was beaten up with sticks and given electric shocks. His hands and ankles were tied with a rope and he was hung upside down from a bar. While his face was covered with a cloth, several buckets of cold water were poured over him. The next morning, leashed dogs were brought in his cell to intimidate him. Idris was made to stand outside and stare open-faced at the sun and when his mouth dried up and he asked for water, the soldiers put a stick in his mouth. Reportedly, he was subjected to this mistreatment by the soldiers in the pretext that he brought medicine for his neighbour who is an alleged militant. Malik was also asked to be an informer for the army. He was released the next day.
  
2. **Mujeeb**<sup>459</sup> (Muslim, resident of Shopian): On 11 August 2019, around 2am, some officers of the Indian army picked up Mujeeb, whose brother has allegedly become a militant, and severely beat him up. Members of an army contingent (44 RR, Chilipora Camp) broke into their house and asked the whole family to come outside. The soldiers kicked and punched Mujeeb for 45 minutes. They took his ID card and told him to report to the camp at 11am the next day. He went to the camp the next day with his cousin, uncle and father, but only Mujeeb was allowed inside the camp. Mujeeb was again brutally beaten and kicked for another 45 minutes at the camp by the soldiers and his cries were broadcasted through loudspeakers for others to hear. His cousin, Abdul Hamid Dar, was asked to come and take Mujeeb who was lying unconscious on the ground. His cousin had to pick him up on his back and take him home.
  
3. **Name unknown**<sup>460</sup> (21-year-old Muslim, resident of Pinjoora village, Shopian): During a raid on the night of 8 August 2019, the victim's ID card was taken away by the soldiers and he was asked to report at the Pahnoo camp the following morning. At the camp, the victim was stripped naked before the soldiers tied him to a pole and brutally beat him up. The soldiers made long cuts on the victim's legs using a sharp blade. According to the victim, an Army Major at the camp asked him to become their informer and provide information about Omar Dhobi and Shakir Pal [both alleged militants]. When the victim denied having any information about the said militants, the high-ranking army officer told him that he 'did not have any other option' other than becoming an informer.

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<sup>458</sup> Association of Parents of Disappeared Persons, "120 Days: 5th August to 5th December – A Report by APDP"

<<https://apdpkashmir.com/120-days-5th-august-to-5th-december-a-report-by-apdp/>>, Ch 2.

<sup>459</sup> People's Union for Civil Liberties, "Imprisoned Resistance: 5th August and its aftermath" <<https://www.pucl.org/sites/default/files/reports/Imprisoned%20Resistance-final%20for%20dissemination.pdf>>, 42.

<sup>460</sup> People's Dispatch, "One civilian killed, over 80 injured in police crackdown on protests in Kashmir" (31 May 2019) <<https://peoplesdispatch.org/2019/05/31/one-civilian-killed-over-80-injured-in-police-crackdown-on-protests-in-kashmir/>>

## Case List C: Arbitrary Arrest and Detention

### Arbitrary Detentions as Crimes Against Humanity

1. **Waheed Para**<sup>461</sup> (35-year-old Muslim, resident of Naira, Pulwama) is a grassroots political and social activist. He is a member of the Women's Alliance for Security Leadership and serves as the President of the People Democratic Party's (PDP) youth wing, an opposition political party. He has also previously worked as a journalist and an anchor, raising awareness of human rights violations of Kashmiris at the hands of the Government of India and produced a number of human-interest news stories. He was one of the political leaders placed in preventative detention on the intervening night of 4 and 5 August 2019 by the government prior to the abrogation of Article 370 in Kashmir and remained under house arrest till September 2020. On 30 July 2020, Para engaged with current and future members of the UN Security Council (UNSC) in a virtual closed meeting where he raised concerns about the treatment of Muslim minorities in India, particularly in Kashmir by the Government of India. Following this meeting, Para received threats from the National Investigative Agency (NIA), the primary counter-terrorism task force officials, indicating that he was inviting trouble by engaging in such events and was given an ultimatum to cease speaking out about the Indian government, or he would have action taken against him. Undeterred, he filed his nomination papers to run for the District Development Council elections. On 25 November 2020, Para was arrested by the NIA, to investigate alleged links with one of the two Hizbul Mujahideen militants arrested earlier last year and was held in custody for one month at their headquarters in New Delhi. While in custody, Para was subjected to heinous torture and interrogated, without any legal representation. On 9 January 2021, following a hearing by a NIA Court, a judge ruled that the Unlawful Activities Prevention Act (UAPA) did not apply in his case. A few hours after his release, he was again arrested and detained by the Counter Intelligence in Kashmir (CIK) and the Jammu and Kashmir Police under a different charge related to providing financial support to terrorist groups. On 11 January 2021, he was formally charged and transferred under the custody of the CIK and appeared before the court for a bail hearing where bail was denied. The NIA immediately appealed the 9 January order in a higher court and on 29 January 2021, his legal team was granted two weeks to file their objections to the NIA challenge. At the time of this report, he remains in remand custody and was found unconscious in Srinagar's Central jail on 1 February 2022. His trial before the NIA court is ongoing.

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<sup>461</sup> UA IND 4/2021, 31 March 2021, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26181>>; Hindustan Times, "Kashmir leaders demand Waheed Para's return" (4 February 2022) <<https://www.hindustantimes.com/cities/chandigarh-news/kashmiri-leaders-demand-waheed-para-s-release-101643916803206.html>>; Then Wire, "Detained PDP leader unable to attend Australia-India Youth Dialogue" (16 January 2020), <<https://thewire.in/politics/india-australia-youth-dialogue-waheed-ur-rehman-para>>

2. **Khurram Parvez**<sup>462</sup> (44-year-old Muslim man, resident of Srinagar) is a human rights activist and the Co-ordinator of the Jammu Kashmir Coalition of Civil Society (JKCCS), a group based in Kashmir, which has published several critical reports on human rights violations by security forces. He also serves as the chairperson of the Asian Federation Against Involuntary Disappearances (AFAD), an international rights organisation that focuses on enforced disappearances in Kashmir. In 2016, he had been detained without formal arrest or notification and legal counsel.

On 22 November 2021, the NIA, assisted by the local police, conducted raids at his residence as well as JKCCS offices in Srinagar, for about 14 hours. During the raid, Parvez's mobile phone, laptop and several books were seized. Thereafter, he was taken into custody for questioning and then arrested under charges of 'criminal conspiracy', 'waging war against the government of India', 'punishment for conspiracy to wage war against the government of India' (Sections 120B, 121, and 121A of the Indian Penal Code, respectively), and 'raising funds for terror activities', 'punishment for conspiracy', 'recruiting any person or persons for commission of a terrorist act', 'offence relating to membership of a terrorist organisation' and 'offence of raising funds for terrorist organisations' (Sections 17, 18, 18B, 38 and 40 of the UAPA respectively). Parvez has been in continuous detention since November 2021 and in March 2022, an NIA court extended his custody by 50 days. At the time of this report, Parvez remains in custody. NIA is also reported having filed a chargesheet in the matter.<sup>463</sup>

3. **Mohammad Ashraf Sehrai**<sup>464</sup> (78-year-old Muslim, resident of Srinagar) was the Chairman of the Tehreek-e-Hurriyat, a faction of the All Party Hurriyat Conference, which was an alliance of various political, social and religious organisations, for the purpose of representing the cause of Kashmiri separatism. He had also served as the general secretary and deputy chairperson of the Jamaat-e-Islami Kashmir and was a trusted affiliate of separatist leader Syed Ali Shah Geelani, who was the chairman of the All Party Hurriyat Conference. Sehrai was one of the separatist

<sup>462</sup> BBC, "Khurram Parvez: Kashmiri rights activist arrested under anti-terror law" (23 November 2021) <<https://www.bbc.com/news/world-asia-india-59383554>>;

India Today, "J-K police detains noted human rights activist Khurram Parvez", (16 September 2016)

<<https://www.indiatoday.in/india/story/jammu-kashmir-police-detains-noted-human-rights-activist-khurram-parvez-341418-2016-09-16>>;

Amnesty International press release, "India: Kashmiri Human Rights activist re-arrested" (21 September 2016)

<<https://www.amnestyusa.org/press-releases/india-kashmiri-human-rights-activist-re-arrested/>>;

Fidh, "India: Arbitrary detention of Khurram Parvez in Jammu and Kashmir" (23 November 2021) <<https://www.fidh.org/en/issues/human-rights-defenders/india-arbitrary-detention-of-khurram-parvez-in-jammu-and-kashmir>>;

Front Line Defenders, "Detention of human rights defender Khurram Parvez" (1 December 2016)

<<https://www.frontlinedefenders.org/en/case/detention-human-rights-defender-khurram-parvez>>

<sup>463</sup> Delhi court takes cognizance of UAPA against Human Rights Activist Khurram Parvez and Others in terror Funding Case. (Live Law, 13 May 2022). <<https://www.livelaw.in/news-updates/delhi-court-cognizance-uapa-human-rights-activist-khurram-parvez-terror-funding-case-199083?infinite-scroll=1>>

<sup>464</sup> The Wire, "Srinagar: Tehreek-e-Hurriyat Chairman Ashraf Sehrai detained under J&K PSA", (12 July 2020)

<<https://thewire.in/government/srinagar-tehreek-e-hurriyat-chairman-ashraf-sehrai-detained-under-ik-psa>>;

The Wire, "Jailed since July 2020, Hurriyat leader Ashraf Sehrai dies in preventive custody", (5 May 2021) <<https://thewire.in/rights/jailed-since-july-2020-hurriyat-leader-ashraf-sehrai-dies-in-preventive-custody>>;

The Tribune, "Separatist leader Ashraf Sehrai arrested, booked under PSA" (12 July 2020) <<https://www.tribuneindia.com/news/j-k/separatist-leader-ashraf-sehrai-arrested-booked-under-psa-11940>>;

The Indian Express, "Days after Geelani letter, Ashraf Sehrai held, booked under PSA", (13 July 2020),

<<https://indianexpress.com/article/india/separatist-leader-jamaat-members-detained-in-kashmir-to-be-booked-under-psa-police-chief-6502138/>>

leaders put under house arrest during the lockdown imposed during the abrogation of Article 370 in Jammu and Kashmir and according to his family, had been on house arrest since 5 August 2019 till he was detained in July 2020.

On 12 July 2020, three weeks ahead of the first anniversary of the abrogation of Article 370, he was detained by the police from his residence at Baghat Barzulla in Srinagar and booked under the PSA, though no reasons were given at the time of arrest. Jammu and Kashmir police chief Dilbagh Singh said that Sehrai and some members of the *Jamaat-e-Islami* were detained and would be charged under the PSA. He was told that he was being taken into preventative custody and then imprisoned in the Kot Balwal jail in Jammu. A senior police official was quoted as saying Sehrai's arrest was necessary to ensure that 'chaos and confusion...remain in the separatist ranks'.

During his imprisonment, his health continuously deteriorated, which led to his family filing three applications as well as a *habeas corpus* petition before the Jammu and Kashmir High Court, seeking permission for a medical examination and treatment at the Government Medical College at Srinagar or Jammu. He was reportedly denied visits from his family for five months before his death due to Covid-19. They had requested visitation rights and his shifting to Jammu or Srinagar jails from the Udhampur district jail where he was imprisoned, for proper care. However, the family alleges that the judge repeatedly deferred the hearing of these applications and no orders were passed on any of the applications. Meanwhile, in calls to his family, Sehrai allegedly stated that his health was severely deteriorating and the jail authorities were denying him treatment. On 4 May 2021, he complained of breathlessness and was shifted to a government hospital in Jammu, where he died the next day. A senior official in the Jammu and Kashmir Prisons department told reporters that the department had written to the home department apprising them of Sehrai's health condition and the available resources in the jail but they did not know what happened to the file. The Jammu and Kashmir High Court Bar Association termed Sehrai's death as a 'custodial murder'.

Two of Sehrai's sons were arrested on 16 May 2021<sup>465</sup> and were booked under the UAPA allegedly for raising anti-national slogans at the funeral of their father.<sup>466</sup> Their bail was refused first by the special NIA court Baramulla and subsequently statutory bail was also denied by the High Court.<sup>467</sup>

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<sup>465</sup> Kashmir Reader, "HC rejects bail to Sehrai's sons in 'anti-national slogans' case" (26 November 2021), <<https://kashmirreader.com/2021/11/26/hc-rejects-bail-to-sehrais-sons-in-anti-national-slogans-case/>>

<sup>466</sup> The Wire, "After Ashraf Sehrai's death in preventive custody, his sons arrested under UAPA", (17 May 2021), <<https://thewire.in/rights/kashmir-ashraf-sehrai-sons-uapa-arrest>>

<sup>467</sup> Greater Kashmir, "HC dismisses plea against bail rejection of Sehrai's sons", (25 November 2021) <<https://www.greaterkashmir.com/todays-paper/kashmir-todays-paper/hc-dismisses-plea-against-bail-rejection-of-sehrais-sons>>

4. **Qazi Shibli**<sup>468</sup> (29-year-old Muslim man, resident of Anantnag) is a Kashmiri journalist and editor of The Kashmiriyat, covering general news as well as news of the conflict in J&K. In July 2019, Shibli had published a story and tweets about a government order for additional movement of troops in Kashmir. He was summoned to the Police Station, Anantnag on 25 July 2019, where he was questioned about his tweets regarding the additional paramilitary deployment. Shibli's family was assured that he would be let off soon, but they did not hear from him thereafter.

On 5 August 2019, when a strict communications black-out and lockdown was imposed by the Indian authorities in J&K due to the abrogation of Article 370, the family lost touch with Shibli. According to Shibli, he was denied contact with his family or a lawyer and was informed on 8 August 2019 that he was being detained under the PSA under accusations of 'waging war against the Union of India', 'creating fear and panic among common people', being 'deeply involved in disrupting the peaceful atmosphere', and seeking 'to motivate the people to work for seceding the state of Jammu and Kashmir from the union of India'. On 9 August 2019, he was transferred by a military plane to the Bareilly District Prison in Uttar Pradesh, around 1300km from his hometown. During his time in the UP prison, he was denied contact with his family until 26 September 2019, when he was allowed to meet his brother Umair. After a nine-month detention, he was released on 13 April 2020.

On 31 July 2020, Shibli received a summons from the Kashmir cyber police station to appear at the Srinagar Police Station. On his arrival, he was interrogated and then transferred to Shergarh Police Station in Srinagar and on 3 August 2020, he was transferred to the Srinagar Central Prison after being booked under Section 107 (security for keeping the peace in other cases) of the Criminal Procedure Code, 1973, which allows for pre-emptive detention based on suspicion. He was released on 17 August 2020.

Since his release, Shibli has continued to face harassment at the hands of the authorities, who conducted a warrantless raid in August 2021, at Shibli's and his relative's residences, resulting in destruction of property. The Kashmiriyat had reposted an article about Kashmiri militant Yawar Nisar, who was allegedly killed by Indian forces, on their Facebook page, hours before these raids.

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<sup>468</sup> Committee to Protect Journalists, "Qazi Shibli (Qamar Zaman Quazi) The Kashmiriyat| Was imprisoned in India| 25 July 2019" <<https://cpj.org/data/people/qazi-shibli-qamar-zaman-quazi/>>; The Kashmir Walla, "'Ghosts haunted me...cell was a cage': Kashmiri journalists's 9-months in jail" (27 April 2020) <<https://thekashmirwalla.com/ghosts-haunted-me-cell-was-a-cage-kashmiri-journalists-9-months-in-jail/>>; Committee to Protect Journalists, "Kashmir police raid homes of journalist Qazi Shibli and his family members" (6 August 2021) <<https://cpj.org/2021/08/kashmir-police-raid-homes-of-journalist-qazi-shibli-and-his-family-members/>>

5. **Omar Abdullah**<sup>469</sup> (52-year-old Muslim man) is the former Chief Minister of Jammu and Kashmir and the grandson of Sheikh Abdullah and the son of Farooq Abdullah, both former Chief Ministers of Jammu and Kashmir and is currently the vice-president of the National Conference party. He has served as the member of the Jammu and Kashmir Legislative Assembly, Minister of State for External Affairs and Member of the Parliament, Lok Sabha. He was the last leader of the opposition of the Jammu and Kashmir Legislative Assembly before its dissolution in 2018 and the State of Jammu and Kashmir ceasing to exist on 5 August 2019, on the abrogation of Article 370 of the Constitution of India. Abdullah was a fierce critic of the abrogation of Article 370 as well as the majority BJP government led by Prime Minister Narendra Modi.

On the intervening night between 4 and 5 August 2019, before the abrogation, Abdullah was placed under preventative detention by Indian authorities under Section 107 of the CrPC. In the last tweet before his arrest, he had called for ‘peace and calm’ in light of the abrogation. He was placed under solitary confinement at Hari Niwas, a state guest house which was declared a subsidiary jail,<sup>470</sup> for six months, without any charges and on the last day of the detention on 5 February 2020 when the continued detention under the CrPC became legally untenable, he was charged under the PSA. He was booked under the PSA on 6 February 2020 when the Executive Magistrate, instead of releasing him, ordered his further detention under Section 8 of the PSA in an arbitrary exercise of power. The PSA dossier against Abdullah cited his popularity and potential to draw voters to polling booths, even during the heights of militancy, as a grave threat and stated that Abdullah was using politics as a cover for his radical ideology for planning activities against the Union Government, without citing any specific incidents or statements made by him.

On 10 February 2020, Abdullah’s sister, Sara Abdullah filed a petition in the Supreme Court urging for the issuance of a writ of *habeas corpus* to the authorities to produce Abdullah before the Court and set him at liberty. On 24 March 2020, after seven months in custody, Abdullah was released after the Indian authorities revoked the orders detaining him under the PSA.

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<sup>469</sup> NDTV, “Omar Abdullah, Mehbooba Mufti charged under Public Safety Act”, (7 February 2020) <<https://www.ndtv.com/india-news/omar-abdullah-mehbooba-mufti-charged-under-public-safety-act-sources-2176180>>;

The Telegraph, “Charge: Omar got voters to defy boycotts”, (9 February 2020), <<https://www.telegraphindia.com/india/charge-omar-abdullah-got-voters-to-defy-boycotts/cid/1743804>>;

The Hindu, “Omar Abdullah used politics to cover his radical ideology: Public Safety Act dossier”, (10 February 2020), <<https://www.thehindu.com/news/national/other-states/omar-abdullah-used-politics-to-cover-his-radical-ideology-public-safety-act-dossier/article61633437.ece>>;

The Hindu, “Omar Abdullah calls for immediate release of others in preventive detention” (24 March 2020) <<https://www.thehindu.com/news/national/omar-abdullah-calls-for-immediate-release-of-others-in-preventive-detention/article61958815.ece>>

<sup>470</sup> Under the Prisons Act 1894, any place can be declared a jail by an order of the government. This is called a subsidiary jail and for all intents and purposes, it functions as a jail. In the case of Kashmir, since so many leaders were detained, State guest houses (reserved as a perk for government officials) were ordered to be subsidiary jails.

6. **Mehbooba Mufti**<sup>471</sup> (62-year-old Muslim woman) was the first woman to hold office as the Chief Minister of Jammu and Kashmir. She resigned in June 2018. She formed a coalition government jointly with the BJP, which later withdrew from the coalition. She was the President of the People's Democratic Party (PDP), is currently the vice-chair of the People's Alliance for Gupkar Declaration and has served as the Member of Parliament, Lok Sabha. She was the last Chief Minister of the State of Jammu and Kashmir, before the abrogation of Article 370.

On the eve of the abrogation, on 4 August 2019, she had tweeted that the Central government's actions were an 'utter betrayal of trust'. Thereafter, on the same day, she was put under detention by the Central government and shifted from her residence to Hari Niwas, a state house converted into a subsidiary jail, where she was kept under house arrest for six months. On the last day of her detention, when continued detention became legally untenable, she was also charged under the PSA. The PSA dossier on Mufti stated that she was a 'hot-headed and scheming person, known for dangerous and insidious machinations' who promotes separatism. The dossier also noted her popularity among the locals, stating that she is referred to as 'Daddy's girl' and 'Kota Rani', based on the profile of a medieval queen of Kashmir, who rose to power by virtue of undertaking intrigues ranging from poisoning of her opponents to 'ponyardings [sic]'. Despite the fact that the BJP had an alliance with the PDP, the dossier termed the PDP as a dubious party due to the fact that the colour of the party is green (as is the colour of Pakistan's flag). The dossier also pointed to Mufti's refusal to sign a bond stating that she would not talk about the abrogation of Article 370 as among the reasons for invoking the PSA against her and quoted her tweets on triple talaq, lynchings and the curbs on civilian movement in February 2019 to allow unhindered movement of security convoys in the Valley, as issuing 'provocative statements that led to incitement of violence' and accused her of invoking religion to create a divide.

In July 2020, Mufti's detention under the PSA was extended and she was shifted to her residence, that was also declared a subsidiary jail by the government. It is speculated that Mufti's release was delayed as she was seen to be inflexible on commenting on the abrogation of Article 370, whereas other mainstream political leaders had been largely silent after their arrests. In September 2020, Iltija Mufti, PDP member and Mufti's daughter, filed a *habeas corpus* petition in the Supreme Court, praying for Mufti's

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<sup>471</sup> The Indian Express, "PSA file indicts Omar Abdullah for getting people to vote, refers to Mehbooba Mufti as 'Daddy's girl'" (10 February 2020) <<https://indianexpress.com/article/india/omar-abdullah-mehbooba-mufti-public-safety-act-psa-jammu-and-kashmir-6259588/>>; The Indian Express, "SC to J&K admn: Can Mehbooba Mufti's detention be extended beyond a year" (30 September 2020) <<https://indianexpress.com/article/india/detention-cannot-be-for-forever-mufti-should-place-request-for-attending-party-meetings-sc-6631805/>>; India Today, "Iltija Mufti files plea in Supreme Court seeking release of Mehbooba Mufti, detained under PSA" (23 September 2020) <<https://www.indiatoday.in/india/story/iltija-mufti-files-plea-in-supreme-court-seeking-release-of-mehbooba-mufti-1724545-2020-09-23>>; Mint, "Mehbooba Mufti, Omar Abdullah arrested after scrapping of Article 370" (5 August 2019) <<https://www.livemint.com/politics/news/mehbooba-mufti-omar-abdullah-arrested-after-scrapping-of-article-370-1565015217174.html>>; NDTV, "Mehbooba Mufti alleges detained again, daughter under house arrest" (27 November 2020) <<https://www.ndtv.com/india-news/mehbooba-mufti-alleges-illegally-detained-again-by-jammu-and-kashmir-administration-daughter-iltija-placed-under-house-arrest-2330873>>

release. During the course of the hearing on 28 September 2020, the Srinagar District Magistrate submitted an affidavit to the court, stating that her continued detention was on the basis of her ‘past conduct’ of ‘glorifying militants, brazenly inciting religion to divide the people, demoralising the security forces and the proclivity to indulge in such behaviour in future which would be highly prejudicial to the maintenance of public order’. The next day, on 29 September 2020, the Court had enquired about the length and validity of Mufti’s detention from the Union Government. Thereafter, the order releasing Mufti from PSA detention was passed by the authorities on 13 October 2020 and she was released on 14 October 2020.

### Other Cases of Arbitrary Detention

7. **Sajad Gul**<sup>472</sup> (23-year-old Muslim, resident of Bandipur) is a student and a freelance journalist, who was working as a trainee reporter at the Kashmir Walla. On 5 January 2022, the police arrived at Gul’s Hajin house while he was in Srinagar. The army arrested him at night and he was taken to the police station. After multiple attempts to contact him by his family, the police finally answered their call and informed them that Gul was in police custody and would be released in the morning. According to Gul’s family, they could hear his voice in the background asking them to inform the media of his arrest. The next day, it was reported that Gul had been arrested and booked under charges of criminal conspiracy, ‘imputations, assertions prejudicial to national integration’ and for ‘fear or alarm to the public’, under the IPC, after he posted a video of the protests that took place in Srinagar after the killing of alleged Lashkar-e-Taiba member Saleem Parray. The police stated that Gul had been arrested for allegedly provoking people to ‘resort to violence and disturb public peace’ and that he ‘uploaded the objectionable videos with anti-national slogans raised by some women folk on the day when most wanted terrorist Saleem Parray was eliminated in Shalimar Srinagar’. They also stated that ‘...the said person [Gul] under the garb of journalist [sic] is habitual of spreading disinformation/false narratives through different social media platforms in order to create ill will against the government by provoking general masses to resort to violence and disturb public peace and tranquility’. A bail application was filed by the Kashmir Walla on 10 January 2022, and he was granted bail on 15 January 2022, by the district court at Bandipur. However, when his brother went to the jail with the bail order, the police refused to release him, without explanation.

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<sup>472</sup> Article 14, “Why Kashmiri Journalist Sajad Gul Faces Police Cases For Doing His Job” (29 December 2021) <<https://article-14.com/post/why-kashmiri-journalist-sajad-gul-faces-police-cases-for-doing-his-job-61cbcd7784b6>>;

AL IND 9/2021, 3 June 2021,

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26390>>;

The Wire, “Kashmir: Sajad Gul Arrested for Tweeting Video of Protest; Media Groups Point to Continuing Suppression” (9 January 2022)

<<https://thewire.in/media/kashmir-sajad-gul-arrested-for-tweeting-video-of-protest-media-groups-point-to-continuing-suppression>>;

Scroll.in, “Journalist Sajad Gul was booked under PSA as he could have got bail otherwise: J&K administration” (23 January 2022)

<<https://scroll.in/latest/1015699/journalist-sajad-gul-was-booked-under-psa-as-he-could-have-got-bail-otherwise-j-k-administration>>

On 16 January 2022, the police booked Gul under the PSA and shifted him to the Kot Bhalwal jail in Jammu, about 200 miles from his home in Hajin. The Jammu and Kashmir administration justified the arrest by stating that booking under the PSA was necessary as he might have been granted bail otherwise (the PSA allows for detention without trial for up to two years). The police stated that as Gul was ‘well educated’, he could use social media to provoke people against the government and that, rather than a journalist, he was an ‘activist’ who ‘promoted enmity’. The police stated that they were apprehensive that if Gul was out on bail, he would continue with his ‘anti-national activities’ which were prejudicial to the safety and sovereignty of the country. The police also stated that it was imperative for them to take action under the PSA as ‘the ordinary law of the land’ did not seem to deter Gul from his ‘nefarious/ anti-national activities which can seriously endanger the peaceful atmosphere’. At the time of this report, Gul remains in custody.

8. **Fahad Shah**<sup>473</sup> (33-year-old Muslim, resident of Srinagar) is a journalist and editor of The Kashmir Walla, a weekly newspaper that reports on the political situation and human rights issues in J&K. He is a well-respected journalist whose work has been widely disseminated in international media outlets and has won the 25<sup>th</sup> Human Rights Press Award.

On 4 February 2022, Shah was arrested by the Pulwama district police, over a report of an encounter published by The Kashmir Walla, where the parents of a teenage boy who was killed along with three alleged militants had been interviewed. The report had also included the police claims that the boy was a ‘hybrid militant’. The police accused Shah of uploading ‘anti-national’ content on social media, ‘glorifying’ terrorist activities and ‘causing a dent to the image of law enforcing agencies’ and spreading ‘disaffection against the country’ and charged him under the UAPA and Sections 124-A (sedition) and 505 (statements conducing to public mischief) of the Indian Penal Code (IPC). On 26 February 2022, an NIA court granted interim bail to Shah until 12 March 2022.

However, before Shah could exit jail, he was charged under a complaint filed by the Indian Army against the Kashmir Walla on 30 January 2021, for reporting that the Army was pressuring a local school in Shopian District in South Kashmir to celebrate India’s Republic Day. The police accused the Kashmir Walla of inciting enmity between groups and provoking riots. Shah and one of his colleagues were charged with ‘provocation to cause a riot’ and ‘public mischief’ under Sections 153 and 505 of the IPC, which carry a punishment of up to three years. Shah and other

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<sup>473</sup> AL IND 9/2021, 3 June 2021, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26390>>; The Indian Express, “Three arrests of journalist Fahad Shah in Kashmir raise questions of police accountability. Court must step in” (10 March 2022) <<https://indianexpress.com/article/opinion/editorials/in-the-firing-line-fahad-shah-arrest-kashmir-7807478/>>; The Wire, “Day before bail hearing, J&K Journalist Fahad Shah booked under Public Safety Act” (14 March 2022), <<https://thewire.in/media/uapa-fahad-shah-jammu-and-kashmir-police-media>>

members of the newspaper approached the district court in Shopian seeking anticipatory bail, which was denied.

On 5 March 2022, he was granted bail by the Shopian court, but immediately arrested again, over the Kashmir Walla's coverage of an encounter in Srinagar's Nawa Kadal locality on 19 May 2020, during which over a dozen houses were razed to the ground and security forces had allegedly looted cash and jewellery before setting the houses on fire, a charge denied by officials. Shah was charged under Section 13 of UAPA (punishment for unlawful activities), and Sections 501 (printing defamatory matter) and 505 (public mischief) of the IPC. A day before his bail hearing was scheduled, the Jammu and Kashmir police invoked the Jammu and Kashmir Public Safety Act (PSA) against Shah. Under the PSA, a person can be jailed without trial for up to two years. At the time of this report, Shah remains in custody at Safakadal police station at Srinagar. Legal experts have questioned the new FIR against him related to UAPA charges.<sup>474</sup>

9. **Manan Gulzar Dar**<sup>475</sup> (24-year-old Muslim man, resident of Srinagar) is a freelance photojournalist who covers conflict in Kashmir and whose work has been published in local outlets as well as The Guardian and the Pacific Press photo agency. In July 2021, one of his photos of the aftermath of an encounter in Srinagar was featured in The Guardian. On 10 October 2021, Dar was summoned to the Batamaloo Police Station for questioning and then detained. His family home was raided by NIA officials on 13 October 2021 and the family's cell phones, financial documents and the deed to their home were seized. He was formally arrested by the NIA on 22 October 2021, under the UAPA in a militant conspiracy case under accusations of being an operative of various proscribed terrorist organisations and working for terrorist organisations to radicalise and recruit Muslim youth. He, along with 12 other people, which include his younger brother Hanan Dar, have been charged under Sections 120B (dealing with criminal conspiracy), 121A (conspiracy to commit offences), 122 (collecting arms, etc, with intention of waging war against the government of India) and 123 (concealing with intent to facilitate design to wage war) of the IPC as well as provisions of the UAPA.

The accusations against Dar stem from an FIR filed in New Delhi by the NIA in response to the killing of five people by alleged militants in early October 2021, though it is unclear how Dar is involved in this case. Dar's family has disputed his involvement in any militant activity and stated that the authorities had inquired from them the reason for Dar's camera containing photographs of people with

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<sup>474</sup> The Quint, "Legal Experts Question New UAPA FIR Against Kashmiri Journalist Fahad Shah" (25 April 2022) <<https://www.thequint.com/news/law/why-was-kashmiri-journalist-fahad-shah-slapped-with-another-uapa-case/#read-more>>

<sup>475</sup> The Wire, "J&K: Family in Dark as NIA Arrests Photojournalist For 'Involvement in Militant Conspiracy' (28 October 2021) <<https://thewire.in/government/jk-family-in-dark-as-nia-arrests-photojournalist-for-involvement-in-militant-conspiracy>>; Committee to Protect Journalists, "Manan Dar, Freelance| Imprisoned in India| 10 October 2021" <<https://cpi.org/data/people/manan-dar/>>

weapons. Dar was taken to New Delhi on 24 October 2021 and is being held in the city's Tihar Jail. His lawyer has stated that Dar was ordered to remain in custody for 30 days on 5 November 2021 and has not been charged with a crime yet, with the authorities refusing to reveal specifics of his crime. At the time of this report, Dar remains in custody at Tihar Jail.

## Case List D: Extrajudicial Killings of Suspected Militants

### 1. The Amshipora Encounter

**Imtiyaz Ahmed, Abrar Ahmed and Mohammed Ibrar**<sup>476</sup> (Muslim men aged 20, 16 and 25 respectively, residents of Rajouri, Jammu) were all labourers working in the Shopian district and were killed on 18 July 2020 by the armed forces and police on suspicion of being militants / foreign terrorists in the so-called ‘Amshipora encounter’.

The army stated that the encounter was executed based on information from the 62<sup>nd</sup> battalion of the Rashtriya Rifles about the presence of terrorists in Amshipora village, and was carried out by the army along with the police, as well as the paramilitary Central Reserve Police Force (CRPF). On 19 July 2020, Brigadier Ajay Katoch, Commander of the 12<sup>th</sup> Sector Rashtriya Rifles stationed in Shopian, held a press conference stating that the army had received ‘human intelligence inputs’ on the presence of about five militants in Amshipora and that a team sent to ‘flush out’ the militants had come under ‘heavy fire’. He also stated that the team waited until daylight to send a search unit which included members of the army and the CRPF into a small house and found three terrorists, who were then shot dead. He stated that ‘incriminating materials, including arms and ammunition were recovered from the site of encounter’. The bodies of the killed men were then buried in unmarked graves in Baramulla after lack of identification.

The identities of the men killed in the encounter were not known until 10 August 2020, when the families of the three men identified them as Imtiyaz Ahmed, Abrar Ahmed and Mohammed Ibrar of Rajouri village. Abrar Ahmed was 16 years old at the time of his death. Their families vehemently disputed the claims of the Indian army, stating that Imtiyaz Ahmed was working as a labourer in apple and walnut orchards in Shopian for a month before he asked the other two men, Abrar Ahmed and Mohammed Ibrar, from his native village to come to Shopian in search of work. Both of them left for Shopian on 16 July 2020 and a local man named Lal Hussain from Rajouri stated that Imtiyaz Ahmed had informed him on 17 July 2020 that the two had reached Shopian, after which the families lost contact with them. Their families filed missing person reports at the Peeri Police post in Rajouri and believed that the three had been temporarily detained due to Covid-19 quarantine restrictions. Thereafter, when

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<sup>476</sup> The Wire, “Three ‘Militants’ Killed in Shopian ‘Encounter’ Were Ordinary Labourers, Families Allege” (10 August 2020) <<https://thewire.in/rights/three-militants-killed-in-shopian-encounter-were-ordinary-labourers-families-allege>>; Article 14, “The Anatomy Of An Extrajudicial Killing In Kashmir” (8 March 2021), <<https://www.article-14.com/post/the-anatomy-of-an-extrajudicial-killing-in-kashmir>>; India Today, “Indian Army says troops violated AFSPA rules in Shopian encounter, will face action” (18 September 2020), <<https://www.indiatoday.in/india/story/army-says-troops-violated-rules-in-shopian-encounter-will-face-action-1723143-2020-09-18>>; Frontline, “Staged encounter in Shopian” (11 September 2020), <<https://frontline.thehindu.com/the-nation/staged-encounter/article32411226.ece>>; NDTV, “Army Officer Among 3 Named In J&K Police Chargesheet In Shopian Encounter”, (27 December 2020), <<https://www.ndtv.com/india-news/army-officer-among-3-named-in-j-k-police-chargesheet-in-alleged-fake-shopian-encounter-2344220>>; The Indian Express, “Shopian encounter: Army set to take over proceedings against Capt from civilian court” (30 December 2020), <<https://indianexpress.com/article/india/shopian-encounter-army-set-to-take-over-proceedings-against-capt-from-civilian-court-7125519/>>

pictures of the bodies of the three killed in the Amshipora Encounter were circulating on social media, they were identified by the families.

The families strongly denied the allegations of the police about the men, stating that being from poor families, all three had only gone to Shopian to find work and did not even have a distant link with militants. Local residents in Amshipora as well as family members informed reporters that the three men travelled annually to Amshipora to work in apple orchards as seasonal labourers. With regard to 16-year-old Abrar Ahmed in particular, his family stated that he was in Class 11 at the time of his death and had travelled to Shopian to earn enough money to pay for his enrolment in Class 12. The families demanded for their bodies to be exhumed and DNA testing to be conducted, which confirmed on 25 September 2020 that the men were indeed Imtiyaz Ahmed, Abrar Ahmed and Mohammed Ibrar.

The J&K police began an investigation of the killings and filed a chargesheet on 28 December 2020 naming Army Captain Bhupendra Singh of the 62<sup>nd</sup> Rashtriya Rifles (using the alias Basheer Khan), along with two civilian informants, Tabish Nazir Malik and Bilal Lone, as the main accused in the killings. The chargesheet stated that the three men were in continuous contact before the killings, having made more than 300 calls to each other and conspired to abduct the victims from their lodgings and take them to the shed, where they were eventually killed. The chargesheet further stated that they concealed the identities of the victims and also planted weapons on them with the motive of claiming a cash reward of INR 2,000,000 (USD 25,780) which is allegedly awarded by the Indian army to officers for killing militants. The police charged the three with murder, abduction, destruction of evidence and providing false information, criminal conspiracy, and possession of prohibited weapons. The investigation in the case is ongoing.

Meanwhile, the army started a parallel inquiry on 18 August 2020 and on 25 December 2020. The Court of Inquiry<sup>477</sup> found that the officers involved in the Amshipora Encounter had violated the mandate given to officers under the Armed Forces (Special Powers) Act (AFSPA) as well as specific guidelines established by the Supreme Court of India<sup>478</sup> in the exercise of these powers by lying to their seniors about the weapons recovered. The army has now started court martial proceedings against Army Captain Bhupendra Singh and another unnamed junior commissioned officer and announced that court-martial proceedings would be conducted against them. The trial against the civilians continues in the district court.

## 2. The Lawaypora Encounter

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<sup>477</sup> A Court of Inquiry is a group of officers assembled by the Commanding Officer to investigate the facts of a particular occurrence and hand over the complete proceedings to the concerned authority, see Military Lawyer India, The Provisions of Court of Inquiry/Board of Inquiry, 18 August 2019, <<https://blog.trishuldefenceacademy.com/indian-army/what-is-court-of-inquiry-coi-in-indian-army/>>

<sup>478</sup> See Naga People's Movement, Of Human vs Union of India, Judgement of 27 November 1997, <<https://indiankanoon.org/doc/1072165/>>

**Aijaz Maqbool Ganie** (19-year-old Muslim man, resident of Pulwama), **Zubair Ahmad** (22-year-old Muslim man, resident of Turkawangam of Shopian), and **Athar Mushtaq Wani** (16-year-old Muslim boy, resident of Pulwama)<sup>479</sup> were killed by the Rashtriya Rifles on the intervening night of 29 December and 30 December 2020. Ajaz Maqbool Ganie was a recent graduate of Government Degree College Pulwama. Zubair Ahmed was a carpenter and Athar Mushtaq Wani was a student. According to a statement made by the J&K police on 30 December 2020, three ‘terrorists’ were killed in an overnight encounter that began on the prior evening when the Indian Army’s 2<sup>nd</sup> Rashtriya Rifles unit launched a cordon and search operation<sup>480</sup> in the Lawaypora area on the basis of a ‘specific input’, i.e. information. The statement did not specify the militant group to which the men were allegedly affiliated. The police stated that the ‘terrorists’ hurled grenades at the search party and also fired indiscriminately, which led to the troops retaliating. According to the statement, on the receipt of this information, the J&K Police and CRPF ‘rushed to the spot’ and while the operation was temporarily suspended due to nightfall, it resumed at dawn and the ‘encounter’ ended at 11.30am when ‘all the three hiding terrorists’ were killed. The police also stated that on searching the men, one AK-47 rifle and two pistols, ammunition and other incriminating material along with some documents were recovered from them, on the basis of which they were identified.

A press conference was also held by General Officer Commanding (GOC) of the counter-insurgency unit that operates mostly in North Kashmir and some areas of Srinagar outskirts, called Kilo Force, H.S. Sahi in Srinagar, where he stated that the nature of the ammunition used by the militants suggested that they were planning a large-scale strike on the highway, a tactic he said is chosen by militants to get maximum publicity. The police also stated later that two of the three killed were ‘radically inclined’ and working as overground workers of the Lashkar-e-Toiba (LeT) terror outfit. On 18 January 2021, the Inspector General of Police (IGP) for Kashmir Range, Vijay Kumar, stated that the police had evidence to prove that the killed men were ‘active terrorists’ and had provided logistic support to other terrorists. The police refused to hand over the bodies of the men to their families due to the Covid-19 pandemic in order to ensure that there was no violation of rules by way of a gathering of mourners. There has been no update on the investigation of the deaths of the three men.

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<sup>479</sup> Scroll.in, “‘We want justice’: Families of three young Kashmiris dispute official version of a deadly shootout”, (3 January 2021), <<https://scroll.in/article/982979/we-want-justice-families-of-three-young-kashmiris-dispute-official-version-of-a-deadly-shootout>>; The Economic Times, “2 of 3 youths killed in encounter were ‘radically inclined’ and LeT overground workers: J-K Police”, (1 January 2021), <<https://economictimes.indiatimes.com/news/defence/2-of-3-youths-killed-in-encounter-were-radically-inclined-and-le-t-overground-workers-j-k-police/articleshow/80059791.cms>>; Kashmir Observer, “Lawaypora Encounter: DGP Says, Will Investigate Families’ Claim”, (31 December 2020) <<https://kashmirobservers.net/2020/12/31/lawaypora-encounter-will-investigate-families-claim-says-dgp/>>; The Times of India, “Slain Lawaypora trio were terrorists: IGP Kashmir” (19 January 2021), <<https://timesofindia.indiatimes.com/india/slain-lawaypora-trio-were-terrorists-igp-kashmir/articleshow/80335741.cms>>

<sup>480</sup> During a cordon and search operation, the area around the suspected militant hideout is evacuated and cordoned off and residents are warned. Then a search party consisting of members of the army and the CRPF is created and sent into the perimeter, while the others guard the perimeter.

However, the families of the victims have claimed that they had no connection with militants and were killed in a so-called fake encounter where a shoot-out is staged to justify the killing. Hours after the press conference by GOC Sahi, the families began to protest outside the Police Control room in Srinagar, having arrived after seeing images of their dead bodies on social media. The families stated that the men had left home on 29 December 2020, and they had been unable to contact them thereafter. The fact that none of the men were listed in the police's database of active militants adds credence to this claim, even though the police insist that two of them were 'hardcore associates of terrorists' and that the third may have joined the two very recently. On 31 December 2020, the J&K Director General of Police (DGP) Dilbag Singh stated that although he had no reason to dispute the version of GOC Sahi as he was a senior officer, he would look into the statements of the families of the dead men.

Police have stated that both Athar Mushtaq Wani and Aijaz Maqbool Ganie have links with militants, asserting that the former was the cousin of Rayees Ahmad Wani, a militant killed in 2017, and that Aijaz Maqbool Ganie was associated with LeT terrorist Faisal Mustaq Baba, killed in June 2020. However, according to locals, Faisal Mustaq Baba and Aijaz Maqbool Ganie merely lived in neighbouring villages and while they did know each other, they were not close.

Athar Mushtaq Wani's family has empathically denied that he had any link to militants, stating that his final examination was scheduled for the day of his death and there was no possibility that he would turn into a militant in 'half a day'. They claim that he had informed them on 29 December 2020 that he would be travelling for some work to Srinagar and would be home late. Thereafter, Wani was unreachable until the family learned of his death.

Aijaz Maqbool Ganie's family stated that he had a spinal disc problem and had left home for the first time in a month on 29 December 2020 due to being on bed rest. They stated that he had travelled to Pulwama to buy books for his examinations and, later that day, informed them that he had met Athar Mushtaq Wani in Pulwama and they would return the following day. Thereafter, Aijaz Maqbool Ganie was also unreachable until his father was asked by the police to identify his body.

Zubair Ahmed's family has also contested the police claims of Zubair Ahmad's militancy saying that he ran a construction business and was always busy with work, having left the house on the evening of 29 December 2020 for work. He informed his brother, a J&K police officer, that he would be back late. The family had no further contact with Zubair Ahmad until an army officer informed his brother that he had been killed in an encounter.

Local residents of the Lawaypora area have also pointed out significant departures from regular police and army behaviour during the Lawaypora Encounter. They stated that there had been no announcement or efforts for evacuation of residents before the

encounter, nor had the internet services been suspended, which are standard practices for the safety of locals as well as to prevent militants from seeking back-up. The locals also contested the claims of the army that the militants had been given any opportunity to surrender stating that no such announcements had been made.

### 3. The Hyderpora Encounter

**Dr Mudasir Gul** (40-year-old Muslim man, resident of Srinagar), **Muhammad Amir Magray** (23-year-old Muslim man, resident of Srinagar), **and Mohammad Altaf Bhat**<sup>481</sup> (48-year-old Muslim man, resident of Srinagar) were killed on 15 November 2021 at Srinagar's Hyderpora locality in a shopping complex by the J&K police, the army and paramilitary forces. In addition, Haider alias Bilal Bhai, a suspected militant from Pakistan was also killed. Dr Mudasir Gul was a trained dental surgeon, working as a broker and with an office in the shopping complex. Muhammad Amir Magray was a worker in Dr Mudasir Gul's office and Mohammad Altaf Bhat was the owner of the shopping complex.

The police claimed that Haider and Muhammad Amir Magray were militants; that Dr Mudasir Gul was working as an associate of the militants; and that Mohammad Altaf Bhat was killed in a 'crossfire' during the encounter. They later claimed that both Dr Mudasir Gul and Mohammad Altaf Bhat were "overground workers" helping the militants and that Muhammad Amir Magray was Haider's local associate.

The J&K police stated that on the evening of 15 November 2021, an anti-militancy operation was launched by the 2<sup>nd</sup> Rashtriya Rifles and CRPF following 'specific police inputs', i.e. information about the 'presence of terrorists' in a shopping complex in Hyderpora, Srinagar. On their arrival, the police asked Mohammad Altaf Bhat and Dr Mudasir Gul to accompany them during the operation. IGP for Kashmir Range, Vijay Kumar, also confirmed that Mohammad Altaf Bhat and Dr Mudasir Gul were used to knock on the door of the room, where the militants were suspected to be hiding, on the top floor of the shopping complex. The police claimed that the alleged militants 'started firing indiscriminately towards the party which was retaliated. However, in the initial exchange of fire, both the individuals (Altaf and Mudasir) accompanying the search party received critical gunshot injuries and succumbed to their injuries'. After the encounter, the bodies of the four men were quickly buried overnight by the police in Handwara, a remote village in north Kashmir about 90km from Srinagar.

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<sup>481</sup> The Wire, "Srinagar Encounter: Eyewitnesses Say Civilians Were Used as 'Human Shields'; Probe Demanded", (17 November 2021), <<https://thewire.in/security/srinagar-encounter-eyewitnesses-civilians-human-shields-hrw-probe-demanded>>; The Wire, "We Want to See His Body, His Face, One Last Time: Family of Civilian Killed in J&K Encounter", (3 December 2021), <<https://thewire.in/rights/we-want-to-see-his-body-his-face-one-last-time-family-of-civilian-killed-in-jk-encounter>>; The Indian Express, "Hyderpora encounter: Under fire over Srinagar killings, J&K admin orders probe, exhumes 2 bodies", (19 November 2021), <<https://indianexpress.com/article/india/hyderpora-encounter-civilians-bodies-exhumed-7629986/>>; Mountain Ink, "Altaf Bhat's Family Demand Judicial Probe; Aamir's Family Await Return of His Body", (19 November 2021), <<https://mountain-ink.com/altaf-bhats-family-demand-judicial-probe-amirs-family-await-return-of-his-body/>>; Hindustan Times, "Hyderpora encounter: SIT gives clean chit to forces, PAGD says 'old story' repeated", (28 December 2021), <<https://www.hindustantimes.com/india-news/hyderpora-encounter-sit-gives-clean-chit-to-forces-pagd-says-old-story-101640707691686.html>>

The police's version of events varies from that of eyewitnesses at the scene, who spoke to the press on conditions of anonymity. Eyewitnesses stated that as soon as the police arrived at the complex around 5.30pm, they ordered for the shops in the shopping complex to be shuttered and seized the phones of all the traders. The unit then asked Mohammad Altaf Bhat to accompany them in the anti-militancy operation, to which he agreed without any resistance. Eyewitnesses then reported seeing Mohammad Altaf Bhat and Dr Mudasir Gul walk along with the security forces out of the complex and being asked to be on standby outside for 30 minutes, after which they were again taken into the complex. Soon after, gunshots were heard during which the men were killed. These accounts have given credence to the allegations that both Mohammad Altaf Bhat and Dr Mudasir Gul were used as human shields by the army or killed for being eyewitnesses to the actions of the army. Eyewitnesses also claimed that Muhammad Amir Magray, who police claim was an associate of Haider and was killed during the encounter, was actually seen leaving the complex before the encounter.

Little to no details are known about the identity or alleged militancy of Haider, the fourth man killed in the encounter, who was allegedly a Pakistani national. However, families of the other three men have strongly disputed the police claims that the victims were militants or even linked to militants. Muhammad Amir Magray's family insists on his innocence, stating that he was a student of Quranic Studies, who had left for Srinagar to work in the office of Dr Mudasir Gul. When his family reached Srinagar to claim his body, the police informed them that Muhammad Amir Magray was a militant who had been giving refuge to other militants and his body had been buried overnight. The family repeatedly asked for any proof of his links to militants and on being provided none, they left for their home in the Thatharka Seripora village without his body. All requests by Muhammad Amir Magray's family for the return of his body have been rejected and they insist that he was used as a human shield by the army during the operation.

The families of Mohammad Altaf Bhat and Dr Mudasir Gul also denied any links to militants and, on being informed that both men had been buried overnight, staged a protest at Srinagar's Press Enclave, demanding that the police return the bodies for last rites. After two days of protesting, the bodies of both men were exhumed and returned to the families for a funeral, on the condition that prayers be kept to a minimum and no sloganeering take place. Saima Bhat, a senior journalist who was Mohammad Altaf Bhat's niece, stated that his family had met with the IGP, who had agreed that Mohammad Altaf Bhat was innocent and had said that he regretted his killing.

On 16 November 2021, the J&K police announced that a Special Investigation Team (SIT), headed by the IGP would be set up to probe the series of events that unfolded during the encounter. On 17 November 2021, Human Rights Watch sought a credible and independent probe into the allegations of civilians being used as human shields during

the encounter. On 18 November 2021, the J&K government ordered a magisterial inquiry into the Hyderpora Encounter to be conducted by an officer of Additional District Magistrate's rank and assured the families that 'suitable action' would be taken on receipt of the report.

However, the families have rejected the magisterial inquiry and insisted on a judicial probe,<sup>482</sup> a request which was not granted. On 26 November 2021, DGP Dilbag Singh announced that the SIT was continuing the probe into the Hyderpora Encounter and would present 'evidence about the foreign militant who was provided shelter there'. On 28 December 2021, the SIT exonerated the security forces in their report, finding that it had been proved that one 'Bilal Bhai' (also known as Haider and Saqib), a Pakistani resident, and Muhammad Amir Magray were both militants. The report also stated that Dr Mudasir Gul was killed by the foreign terrorist Haider and that Mohammad Altaf Bhat and Muhammad Amir Magray had both been killed in the crossfire as Haider had tried to use them as a human shield.

In January 2022, Muhammad Amir Magray's family approached the J&K High Court seeking the exhumation of his body for a proper burial. During the hearing, an affidavit was submitted by the police which contained discrepancies from their earlier version of events regarding the source of the information received about the presence of militants in the shopping complex. The police submitted that it cannot be ruled out that Dr. Mudasir Gul also had links to militants. The police have also rejected the demand made by Muhammad Amir Magray's family for his body stating that he is not an ordinary citizen but a terrorist and if 'the return of the dead body of terrorist is considered, it will send a wrong message in society and will lead to far greater consequences of law and order and security concerns'. The case is ongoing in the High Court.

In one of the rare cases where investigations were conducted into an incident, in which three labourers from Rajouri including a minor were killed in a fake<sup>483</sup> encounter in Ashimpora area of district Shopian, the army stated in a probe that it exceeded its powers under AFSPA.<sup>484</sup>

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<sup>482</sup> Magisterial inquiries are conducted by a magistrate who is part of the government, unlike an independent judge and have proven to be an ineffective remedy, see The Wire, *The Futility of Magisterial Inquiries Into Encounter Killings in Kashmir*, 27 November 2021, <<https://thewire.in/government/why-magisterial-inquiries-into-encounter-killings-in-kashmir-invariably-run-aground>>

<sup>483</sup> India Today, "Amshipora fake encounter case: J&K police produces challan against Army captain, 2 others" (26 December 2020), <<https://www.indiatoday.in/india/story/amshipora-fake-encounter-case-j-k-police-produces-challan-against-army-captain-2-others-1753400-2020-12-26>>

<sup>484</sup> The Wire, "Shopian 'Encounter': Army says it exceeded AFSPA powers, confirms 3 killed were from Rajouri", (18 September 2020), <<https://thewire.in/rights/shopian-encounter-army-jk-police-afspa-rajouri-labourers>>

## **ANNEXURE V**

**STATE AND VIGILANTES INCITING,  
BRUTALISING AND DENYING RIGHTS OF  
MUSLIMS IN UTTAR PRADESH**

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## I. Background on Uttar Pradesh

Uttar Pradesh (UP) in the north-west of India is the largest state in India, with a population of 240 million people and the highest Muslim population in the country: around 44 million Muslims.<sup>1</sup> UP consists of 75 districts.

The state is ruled by the Bhartiya Janta Party (BJP) since 2017, when Ajay Singh Bisht aka Yogi Adityanath was appointed as its Chief Minister (CM) and Home Minister (HM).<sup>2</sup>

The CM is the head of the State Government with a cabinet of Ministers.<sup>3</sup> The Law and Order portfolio is part of the Home Department of the state, with a Home Minister as the political head of the department, with ultimate authority and responsibility for all actions of the department.<sup>4</sup>

## II. Factual findings

This chapter describes events and facts that occurred in UP since 2019 that have relevance for international law. The description is based on secondary sources, including UN reports, local and international NGO reports, independent

media articles, as well as on primary sources, such as witness/victim testimonies and official government documents.

### I. Crackdown on CAA protests

The Citizenship (Amendment) Act 2019 (CAA) was signed into law on 12 December 2019, creating a patently discriminatory law which disadvantages Muslims.<sup>5</sup> The legislation creates a fast-track for “illegal migrants” belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Bangladesh or Pakistan, who entered India due to or for fear of religious persecution, to apply for expedited naturalisation as Indian citizens but specifically excludes Muslims.<sup>6</sup>

#### I.1. Timeline

On the day the CAA was enacted in the national Parliament, the UP Home Department under CM Yogi Adityanath directed law enforcement agencies to implement a “Zonal/Sector scheme” to prime the police hierarchy to be vigilant and for senior police officers to take all necessary measures for the maintenance of law and order.<sup>7</sup> A riot control scheme (*Danga Niyamtran* scheme) was also

<sup>1</sup> Human Rights Watch, India: Deadly Force Used Against Protesters, 23 December 23, 2019, <<https://www.hrw.org/news/2019/12/23/india-deadly-force-used-against-protesters>>

<sup>2</sup> Official Website of UP Government, <[http://upcmo.up.nic.in/cabinet\\_minister.htm](http://upcmo.up.nic.in/cabinet_minister.htm)>, lists persons in-charge of the relevant ministerial portfolios; Controversial Hindu priest chosen as Uttar Pradesh chief minister (The Guardian, 19 March 2017)

<<https://www.theguardian.com/world/2017/mar/19/uttar-pradesh-yogi-adityanath-hindu-priest-chief-minister>>; CM Yogi Adityanath keeps home, revenue: UP portfolio allocation highlights (Hindustan Times, 22 March 2017) <<https://www.hindustantimes.com/india-news/live-updates-on-uttar-pradesh-govt-portfolios-keslav-prasad-maurya-gets-pwd/story-JafGBgr70e7VXxcBsnA0dM.html>>

<sup>3</sup> See Official Website of UP Government, <[http://upcmo.up.nic.in/cabinet\\_minister.htm](http://upcmo.up.nic.in/cabinet_minister.htm)>

<sup>4</sup> Section Wise Work Distribution – Home Department, Government of Uttar Pradesh: <http://uphome.gov.in/activities-of-the-department.htm> (last accessed on 8 February 2022).

<sup>5</sup> UN News, New citizenship law in India ‘fundamentally discriminatory’: UN human rights office, 13 December 2019, <<https://news.un.org/en/story/2019/12/1053511>>.

<sup>6</sup> United States Commission on International Religious Freedom, Legislation Factsheet India, The Citizenship (Amendment) Act in India, February 2020, <[https://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](https://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf)>

<sup>7</sup> UP Police Submission made to the Allahabad High Court, on file with authors.

implemented throughout the state in which police battalions were equipped with riot control weaponry such as anti-riot guns, tear gas, rubber bullets etc.<sup>8</sup>

The enactment of the CAA immediately triggered protests across the country.<sup>9</sup> On 13 December 2019 and 15 December 2019, the initial two protests against the CAA took place at Muslim-majority Aligarh Muslim University. These protests were quelled immediately by police operations on the campus.<sup>10</sup> Aligarh was the first location where the internet was shut down on that same day.<sup>11</sup>

In the course of the following days, protests slowly increased throughout UP, and large protests were planned for 20 December 2019.<sup>12</sup> Between 13 December 2019 and 23 December 2019, protests against the CAA were organised by a mix of local community groups, political parties, youth

groups and often also just arose spontaneously, to express resentment against the CAA. The vast majority of protesters were Muslims.<sup>13</sup> Many protest marches were planned to culminate in the handing over of memoranda to local authorities.<sup>14</sup> These were organised across much of UP (as elsewhere in the country) on 19 December 2019 and particularly on 20 December 2020, the first Friday after the passage of the CAA in the Parliament.<sup>15</sup>

Starting on 16 December 2019, large parts of UP, especially its Muslim concentrations in western and central districts of Bijnor, were put under lockdown by District Magistrates of the UP State Government. Restrictions were imposed on assembly and movement through orders passed under Section 144 of the Code of Criminal Procedure (CrPC), which prohibits the gathering of more than four people.<sup>16</sup> From the next day onwards, 17 December 2019,

<sup>8</sup> Ibid; The Hindustan, [उपद्रव की आशंका, जिले में लागू रही दंगा नियंत्रण स्कीम](https://www.livehindustan.com/uttar-pradesh/saharanpur/story-fear-of-disturbance-riot-control-scheme-implemented-in-the-district-2925724.html), 27 December 2019, available at: <https://www.livehindustan.com/uttar-pradesh/saharanpur/story-fear-of-disturbance-riot-control-scheme-implemented-in-the-district-2925724.html>.

<sup>9</sup> United States Commission on International Religious Freedom (USCIRF), India – USCIRF – Recommended for countries of particular concern (CPC), Annual Report 2020, <<https://www.uscifr.gov/sites/default/files/India.pdf>> (hereinafter **USCIRF Report 2020**), 20–21; European Parliament, Motion for a resolution on India's Citizenship (Amendment) Act, 2019, B9-0079/2020, <[https://www.europarl.europa.eu/doceo/document/B-9-2020-0079\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2020-0079_EN.html)> (hereinafter **EU Parliament Motion**), para. I.

<sup>10</sup> Khan AA, 'A Timeline of Protests at Aligarh Muslim University, As I Saw It' (*The Quint*, 27 December 2019), <<https://www.thequint.com/my-report/caa-protests-students-aligarh-muslim-university-violence-timeline>>

<sup>11</sup> The Hindu, Internet Services Shut down in Aligarh, 13 December 2019, <<https://www.thehindu.com/news/national/other-states/internet-services-shut-down-in-aligarh/article30294816.ece>>; Week-long Internet Shutdown Ends In UP's Aligarh Amid Anti-CAA Agitation (Republic World, 22 December 2019) <<https://www.republicworld.com/india-news/general-news/week-long-internet-shutdown-ends-in-ups-aligarh-amid-anti-cao-agitati.html>>

<sup>12</sup> Hindustan Times, Protests against Citizenship Amendment Act Continue in UP, 13 December 2019, <<https://www.hindustantimes.com/lucknow/protests-against-citizenship-amendment-act-continue-in-up/story-xFxDfPruuMvjIvPrsiTo6I.html>>; The Hindu, Anti-Citizenship Act Protests on 19 December | One Dies of Alleged Firearm Injury in Lucknow; Two Die in Police Firing in Mangaluru, 9 December 2019, <<https://www.thehindu.com/news/national/anti-cao-protests-live-updates-december-19/article30345949.ece>>; News18, UP to Kerala, Bengal to Gujarat: How India Vented Out Anger Against Police Crackdown in Jamia, AMU, 17 December 2019, <<https://www.news18.com/news/india/citizenship-amendment-bill-protests-live-updates-jamia-millia-islamia-citizenship-act-2019-amu-assam-west-bengal-2425443.html>>

<sup>13</sup> The Hindu, An Anatomy of Anti-CAA Protests, 1 January 2020, <<https://www.thehindu.com/opinion/op-ed/an-anatomy-of-anti-cao-protests/article30446145.ece>>; The India Forum, Three Streams in the Anti-CAA Movement, 21 January 2020, <<https://www.theindiaforum.in/article/three-streams-anti-cao-movement>>

<sup>14</sup> Scroll.in, UP: Mau Administration Asks 26 Anti-CAA Protestors to Pay Rs 49 Lakh for Alleged Property Damage, 20 February 2021, <<https://scroll.in/latest/987489/up-mau-administration-asks-26-anti-cao-protestors-to-pay-rs-49-lakh-for-alleged-property-damage>>; Hindustan Times, Muslim Women Protest against CAA and NRC in Hapur, Apprise DM of Their Worries, 22 December 2019, <<https://www.hindustantimes.com/cities/muslim-women-protest-against-cao-and-nrc-in-hapur-apprise-dm-of-their-worries/story-VnWYSyhwOv04yPIk0IYVVPJ.html>>

<sup>15</sup> BBC News, India Protests: At Least Six Killed in Uttar Pradesh, 20 December 2019, <<https://www.bbc.com/news/world-asia-india-50872900>>; The Free Press Journal, CAA protest: 5 dead in Uttar Pradesh, police use water cannons on protesters in Delhi, 20 December 2019, <<https://www.freepressjournal.in/india/cao-protest-updates-jmi-website-hacked-later-restored>>

<sup>16</sup> EU Parliament Motion, para. The Hindu, Anti-CAA Protests: 1,113 Arrests, 5,558 Preventive Detentions, 19 Dead in UP, 26 December 2019, <<https://www.thehindu.com/news/national/anti-cao-protests-1113-arrests-5558-preventive-detentions-19-dead-in-up/article30402858.ece>>; The Times of India, Anti-CAA Stir in Uttar Pradesh: Sec 144 Clamped, Internet Snapped in Five Districts, No Public Events on Thursday, 17 December 2019, <<https://timesofindia.indiatimes.com/city/lucknow/sec-144-clamped-net-snapped-in-5-dists-no-public-events-on-thursday/articleshow/72789372.cms>>

internet services were suspended in various districts which lasted until 28 December 2019.<sup>17</sup>

On 18 December 2019, Director-General of the Police (DGP) Om Prakash Singh issued notices to more than 3,000 people across UP, warning them not to participate in the protests against the CAA planned for 20 December 2019.<sup>18</sup> On the same day, a number of human rights defenders and activists from the Muslim community were put under house arrest in Lucknow.<sup>19</sup> At the same time, the Secretary General of the UN expressed concerns about the use of excessive force against anti-CAA protesters across India.<sup>20</sup>

On 19 December 2019, DGP Om Prakash Singh announced that preventive arrests had been made in several districts to prevent protests.<sup>21</sup> On that same day, the CM Yogi Adityanath publicly warned that his government would take ‘revenge’ on protesters: ‘[...] *Whoever is responsible, we will fix accountability on them, will confiscate the property of each element*

*involved in this violence, and from this whatever damage has been done to public property will be compensated. All faces are marked out and have been captured on video and CCTV footage. We will confiscate all their properties to take revenge on them. I have said strictly that the entire UP is under Section 144. It has been so continuously from 8 November. There can be no demonstrations without permission, and it is not acceptable that there be violence in the name of demonstrations. Such kind of anti-social and anarchic activities will not be tolerated in any situation. I have talked personally to all police officers and given them necessary instructions that the general public should face no difficulties, but riotous elements should be dealt with strictly and investigation should be begun against them. [...]*<sup>22</sup> [unofficial translation]

On 20 December 2019, in anticipation of planned protests the police put up barricades outside Muslim populated areas and deployed forces, in tandem with civilians recruited by the police, so-called

<sup>17</sup> The Economic Times, Internet Suspended in 21 UP Districts over Citizenship Amendment Act, 27 December 2019, <<https://economictimes.indiatimes.com/news/politics-and-nation/internet-suspended-in-21-up-districts-over-citizenship-amendment-act/articleshow/72989827.cms?from=mdr>>; MediaNama, Indian Govt Uses Internet Shutdowns to Curb Anti-CAA Protests – in UP, Delhi, Assam, and 6 Other States, 2 January 2020, <<https://www.medianama.com/2020/01/223-indian-govt-internet-shutdowns-citizenship-protests/>>

<sup>18</sup> Mint, Sec 144 imposed across UP as protests against CAA spreads in country, 19 December 2019, <<https://www.livemint.com/news/india/sec-144-imposed-across-up-as-protests-against-kaa-spreads-in-the-country-11576744974673.html>>; Deccan Herald, ‘No permission given for protests as sec 144 in place’ 19 December 2019; <<https://www.deccanherald.com/national/north-and-central/no-permission-given-for-protests-as-sec-144-in-place-786836.html>>

<sup>19</sup> A State at War with its People, 10; The Times of India, CAA Protests: With 100 More in Police Net, Arrest Count at 250 in Lucknow | Lucknow News - Times of India, 22 December 2019, <<https://timesofindia.indiatimes.com/city/lucknow/kaa-protests-with-100-more-in-police-net-arrest-count-at-250-in-lucknow/articleshow/72921031.cms>>; Human Rights Watch, “Shoot the Traitors”: Discrimination Against Muslims under India’s New Citizenship Policy’, 2020, <[https://www.hrw.org/sites/default/files/report\\_pdf/india0420\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/india0420_web_0.pdf)> (hereinafter **HRW Report 2020**), 51.

<sup>20</sup> Press Trust of India, UN voices concern over violence in India against CAA, urges respect for freedom of expression, 18 December 2019, <<https://www.indiatoday.in/india/story/un-voices-concern-over-violence-in-india-against-kaa-urges-respect-for-freedom-of-expression-16293399-2019-12-18->>; Scroll, “Citizenship Act protests: UN chief concerned about violence and ‘alleged use of excessive force’”, 18 December 2019 <<https://scroll.in/latest/947223/citizenship-act-protests-un-chief-concerned-about-violence-and-alleged-use-of-excessive-force>>

<sup>21</sup> Mint, Sec 144 imposed across UP as protests against CAA spreads in country, 19 December 2019, <<https://www.livemint.com/news/india/sec-144-imposed-across-up-as-protests-against-kaa-spreads-in-the-country-11576744974673.html>>; Business Standard, Situation brought under control in UP, priority to maintain law and order: DGP, 19 December 2019, <[https://www.business-standard.com/article/pti-stories/situation-brought-under-control-in-up-priority-to-maintain-law-and-order-dgp-119121901594\\_1.html](https://www.business-standard.com/article/pti-stories/situation-brought-under-control-in-up-priority-to-maintain-law-and-order-dgp-119121901594_1.html)>

<sup>22</sup> The Economic Times, ‘Yogi Adityanath on CAA protests: Properties of vandals will be confiscated’ (19 December 2019), <<https://www.youtube.com/watch?v=J4D4oJg0oTs>>; “Will Take Revenge’: Yogi Adityanath On Protesters Vandalising Public Properties,” *Outlook Magazine*, 19 December 2019, <<https://www.outlookindia.com/website/story/india-news-will-take-revenge-yogi-adityanath-on-anti-kaa-protesters-vandalising-public-properties/344396>>

*police mitra* (friends of the police), outside of prominent mosques across UP.<sup>23</sup> Peaceful protests started in several districts, some of them spontaneously after Friday prayers.<sup>24</sup> The police responded to these protests with force by checking and frisking around mosques, resorting to baton charges at worshippers and those participating in protest marches as well as bystanders, without provocation, and used tear gas shells and stun grenades indiscriminately.<sup>25</sup> According to eyewitness and survivor testimonies, police personnel shot live bullets at protesters on that day.<sup>26</sup> Scores of individuals were arrested at the same time.<sup>27</sup>

Later that day, UP Police also ransacked homes and destroyed private property in Muslim neighbourhoods in Muzaffarnagar, Kanpur, Lucknow and Firozabad, among others, and beat up some of the residents.<sup>28</sup> The following day, on 21 December 2019, the Districts Administrations sealed off Muslim shops in a number of districts and demanded from Muslim community leaders on 25 December 2019 that they refrain from protesting in exchange for opening the sealed shops.<sup>29</sup>

Between 23 December 2019 and June 2020, additional arrests of human rights defenders and opposition members were made.<sup>30</sup> No large protests were held during that time.

## 1.2. Documented abuses during CAA crackdown

The following abuses in relation to the protests against the CAA were documented in the period of 13 December 2019 and June 2020.

### (a) Police shootings

As shown in [Case List A](#) below, documentation by NGOs and media reports recorded 22 cases of deaths resulting from police shootings and one victim reportedly killed by a BJP leader. These are from nine districts in UP: Bijnor (2); Firozabad (7); Kanpur (3); Lucknow (1), Meerut (5), Muzaffarnagar (1); Rampur (1); Sambhal (2) and Varanasi (1 allegedly killed by BJP leader). All deaths occurred on 20 December 2019, except for the case in Lucknow, which occurred on 19 December 2019.

In a press note issued by the UP Police on 26 December 2019, a total of 19 persons were

<sup>23</sup> HRW Report 2020, 45; International Commission of Jurists, Briefing Paper on the Unlawful Use of Force by Uttar Pradesh Police to Quell Anti-Citizenship Amendment Act Protests, 2020, <https://www.ici.org/wp-content/uploads/2020/01/India-Police-Excessive-Force-UP-Briefing-Paper-2020-ENG.pdf> (hereinafter **ICJ Briefing Paper**); Scroll.in, Meet the "Friends" of the Uttar Pradesh Police Who Wielded Batons against Muslims a Month Ago, 20 January 2020, <<https://scroll.in/article/950489/meet-the-friends-of-the-uttar-pradesh-police-who-wielded-batons-against-muslims-a-month-ago>>

<sup>24</sup> HRW Report 2020

<sup>25</sup> HRW Report 2020

<sup>26</sup> HRW Report 2020

<sup>27</sup> HRW Report 2020

<sup>28</sup> India Today, Bijnor Ground Report: Muslim families flee as UP Police vandalise homes, harass women after clashes over CAA, 24 December 2019, <<https://www.indiatoday.in/india/story/bijnor-ground-report-muslim-families-flee-as-up-police-vandalise-homes-harass-women-after-clashes-over-caa-1631046-2019-12-24>>; Scroll.in, Watch: Scenes of destruction in Muzaffarnagar as mob attacks Muslim neighbourhood, 21 December 2019, <<https://scroll.in/video/947552/watch-scenes-of-destruction-in-muzaffarnagar-as-mob-attacks-muslim-neighbourhoods>>; India Today, Every assailant was policeman: Activists accuse UP Police of assaulting Muslims during CAA stir, release videos, 29 December 2019, <<https://www.indiatoday.in/india/story/every-assailant-was-policeman-activists-accuse-up-police-of-assaulting-muslims-caa-stir-release-videos-1632361-2019-12-29>>

<sup>29</sup> The New Indian Express, 67 shops of alleged protesters sealed in Uttar Pradesh district, 23 December 2019,

<<https://www.newindianexpress.com/nation/2019/dec/23/67-shops-of-alleged-protesters-sealed-in-uttar-pradesh-district-2079914.html>>

<sup>30</sup> See Case List B.

reported to have died in the course of anti-CAA protests, all except one related to incidents on 20 December 2019.<sup>31</sup> Police sources confirmed to the media that 14 were from 'firearm injuries'.<sup>32</sup> In submissions to the Allahabad High Court in the Public Interest Litigation case against police repression filed on 17 February 2020, they revised this figure to 22.<sup>33</sup>

The UP Police has only admitted that people have died due to firearm injuries but is not disclosing, admitting to or registering cases of deaths by police shooting.<sup>34</sup> To date, there is still no official statement or confirmation by the UP Police of the number of deaths caused by police firing; despite reports and evidence being reported by human rights organisations and the media.<sup>35</sup> In spite of internal police

regulations requiring reporting following incidents of firing, the UP Police has only projected denials and contradictions in disclosing how many deaths have occurred due to police firing.<sup>36</sup>

In late December 2019, DGP Om Prakash Singh claimed that no one had died from a police bullet and all deaths reported are due to firing by protestors themselves.<sup>37</sup> Following this, SP of Bijnor Sanjeev Tyagi admitted to a newspaper that one death was caused by police firing in his district.<sup>38</sup> This is the only admission so far. He acknowledged that both victims in Bijnor, the district under his command, died due to firearm injuries.<sup>39</sup> No legal proceeding has been initiated against any police officer, even in the lone case of police admission.<sup>40</sup>

<sup>31</sup> UP Police note, 'Action taken against anti-CAA 2019 protests in state's districts', 26 December 2019; Karwaan-e-Mohabbat, A State at War with its People.

<sup>32</sup> FPJ Bureau, 'CAA protest: 14 of 16 UP protesters died of bullet injury' (*The Free Press Journal*, 24 December 2019), <<https://www.freepressjournal.in/india/caa-protest-14-of-16-up-protesters-died-of-bullet-injury>>; The Indian Express, UP: 14 of 16 killed in CAA protests fell to bullet injuries, 23 December 2019, <<https://indianexpress.com/article/india/up-cao-protests-deaths-bullet-injuries-6180302/lite/>>

<sup>33</sup> Allahabad HC PIL 08/2020. State Government Affidavit in Compliance, 17 February 2020; The Hindustan Times, 22 killed during anti-CAA stir, 322 still in jail, UP government tells Allahabad high court, 9 November 2021, <<https://www.hindustantimes.com/india-news/22-killed-during-anti-cao-stir-322-still-in-jail-up-government-tells-allahabad-high-court/story-FwFSEDAUWTj0oGqgREITNM.html>>

<sup>34</sup> FPJ Bureau, 'CAA protest: 14 of 16 UP protesters died of bullet injury' (*The Free Press Journal*, 24 December 2019), <<https://www.freepressjournal.in/india/caa-protest-14-of-16-up-protesters-died-of-bullet-injury>>; The Indian Express, UP: 14 of 16 killed in CAA protests fell to bullet injuries, 23 December 2019, <<https://indianexpress.com/article/india/up-cao-protests-deaths-bullet-injuries-6180302/lite/>>; The Hindustan Times, 22 killed during anti-CAA stir, 322 still in jail, UP government tells Allahabad high court, 9 November 2021, <<https://www.hindustantimes.com/india-news/22-killed-during-anti-cao-stir-322-still-in-jail-up-government-tells-allahabad-high-court/story-FwFSEDAUWTj0oGqgREITNM.html>>

<sup>35</sup> Salik Ahmad, 'CAA Protesters: Police Denials At Odds With Horror Accounts Of Locals In Uttar Pradesh' (*The Outlook*, 24 December 2019), <<https://www.outlookindia.com/website/story/india-news-police-denials-at-odds-with-horror-accounts-of-locals-in-uttar-pradesh/344650>>; Firstpost, 'Reign of terror in Uttar Pradesh': Police framing false charges against anti-CAA protesters, govt spreading lies about NPR, NRC, claim activists, 26 December 2019, <<https://www.firstpost.com/india/reign-of-terror-in-uttar-pradesh-police-framing-false-charges-against-anti-cao-protesters-govt-spreading-lies-about-npr-nrc-claim-activists-7827991.html>>

<sup>36</sup> See guidelines for police encounters issued by the Supreme Court in People's Union for Civil Liberties vs. State of Maharashtra, Criminal Appeal No. 1255 of 1999, 23 September 2014, <<https://www.lawweb.in/2019/11/supreme-court-guidelines-on-police.html>>; National Human Rights Commission India, 'Revised Guidelines/Procedures to be followed in cases of death caused in police action', 12 May 2010, <<https://nhrc.nic.in/sites/default/files/Death%20During%20the%20course%20of%20Police%20Action.pdf>>

<sup>37</sup> India Today Web Desk, 'UP Police claims firing by protestors, not cops behind 18 deaths in CAA protests in state' (*India Today*, 22 December 2019), <<https://www.indiatoday.in/india/story/uttar-pradesh-police-claims-firing-protestors-not-cops-behind-deaths-cao-protests-state-1630474-2019-12-22>>; The Wire, Uttar Pradesh: 5 Killed in Anti-CAA Protests; 'Not One Bullet Shot', Says Police, 20 December 2019, <<https://thewire.in/rights/uttar-pradesh-5-killed-in-anti-cao-protests-not-one-bullet-shot-says-police>>

<sup>38</sup> Manisha Sahu, 'First official admission in UP: Bijnor man killed when police fired in self-defence' (*The Indian Express*, 24 December 2019), <<https://indianexpress.com/article/india/cao-protests-up-bijnor-protester-killed-police-firing-6181930/>>; Hindustan Times, After flip-flop, police admit to opening fire in 'self-defence' during anti-CAA protest in Bijnor, 24 December 2019, <<https://www.hindustantimes.com/lucknow/after-flip-flop-police-admit-to-opening-fire-in-self-defence-during-anti-cao-protest-in-bijnor/story-3a0YeznjeeJWE58mubkfk.html>>

<sup>39</sup> The Indian Express, UP: 14 of 16 killed in CAA protests fell to bullet injuries, 23 December 2019, <<https://indianexpress.com/article/india/up-cao-protests-deaths-bullet-injuries-6180302/lite/>>; Hindustan Times, After flip-flop, police admit to opening fire in 'self-defence' during anti-CAA protest in Bijnor, 24 December 2019, <<https://www.hindustantimes.com/lucknow/after-flip-flop-police-admit-to-opening-fire-in-self-defence-during-anti-cao-protest-in-bijnor/story-3a0YeznjeeJWE58mubkfk.html>>

<sup>40</sup> Aishwarya S Iyer, 'Remembering Suleiman: UPSC Aspirant who Died in Police Firing', (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/suleiman-bijnor-up-police-firing-anti-cao-protests-anas#read-more>>; NewsClick, UP: A Year on, Forgotten Victims of Anti-CAA, NRC Still Await Justice, 21 December 2020, <<https://www.newsclick.in/UP-year-forgotten-victims-anti-CAA-NRC-still-await-justice>>

Various videos have emerged of police directly firing live bullets at protesters, contradicting police claims that deaths were the result of cross-firing by protesters using illegal firearms.<sup>41</sup> In addition, many media accounts and witness testimonies rebut the police claims and allege that it was the police who first provoked the crowd and later on used excessive force.<sup>42</sup> The targeting appears pre-planned, considering that evidence has emerged from across districts of police personnel taking care to prevent any chance of evidence, before launching attacks. In Meerut, the police are reported to have destroyed all CCTV cameras just before the violence.<sup>43</sup> Similarly, in Kanpur, Muzaffarnagar, Lucknow and Bijnor the UP police were caught on camera destroying CCTVs.<sup>44</sup>

An analysis of 20 police reports (referred to as “First Information Reports” – FIR) that were registered against protesters in Muzaffarnagar, Meerut, Firozabad and Bijnor, also raises doubts about the police’s version.<sup>45</sup> Some FIRs mention protesters using petrol bombs, *sutli* (string) bombs, and country made guns, among others, to attack police. But none mention any

relevant seizures – except slippers, shoes and sticks in some FIRs. Further, none of the arrested had, in the police’s own admission, any of these weapons on their person. There is omnibus use of Section 148 of Indian Penal Code<sup>46</sup> (IPC) which criminalises rioting and being armed with deadly weapons, even in FIRs which mention protesters armed only with stones. FIRs do not detail specific injuries to police personnel but invoke sections relating to assault and injury situations in general terms. Yet, in the absence of credible information attesting to a high threshold of injury on police or others, in some cases, even Section 307 of the IPC (attempt to murder) is applied. None of the FIRs mention any individual role or attribution. At most they name certain people as organisers/instigators, but no other role is mentioned. The FIRs usually also list several unknown others as suspects, giving the police a great deal of leeway to implicate individuals in these crimes arbitrarily. Even where named, only first names are mentioned, making it possible for the police to round up anyone in the area with the same name.

<sup>41</sup> ‘CAA protests: Video shows police firing at protesters, contrary to UP DGP claims’ (*Gulf News*, 23 December 2019), <<https://gulfnnews.com/world/asia/india/caa-protests-video-shows-police-firing-at-protesters-contrary-to-up-dgp-claims-11577078324096>>; Alok Pandey, ‘Video Suggests UP Cop Opened Fire In Kanpur, Contrary To “No Police Firing” Claim’ (NDTV, 22 December 2019), <<https://www.ndtv.com/india-news/citizenship-amendment-act-protests-video-suggests-up-cop-opened-fire-in-kanpur-contrary-to-no-police-2152566?amp=1&akamai-rum=off>>

<sup>42</sup> Supriya Sharma, ‘Meet the “Friends” of the Uttar Pradesh Police who Wielded batons against Muslims a Month ago’, (*Scroll*, 20 January 2020), <<https://scroll.in/article/950489/meet-the-friends-of-the-uttar-pradesh-police-who-wielded-batons-against-muslims-a-month-ago>>; The Wire, ‘Video Contradicts UP Police’s Claim of Not a “Single Bullet” Fired at Anti-CAA Protesters’, 22 December 2019, <<https://thewire.in/law/up-police-video-protests>>

<sup>43</sup> Web Desk, ‘Watch: UP Police Smash CCTV Cameras in Before Violence Begin in Meerut’, (*The Wire*, 27 December 2019), <<https://www.theweek.in/news/india/2019/12/27/watch-up-police-smash-cctv-cameras-before-violence-began-in-meerut.html>>; Video tweet, Reuters, 27 December 2019.

<sup>44</sup> Fatima Khan, ‘Police Brutality Videos Need Verification’ UP DGP says CAA Protesters used Illegal Arms’, (*The Print*, 28 December 2019), <<https://theprint.in/india/police-brutality-videos-need-verification-up-dgp-says-cao-protesters-used-illegal-arms/341894/>>; Indian Express, In Muzaffarnagar protest case, ADM is prosecution, jury and judge combined, 15 February 2020, <<https://indianexpress.com/article/india/muzaffarnagar-cao-protest-case-adm-prosecution-jury-judge-6268931/>>

<sup>45</sup> This analysis based on a review of FIRs available to the authors. On 17 February 2020, state government filed compliance affidavit in Allahabad HC, that provided details and copies of all FIRs registered.

<sup>46</sup> Section 148 of the Indian Penal Code reads: “Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Testimonies and media accounts corroborate the discrepancies in police accounts. In Bijnor, survivor families stated that at the Thana Masjid (*Agency Chouraha*, site of incident) no protest was planned or organised, and police charged at worshippers who were just milling out of the mosque after Friday prayers.<sup>47</sup> In Firozabad, the team was informed that police commenced a baton charge and firing before Friday prayers had concluded.<sup>48</sup> And in Muzaffarnagar, police attacked an Islamic seminary well after protest marches had moved away.<sup>49</sup>

The International Commission of Jurists (ICJ), examining the lawfulness of the UP Police's response to anti-CAA 2019 protests, concluded that many aspects of the response contravened international law and standards – including rights to life and freedom from ill-treatment, both protected under international law and guaranteed by India as part of its international obligations and domestic law. It called for India to 'thoroughly, promptly and impartially' investigate any death and injury caused and bring to justice any law enforcement officials implicated in or found to be responsible for arbitrary deprivation of life during protest.<sup>50</sup>

The individual cases listed in [Case List A](#) show that all victims were killed in the vicinity of protests or at locations where

police presence was built up in the anticipation of protests, even though most of them were not actively taking part in the protests but were merely passing through the area, eg. on their way home from work or from the mosque. This pattern indicates that police were shooting at individuals without legitimate justification, such as self-defence, even when it was obvious that they were not actively participating in the protests.

All bullet injuries of the 22 police shootings described in [Case List A](#) were above the waist: seven had head wounds, two in the neck, five chest wounds, three in the upper back, and three in the abdomen. Regulation 70(e) of the UP Police Regulations, laying down the procedure to be followed in using firearms, stipulates that when firearms are used, aim should be low and pointed only at the most threatening part of the crowd.<sup>51</sup> The nature of injuries seems to signal, thus, an intent to kill rather than to warn and disperse crowds.

All deceased were male, working-class Muslims who were, in most cases, the main breadwinners of their families.

As described in [Case List A](#), families of the deceased from across districts report a pattern of threats and intimidation by police, from the time of registration of complaints to the conduct of autopsies.

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<sup>47</sup> Interview, families of Mohammad Anas and Mohammad Suleiman. Nahtaur, 15 January 2020.

<sup>48</sup> Interview, families of Mohammad Abrar, Mohammad Haroon and Mohammad Shafeeq, Firozabad, 20 January 2020.

<sup>49</sup> Interview, S.A.R.H., Muzaffarnagar, 15 January; Outlook, CAA Protests: Police Denials At Odds With Horror Accounts of Locals in Uttar Pradesh, 24 December 2019, <<https://www.outlookindia.com/website/story/india-news-police-denials-at-odds-with-horror-accounts-of-locals-in-uttar-pradesh/344650>>

<sup>50</sup> ICJ Briefing Paper.

<sup>51</sup> Uttar Pradesh Police Regulations, Official version in Hindi, <https://uppolice.gov.in/article/en/rules-regulation>; unofficial English translation, <<https://www.prashantkanha.com/wp-content/uploads/2021/03/UP-Police-Regulations-uttar-pradesh.pdf>>, 63-64. (last accessed on 8 February 2022)

Police in several instances did not allow bodies to be taken home for burial and instead forced burials at distant locations, in hurried funerals, with the intent to dispose of bodies speedily. Families report intimidation by police at the time of registering a FIR to persuade them not to record bullet injuries as cause of death; or that police firing might have been the cause. Police dictated instead that it was protesters' shooting and/or minor injuries that caused the deaths. Despite some families naming police officers as likely accused, none were recorded in FIRs. In some instances, families also reported that police refused to hand bodies back to families, unless they signed off on complaints dictated and drafted by police.

Based on the 20 FIRs, FIRs registered on the deaths present distorted facts and dilute the offences needed to be invoked. Whether survivor families have approached the police or not, the offence of murder (Section 302 IPC) has not been registered in all but one FIR. Where families have reported to the police, the FIRs invoke only culpable homicide not amounting to murder (Section 304 IPC), and do not mention bullet wounds, in several cases stating that the death was due to minor injury. In the lone case of a FIR registered for murder, it blames unknown protesters for the firing.

### (b) Detentions and arrests

In the lead-up to the escalation on 20 December 2019 large numbers of protesters were detained or arrested. The authorities have not published a total number of people detained or arrested in the context of CAA protests since 13 December 2019 but have issued various statements mentioning different numbers.

On 21 December 2019, the UP State government through their Twitter handle announced that 124 incidents of violence were reported in the state, that 705 people had been arrested, and 4,500 more had been detained. It also claimed 63 cases had been registered regarding offensive social-media posts, and 102 people were arrested in connection with the same.<sup>52</sup> Later in their submission to the Allahabad High Court in February 2020, the UP Police submitted that 885 persons had been arrested for protesting against the CAA from 22 districts of the state.<sup>53</sup> No further updates have been made available publicly. Requests for information filed with UP DGP Om Prakash Singh in January 2021 were returned on the grounds that 'the information is sensitive and is barred by the law from being shared'.<sup>54</sup>

In January 2020, media reports claimed that the state government had admitted it had arrested many innocent persons in its action against anti-CAA protesters, and that it would review arrests of the 1,200 or so persons then still in custody.<sup>55</sup> This was

<sup>52</sup> UP Police [@Uppolice] (2019 December 21) [Tweet], <https://twitter.com/Uppolice/status/1208403051058487298/photo/1>.

<sup>53</sup> Submission made to the Allahabad High Court, on file with authors.

<sup>54</sup> Reply to request for information, on file with authors.

<sup>55</sup> NH Correspondent, 'Uttar Pradesh: Yogi Govt. to review Anti-CAA arrests, admits innocent were arrested', (*National Herald*, 02 January 2020), <<https://www.nationalheraldindia.com/india/uttar-pradesh-yogi-govt-to-review-anti-cao-arrests-admits-innocents-were-arrested>>

on the back of local courts granting bail to those arrested, for want of any evidence against them.

In a large number of cases people were detained or arrested without meeting the necessary requirements under domestic law. An analysis of the contents of 20 FIRs registered by UP Police against the persons detained or arrested in Muzaffarnagar, Meerut, Firozabad and Bijnor, indicates that these do not contain credible facts that add up to or justify the offences being invoked.<sup>56</sup> As set out more fully above, this calls the credibility of the FIRs themselves – and the entire narrative perpetrated by the police that it was protestors that were violent – into question.

In the materials reviewed for this report, 187 cases of detention were reported, including 35 minor victims, where indications of arbitrariness of the detention were mentioned. Among those arrested or detained across the state were prominent human rights defenders, including lawyers, environmental activists, local politicians, former civil servants, academics, artists, and university or secondary school students, with the vast majority being Muslims. These cases include:

- 125 people arrested for participating in peaceful protests between 19 and 21 December 2019 were released on bail due to lack of evidence on their role in committing violence, including 56 activists, scholars and students in Varanasi,<sup>57</sup> 19 individuals in Muzaffarnagar,<sup>58</sup> and 50 persons in Bijnor.<sup>59</sup> In Varanasi, 69 persons were arrested on 19 December 2019. Of these, 56 were charged with serious offences such as rioting with weapons and obstructing public officials from discharging their duties and assaulting them. While granting bail to all the 56, the Sessions Court reportedly recorded that no clear role of the accused had been established in the violence, apart from the accusation that activists had taken part in the protest without obtaining permission.<sup>60</sup> Media accounts reported that 19 of the 107 persons detained by police in anti-CAA protests in Muzaffarnagar were released from custody. Five of these were released by the police themselves on the grounds that evidence was deficient, dropping all grievous charges against them. The rest were released on bail by the courts, again due to lack of evidence.<sup>61</sup> The Bijnor sessions court, while granting bail to two out of over 100 arrested and

<sup>56</sup> This analysis based on a review of FIRs available to the authors.

<sup>57</sup> Scroll.in, A month after UP police made sweeping arrests, bail orders show that it is unable to offer evidence, 20 January 2020, <[https://amp.scroll.in/article/950409/a-month-after-up-police-made-sweeping-arrests-bail-orders-show-that-it-is-unable-to-offer-evidence?\\_twitter\\_impression=true](https://amp.scroll.in/article/950409/a-month-after-up-police-made-sweeping-arrests-bail-orders-show-that-it-is-unable-to-offer-evidence?_twitter_impression=true)>

<sup>58</sup> The Indian Express, Cases start falling in Muzaffarnagar: 19 of 107 freed after police say no evidence, 15 January 2020, <<https://indianexpress.com/article/india/cases-start-falling-in-muzaffarnagar-19-of-107-freed-after-police-say-no-evidence-6216925/>>

<sup>59</sup> The Indian Express, Judge shreds Bijnor police claims: No proof of protesters firing or bullet injuries to cops, 29 January 2020, <<https://indianexpress.com/article/india/citizenship-act-protests-up-bijnor-police-court-6240169/>>; NDTV, “No Proof”: UP Police Face Questions As 48 CAA Protesters Get Bail, 30 January 2020, <<https://www.ndtv.com/india-news/in-up-town-bijnor-singed-by-caa-violence-48-get-bail-where-is-the-proof-asks-court-2171855>>

<sup>60</sup> NDTV, “No Proof”:

<sup>61</sup> Kaunain Sheriff M, ‘Cases start falling in Muzaffarnagar: 19 of 107 freed after police say no evidence’ (*The Indian Express*, 15 January 2020), <<https://indianexpress.com/article/india/cases-start-falling-in-muzaffarnagar-19-of-107-freed-after-police-say-no-evidence-6216925/>>

accused of rioting and attempt to murder during anti-CAA protests on 20 December 2019, reportedly castigated the prosecution, noting that it provided no evidence to show that the accused had indulged in arson and firing, that any weapons had been seized from them, or that police had sustained any injuries.<sup>62</sup> Another court in Bijnor came to the same conclusion when granting bail to 48 out of 83 people arrested on 20 December.<sup>63</sup>

- On 19 December 2019, eight university students from the Baranas Hindu University in Varanasi District were detained and held for five days without access to a lawyer or information provided to their families.<sup>64</sup>
- On 20 December 2019, three individuals were arrested without any apparent cause when their houses were raided and ransacked by the police in Bijnor.<sup>65</sup>
- On 20 December 2019, 21 minors, with the youngest at the age of 13, were detained by the police in Bijnor in the context of protests, in violation of domestic laws, which requires them to be presented before a Juvenile Justice Board within 24 hours.<sup>66</sup> In

Muzaffarnagar, 14 minors were detained in violation of the same domestic laws.<sup>67</sup> Some of the victims also reported physical and mental abuse while being held in custody (see below on [Physical and Mental Abuse in Custody](#)).

- 16 human rights defenders, journalists and opposition politicians were detained, often without charges, throughout this period, with the arrests continuing as late as June 2020 (see description of individual cases in [Case List B](#)). Most of them were also physically and verbally abused while in detention.

#### (c) Physical and mental abuse in custody

As described in [Case List C](#), independent media articles and NGO reports recorded 117 cases of physical and mental abuse by police officers in nine districts in UP between 13 December 2019 and 23 March 2020, with 41 victims below the age of 18. The victims are almost all Muslims, including human rights defenders, students and protesters. All but one of the cases were committed in police custody after the victim was arrested or detained, often arbitrarily. [Case List B](#) describes the type of abuse meted out to human rights defenders in police custody. The common

<sup>62</sup> Kaunain Sheriff M, 'Judge shreds Bijnor police claims: No proof of protesters firing or bullet injuries to cops' (The Indian Express, 29 January 2020), <<https://indianexpress.com/article/india/citizenship-act-protests-up-bijnor-police-court-6240169/>>

<sup>63</sup> Alok Pandey, "'No Proof': UP Police Face Questions As 48 CAA Protesters Get Bail' (NDTV, 30 January 2020), <<https://www.ndtv.com/india-news/in-up-town-bijnor-singed-by-caa-violence-48-get-bail-where-is-the-proof-asks-court-2171855>>

<sup>64</sup> Citizens Against Hate, (2020), "Every One Has Been Silenced" Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal', <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>65</sup> Sagar, 'Adityanath's Police Raj' (The Caravan, 27 December 2019), <<https://caravanmagazine.in/politics/nehtaur-bijnor-fear-up-police-defends-two-killings-state-rampage>>; Citizens Against Hate, (2020), "Every One Has Been Silenced" Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal', <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>66</sup> The Quint, 'Will Gouge Out Your Eyeballs': Bijnor Kids Allege Police Torture, 26 December 2019, <<https://www.thequint.com/news/india/caa-nrc-protests-in-bijnor-uttar-pradesh-minors-detained#read-more%20also%20in%20Brutalizing%20Innocence#read-more>>

<sup>67</sup> Quill Foundation et al., Brutalising Innocence – Detention Torture & Criminalization of Minors by UP Police to quell anti-CAA protests, January 2020, <<https://www.hqrc.org/wp-content/uploads/2020/02/brutalizing-innocence-report.pdf>>

forms of physical abuse included beating with fists or batons, slapping, and kicking different parts of the body, often leading to severe injuries. In most cases, the physical attacks were accompanied by verbal insults or slurs commonly used against Muslims.

Other cases include:

- On 15 December 2019, the students of **Aligarh Muslim University (AMU)** who were protesting against heavy-handed police action against students of Delhi's Jamia Millia Islamia protesting against CAA earlier in the week, came under attack by UP police. Hordes of policemen were reported to have entered the AMU campus and brutalised the students with tear gas and rubber bullets.<sup>68</sup> The police also used stun grenades, pellet guns and batons.<sup>69</sup> Around 60 students suffered serious injuries, including one who lost his right hand.<sup>70</sup> One of the students attacked at the campus and then detained gave the following account: *'Then, I was dragged outside the hostel, beaten up all the way, until we reached the end of Morrison court area. They then asked me about my hometown. After coming to know that I was from Kashmir, the degree of brutality increased. They started*

*shouting, "Acha tum hi ho jisko azadi chahiye?" (So you're the one who wants freedom?) and then as they beat me, they said, "Yeh lo Azadi" (Take this, here is your freedom). One of the personnel suggested the others beat me with a wooden rod instead of a plastic one. I was tied to a tree and my legs were beaten. This happened at the corner of the road which leads to Morrison Court. I received a blow on my ear and it began to bleed heavily. I was half conscious and I told the police personnel, who were holding my collar, that my head had been injured. He then held me by my head and asked others not to hit me on the head while suggesting that they could hit anywhere on the rest of my body. I was kept in a large police vehicle, a truck, along with many others and we were beaten in the vehicle as well. A policeman had a short rod-like object in his hand—he was counting us repeatedly after every few minutes—he beat us while counting each time. He stepped on my face, my legs and wherever he could step on.'*<sup>71</sup> A number of students of AMU claimed to have been abused in custody as well.<sup>72</sup> Police reportedly detained 26 AMU students in connection with the violence and released them on 16 December 2019.<sup>73</sup> They were reportedly taken to different police stations where

<sup>68</sup> Vatsala Gaur, 'After Jamia, Police used Brute Force to Quell Protests at AMU', (*The Economic Times*, 15 December 2019), <<https://economictimes.indiatimes.com/news/politics-and-nation/amu-students-protest-against-caa-cops-use-batons-teargas/articleshow/72697984.cms?from=mdr>>

<sup>69</sup> Karwan e Mohabbat and Indian Cultural Forum, 'The siege of Aligarh Muslim University: A fact finding report' (Indian Cultural Forum, 24 December 2019), <<https://indianculturalforum.in/2019/12/24/the-siege-of-aligarh-muslim-university-a-fact-finding-report/>>

<sup>70</sup> Karwan e Mohabbat and Indian Cultural Forum, 'The siege of Aligarh Muslim University'.

<sup>71</sup> Citizens Against Hate (2020), 'The Dismantling of Minority Education – Police Violence in Aligarh Muslim University & Jamila Millia Islam' <<https://citizensagainsthate.org/wp-content/uploads/2020/12/Dismantling-of-Minority-Education-Violence-against-JMI-and-AMU.pdf>>, 56.

<sup>72</sup> Anuj Kumar, 'Report Documents Students' Testimonials on Violence at JMI and AMU in Dec. 2019' (*The Hindu*, 17 December 2020), <<https://www.thehindu.com/news/national/report-documents-students-testimonials-on-violence-at-jmi-and-amu-in-dec-2019/article33356025.ece>>

<sup>73</sup> Karwan e Mohabbat and Indian Cultural Forum, 'The siege of Aligarh Muslim University: A fact finding report' (Indian Cultural Forum, 24 December 2019), <<https://indianculturalforum.in/2019/12/24/the-siege-of-aligarh-muslim-university-a-fact-finding-report/>>

three claim to have been stripped and beaten with thick wide leather belts on the hips and hands, and another was reported to have been beaten with rifle butts. All allege that they were forced to drink alcohol and chant religious slogans.<sup>74</sup> As a consequence of the beatings, one student reported that ‘every part of my body except my head and feet had turned blue’.<sup>75</sup>

- The police also reportedly used communal slurs against them and threatened to shoot them.<sup>76</sup> One of the detained students described the situation as follows: *‘I was thrown into the truck and one RAF personnel entered it as well. He laid me down and put his foot on my face and said, “Ab mango azadi, azadi chahte thay gaddaro” (Now ask for freedom, you were demanding freedom you traitors!). He also added, “Desh ka namak khaatay ho, desh se gaddari kartay ho” (You earn your bread and butter in this country, and still you betray it). He punched my face and my face, my lower lip and my knees began to bleed. [,,] During the questioning, they followed a pattern, one question, one slur, one slap. One policeman came and did that, others followed. This was repeated around 7-8*

*times. [,,] The condition of the lock-up was pathetic. We were around nine students in a single room and there was no separate washroom. The room stank. It was very cold and we were not provided with extra blankets—nine people had to share only three blankets. The cold was more painful than the injuries. We were not spared even in the lock-up. Everyone passing by abused us. I was screaming in pain the entire night. [,,]’<sup>77</sup>*

- In **Sambhal district**, police arrested a Muslim student (name unknown). When they found that he was a student of Jamia Millia Islamia – where large-scale anti-CAA protests had been ongoing – he was stripped naked and beaten with batons and belts, including on his genitals.<sup>78</sup>
- In **Firozabad district**, 14 people were taken to police stations and beaten, one of them suffered serious internal injuries.<sup>79</sup> One of them, Nabi Ahmed, testified that his testicles were squeezed during detention at Rasoolpur Thana and he could hear other detainees’ screams as the same was done to them.<sup>80</sup> The police also stripped them and whipped them with batons and

<sup>74</sup> Citizens Against Hate (2020), ‘*The Dismantling of Minority Education – Police Violence in Aligarh Muslim University & Jamila Millia Islam*’, <<https://citizensagainsthate.org/wp-content/uploads/2020/12/Dismantling-of-Minority-Education-Violence-against-JMI-and-AMU.pdf>>.

<sup>75</sup> Citizens Against Hate (2020), ‘The Dismantling of Minority Education’, 57.

<sup>76</sup> Srutihsagar Yamunan, ‘Aligarh Muslim University Allege they were Tortured in Police Custody after Sunday Protest’, (*Scroll*, 18 December 2019), <<https://scroll.in/article/947178/aligarh-muslim-university-students-allege-they-were-tortured-in-police-custody-after-sunday-protests>>.

<sup>77</sup> Citizens Against Hate (2020), ‘*The Dismantling of Minority Education – Police Violence in Aligarh Muslim University & Jamila Millia Islam*’, <<https://citizensagainsthate.org/wp-content/uploads/2020/12/Dismantling-of-Minority-Education-Violence-against-JMI-and-AMU.pdf>>, 55-56.

<sup>78</sup> Karwan-e-Mohabbat (February 2020), ‘A State at War with its People: Report on State Action in UP Targeting Dissent and Muslim Minorities’, <<http://karwanemohabbat.in/wp-content/uploads/2020/06/A-State-at-War-With-Its-People-KeM-Feb2020.pdf>>.

<sup>79</sup> Karwan-e-Mohabbat (February 2020), ‘A State at War with its People: Report on State Action in UP Targeting Dissent and Muslim Minorities’, <<http://karwanemohabbat.in/wp-content/uploads/2020/06/A-State-at-War-With-Its-People-KeM-Feb2020.pdf>>.

<sup>80</sup> Karwan-e-Mohabbat (February 2020), ‘A State at War with its People: Report on State Action in UP Targeting Dissent and Muslim Minorities’, <<http://karwanemohabbat.in/wp-content/uploads/2020/06/A-State-at-War-With-Its-People-KeM-Feb2020.pdf>>.

belts.<sup>81</sup> Another man, Amir, suffered serious internal injuries due to the beating in custody and he was denied medical treatment.<sup>82</sup>

- In **Kanpur** district, 20-year old Mohammad Adil was arrested from his home by the police on 20 December 2019 and in custody he was beaten, which led to serious injuries on his legs, hands and head.<sup>83</sup>

Among those allegedly tortured in custody were 41 minors between the ages of eight and 18. There have been reports of illegal detention and custodial torture of children by police from various districts in the state.<sup>84</sup> A fact-finding report on violence against minors in the police crackdown against anti-CAA protesters reveals police lawlessness, violating existing laws and regulations regarding children.<sup>85</sup> Of the 41 minors detained by Police, 21 were detained and tortured in Bijnor, 14 in Muzaffarnagar, six in Sambhal.<sup>86</sup>

- In **Bijnor**, 21 minors, with the youngest 13-years old, were detained on 20 December 2019 by the police and released only after they had spent three days in detention.<sup>87</sup> The minors were

reportedly not allowed to sleep at night and were assaulted continuously.<sup>88</sup> One of the minors later told the media: *'The police personnel beat each one of us. They brought us together in civil lines and beat us. They sat us down, then beat us, gave us water, then beat us, and gave us food then beat us again.'*<sup>89</sup> Police registered FIRs against four minors for rioting among other offences – and released them only after 12 days in custody.

- In **Sambhal**, six minors were reportedly put behind bars on 20 December without informing their parents or giving access to legal representation, and shown as adults in police records.<sup>90</sup> Lawyers in the district revealed that the six were released on bail after more than 40 days.<sup>91</sup> All detained minors that the fact-finding team spoke to, testified that they were beaten with police batons in custody, resulting in serious injuries in several cases - fractured limbs, smashed knees and bruised bodies. They were kept in the same enclosure as adult detainees and made to witness violence inflicted by police on adults. During detention, minors were denied basic rights like access to drinking water and

<sup>81</sup> Karwan-e-Mohabbat, 'A State at War with its People'.

<sup>82</sup> Karwan-e-Mohabbat, 'A State at War with its People'.

<sup>83</sup> Sagar, 'Quietly defiant, Kanpur's Muslims persist in the face of police brutality and state apathy' (The Caravan, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>

<sup>84</sup> Aman Sethi, 'CAA: UP Police Tortured Children Swept Up In Citizenship Law Protests' (Huffington Post, 24 December 2019), [https://www.huffingtonpost.in/entry/caa-uttar-pradesh-police-tortured-children\\_in\\_5e0207b5e4b05b08babab722?hka](https://www.huffingtonpost.in/entry/caa-uttar-pradesh-police-tortured-children_in_5e0207b5e4b05b08babab722?hka).

<sup>85</sup> Quill Foundation and others (January 2020), 'Brutalising Innocence: Detention, Torture and Criminalization of Minors by UP Police to Quell anti-CAA Protests', <<https://www.haqcrc.org/wp-content/uploads/2020/02/brutalizing-innocence-report.pdf>>

<sup>86</sup> Ditsa Bhattacharya, 'Fact Finding Report from UP: Young Victims of State Violence Narrate Ordeal', (NewsClick, 09 February 2020), <<https://www.newsclick.in/fact-finding-report-young-victims-state-violence-narrate-ordeal>>

<sup>87</sup> Aishwarya S Iyer, "'Will Gouge Out your Eyeballs': Bijnor Kids Allege Police Torture', (The Quint, 26 December 2019),

<<https://www.thequint.com/news/india/caa-nrc-protests-in-bijnor-uttar-pradesh-minors-detained#read-more>>

<sup>88</sup> Aishwarya S Iyer, 'Will Gouge Out your Eyeballs'.

<sup>89</sup> Aishwarya S Iyer, 'Will Gouge Out your Eyeballs'.

<sup>90</sup> Nidhi Suresh, 'Detained for CAA Protests, Sambhal Minor Recall Lock-Up Ordeal' (The Quint, 09 May 2020),

<<https://www.thequint.com/news/politics/caa-protests-minors-detained-sambhal-uttar-pradesh-police#read-more>>

<sup>91</sup> Nidhi Suresh, 'Detained for CAA Protests'.

food and rebuked or beaten for asking for water or the use of toilets. They were also sleep-deprived, and no arrangement for heating was made despite freezing temperatures.

- In **Muzaffarnagar**, 14 minors, with the youngest eight years old, were detained on 20 December at an Islamic seminary that was attacked and ransacked by police.<sup>92</sup> They were beaten at the seminary, in the police vehicle and at the police station.<sup>93</sup> Police denied them water to break the fast. They were also abused and humiliated, and religious slurs against Islamic religious figures were made by police personnel.<sup>94</sup> Many students had broken arms and bruises all over the body.<sup>95</sup> The minors, along with other detainees, were forced to chant 'Jai Sri Ram' (Glory to Lord Rama, the Hindu god).<sup>96</sup> The Principal of the seminary was himself tortured in custody – ending up with a fractured arm, sore legs and bruised body – and repeatedly threatened, accused by the police party of having sent his students to protests to violently oppose CAA. According to the Principal, 14 of the 50 students detained by police from the seminary that evening were minors. Four of these had FIRs registered against them, accused of serious crimes,

including rioting and destruction of property, besides assaulting and obstructing public officials, as well as under Section 307 IPC (acting with intention to cause death) and Section 120-B IPC (criminal conspiracy).<sup>97</sup> The four minors were released only after 12 days in custody. In their submission to Allahabad High Court in the PIL against police repression, the state government claimed that Maulana Asad Raza, the principal, had recorded statements that some rioters entered into the hostel and thereafter police entered into the hostel to disperse them. The affidavit goes on to claim that the principal 'nowhere stated that the police tortured him'.<sup>98</sup> However, the principal testified that he was forced by senior district police officers to furnish sworn affidavits absolving the police of any mistreatment – in return for release of the students from custody.<sup>99</sup>

- In **Muzaffarnagar**, Mohammad Sadiq, 14 years at the time, was beaten by the police on the streets where the protest took place on 20 December 2019, and his hand was burned with an iron rod heated in the flames of a car, before he was detained.<sup>100</sup>

<sup>92</sup> Quill Foundation and others (January 2020), 'Brutalising Innocence: Detention, Torture and Criminalization of Minors by UP Police to Quell anti-CAA Protests', <<https://www.haqcrc.org/wp-content/uploads/2020/02/brutalizing-innocence-report.pdf>>

<sup>93</sup> Quill Foundation and others, 'Brutalising Innocence'.

<sup>94</sup> Interview, S.A.R.H., Muzaffarnagar, 15 January 2020.

<sup>95</sup> Quill Foundation, Citizens Against Hate and HAQ Centre for Child Rights (January 2020), 'Brutalising Innocence: Detention, Torture and Criminalization of Minors by UP Police to Quell anti-CAA Protests', <<https://www.haqcrc.org/wp-content/uploads/2020/02/brutalizing-innocence-report.pdf>>

<sup>96</sup> Quill Foundation, Citizens Against Hate and HAQ Centre for Child Rights (January 2020), 'Brutalising Innocence'.

<sup>97</sup> FIR # 684 of 2019, dated 21 December 2019. Civil Lines PS, Muzaffarnagar.

<sup>98</sup> Allahabad HC PIL 08/2020. Affidavit of Compliance, hearing on 17 February 2020. para. 10.

<sup>99</sup> Interview, Muzaffarnagar, 15 January 2020.

<sup>100</sup> Hannah Ellis-Peterson, 'We are not safe': India's Muslims tell of wave of police brutality' (Guardian, 3 January 2020) Citizens Against Hate, (2020), "'Every One Has Been Silenced" Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal', <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

- In **Kanpur**, a 17-year-old boy was arrested outside the mosque on 20 December with two other minors and detained for a night, during which he was beaten to the extent that his feet were swollen, he had bruises all over his back and his jaw was dislocated. He was also made to chant ‘Jai Sri Ram’ (Glory to Lord Rama, the Hindu god).<sup>101</sup>

**(d) Destruction of property and closing of businesses**

In the days following 20 December 2019, there were reports, specifically in Muzaffarnagar, Bijnor and Lucknow, of police forcibly entering homes in Muslim localities in the aftermath of the protests, including the homes of some of the murder victims, ransacking the homes,<sup>102</sup> vandalising property,<sup>103</sup> and beating up residents, in what is reported by civilian fact-finding teams as reprisal attacks.<sup>104</sup> Residents reported that the police first destroyed the CCTV cameras.<sup>105</sup> One witness stated that the police were saying Muslims belong to Pakistan or Kabristan.<sup>106</sup>

Media accounts speak of vandalism by police in Lucknow.<sup>107</sup> In Mau district, authorities seized a large ‘wedding hall’ of Asif Chandan on 18 December 2019. In Kanpur, six shops were vandalised by the police on 20 December.<sup>108</sup> Videos show police smashing cars and throwing stones at homes on the night of 21 December.<sup>109</sup> Similar accounts of police vandalism were reported by the family of Mohammad Suleiman, victim of police firing on 20 December in Nehtaur, Bijnor district, where policemen numbering 10-12 in uniform, broke into the first floor house of the deceased and smashed glass panes and utensils in the balcony, according to the family, to overawe them.<sup>110</sup> Other homes of Muslims in Nehtaur were also broken into and ransacked as the police went from place to place to raid every house.<sup>111</sup>

In addition to the destruction of property, in the aftermath of 20 December 2019, the state government sealed properties of those they accused of being involved in protests, in a stated effort to seize and recover costs of destruction of public property from their sale. Reportedly, the

<sup>101</sup> Sagar, ‘Quietly defiant, Kanpur’s Muslims persist in the face of police brutality and state apathy’ (The Caravan, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>.

<sup>102</sup> Munish Chandra Pandey, ‘Bijnor Ground Report: Muslim families flee as UP Police vandalise homes, harass women after clashes over CAA’ (India Today, 24 December 2019), <<https://www.indiatoday.in/india/story/bijnor-ground-report-muslim-families-flee-as-up-police-vandalise-homes-harass-women-after-clashes-over-CAA-1631046-2019-12-24>>

<sup>103</sup> ‘Watch: Scenes of destruction in Muzaffarnagar as mob attacks Muslim neighbourhood’ (Scroll, 21 December 2019), <<https://scroll.in/video/947552/watch-scenes-of-destruction-in-muzaffarnagar-as-mob-attacks-muslim-neighbourhoods>>

<sup>104</sup> Web Desk, ‘Every assailant was policeman: Activists accuse UP Police of assaulting Muslims during CAA stir, release videos’ (India Today, 29 December 2019), <<https://www.indiatoday.in/india/story/every-assailant-was-policeman-activists-accuse-up-police-of-assaulting-muslims-CAA-stir-release-videos-1632361-2019-12-29>>

<sup>105</sup> Greeshma Kuthar and Gulfam, ‘What really happened during the CAA protests at Muzaffarnagar? Ruptured knees, looted property tell tale of police excess’ (Firstpost, 24 December 2019) <<https://www.firstpost.com/india/what-really-happened-during-the-CAA-protests-at-muzaffarnagar-ruptured-knees-looted-property-tell-tale-of-police-excess-7820391.html>>

<sup>106</sup> Greeshma Kuthar and Gulfam, ‘What really happened during the CAA protests at Muzaffarnagar?’.

<sup>107</sup> Ipsita Chakravarty et al., ‘Watch: A young woman narrates how Lucknow police broke into her home and smashed everything’ (Scroll, 20 December 2019), <[https://scroll.in/video/947465/watch-a-young-woman-narrates-how-lucknow-police-broke-into-her-home-and-smashed-everything?fbclid=IwAR0UdxMm9k10VZ1awJtkxsLpHPPmrdj514\\_P51Xnvevnel70BI2-zChabok](https://scroll.in/video/947465/watch-a-young-woman-narrates-how-lucknow-police-broke-into-her-home-and-smashed-everything?fbclid=IwAR0UdxMm9k10VZ1awJtkxsLpHPPmrdj514_P51Xnvevnel70BI2-zChabok)> <[https://www.facebook.com/farinajamal09/posts/2787548241307595?hc\\_location=ufi](https://www.facebook.com/farinajamal09/posts/2787548241307595?hc_location=ufi)>

<sup>108</sup> Sagar, ‘Quietly defiant, Kanpur’s Muslims persist in the face of police brutality and state apathy’ (The Caravan, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>

<sup>109</sup> Citizens Against Hate, (2020), ‘‘Every One Has Been Silenced’’ Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal’, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>110</sup> Interview, family of Mohammad Suleiman. Nehtaur, 15 January 2020.

<sup>111</sup> Sagar, ‘Adityanath’s Police Raj’ (The Caravan, 27 December 2019), <<https://caravanmagazine.in/politics/nehtaur-bijnor-fear-up-police-defends-two-killings-state-rampage>>

state government holds that this is for restitution for damage to public property during violence accompanying protests, in acts of retribution.<sup>112</sup> To this effect, the Chief Minister's Office's Twitter handle directed local authorities on 21 December 2019, 'wherever public property is damaged, get damages for that from protestors by identifying them from CCTV footage and other sources'.<sup>113</sup> However, these measures lacked any legal basis as they did not follow due process.<sup>114</sup>

In Muzaffarnagar, 67 shops in the Meenakshi chowk area – the site of protests and violence on 20 December 2019 – were sealed by the police on 21 December, and notices issued to them of non-payment of past revenue dues, with 63 of these shops belonging to Muslims.<sup>115</sup> On 25 December 2019, the district administration, in a meeting it called with traders, Imams of prominent mosques and Muslim community leaders, demanded from Muslim leadership that they ensure no further anti-CAA protests, in return for de-sealing of shops as well as releasing youths from detention. Once community leaders gave this undertaking, all shops were reopened that same evening. The next

Friday, 27 December 2019, no protests were held.<sup>116</sup>

### (e) Prohibition of gatherings

Starting on 16 December 2019, large parts of UP, especially its Muslim concentrations in western and central districts of Bijnor, Firozabad, Kanpur, Meerut, Muzaffarnagar, Rampur, Sambhal and the capital Lucknow were put under lockdown by District Magistrates of the UP State Government imposing restrictions on assembly and movement, through orders passed under Section 144 of the Code of Criminal Procedure (CrPC), which prohibits the gathering of more than four people.<sup>117</sup> However, according to the Supreme Court, Section 144 CrPC can be applied to prohibit assemblies only when there are clear indications of incitement to violence and riots, but in the days before 20 December 2019 there were no signs that protests would turn violent.<sup>118</sup> FIRs of people who were arrested name specific organisers or student bodies as having called the protests, despite having no permission and prohibitions of assemblies of more than four persons in place pursuant to Section 144 of the Criminal Procedure Code (CrPC).<sup>119</sup>

<sup>112</sup> '67 shops of alleged protesters sealed in Uttar Pradesh district' (The New Indian Express, 23 December 2019),

<<https://www.newindianexpress.com/nation/2019/dec/23/67-shops-of-alleged-protesters-sealed-in-uttar-pradesh-district-2079914.html>>

<sup>113</sup> CM Office, Tweet, <<https://twitter.com/CMOfficeUP/status/1208275318034718721?s=20>>

<sup>114</sup> The Wire, No Legal Backing for UP Govt's Action Against Property of 'Rioters': Lawyers, 27 December 2019, <<https://thewire.in/law/uttar-pradesh-protest-property>>

<sup>115</sup> Citizens Against Hate, (2020), 'Every One Has Been Silenced' Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal', <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>116</sup> Interview, family of Noor Mohammad, Muzaffarnagar, 15 January 2020.

<sup>117</sup> EU Parliament Motion, para. The Hindu, Anti-CAA Protests: 1,113 Arrests, 5,558 Preventive Detentions, 19 Dead in UP, 26 December 2019,

<<https://www.thehindu.com/news/national/anti-kaa-protests-1113-arrests-5558-preventive-detentions-19-dead-in-up/article30402858.ece>>; The Times of India, Anti-CAA Stir in Uttar Pradesh: Sec 144 Clamped, Internet Snapped in Five Districts, No Public Events on Thursday, 17 December 2019, <<https://timesofindia.indiatimes.com/city/lucknow/sec-144-clamped-net-snapped-in-5-dists-no-public-events-on-thursday/articleshow/72789372.cms>>

<sup>118</sup> Karwan-e-Mohabbat, A State at War with its People: Report on State Action in UP Targeting Dissent and Muslim Minorities, February 2020, <<http://karwanemohabbat.in/wp-content/uploads/2020/06/A-State-at-War-With-Its-People-KeM-Feb2020.pdf>> (hereinafter **A State at War with its People**), 8; BBC, Citizenship Act protests: How a colonial-era law is being used in India, 20 December 2019,

<<https://www.bbc.com/news/world-asia-india-50849909>>

<sup>119</sup> Section 144 of the Criminal Procedure Code authorises the Executive Magistrate of any state to issue an order that prohibits the assembly of more than four people under certain conditions. Any gatherings violating this order is considered an 'unlawful assembly' and can be punished with imprisonment according to Section 144 of the Indian Penal Code.

From 13 December 2019 onwards, internet services were suspended in various districts. This lasted until 28 December.<sup>120</sup> On 19 December, the shutdown of internet and mobile services was extended to the state capital Lucknow for 45 hours 'to prevent the possible misuse of media and Internet to disturb the peace and tranquillity of the city, and create further law and order situation'.<sup>121</sup> They were only restored on 28 December 2019.<sup>122</sup>

In Baghpath, adjoining Muzaffarnagar, the police in a tweet that day asked for worshippers to come for Friday prayers in pairs of twos or threes, and no more.<sup>123</sup> In Kanpur, the City Superintendent of Police (SP) tweeted the following as an example of preventive action police were taking against protesters: *'We've made some preventive arrests, identified people who are anti-social elements; we've spoken to all Imams and Maulvis to tell people that all the 'namazis' (worshippers) must return home directly after prayers and not indulge in any protest. We have started checking/frisking around all mosques and at strategic locations, installed barriers, deployed force, and are using aerostag (drone mounted camera) with which we*

*will keep an eye and monitor all students etc. within a five km radius.*'<sup>124</sup> He further warned people against coming out on roads, claiming that, since Section 144 CrPC was in force, and no permission had been granted to hold protests, police would take action against those breaking the rule.<sup>125</sup>

#### (f) Public hoardings

Disregarding the right to privacy, the district administration in Lucknow on the orders of CM Yogi Adityanath put up public hoardings in March 2020 containing photographs, names and addresses of alleged Muslim anti-CAA protesters, including prominent human rights defenders, as public notices for action.<sup>126</sup> The Allahabad High Court took note of the matter and ordered UP state authorities to immediately take down all the posters. The order was challenged by the UP Government in the Supreme Court of India who refused to stay the Allahabad High Court's order, informing the UP government that the move was 'not backed by the law'.<sup>127</sup> Yet, the state government has continued to target civilians, with fresh

<sup>120</sup> The Economic Times, Internet Suspended in 21 UP Districts over Citizenship Amendment Act, 27 December 2019, <<https://economictimes.indiatimes.com/news/politics-and-nation/internet-suspended-in-21-up-districts-over-citizenship-amendment-act/articleshow/72989827.cms?from=mdr>>; MediaNama, Indian Govt Uses Internet Shutdowns to Curb Anti-CAA Protests — in UP, Delhi, Assam, and 6 Other States, 2 January 2020, <<https://www.medianama.com/2020/01/223-indian-govt-internet-shutdowns-citizenship-protests/>>; Software Freedom Law Center, Internet Shutdowns during anti-CAA protests, <<https://internetshutdowns.in/static-page/caa-protest/>>

<sup>121</sup> Uttar Pradesh Government Notification No 189/2019 – CX – 3 dated 19 December 2019, exercising powers under Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

<sup>122</sup> ET Online, 'Internet Suspended in 21 UP Districts over Citizenship Amendment Act' (*The Economic Times*, 27 December 2019), <<https://economictimes.indiatimes.com/news/politics-and-nation/internet-suspended-in-21-up-districts-over-citizenship-amendment-act/articleshow/72989827.cms>>

<sup>123</sup> Baghpat Police, Tweet, <<https://twitter.com/baghpatpolice/status/1207921486062743552?s=20>>

<sup>124</sup> Baghpat Police, Tweet, <<https://twitter.com/kanpurnagarpol/status/1207978601800294401?s=20>>

<sup>125</sup> Police Commissioner Kanpur Nagar, Tweet, <<https://twitter.com/kanpurnagarpol/status/1207978601800294401?s=20>>

<sup>126</sup> Press Trust of India, 'Yogi's Name and Shame Raj: Banners with Photos and Personal Details of CAA Protestors puts up in Lucknow', (*India Today*, 07 March 2020), <<https://www.indiatoday.in/india/story/yogi-s-name-and-shame-raj-banners-with-photos-personal-details-of-caa-protesters-put-up-in-lucknow-1653290-2020-03-07>>

<sup>127</sup> Debayan Roy, 'SC says there is no Law to back UP Govt. on 'Name and Shame' Posters of Anti-CAA Protestors', (*The Print*, 12 March 2020), <<https://theprint.in/judiciary/sc-says-there-is-no-law-to-back-up-govt-on-name-and-shame-posters-of-anti-cao-protesters/379621/>>

hoardings of protestors put up in November 2020 in Lucknow.<sup>128</sup>

## 2. 'Encounter' killings in police operations

Extrajudicial killings (EJKs) in India, even in regions that are not categorised as conflict zones, are a common occurrence. Police officials shooting at suspected criminals or even innocent civilians as a law enforcement tactic is colloquially referred to as 'encounters' in India.<sup>129</sup> Often carried out in orchestrated settings, the killings are then justified as a means of self-defence or use of retaliatory force by the police. This standard pattern of 'fake encounters' carried out by the police forces in India also found a mention and succinct description in one of the reports by UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: *'Where they occur, "fake encounters" entail that suspected criminals or persons alleged to be terrorists or insurgents, and in some cases individuals for whose apprehension an award is granted, are fatally shot by the security officers. A shootout scene is staged afterwards. The scene portrays those killed as the aggressors who had first opened fire.'*

*The security officers allege in this regard that they returned fire in self-defence.*<sup>130</sup>

Ever since 2017, the state of UP has been actively resorting to 'encounter' or extrajudicial killings as an intimidating tool for law enforcement.<sup>131</sup> This time-tested method has been used by the UP administration with a renewed rigour and preference as a matter of state policy to maintain law and order. Credible evidence presented below casts serious doubts on the veracity of the police version of events and points to the cases being 'false encounter' killings in furtherance of the state's law enforcement policy.

In June 2017, CM Yogi Adityanath declared in an interview with a private television channel that his government would 'knock down' criminals: 'If they commit crimes, they will be knocked down' (*"gar apradh kareng toh thok diye jayenge"*).<sup>132</sup> While addressing police officers of the state, he emphasised a 'zero tolerance for crime' policy clarifying that human rights are only for citizens and not criminals.<sup>133</sup> This 'encounter campaign' led by CM Yogi

<sup>128</sup> The Wire Staff, 'Despite HC Orders, New Hoardings Appear in Lucknow with Names, Address of Anti-CAA Protestors', (*The Wire*, 6 November 2020), <<https://thewire.in/rights/despite-hc-order-new-hoardings-appear-in-lucknow-with-names-addresses-of-anti-kaa-protestors>>

<sup>129</sup> Bhargava, Naina, and Gauri S. Kumar. 'Extra-judicial killings in India: a crisis of justice, faith and public morality?' *South Asia@LSE* (2021); The Supreme Court of India considered the matter in *Om Prakash & Ors vs State of Jharkhand & Anr* (2012).

<sup>130</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Human Rights Council, 23rd Session: UN Assembly, pg 5, para. 13 (April 26, 2013).

<<https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1.EN.pdf>>

<sup>131</sup> Human Rights Watch, World Report, India <<https://www.hrw.org/world-report/2021/country-chapters/india>>; Adityanath's war on crime: Encounters spiked after Yogi took oath as Uttar Pradesh CM in 2017 (*Money Control*, July 10, 2020)

<<https://www.moneycontrol.com/news/india/adityanaths-war-on-crime-encounters-spiked-after-yogi-took-oath-as-uttar-pradesh-cm-in-2019-5530651.html>>

<sup>132</sup> "Thok Denge": We will knock down criminals in UP, says UP CM Yogi Adityanath in Aap Ki Adalat' (*IndiaTV*, 3 June, 2017)

<<https://www.indiatvnews.com/politics/national-thok-denge-we-will-knock-down-criminals-in-up-says-up-cm-yogi-adityanath-in-aap-ki-adalat-384587>>

<sup>133</sup> 'Human rights are for common man, not for criminals, terrorists,' says UP CM Yogi Adityanath (*Hindustan Times*, 29 December 2018) <<https://www.hindustantimes.com/india-news/human-rights-are-for-common-man-not-for-criminals-terrorists-says-up-cm-yogi-adityanath/story-c0GZWHGSA3GnKqBumkYZK.html>>; Cop killings in UP: Yogi Adityanath's macho posturing does little to address crisis of confidence in law and order machinery (*Firstpost*, 31 December 2018) <<https://www.firstpost.com/india/cop-killings-in-up-yogi-adityanaths-macho-posturing-does-little-to-address-crisis-of-confidence-in-law-and-order-machinery-5816561.html>>

Adityanath is colloquially being referred as the shoot-down policy (*thoko neeti*).<sup>134</sup>

Muslims, particularly young Muslim men, have been disproportionately targeted by the police while carrying out encounter killings in the past three years. In the past, UP Police has been noted by the High Court (HC) of Delhi as harbouring an ‘institutional bias’<sup>135</sup> against Muslims. On several occasions, CM Yogi Adityanath has alluded that these ‘criminals’ were predominantly Muslims.<sup>136</sup> This institutional bias against Muslims manifests itself in numbers: according to data from 2017-2020 nearly 37 per cent of those killed in ‘encounter’ deaths in UP were Muslims, who made up 19 per cent of the state’s population.<sup>137</sup>

In January 2019, four UN Special Rapporteurs – on extrajudicial executions, on the situation of human rights defenders, on torture, and on freedom of religion or belief – flagged UP’s EJKs as ‘alarming’.<sup>138</sup> Their Communication to the Indian government discussed 15 specific cases in detail and expressed concern about the pattern of events, including individuals

allegedly being abducted or arrested before their killing, and their bodies bearing injuries indicative of torture.<sup>139</sup> The experts called for (i) an urgent review of the use of force by the UP Police, (ii) a prompt, independent and thorough investigation into all allegations of potentially unlawful killings, and (iii) for perpetrators to be prosecuted.<sup>140</sup> On 11 January 2019, a press statement was issued by the United Nations Office of the High Commissioner for Human Rights stating: ‘*Unfortunately, we are continuing to receive reports of other similar cases of killings as well as threats and harassment*’; and added that ‘*these are extremely serious allegations requiring immediate action*’.<sup>141</sup>

Nevertheless, the UP government hails its encounter policy as a major law enforcement success. Flouting the guidelines of the Indian Supreme Court on the matter, cash rewards and promotions from the government serve as incentives for police officials who carry out the highest number of encounters – an explicit

<sup>134</sup> Amitanshu Verma and Harsh Mander, How Uttar Pradesh became a vigilante state under Adityanath (*Scroll*, 3 October 2020) <<https://scroll.in/article/974721/how-uttar-pradesh-became-a-vigilante-state-under-adityanath>>; Yogi Adityanath takes a leaf out of ‘roko, thoko neeti’ (*Free Press Journal*, 29 May 2021) <<https://www.freepressjournal.in/india/yogi-adityanath-takes-a-leaf-out-of-roko-thoko-neeti>>; UP cops following Adityanath’s ‘thoko neeti’ to avoid transfer, alleges Akhilesh (*The Print*, 30 December 2018) <<https://theprint.in/india/governance/up-cops-following-adityanaths-thoko-neeti-to-avoid-transfer-alleges-akhilesh/171008/>>

<sup>135</sup> Dushyant, ‘Hashimpura and State bias’ (*Mumbai Mirror*, 2 November 2020) <<https://mumbaimirror.indiatimes.com/opinion/columnists/dushyant/hashimpura-and-state-bias/articleshow/66469555.cms>>; Crime As Punishment: How India’s Public Backs Extrajudicial Killings By The Police (*Article 14*, 1 November 2021) <<https://article-14.com/post/crime-as-punishment-how-india-s-public-backs-extrajudicial-killings-by-the-police-617f5cd47964d>>

<sup>136</sup> ‘If They Kill One Hindu, We Will...’: Cut-And-Paste Video, Says Yogi Adityanath (*NDTV*, 14 August 2021) <<https://www.ndtv.com/video/news/the-buck-stops-here/watch-yogi-adityanath-s-hindutva-rant-shadows-pm-s-development-chant-335939?rdr=1>>; Who’s the Hindu hardliner running India’s most populous state? (*BBC*, 29 March 2017) <<https://www.bbc.com/news/world-asia-india-39403778>>

<sup>137</sup> Nearly 37% of those killed in encounters by UP Police in past three years are Muslims (*Economic Times*, 12 August 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/nearly-37-of-those-killed-in-encounters-by-up-police-in-past-3-years-are-muslims/articleshow/77511147.cms?from=mdr>>; UP Govt Admits 37% of ‘Criminals’ Killed in Encounters in 3 Years Were Muslims (22 August 2020) <<https://www.newsclick.in/UP-Govt-Admits-37%25-%27Criminals%27-Killed-in-Encounters-in-3-Years-Were-Muslims>>

<sup>138</sup> Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

<sup>139</sup> Letter written to the Government of India by Mandates of the Special Rapporteurs, Reference: UA IND 27/2018 (2018, December 11), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gl=24240>.

<sup>140</sup> Letter written to the Government of India.

<sup>141</sup> OHCHR India: UN experts alarmed by alleged police killings in Uttar Pradesh. (11 January 2019). [Press release], <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24066&LangID=E>>

encouragement of unlawful conduct.<sup>142</sup> For instance, Ajay Pal Sharma, an Indian Police Service (IPS) officer who has personally conducted at least 30 such encounters and has been labelled by sections of the media as an ‘encounter specialist’, was singled out for praise by CM Yogi Adityanath urging others to follow Sharma’s path.<sup>143</sup>

The number of police shootings and consequent extrajudicial killings from 2017 to 2021 has been consistently increasing every year since Adityanath took office in March 2017. According to the official statistics released by the UP government, between March 2017 and January 2018, the first 10 months of the Adityanath regime, the UP police conducted 1,038 ‘encounters’ (instances of police firing at civilians) – an average of four times per day - resulting in **32 deaths** and injuries to 238 persons.<sup>144</sup> By December 2019, the number of killings had increased to **103 deaths** according to the UP Police’s celebratory tweet tallying the total number of police encounter killings since the government came to power in March 2017.<sup>145</sup> By July 2020, the number of deaths had increased once again to **119 deaths** among 6,145 cases of ‘encounter’

operations.<sup>146</sup> In 2021, media estimates indicate that the number of deaths in police shootouts since March 2017 has now reached **146 killings** (among 8,472 ‘encounter’ operations) and 3,302 injured in the state of UP.<sup>147</sup>

A list of individual cases and accounts based on victims/survivor testimonies is attached as [Case List D](#).

### 3. Misuse of national security laws

India has historically had a number of laws and provisions that are ostensibly aimed at maintaining national security and preserving national integrity. These laws and provisions are meant to be invoked only in exceptional circumstances, but in practice are routinely abused in order to quell dissent, particularly by minorities.<sup>148</sup> Among the most abused are the Unlawful Activities (Prevention) Act<sup>149</sup> (UAPA) and the National Security Act (NSA).<sup>150</sup>

<sup>142</sup> Yogi Adityanath’s War on Crime Excluded Powerful, Connected Criminals Like Vikas Dubey (*The Wire*, 9 July 2020) <<https://thewire.in/government/yogi-adityanath-vikas-dubey-war-on-crime>>. Exposed: Uttar Pradesh’s cash-for-encounter raj (*India Today*, 16 August 2021) <<https://www.indiatoday.in/india/story/exposed-uttar-pradesh-s-cash-for-encounter-raj-1306730-2018-08-06>>

<sup>143</sup> Neha Dixit, ‘A Chronicle of the Crime Fiction That is Adityanath’s Encounter Raj’ (*The Wire*, 24 February 2018)

<<https://thewire.in/rights/chronicle-crime-fiction-adityanaths-encounter-raj>>

<sup>144</sup> Neha Dixit, ‘A Chronicle of the Crime Fiction That is Adityanath’s Encounter Raj’ (*The Wire*, 24 February 2018)

<<https://thewire.in/rights/chronicle-crime-fiction-adityanaths-encounter-raj>>

<sup>145</sup> [Tweet](#) by UP, Police on 6 December 2019.

<sup>146</sup> Vikas Dubey Is the 119<sup>th</sup> Accused to Be Killed in an ‘Encounter’ Since Adityanath Became UP CM’ (*The Wire*, 11 July 2020)

<<https://thewire.in/government/vikas-dubey-is-the-119th-accused-to-be-killed-in-an-encounter-since-adityanath-became-up-cm>>

<sup>147</sup> Report by YHRD, CAH, and People’s Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021) <<https://vhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>>; Citing data from the police - Operation Langda: In UP encounters, 3,300 ‘criminals’ shot at (*Indian Express*, 13 August 2021) <<https://indianexpress.com/article/india/operation-langda-in-up-encounters-3300-criminals-shot-at-7451222/>>

<sup>148</sup> See description of national security laws in All India Chapter.

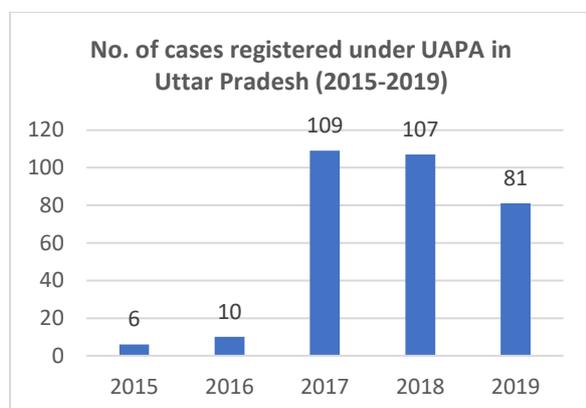
<sup>149</sup> UAPA is India’s principal anti-terror law, originally enacted in 1967 and further amended in 2004, 2008 and 2012. The law gives state agencies sweeping powers to arrest, search and detain suspects based merely on ‘personal information’, has stringent bail provisions and creates a presumption of the guilt of the accused, and enables their pre-trial detention for up to 180 days. See The Unlawful Activities (Prevention) Act, 1967 <<https://www.mha.gov.in/sites/default/files/A1967-37.pdf>>; Human Rights Watch, ‘Back to the Future: India’s 2008 Counterterrorism Laws’ (2010) <<https://www.hrw.org/report/2010/07/27/back-future/indias-2008-counterterrorism-laws>>

<sup>150</sup> NSA is a preventive detention law in effect across India, since 1980, that empowers the central and state governments to detain any person for up to 12 months without trial, lest they act in a manner prejudicial to India’s national security, its foreign relations, the maintenance of public order, etc. See The National Security Act, 1980.

<[https://www.mha.gov.in/sites/default/files/ISdivII\\_NSAAct1980\\_20122018.pdf](https://www.mha.gov.in/sites/default/files/ISdivII_NSAAct1980_20122018.pdf)>

### 3.1. Detention under UAPA

In UP, the invocation of the UAPA increased dramatically when CM Yogi Adityanath assumed power in 2017:



Source: Data collected by [National Crime Records Bureau](#) furnished by the Ministry of Home Affairs in Parliament

Detentions under the UAPA disproportionately target Muslims.<sup>151</sup> A widely reported recent instance was the arrest of **Siddique Kappan**, a Muslim journalist, along with three other Muslims in October 2020, while on their way to interview the family of a Dalit woman who had been gang raped and murdered by ‘upper’ caste men in Hathras, Uttar Pradesh. The police had charged them with raising funds for the radical group Popular Front of India (PFI) and they were arrested on the apprehension of causing a breach of peace but were later charged with

stringent charges of sedition and violation of the UAPA and Information Technology Act.<sup>152</sup> This case resulted in an outburst of public anger against local

authorities in Hathras, UP.<sup>153</sup> In June 2021, a Mathura court dropped the proceedings in one case against Siddique Kappan and his associates as the police failed to complete the inquiry against them within the prescribed period of six months.<sup>154</sup>

In July 2021, five Muslim men were arrested under the UAPA on charges of plotting a terror attack.<sup>155</sup> However, fact-finding missions by local CSOs found no evidence supporting the allegations.<sup>156</sup>

### 3.2. Detention under NSA

Together with Madhya Pradesh, UP accounts for 95 per cent of the preventive detentions under NSA recorded across India in 2017 and 2018, the only years for which national-level data is publicly available:

<sup>151</sup> See All India Chapter.

<sup>152</sup> The Quint, <<https://www.thequint.com/news/india/hathras-case-siddique-kappan-kerala-journalist-chargesheet-uapa#read-more>>

<sup>153</sup> ‘More outrage, protests after Hathras victim’s cremation’ (*Hindustan Times*, 2 October 2020) <<https://www.hindustantimes.com/india-news/more-outrage-protests-after-hathras-victim-s-cremation/story-s0AFiYcn5SAaEsDDFHCsSO.html>>

<sup>154</sup> ‘Mathura court drops proceedings in one case against Kappan, three others’ (*The Indian Express*, 16 June 2021) <<https://indianexpress.com/article/cities/lucknow/mathura-court-drops-proceedings-in-one-case-against-kappan-three-others-7360978/>>

<sup>155</sup> The Leaflet, As their kin spend another month in jail over ‘Al Qaeda module’ arrests, families of UP ATS accused shed light on glaring loopholes in the case, 16 September 2021, <<https://theleaflet.in/as-their-kin-spend-another-month-in-jail-over-al-qaeda-module-arrests-families-of-up-ats-accused-shed-light-on-glaring-loopholes-in-the-case/>>

<sup>156</sup> Ibid; ‘Arrest of Terror Suspects by UP Police an Attempt for Religious Polarisation, Say Activists’ (*The Week*) <<https://www.theweek.in/news/india/2021/07/22/arrest-of-terror-suspects-by-up-police-an-attempt-for-religious-.html>>

	UP	MP	India
2017	171	300	501
2018	167	495	697

Source: Data collected by [National Crime Records Bureau](#) furnished by the Ministry of Home Affairs in Parliament

In UP, detentions under the NSA are disproportionately used against Muslims. The Indian Express analysed 120 habeas corpus petitions that had reached the Allahabad High Court (HC) challenging preventive detentions under NSA between January 2018 and December 2020.<sup>157</sup> The investigation revealed a particularly discriminatory pattern in cases of NSA being invoked against persons accused of cow slaughter. In the 41 such detentions, the accused were Muslims in each case. Of these, 30 (73.1 per cent) were immediately ordered released, while 10 (24.4 per cent) had their detentions initially upheld but were subsequently granted bail. In 11 (26.7 per cent) cases, the court cited ‘non-application of mind’ while passing the detention order and in 13 (31.7 per cent) cases the court explicitly stated that the detainee had been denied the opportunity to represent himself effectively. In NSA

detentions in cases related to ‘communal incidents’ – again, all against Muslims – all 20 detention orders were struck down by the court.<sup>158</sup> The Indian Express noted that many of the detention orders were ‘strikingly identical – and in many cases ad verbatim’, suggesting that the targeting of Muslims using NSA has been done systematically, as a matter of state policy.

The total number of detentions of Muslims under NSA is likely higher than the investigation by the Indian Express suggests. In 2020, Awanish Awasthi, a top government official revealed that the NSA was invoked against 139 people until August that year, of which 76 were Muslims for cow slaughter.<sup>159</sup> 13 were in cases related to protests against the CAA, confirming a continuing pattern of NSA invocation against other dissidents and political opponents.

In June 2021, after UP’s Anti-Terrorism Squad (ATS) claimed to have busted a mass ‘religious conversion racket’, CM Yogi Adityanath was reported to have asked authorities to invoke the NSA in cases of religious conversion.<sup>160</sup>

#### 4. Legislation affecting Muslim minority

Since 2019, a number of laws have been enacted that have a negative impact

<sup>157</sup> Express Investigation: Citing lack of due process & glaring gaps in FIRs, Allahabad HC struck down 20 of 20 cases. 7 April 2021. <<https://indianexpress.com/article/express-exclusive/uttar-pradesh-allahabad-high-court-nsa-cow-slaughter-cases-communal-incidents-7261875/>>

<sup>158</sup> The Wire, Allahabad HC Quashed All 20 ‘Communal Incident’ NSA Orders Between 2018 and 2020: Report, 7 April 2021,

<<https://thewire.in/law/allahabad-high-court-national-security-act-uttar-pradesh>>

<sup>159</sup> Reuters, Indian state uses draconian law to detain those accused of killing cows, 11 September 2020,

<<https://www.reuters.com/article/uk-india-crime-idUKKBN2621GY>>

<sup>160</sup> The Hindustan Times, Invoke NSA, Gangster Act against those involved in conversions, says UP govt, 22 June 2021,

<<https://www.hindustantimes.com/cities/lucknow-news/invoke-nsa-gangster-act-against-those-involved-in-conversions-says-up-govt-101624386584758.html>>

particularly on Muslims, either as an express objective of the legislation or through its application and interpretation. In UP, three pieces of legislation in particular have been used to target Muslims through the criminalisation of conduct that allows authorities to specifically arrest and detain Muslims.

#### 4.1. Restrictive laws on cow meat

In 20 states out of 28, cow protection laws have been enacted.<sup>161</sup> This ensures that cow slaughter is a criminal offence, treated on par with offences such as culpable homicide and slave trading in terms of the comparable punishment to be meted out.<sup>162</sup> Such laws disproportionately affect poor Muslims (and Hindus belonging to lower castes), who usually engage in cow slaughter as a means of livelihood and rely on beef as an inexpensive food source.<sup>163</sup>

UP provides an example of the manner in which discrimination is being practised by the state under the guise of ‘cow protection’. In 2017, Chief Minister Yogi Adityanath launched a crackdown on slaughterhouses and meat shops, mostly run by Muslims.<sup>164</sup> Many of the business

owners have claimed that they were forced to close without notice or due process.

The UP State Cabinet passed an ordinance in 2020 seeking to strengthen the provisions of the 1955 law banning cow slaughter, by prescribing a punishment of rigorous imprisonment up to 10 years.<sup>165</sup> In October 2020, UP’s High Court had warned that the state’s cow protection Act ‘is being misused against innocent persons’.<sup>166</sup> As described above (see [Misuse of National Security Laws](#)) the Indian Express revealed a particularly discriminatory pattern of a stringent national security law, NSA, being invoked against persons accused of cow slaughter in 41 cases, all the accused being Muslims.<sup>167</sup> In 2020 alone, at least 4,000 people were arrested in UP over allegations of cow slaughter under the law banning it, and the NSA was used against 76 people accused of cow slaughter.<sup>168</sup>

On 1 September 2021, the Allahabad High Court alarmingly reemphasised the overuse of cow protection laws by stating that the ‘government should bring a bill in the Parliament to include cow within the scope of fundamental rights, and strict

<sup>161</sup> The Hindustan Times, Declare cow national animal, its protection a right: Allahabad high court, 2 September 2021, <<https://www.hindustantimes.com/india-news/declare-cow-national-animal-its-protection-a-right-allahabad-hc-101630521729316.html>>

<sup>162</sup> ‘A Narrowing Space: Violence and discrimination against India’s religious minorities’, *Center for Study of Society and Secularism & Minority Rights Group International*, June 2017, <[https://minorityrights.org/wp-content/uploads/2017/06/MRG\\_Rep\\_India\\_final.pdf](https://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_India_final.pdf)>

<sup>163</sup> Violent Cow Protection in India, *Human Rights Watch*, 18 February 2019, <<https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>>

<sup>164</sup> The Hindustan Times, Slaughterhouse crackdown in UP: Butchers and farmers hit, big business gain, 15 July 2021, <<https://www.hindustantimes.com/india-news/slaughterhouse-crackdown-in-up-butchers-and-farmers-hit-big-businesses-gain/story-SE3ha4M3FArgc3n28wtqgM.html>>

<sup>165</sup> The Wire, UP Cabinet Passes Ordinance: 10 Years’ Rigorous Punishment for Cow Slaughter, 10 June 2020, <<https://thewire.in/government/uttar-pradesh-cabinet-ordinance-punishment-cow-slaughter>>

<sup>166</sup> The Indian Express, <<https://indianexpress.com/article/india/up-cow-slaughter-law-is-being-misused-against-innocent-allahabad-hc-6889785/>>

<sup>167</sup> The Indian Express, UP cow slaughter law is being misused against innocent: Allahabad HC, 27 October 2020, <<https://indianexpress.com/article/express-exclusive/national-security-act-uttar-pradesh-police-detentions-cow-slaughter-ban-7260425/>>

<sup>168</sup> Manish Sahu, ‘In Uttar Pradesh, more than half of NSA arrests this year were for cow slaughter’ (The Indian Express, 11 September 2020), <[www.indianexpress.com/article/india/in-uttar-pradesh-more-than-half-of-nsa-arrests-this-year-were-for-cow-slaughter-6591315/](http://www.indianexpress.com/article/india/in-uttar-pradesh-more-than-half-of-nsa-arrests-this-year-were-for-cow-slaughter-6591315/)>

laws should be made to punish those who talk about harming cows'.<sup>169</sup>

#### 4.2. Interfaith marriage law

On 27 November 2020, the UP State government promulgated the Prohibition of Unlawful Conversion of Religion Ordinance, 2020.<sup>170</sup> This Ordinance criminalises the conversion of a person to another religion by marriage and allows the Family Court to declare such marriage void.<sup>171</sup> A conversion by marriage is understood to be the case when a person converts to another faith solely for the purpose of marriage.<sup>172</sup> The offence is punishable by a sentence of at least one year and maximum five years in addition to a fine but can extend up to 10 years if the woman is a minor or from a specific caste.<sup>173</sup>

The Ordinance intends to prevent interfaith marriages between Muslim men and Hindu women because of the belief among Hindu-Nationalists that Muslim men marry Hindu women to convert them to Islam and thereby increase the Muslim

population in India, often referred to as 'Love Jihad'.<sup>174</sup> This Islamophobic narrative has been promoted widely through social media as noted by the UN Special Rapporteurs on minority issues and freedom of religion or belief.<sup>175</sup>

As of July 2021, 162 people were arrested under such laws in the state of Uttar Pradesh alone, and 101 jailed.<sup>176</sup> In the aftermath of the enactment of this Ordinance, police and Hindu vigilante groups are reported to be working jointly to violently target consensual, inter-faith couples by tracking down the couple with the help of the police's phone surveillance system and using violence or threatening them.<sup>177</sup> In another case, police arrested a Muslim man and detained his wife in a shelter, based on a complaint by her relatives.<sup>178</sup> The woman alleged that she suffered a miscarriage at the shelter due to medical negligence.<sup>179</sup> In some cases, the police have even unlawfully used the

<sup>169</sup> Bar and Bench, Cow is part of culture of India; should be declared as national animal, made part of fundamental rights: Allahabad High Court, <<https://www.barandbench.com/news/litigation/bring-law-grant-cows-fundamental-rights-declare-cow-as-national-animal-allahabad-high-court>>

<sup>170</sup> The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, U.P. Ordinance No. 21 of 2020, <[https://prsindia.org/files/bills\\_acts/bills\\_states/uttar-pradesh/2020/UP%20Prohibition%20of%20Unlawful%20Conversion%20of%20Religion%20Ordinance.%202020%20.pdf](https://prsindia.org/files/bills_acts/bills_states/uttar-pradesh/2020/UP%20Prohibition%20of%20Unlawful%20Conversion%20of%20Religion%20Ordinance.%202020%20.pdf)>

<sup>171</sup> Section 3 and 6 Prohibition of Unlawful Conversion of Religion Ordinance 2020.

<sup>172</sup> The India Forum, Why Only the UP Law on Inter-Faith Marriages is Creating Turmoil, 5 February 2021, <<https://www.theindiaforum.in/letters/law-inter-faith-marriage>>; Timesnownews.com, Yogi government clears 'Love Jihad' ordinance: UP's new law and what it means, 24 November 2020, <<https://www.timesnownews.com/india/article/yogi-government-clears-love-jihad-ordinance-ups-new-law-and-what-it-means/686073>>

<sup>173</sup> Section 5(1) Prohibition of Unlawful Conversion of Religion Ordinance 2020.

<sup>174</sup> See BBC News, Love Jihad: The Indian Law Threatening Interfaith Love, December 2020, <<https://www.bbc.com/news/world-asia-india-55158684>>; The India Forum, Why Only the UP Law on Inter-Faith Marriages is Creating Turmoil, 5 February 2021, <<https://www.theindiaforum.in/letters/law-inter-faith-marriage>>

<sup>175</sup> Minority issues - Report of the Special Rapporteur on Minority Issues, Fernand de Varennes, Human Rights Council Forty-sixth session, A/HRC/46/57, 3 March 2021, <<https://undocs.org/A/HRC/46/57>>; Countering Islamophobia/Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief - Report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, Human Rights Council Forty-sixth session, A/HRC/46/30, 13 April 2021, <<https://undocs.org/A/HRC/46/30>>

<sup>176</sup> Rai P, '7 Months of UP's Anti-Conversion Law: 162 People Booked in 63 Cases' (*The Quint*, 8 July 2021), <<https://www.thequint.com/news/india/7-months-of-ups-anti-conversion-law-162-people-booked-in-63-cases>>

<sup>177</sup> The Intercept, Hindu Vigilantes Work with Police to Enforce "Love Jihad" Law in North India, 3 July 2021, <<https://theintercept.com/2021/07/03/love-jihad-law-india/>>

<sup>178</sup> BBC News, 'Love jihad': What a reported miscarriage says about India's anti-conversion law, 17 December 2020, <<https://www.bbc.com/news/world-asia-india-55314832>>

<sup>179</sup> BBC News, 'Love jihad'.

law retroactively, which is prohibited under the Indian Constitution.<sup>180</sup>

### 4.3. Population control law

Muslims are being blamed by Hindu-Nationalists for overpopulation in India because they are being allowed to have multiple wives and the Uttar Pradesh Population (Control, Stabilisation and Welfare) Bill, 2021 has been proposed to curb population growth through a two-child policy.<sup>181</sup> This Bill bars people who have more than two children from applying for government jobs, promotions or access to welfare schemes or subsidies.<sup>182</sup> The Bill also incentivises ‘voluntary sterilisations’ and as the burden of sterilisation is very high on women from marginalised communities, they face tremendous pressure to undergo sterilisation.<sup>183</sup>

The Population Policy 2021-30, released by UP Chief Minister Yogi Adityanath on 11 July 2021, says outright that it is aimed at creating a ‘population balance’ between different communities,<sup>184</sup> confirming fears that it would ‘selectively further a larger agenda as well to favour or punish different

categories of people’.<sup>185</sup> The trope of uncontrolled population growth among Muslims has been repeatedly debunked but continues to be used by Hindu nationalists to ostracise Muslims.<sup>186</sup>

## 5. Suppression of critical voices

In UP, voices critical of the government’s treatment of Muslims are often suppressed through unwarranted arrests and detentions. For example, Dr Kafeel Khan was arrested on 29 January 2020 under the NSA after criticising the CAA in a speech made at the Aligarh Muslim University in December 2019.<sup>187</sup> He was eventually released following a high court ruling in September 2020.<sup>188</sup> A specific group targeted for their expressions are journalists, such as Siddique Khan’s case described above.<sup>189</sup> Another example is the FIR filed on 15 July 2021 against three journalists and a local investigative news website for posting tweets showing a Muslim man being beaten and forced to chant ‘Jai Shri Ram’ in Ghaziabad on 5 June 2021.<sup>190</sup> Since the BJP entered into

<sup>180</sup> The Print, 3 of UP’s 5 ‘love jihad’ cases are old, ‘unconstitutional’ to prosecute them under new law, 12 December 2020, <<https://theprint.in/india/3-of-ups-5-love-jihad-cases-are-old-unconstitutional-to-prosecute-them-under-new-law/565218/>>

<sup>181</sup> Proposed Draft Bill: The Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021, <[https://www.livelaw.in/pdf\\_upload/up-population-control-bill-draft-396420.pdf](https://www.livelaw.in/pdf_upload/up-population-control-bill-draft-396420.pdf)>

<sup>182</sup> Shweta Dash, ‘Behind The BJP’s 2-Child Policies, An Anti-Muslim Agenda That Will Endanger All Indian Women’ (*Article 14*, 8 September 2021), <<https://article-14.com/post/behind-the-bjp-s-2-child-policies-an-anti-muslim-agenda-that-will-endanger-all-indian-women-613823097d3c5>>

<sup>183</sup> Human Rights Law Network, ‘Mistreatment and Coercion: Unethical Sterilization in India’ <<https://hrln.org/uploads/2018/10/Mistreatment-and-Coercion-Unethical-Sterilization-in-India.pdf>>

<sup>184</sup> The Indian Express, <<https://indianexpress.com/article/india/up-population-plan-for-balance-among-communities-lower-fertility-rate-a-focus-7400016/>>

<sup>185</sup> The Wire, Why UP’s Population Control Bill May Be Dangerous, 17 July 2021, <<https://science.thewire.in/health/why-ups-population-control-bill-may-be-dangerous/>>

<sup>186</sup> The Hindustan Times, Interview: SY Quraishi, author, the Population Myth: Islam, Family Planning and Politics in India, 19 February 2021, <<https://www.hindustantimes.com/books/interviews-y-quraishi-author-the-population-myth-islam-family-planning-and-politics-in-india-101613741759641.html>>

<sup>187</sup> The Wire, Did Dr Kafeel Pay a Heavy Price Because His Name Is Khan?, 3 September 2020, <<https://thewire.in/rights/did-dr-kafeel-pay-a-heavy-price-because-his-name-is-khan>>

<sup>188</sup> BBC News, Kafeel Khan: National threat or symbol of repression?, 3 September 2020, <<https://www.bbc.co.uk/news/world-asia-india-53995027>>

<sup>189</sup> See above 2.3. Misuse of national security laws.

<sup>190</sup> Reporters Without Borders, Three Indian journalists could be jailed for nine years for tweets about video, 17 June 2021, <<https://rsf.org/en/three-indian-journalists-could-be-jailed-nine-years-tweets-about-video>>; The Wire, ‘Judicial Harassment’: RSF

government in UP in 2017, criminal cases have been filed against 66 journalists and another 48 journalists have been physically attacked.<sup>191</sup>

## 6. Hate crimes

For the purpose of this report, the term 'hate crime' is understood as a criminal act committed by non-state actors against victims because of their real or perceived membership or connection to a particular group, that is defined by e.g. religion, ethnicity, nationality, caste.

Amnesty International documented 902 instances of alleged hate crimes<sup>192</sup> in India between September 2015 and June 2019.<sup>193</sup> Of these, the majority of crimes (69 per cent) were against Dalits,<sup>194</sup> while Muslims faced 22 per cent (197) and Christians 2 per cent (18). UP alone accounted for 25 per cent (216) of these incidents, and also led in each of the specific categories of hate crimes tracked: cow vigilantism,<sup>195</sup> religion-based violence<sup>196</sup> and caste-based violence.<sup>197</sup>

The Documentation of the Oppressed's (DOTO) ongoing tracking efforts, which mostly focus on the targeting of Muslims, have revealed that Muslims are targeted much more than even Amnesty's numbers suggest. A total of 1,041 instances of anti-Muslim targeting have been recorded by DOTO between January 2014 and May 2022.<sup>198</sup> Of these, UP accounts for the largest number with 387 incidents involving 3,273 victims.<sup>199</sup> These include:

- 28 cases of mob lynching;
- 32 cases of physical assault; and
- 45 cases of attacks against places of worship.<sup>200</sup>

The reasons for the mob lynchings include punishment for eating or selling/buying beef (referred to as cow vigilantism), for being Muslim, and for inter-religious marriages between Muslims and Hindus.<sup>201</sup>

In UP some of the individuals involved were later promoted by the BJP:

- Vivek Premi, a local Bajrang Dal<sup>202</sup> worker who had been arrested in June 2015 for assaulting and publicly

Condemns UP Police FIR Against 'The Wire', 3 Journalists, 17 June 2021, <<https://thewire.in/media/judicial-harassment-rsf-condemns-up-police-fir-against-the-wire-others>>

<sup>191</sup> Human Rights Watch, India: Media Freedom Under Threat, 3 May 2022, <<https://www.hrw.org/news/2022/05/03/india-media-freedom-under-threat>>

<sup>192</sup> Amnesty tracked instances of harassment, assault, killing, rape and sexual assault, sexual harassment and property damage against Dalits, Muslims, Adivasis, Transgender persons, Christians and other vulnerable groups, where the victim or target of the offence was selected because of their real or perceived connection or membership of a particular group.

<sup>193</sup> With Amnesty International India taking down its India website in September 2020, the listing/mapping of all 902 cases is no longer available. See an archived version of Amnesty's key findings up to June 2019,

<<https://web.archive.org/web/20200926193035/https://amnesty.org.in/wp-content/uploads/2019/10/Halt-The-Hate-KeyFindings-Amnesty-International-India-1.pdf>>. All numbers cited in this report are from the key findings.

<sup>194</sup> While Dalits have also faced violence from Hindu vigilante groups, anti-Dalit targeting is far more prevalent and has a longer history and a wider range of motivations, mostly related to the Hindu notions of purity and pollution, with those daring to break taboos vulnerable to violence from members of 'upper' castes.

<sup>195</sup> Of a total of 113 cow-related mob attacks tracked by Amnesty, Muslims faced 89 (79 per cent). UP accounted for 17 (15 per cent) of the 113. A further breakdown is not available.

<sup>196</sup> Amnesty tracked 217 incidents with a religion-based motive, including 91 killings and three instances of rape. Muslims faced 193 (89 per cent) of the 217 incidents, including 79 of the killings. UP accounted for 48 (22 per cent) of the 217 incidents. A further breakdown is not available.

<sup>197</sup> Amnesty tracked 621 incidents with a caste-based motive, including 194 killings and 119 instances of rape. Dalits faced 618 (99.6 per cent) of the 621. UP accounted for 167 (27 per cent) of the 621 incidents. A further breakdown is not available.

<sup>198</sup> Documentation of the Oppressed Database, <<http://www.dotodatabase.com/>>

<sup>199</sup> Documentation of the Oppressed Database.

<sup>200</sup> Documentation of the Oppressed Database.

<sup>201</sup> Documentation of the Oppressed Database.

<sup>202</sup> A sister organisation to the BJP. Both BJP and Bajrang Dal are part of the Hindu nationalist Sangh Parivar network.

parading a Muslim man in Shamli district in UP, was reportedly released from custody on the orders of the federal home ministry.<sup>203</sup> Premi was profiled in detail by the media platform, WIRED, in April 2020 when he revealed details of the violent campaigns he had been involved in – based on Hindu nationalist causes such as ‘love jihad’, the stopping of conversions, and cow protection.<sup>204</sup> In February 2020, Premi was elevated to the BJP, and appointed the secretary of the Shamli district.<sup>205</sup>

- After assuming power in 2017 in UP, BJP has withdrawn cases against dozens of Hindus accused of rioting, rape and murder during the anti-Muslim violence in Muzaffarnagar (Uttar Pradesh) in 2013.<sup>206</sup> Sanjeev Balyan, a BJP leader who was accused of inciting violence in 2013, was elevated to the central cabinet, where he is now a minister of state.<sup>207</sup>

## 7. Destruction and removal of mosques

There have been instances of illegal destruction of mosques, as well as continuing claims to ownership of land on which historical mosques stand. UP is home to a number of historic mosques constructed in the 16th and 17th century.

Hindu groups have made claims to several, claiming they stand on lands that are important religious sites for Hindus, and have also followed up with public movements to remove the mosques and replace them with Hindu temples. In two instances, the mosques were unlawfully demolished. The Places of Worship Act, 1991, prohibits conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15<sup>th</sup> day of August 1947, i.e. the day of India’s freedom from British Rule. At least two historical mosques / Muslim places of worship continue to be embroiled in controversy, with Hindu groups asking for their conversion to Hindu temples.<sup>208</sup>

### Ayodhya

The Babri Masjid was a mosque situated in Ayodhya, UP, believed to be built in 1528.<sup>209</sup> Hindu groups have argued that this site was the birthplace of Lord Ram, an avatar of a Hindu god, worshipped by many Hindu believers and that the mosque was built by destroying a pre-existing temple of Ram, the existence of which has been a matter of controversy.<sup>210</sup> On 6 December 1992, crowds bordering on 150,000<sup>211</sup> of militant Hindu nationalist youths, or

<sup>203</sup> The Indian Express, <<https://indianexpress.com/article/india/india-news-india/bajrang-dal-leader-vivek-premi-who-beat-up-paraded-muslim-is-out-of-nsa-net/>>

<sup>204</sup> Mohammad Ali, ‘The Rise of a Hindu Vigilante in the Age of WhatsApp and Modi’ [2020] *Wired* <<https://www.wired.com/story/indias-frightening-descent-social-media-terror/>> .

<sup>205</sup> See Premi’s public LinkedIn profile at ‘Vivek Premi - Secretary - Bhartiya Janta Party (BJP)’ <<https://in.linkedin.com/in/vivek-premi-501b841aa>> .

<sup>206</sup> The Wire, <<https://thewire.in/law/up-govt-withdrew-77-muzaffarnagar-riots-cases-without-giving-a-reason-sc-told>>

<sup>207</sup> News18, <<https://www.news18.com/news/politics/muzaffarnagar-mp-sanjeev-kumar-balyan-sworn-in-as-minister-of-state-in-modi-cabinet-2-0-2165865.html>>

<sup>208</sup> See the Places of Worship Act, 1991, <<https://legislative.gov.in/sites/default/files/A1991-42.pdf>>

<sup>209</sup> See history of Bari Masjid at Maidan Project, <[https://madainproject.com/babri\\_masjid](https://madainproject.com/babri_masjid)>

<sup>210</sup> TheWire, Babri Masjid: The Timeline of a Demolition, 6 December 2021, <<https://thewire.in/communalism/babri-masjid-the-timeline-of-a-demolition>>

<sup>211</sup> BBC News, <[http://news.bbc.co.uk/2/hi/south\\_asia/2528025.stm](http://news.bbc.co.uk/2/hi/south_asia/2528025.stm)>

karsevaks, demolished the mosque.<sup>212</sup> Neither the police nor political leadership offered timely intervention or any serious resistance. The destruction of the mosque triggered communal riots throughout the country, leaving over 2,000 dead.<sup>213</sup> After lengthy legal proceedings, the Supreme Court on 9 November 2019 directed that a Ram temple be constructed on the ruins of the Babri Masjid because the Court held that there was no evidence available to establish Muslims' possession and usage of the site between 1528 and 1857.<sup>214</sup> In exchange, to balance the equities, the Supreme Court ordered the handing over by state authorities of five acres of land anywhere in Ayodhya to the Muslim community.

### Barabanki

In May 2021, in the Barabanki district of Uttar Pradesh, a 100-year-old mosque by the name of Ghareeb Nawaz was demolished after orders by the local administration, contravening an earlier order of the State's High Court in Allahabad.<sup>215</sup> On the petition of the mosque committee, the Lucknow Bench of the Allahabad High Court had directed the district administration to examine the

claim of legality of the building. However, without observing full procedural justice, the mosque was demolished in haste. The State administration appears to have converted the land where the masjid was situated into a public park. However, instead of taking *suo motu* action of what constitutes contempt of a court decision, the judiciary did not take any immediate action on a petition filed by a few persons. The issue of contempt is still pending in court. This even as Muslims were arrested for protesting the demolition.<sup>216</sup>

### Mathura

Subsequent to the decision in the Babri Masjid Case by the Supreme Court, a suit was filed on 23 December 2020 on behalf of the deity Lord Krishna, seeking removal of the mosque Shahi Masjid Eidgah constructed in the 17<sup>th</sup> century in Mathura.<sup>217</sup> Citing the Supreme Court ruling in the Babri Masjid case above, the plaintiff offered to make available land in a different location.<sup>218</sup> The site is believed to be the birthplace of the Hindu deity Lord Krishan and a temple complex stands next to the mosque.<sup>219</sup> The case is still pending at the time of the writing of this report.

<sup>212</sup> 'Advani, BJP Leaders Made Provocative Speeches Before Babri Demolition, Says Former PSO' (*IndiaTV*, 26 March 2010) <<https://www.indiatvnews.com/news/india/advani-bjp-leaders-made-provocative-speeches-before-babri-demolition-says-former-psy-2241.html>>

<sup>213</sup> India Today, Bloody aftermath of Babri Masjid demolition across India, 5 December 2011, <<https://www.indiatoday.in/india/story/babri-masjid-bloody-aftermath-across-india-147823-2011-12-05>>; Guha, Ramachandra (2007), *India after Gandhi: the history of the world's largest democracy*, MacMillan, 582-98.

<sup>214</sup> *M Siddiq (D) Thr Lrs v Mahant Suresh Das & Ors* (2019): Civil Appeal Nos 10866-10867 of 2010, Supreme Court judgment dated 9 November.

<sup>215</sup> Al Jazeera, India: Century-old mosque razed in defiance of court order, 19 May 2021, <<https://www.aljazeera.com/news/2021/5/19/mosque-razed-in-bjp-ruled-indian-state-muslim-body-to-move-court>>

<sup>216</sup> Al Jazeera, India: Century-old mosque razed in defiance of court order, 19 May 2021, <<https://www.aljazeera.com/news/2021/5/19/mosque-razed-in-bjp-ruled-indian-state-muslim-body-to-move-court>>; The Print, Survey team 'stopped' from entering Gyanvapi mosque again as Interamia committee moves court, 7 May 2022, <<https://theprint.in/india/survey-team-stopped-from-entering-gyanvapi-mosque-again-as-interamia-committee-moves-court/946901/>>

<sup>217</sup> Business Standard, Hearing in Krishna Janmabhoomi case suit now on May 10, say court officials, 27 April 2022, <[https://www.business-standard.com/article/current-affairs/hearing-in-krishna-janmabhoomi-case-suit-now-on-may-10-say-court-officials-12204270010\\_1.html](https://www.business-standard.com/article/current-affairs/hearing-in-krishna-janmabhoomi-case-suit-now-on-may-10-say-court-officials-12204270010_1.html)>

<sup>218</sup> The Hindustan Times, Mathura temple case: Hindus offer alternative land for mosque, 23 June 2021, <<https://www.hindustantimes.com/india-news/mathura-temple-case-hindus-offer-alternative-land-for-mosque-101624387960121.html>>

<sup>219</sup> The Legitimate, The Genesis of Shahi Idagh Mosque Or Krishna Janmasthan Temple, 17 February 2021, <<https://thelegitimateneeds.com/the-genesis-of-shahi-idagh-mosque-or-krishna-janmasthan-temple/>>

## Varanasi

In 1991, a petition was filed on behalf of a Hindu deity to remove the Gyanvapi Masjid mosque erected in the 17<sup>th</sup> century in Varanasi claiming that a Hindu temple was originally built on that site before the mosque was constructed.<sup>220</sup> 22 years after the Allahabad High Court stayed the proceedings due to a law that prohibited changes to places of worship as they stood on 15 August 1947, and following the Supreme Court ruling in the Babri Masjid case above, on 8 April 2021, the senior division civil court of Varanasi ordered that an archaeological survey of the premises be carried out to determine if the current structure was an addition or alteration of another previous religious structure.<sup>221</sup> The case is still pending at the time of writing this report.

### 8. Obstacles for seeking justice

Victims and their families in some of the cases described above faced various obstacles when attempting to seek justice.

#### 8.1. Reprisals for filing complaints

Documentary information (see [Case List A](#)), focus groups conducted by an NGO with direct victims, family members of victims of hate crimes and police violence during the anti-CAA protests in Uttar Pradesh<sup>222</sup>

indicate a pattern of threats and intimidation by police, from the time of registering initial complaints to the conduct of autopsies.<sup>223</sup>

During the focus groups, several victims noted that police officials not only refused to acknowledge their complaints and register FIRs, but also actively tried to suppress their voices. Across cases, a pattern emerged of police officials trying to absolve themselves of any culpability. In some instances, police officials offered bribes to the survivors to keep them quiet. As already relayed above, families also reported being pressured by the police when registering a FIR not to record bullet injuries as the cause of death. In some instances, families also reported that police refused to hand bodies back to families, unless they signed off on complaints dictated and drafted by police. In many cases, the police did not allow bodies to be taken home for burial, forcing families to bury their dead at distant locations in hurried funerals, which would undermine thorough autopsies. Another tool used to put pressure on families was the registration of FIR by the police against family members who lodged a complaint.<sup>224</sup>

<sup>220</sup> The Quint, Gyanvapi Mosque-Kashi Vishwanath Dispute: All You Need to Know, 12 April 2021, <<https://www.thequint.com/explainers/gyanvapi-mosque-kashi-vishwanath-dispute-explained#read-more>>

<sup>221</sup> The Quint, Gyanvapi Mosque-Kashi Vishwanath Dispute: All You Need to Know, 12 April 2021, <<https://www.thequint.com/explainers/gyanvapi-mosque-kashi-vishwanath-dispute-explained#read-more>>

<sup>222</sup> Focus groups were conducted by an NGO on 30 November and 1 December 2021 with 25 participants. Here, we draw on audio recordings and transcripts of these focus groups. The name of the NGO has been omitted due to security concerns. Records of these focus group discussions are on file with the authors.

<sup>223</sup> See also Youth for Human Rights Documentation, Extinguishing Law and Life – Police Killings and Cover-up in the State of Uttar Pradesh, October 2021, <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, 97 ff.

<sup>224</sup> See also Youth for Human Rights Documentation, Extinguishing Law and Life – Police Killings and Cover-up in the State of Uttar Pradesh, October 2021, <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, 97-98.

Several focus group participants described threats and intimidation by the police:<sup>225</sup>

- A, whose 20-year-old brother was shot dead by police, alleged that his lawyer was threatened by a mediator on behalf of the police, probably as A is aware of the local SP, who is alleged to have ordered the shooting of his brother: *'I have filed complaints and applications before various authorities, including the National Human Rights Commission (NHRC), the Chief Minister's Office, and the Prime Minister's Office. I have also filed an application under section 156 (3) CrPC in the court. Later, the police sent a mediator to my advocate and told him to be ready to "bear the consequences" if we move ahead with the case.'*
- B, whose brother was shot dead, revealed that he was directly threatened by a senior police officer: *'When I went to collect my brother's body from the City Hospital, the Senior Superintendent of Police (SSP) threatened me, "If anything happens, you will be responsible for it." The police were not helping us at all.'*
- C, whose brother was shot dead during anti-CAA protests in December 2019 recounted the mental torture he faced from the police: *'I was under immense pressure from Station House Officer (SHO). Police used to pressurize me and my father to sign blank papers. For some time, I had stopped going to court hearings due to the pressure put on us by the police. But we did not succumb to the police pressure and held our ground strongly.'*
- D, who had been shot at by a policeman in December 2019, told us that after his discharge from hospital, he was directly taken to the Police Station to see the same police officer(s), without being allowed to inform his family: *'They kept us there till 11 pm. Six policemen took me and my brother to the Superintendent of Police (SP)'s Office. I reached the office, and the SP arrived at 11:45. When I saw the SP, it was the same face that I had seen when I got shot. I was taken by surprise but I did not disclose this to anyone. I kept it in my heart.'* D also recounted the harassment he faced from police, with the intention of forcing him to change his statement. He was summoned to the district court twice to depose before the magistrate but was sent back without collecting his statement. D recalled that the first time he had been called to depose in Bijnor he had asked Bhim Army (a grassroots Dalit rights organisation) activists to accompany him. Bhim Army activists and seven policemen accompanied him: *'In our car, one of the policemen sitting with us tried to get me to change my statement, even though he was Muslim. His name was Zafar. But I told him that I would tell the court exactly what had happened to me.'* At the district court complex, D arrived with a written statement. After being approached by the Superintendent who asked him if he

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<sup>225</sup> Names are anonymised to protect the identity of the participants.

knew what to say, D noted that he refused to change his testimony: *'This was just another attempt at harassing us by the police. We stood there for 4-5 hours but they did not take my statement.'*

### 8.2. Refusal by police to register complaints

In many cases of alleged crimes committed against Muslims, the police generally refuse to even register an FIR. While talking about the discrepancies in accessing justice in even filing an FIR, B mentioned his personal experience: *'We have demanded strict action against the police. No FIR was initially filed or registered. PIL was registered at Allahabad High court. Re investigation of the case with affidavit is being filed at the court.'*

E, who works as a human rights defender, while talking about the targeted violence against Muslims, narrated the general struggle to get an FIR registered with the police: *'In a particular case (not mentioned), we tried three times to get an FIR registered at the police station. The police refused on each occasion, insisting that they did not fire any bullets at the protesters.<sup>226</sup> Even when we tried to get the FIR registered online, it was rejected.'* He further noted that the Police were putting pressure on families he is in contact with and also striking deals with the accused, taking money to weaken the case against them.

Failure of the police to file FIRs led to survivors filing a number of applications under Section 156(3) of the Code of Criminal Procedure, which empowers a judicial magistrate to order the police to investigate a criminal offence.<sup>227</sup> The same happened in F's case. His struggle for justice, based on his expectations, continues: *'My uncle went to an advocate because the police did not register my FIR. I have the name of the person as well as people who were present at the violence. I also provided evidence of the same incident to the police. But they are not filing my case. I have filled an application under 156(3).'*' These accounts suggest that victims had to petition the courts even to get their complaints acknowledged by the police.

### 8.3. Incorrect recording of complaints

Based on our analysis of 20 FIRs registered on the victims killed in the context of anti-CAA protests, the FIRs present distorted facts and dilute the offences needed to be invoked.<sup>228</sup> The police do not invoke legal provisions on murder (Section 302 IPC) in 19 out of 20 of these FIRs. Some FIRs invoke culpable homicide not amounting to murder (Section 304 IPC), but do not mention bullet wounds, and in several cases state that the death was due to minor injury. The lone FIR that invokes the offence of murder blames unknown protesters for the firing. Thus, complaints about criminal offences against protestors were incorrectly recorded in order to

<sup>226</sup> Video evidence has [contradicted](#) the claims of police in Kanpur that they did not fire a single bullet at protesters.

<sup>227</sup> Section 156(3), The Code of Criminal Procedure, 1973.

<sup>228</sup> FIRs on file with authors.

render them vague (and therefore harder to investigate properly) and less serious. Further, as discussed in Section 2.1(2) above, FIRs *against* protestors appear to be based on exaggeration and even complete fabrication,<sup>229</sup> and invoke serious criminal offences unsupported by *prima facie* evidence.

#### **8.4. Lack of access to legal advice and counsel**

Focus group participants also reported that lack of awareness of the law and of procedural and bureaucratic requirements has been a common challenge, with serious consequences in some cases. One of the main problems reported was that the people who become victims to such atrocities were unaware of the legal tools available to them. Many victims also lack access to legal aid, leaving them vulnerable to being taken advantage of and defrauded by lawyers. Further, finding lawyers willing to fight such cases pro bono or for only small fees has proven to be a difficult task.

### **III. Persons and groups responsible**

#### **I. State actors**

The majority of the acts described above were committed by state actors. The heavy-handed actions that require physical violence, such as shootings, arrests under UAPA and NSA, or abuse in custody, are

undertaken by the police. However, other parts of the state apparatus play a role in laying the foundations for such conduct or creating an enabling environment.

#### **I.I. UP Police**

The physical violence against Muslims and other victims was mostly perpetrated by the UP police: In the context of the CAA protests, the killings all are reported to have resulted from police shooting, and the arrests and detention together with the physical and mental abuse in custody were all at the hands of the police.<sup>230</sup> In addition, the destruction of property in Muslim neighbourhoods was documented to be committed by the police.<sup>231</sup> The encounter killings are also the result of police operations.<sup>232</sup> In the same vein, the arrests and detentions using the national security laws (UAPA and NSA) are under the purview of the UP police.<sup>233</sup>

The Home Department is the controlling department for the UP Police Department, charged with maintenance of law and order, with the Home Department determining policy and allocating resources, while the police department implements those policies and procedures.<sup>234</sup>

The head of the UP Department of the Police is the Director-General of the Police (DGP).<sup>235</sup> The DGP reports directly to the Chief Minister and Home Minister as well as

<sup>229</sup> This analysis is based on a review of FIRs available to the authors.

<sup>230</sup> See above [Documented Abuses during CAA Crackdown](#).

<sup>231</sup> See above [Documented Abuses during CAA Crackdown](#).

<sup>232</sup> See above [Encounter Killings in Police Operations](#).

<sup>233</sup> See above [Misuse of National Security Laws](#).

<sup>234</sup> Government of Uttar Pradesh – Home Department, <http://uphome.gov.in/about-us.htm>. (last accessed on 8 February 2022)

<sup>235</sup> UP Police Regulations.

the Chief Secretary and Home Secretary.<sup>236</sup> The DGP has the authority to distribute staff, funds and equipment in that department, to oversee training and discipline of the force, to inspect units, and to collect and communicate intelligence.<sup>237</sup> The DGP's duty is to decide on all spheres of police administration and on the state of crime and advise the State government of these issues.<sup>238</sup> The DGP also has the authority to direct operations necessitated by riots, disorders or political movements spread over a wide area, including deploying reserve police.<sup>239</sup> Monthly reports are sent to the DGP by the Superintendents of the Police in the 75 districts, which contain information about every type of duty performed by the SPs, whether in headquarters or on tour.<sup>240</sup> The DGP equally receives reports from the Inspector Generals (IG) of the 19 ranges which contain the IGs' inspection on the prevention of crimes, dealing with unusual

outbreaks of crimes, supervision over investigation of cases, etc.<sup>241</sup>

The UP Police structure is divided into eight zones, 18 ranges and 75 districts.<sup>242</sup> The zones are headed by Additional Directors General (ADG)/Inspectors General (IG) of Police and ranges are headed by IGs/Deputy Inspectors General (DIG).<sup>243</sup> Senior Superintendents of Police (SSPs)/Superintendents of Police (SPs) head district police units in each of the 75 districts of the state.<sup>244</sup>

As the Home Minister (and Chief Minister), Yogi Adityanath holds ultimate authority over the UP police since 2017. Between January 2018 and 31 January 2020, Om Prakash Singh was the DGP of the UP Police Department.<sup>245</sup> Since 1 February 2020, Mukul Goyal is the DGP.<sup>246</sup>

## 1.2. UP State Organs

Various UP State Organs carry responsibility for some of the conduct

<sup>236</sup> Uttar Pradesh Police Regulations, Official version in Hindi [https://upolice.gov.in/writereaddata/uploaded-content/Web\\_Page/14\\_8\\_2014\\_10\\_43\\_8\\_police\\_regulation\\_2.pdf](https://upolice.gov.in/writereaddata/uploaded-content/Web_Page/14_8_2014_10_43_8_police_regulation_2.pdf) (hereinafter **UP Police Regulations**). (last accessed on 8 February 2022)

<sup>237</sup> UP Police Regulations.

<sup>238</sup> UP Police Regulations.

<sup>239</sup> UP Police Regulations.

<sup>240</sup> UP Police Regulation.

<sup>241</sup> UP Police Regulation.

<sup>242</sup> Uttar Pradesh Police, 'Organisational Setup of Uttar Pradesh Police', <https://uppolice.gov.in/pages/en/topmenu/about-us/en-organisational-setup-of-uttar-pradesh-police>, and Uttar Pradesh Police, 'Police Units', <https://uppolice.gov.in/article/en/police-units?cd=MQAvAA%3D%3D>. (last accessed on 8 February 2022)

<sup>243</sup> Uttar Pradesh Police, 'Organisational Setup of Uttar Pradesh Police', <https://uppolice.gov.in/pages/en/topmenu/about-us/en-organisational-setup-of-uttar-pradesh-police>, and Uttar Pradesh Police, 'Police Units', <https://uppolice.gov.in/article/en/police-units?cd=MQAvAA%3D%3D>. (last accessed on 8 February 2022)

<sup>244</sup> Uttar Pradesh Police, 'Organisational Setup of Uttar Pradesh Police', <https://uppolice.gov.in/pages/en/topmenu/about-us/en-organisational-setup-of-uttar-pradesh-police>, and Uttar Pradesh Police, 'Police Units', <https://uppolice.gov.in/article/en/police-units?cd=MQAvAA%3D%3D>. (last accessed on 8 February 2022)

<sup>245</sup> Amid extension buzz UP DGP OP Singh retires today (*Economic Times*, 31 January 2021), <https://government.economicstimes.indiatimes.com/news/governance/service-extension-talks-on-rife-as-up-dgp-retires-today/73778728>

<sup>246</sup> News State, IPS मुकुल गोयल होंगे उत्तर प्रदेश के नए पुलिस महानिदेशक (IPS Mukul Goel will be the new Director General of Police of Uttar Pradesh, 30 June 2021, <https://www.newsnationtv.com/states/uttar-pradesh/ips-mukul-goel-will-be-the-new-director-general-of-police-of-uttar-pradesh-191843.html>)

described above and often work in concert with the UP police. The UP State is organised in three branches: the judiciary, the executive and legislature. The legislative function is carried out by the UP State Assembly, whereas the executive power lies with the UP State Government, headed by the Chief Minister, which comprises the UP Cabinet of State Ministers heading the State Departments.<sup>247</sup>

During the crackdown in the context of the CAA, actions by UP State organs accompanied the violent measures taken by the UP police. District Magistrates issued restrictions on public gatherings following the adoption of the CAA under Section 144 CrPC.<sup>248</sup> In this function, District magistrates are part of the executive branch and are acting at the behest of the Home Department.

District Magistrates also fulfil a judicial role by ordering preventive detentions under the NSA that are the basis for arrests made by the UP police.<sup>249</sup> In contrast, arrests under the UAPA are made solely by the UP police in accordance with the regular criminal procedure.<sup>250</sup>

Concerning laws that have a negative impact on Muslims, the UP State Assembly passed these laws but they are usually introduced by one of the State

Departments, e.g. the Law Department.<sup>251</sup> Ordinances, such as the one described above on religious conversion, are issued by the UP State Cabinet on the initiative of the Law Department.<sup>252</sup> As described above, these laws and ordinances served as justification for arrests, harassment and abuses of Muslims by the police and in some instances by vigilantes.

## 2. Non-state actors

Non-state actors were responsible for the hate crimes as described above, in particular cow vigilantism.<sup>253</sup> Non-state actors were also reported to be working jointly with the UP Police to threaten and punish couples of interfaith marriages, particularly targeting the women in these relationships.<sup>254</sup>

## IV. Legal analysis

### I. International human rights law

#### I.I. Right to life

Under international law, the right to life protects against arbitrary deprivation of life.<sup>255</sup>

The police shootings in the context of the crackdown against CAA protesters described above constituted lethal force used by the UP police, which was neither

<sup>247</sup> Government of Uttar Pradesh – State Portal, ‘Constitutional Setup’, <<https://up.gov.in/en/page/constitutional-setup>>

<sup>248</sup> See above [Documented Abuses during CAA Crackdown](#).

<sup>249</sup> The National Security Act, 1980, 27 December 1980, Section 3(3).

<<http://www.jkhome.nic.in/pdf/National%20Security%20Act.%201980.pdf>>

<sup>250</sup> See The Unlawful Activities (Prevention) Act, 1967, Section 43A.

<[http://www.jkhome.nic.in/pdf/THE%20UNLAWFUL%20ACTIVITIES%20\(PREVENTION\)%20ACT.%201967.pdf](http://www.jkhome.nic.in/pdf/THE%20UNLAWFUL%20ACTIVITIES%20(PREVENTION)%20ACT.%201967.pdf)>

<sup>251</sup> See Rules of Procedure and Conduct of Business of the U.P. Legislative Assembly, 1958 (As corrected up to December, 2019), 2019, Chapter

F.

<sup>252</sup> See Uttar Pradesh Rules of Business 1975, Hindu version, <<http://uppwd.gov.in/site/writereaddata/siteContent/2020060816171950672.pdf>>

<sup>253</sup> See above [Hate Crimes](#).

<sup>254</sup> See above [Interfaith Marriage Law](#).

<sup>255</sup> Article 3 Universal Declaration of Human Rights (UDHR), Article 6(1) International Covenant on Civil and Political Rights (ICCPR).

strictly necessary nor proportional. The 22 cases in [Case List A](#) show that in each situation, the victim posed no direct threat or risk to the police or anyone else but was merely present in the vicinity of the protests. In most cases, the victims were not participating in the protests. Even if some of them were part of an ongoing protest, credible sources report that those were conducted in a peaceful manner until the police resorted to violence.

The encounter killings in police operations described above can be characterised as extrajudicial killings as they were carried out without legitimate reasons. The cases in [Case List D](#) show that the police narrative of self-defence is untenable in light of witness testimonies, autopsy reports, inconsistencies in police reports, and the replication of identical narratives in FIRs.

In both sets of facts, the UP police as state agents are responsible. The fact that the large majority of victims are Muslims is a sign of discriminatory targeting of a particular religious group.

### **1.2. Torture and other cruel, inhuman treatment**

Torture under the Convention Against Torture consists of ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has

committed or is suspected of having committed, or intimidating him or other persons.’<sup>256</sup>

The treatment of victims in custody in the aftermath of the adoption of the CAA amounts to torture. The cases described above<sup>257</sup> and in [Case List B](#) show that the physical abuse meted out on the victims resulted in severe physical and mental pain or suffering, including broken limbs, loss of consciousness and other serious injuries. They were inflicted by the police as public officials. The language used during the abuse, which included insults against Muslims, references to the victims’ connection with Pakistan and demands to chant Hindu nationalist slogans, clearly shows that the abuse was inflicted with the intention to punish the victim for their real or perceived religion. All victims suffered abusive treatment after they were taken into custody for protesting or opposing the CAA. In such a context, the intention of the police officers to punish the victims for their political views becomes apparent. Among the human rights defenders, some were arrested and abused in detention before protests had started, which shows the police’s intention to intimidate them from leading or supporting protests.

In some of the cases of encounter killings during police operations described in [Case List D](#), victims’ bodies showed signs of physical abuse, including lacerations on the neck, wounds on the head, broken legs, and fractured ribs which could not have

<sup>256</sup> Art. 1(1) Convention Against Torture (CAT).

<sup>257</sup> See above [Physical and Mental Abuse in Custody](#).

been suffered as a result of the shooting. These indicate that they might have been physically abused before their deaths at the hands of the police. The cases documented do not contain information about the intention of the perpetrators. However, in light of the context where the victim is apprehended by the police as a criminal suspect despite the lack of evidentiary basis for such suspicions, followed by the extrajudicial killing of that person, it is likely that the police acted with the purpose to obtain a confession or punish the victim.

In both situations, the UP police as state agents are responsible. The fact that the large majority of victims are Muslims is a sign of discriminatory targeting of a particular religious group.

### 1.3. Arbitrary detention/arrest

International human rights law prohibits unlawful or arbitrary arrest and detention.<sup>258</sup>

As described above, during the crackdown on CAA protests, scores of people were arrested and detained, which the UP government acknowledges.<sup>259</sup> In many of those cases, detailed information is not available as to the exact circumstances that allow an assessment of the unlawfulness or arbitrariness of these deprivations of liberty. However, in 187 cases described above there are some indications that these were violating the

right to liberty because the arrest was contrary to domestic laws and procedures, e.g. minors were not presented to the Juvenile Justice Board within the first 48 hours and some individuals were added to a FIR only after they were arrested, or there was no reasonable basis for the arrest. So, for example, in 125 cases courts found that there had been insufficient evidence of any involvement in a criminal act and the FIR registered against individuals did not contain sufficient or truthful information about the alleged crimes.<sup>260</sup>

Detentions under national security laws as described above can be considered arbitrary as the restriction on personal liberty appears to be unnecessary for the lack of a real threat to national security and disproportionate because it is targeting victims who exercise their freedom of expression or belief.

### 1.4. Freedom of religion and belief

International human rights law protects the freedom to have and manifest a religion or belief.<sup>261</sup>

The Prohibition of Unlawful Conversion of Religion Ordinance 2020, introduced by the UP State Cabinet criminalises the conversion from one religion to another through marriage.<sup>262</sup> The legislation affects an individual's choice to adopt a religion, which is protected by Art 18(1) ICCPR and cannot be restricted.<sup>263</sup> As a consequence,

<sup>258</sup> Articles 3 and 9 UDHR, Article 9(1) ICCPR, Article 37(b) of Convention on the Rights of the Child (CRC).

<sup>259</sup> See above [Detentions and Arrests](#).

<sup>260</sup> See above [Detentions and Arrests](#).

<sup>261</sup> Article 18 UDHR, Article 18 ICCPR.

<sup>262</sup> See above [Discriminatory Laws](#).

<sup>263</sup> Special Rapporteur on Freedom of religion or belief, Rapporteur's Digest on Freedom of Religion or Belief, 10 March 2011, <<https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>>

compelling believers to adhere to a certain religion through coercive measures, including penal sanctions, is barred.<sup>264</sup> As described above the law effectively has the goal to prevent interfaith marriages between Muslim men and Hindu women. The purported ‘threat’ against Hindu women is purely based on Islamophobic beliefs rather than actual risks to the rights of individuals.

In the Indian context, the Supreme Court has held that mosque is not an essential part of Islam and worship can be offered anywhere.<sup>265</sup> However, under international law, freedom of religion encompasses the right to establish and maintain buildings or places of worship and the State’s obligation to protect them where they are vulnerable to desecration or destruction.<sup>266</sup> In the above-mentioned two cases where historic mosques were unlawfully destroyed, India has failed its protective obligation. In the case of the Babri Masjid mosque, the destruction was accomplished by non-state actors. However, the authorities stood by without intervening, even though the attackers did not have any legal basis for the demolition.<sup>267</sup> In the case of the Ghareeb Nawaz mosque, state authorities were responsible for the demolition despite a court order to the contrary.<sup>268</sup>

Whether or not these religious buildings had been built on sites of previous Hindu temples should carry no relevance for the obligations of the state to protect them as they were clearly buildings used for worship at the moment of their destruction. The Supreme Court decision on Babri Masjid arguably did not sufficiently take into consideration the protection that places of worship are entitled to under international law. Prior to this decision, the UN Special Rapporteur on Freedom of Religion and Belief had stated in relation to Babri Masjid: ‘*The most logical solution would seem to be to restore these places of worship as they were before the riots occurred - unless the religious communities concerned decide to effect a symbolic exchange as a means of cooling passions and reducing tensions. The authorities must remain on the watch to prevent the recurrence of such traumatic incidents, which are sources of division and hate between communities.*’<sup>269</sup> In the pending cases mentioned above in Mathura and Varanasi it remains to be seen how far domestic courts will adequately consider the international human rights protection of buildings of worship.

### 1.5. Freedom of assembly

Freedom of assembly protects the participation in peaceful protests and

<sup>264</sup> UN Special Rapporteur on freedom of religion or belief, Rapporteur’s Digest on Freedom of Religion or Belief, 10 March 2011,

<<https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>>

<sup>265</sup> Ismail Faruqui v. Union of India, [(1994) 6 SCC360.

<sup>266</sup> UN Human Rights Committee, General Comment No. 22: The right to freedom of thought, conscience and religion, CCPR/C/21/Rev.1/Add.4, 1993, <<https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2022.pdf>>; Human Rights Council Resolution 6/37, Elimination of all forms of intolerance and of discrimination based on religion or belief, 14 December 2007,

<[https://ap.ohchr.org/Documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_37.pdf](https://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_6_37.pdf)>, para. 9(e) and 9(g).

<sup>267</sup> See above Removal of mosques.

<sup>268</sup> See above Removal of mosques

<sup>269</sup> Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/23 – Addendum – Visit to India, E/CN.4/1997/91/Add.1, 14 February 1997, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/105/29/PDF/G9710529.pdf?OpenElement>, para. 93.

restrictions of this right must be based on law, serve a legitimate aim and be necessary and proportionate.<sup>270</sup>

The above-mentioned orders issued by District Magistrates under Section 144 CrCP on 16 December 2019 following the adoption of the CAA to prohibit public gatherings of more than four people restrict peaceful protests and are based on law.<sup>271</sup> The authorities argued that the orders were necessary to prevent violence which would be a legitimate aim. However, it is doubtful if such a strict prohibition was the least intrusive means of achieving the aim. The order is too wide-ranging as it does not make any exception for peaceful protests. Instead, a prohibition of gatherings could have been tied to certain requirements that would allow peaceful assemblies to go ahead, e.g. by prohibiting dangerous objects to be carried by protesters and requiring protests to be announced in advance. In addition, the protests on the days before the orders were peaceful and there was no indication that a complete ban on assemblies would be required to prevent violence. The only incidents where violence occurred were the protests at Aligarh Muslim University on 13 and 15 December 2019, as a result of the crackdown by the police on the students.

Even though the orders did not distinguish between religious groups, they had a disproportionate negative impact on

Muslims as this group had the most interest and stake in protesting against the CAA, and at the time the orders were issued it was clear that the majority of protesters would be Muslims.

#### **1.6. Freedom of expression and opinion**

Freedom of expression and opinion is enshrined in international human rights law.<sup>272</sup> The protection extends to discussion of government policies and political debate; reporting on human rights and/or government activities; and engaging in peaceful demonstrations or political activities.<sup>273</sup> The arrests and detentions of journalists and other voices critical of the government's policies regarding Muslims or their treatment, often based on national security laws, without sufficient reasonable basis, as described above, inhibit the victims' ability to express themselves publicly.<sup>274</sup> These measures are not justified by a legitimate aim as the only goal is to silence protected speech.

#### **1.7. Right to work**

International human rights law guarantees the right to gain one's living by work. This right can only be restricted by law insofar as it is compatible with the nature of the right, solely serves the purpose of promoting general welfare in a democratic society and does not discriminate based on religion or other factors.<sup>275</sup>

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<sup>270</sup> Article 21 ICCPR.

<sup>271</sup> See above [Documented abuses during CAA crackdown](#).

<sup>272</sup> Article 19 ICCPR.

<sup>273</sup> UN Human Rights Council, A/HRC/RES/12/16, 12 October 2009, <https://www.right-docs.org/doc/a-hrc-res-12-16/>, para. 5(p)(i).

<sup>274</sup> See above [2.5. Suppression of critical voices](#).

<sup>275</sup> Article 2(2), 4 and 6(1) International Covenant on Economic, Social and Cultural Rights (ICESCR).

The above-described ordinance passed by the UP State Cabinet banning cow slaughter effectively led to the closure of slaughterhouses and meat shops and thus effectively restricts their owner's right to work. The ordinance purportedly promotes Hindus' belief in the sacredness of the cow. However, in light of the strict punishment of up to 10 years in prison and the lack of exceptions to balance the right to work of those affected with the freedom of belief of Hindu worshippers, this piece of legislation fails to meet the international standards. In addition, the prohibition of cow slaughter *de facto* discriminates against Muslims as the vast majority of these businesses are run by the Muslim community.

### 1.8. Prohibition of discrimination

International human rights law prohibits discrimination based on religion in relation to the rights listed above.<sup>276</sup>

As set out above, state authorities in Uttar Pradesh have infringed all the international human rights listed above with a discriminatory bias against Muslims, in some instances by singling out Muslims as targets, such as during the crackdown on CAA protests, in other instances through the indirect impact of state actions, for example by prohibiting cow slaughter or interfaith marriages. Discrimination based on religion appears as an overarching motivation behind the state's conduct in UP.

## 2. Right to effective remedy

International law guarantees the right to an effective remedy for victims of human rights violations.<sup>277</sup> It includes, *inter alia*, the duty to investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, to take action against those allegedly responsible in accordance with domestic and international law, and provide victims with equal and effective access to justice and reparation.<sup>278</sup> The below analysis of measures taken by the judiciary and other authorities in response to claims of serious human rights abuses and potential criminal offences shows that they fall short of these international obligations owed by India to the victims.

### 2.1. Criminal investigations and prosecutions

Publicly available information as well as focus group discussions indicate that the Uttar Pradesh government is not seriously investigating or prosecuting the alleged perpetrators of the abuses discussed above. As described above, attempts by victims and their families to file complaints to the police to initiate investigations were met with (1) lack of responsiveness, hostility and even reprisals from the police and other institutional actors; (2) widespread failure to accurately record complaints and gather evidence – which lays the foundation for a low likelihood of

<sup>276</sup> Article 7 UDHR, Article 2(1) ICCPR, Article 2(2) ICESCR, Article 2(1) CRC.

<sup>277</sup> Article 2(3) ICCPR.

<sup>278</sup> UNGA Res 60/147 (16 December 2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, principle 3.

success at trial; and (3) recurring displays of anti-Muslim bias by the police.<sup>279</sup>

Regarding criminal investigations and prosecutions of hate crimes, we also note salient gaps in Indian law that are likely to weaken access to remedies for certain violations in this particular context. Existing statutory offences that could be used to prosecute hate speech against religious minorities are designed to maintain public order rather than protect the rights of the targeted individuals.<sup>280</sup> While these provisions serve a stop-gap function in relation to hate speech, India nevertheless currently lacks legislation that defines or enhances penalties for religious hate crimes, i.e., crime motivated by hostility towards the actual or perceived religion of the victim.

## 2.2. Constitutional and administrative law remedies

The higher judiciary in India have robust powers to protect and enforce fundamental constitutional rights. State High Courts and the national Supreme Court in India are empowered to review laws for compatibility with the national constitution, and to issue prerogative writs directing lower courts and public authorities to take or refrain from taking action, in order to ensure the enforcement of fundamental rights.<sup>281</sup> For instance, courts may issue a writ of habeas corpus (in instances of illegal detainment and

imprisonment); mandamus (directing public authorities to fulfil their duty); prohibition (directing public authorities to refrain from exceeding their jurisdiction); certiorari (correcting wrongful orders passed by lower courts outside the scope of their authority to do so); and quo warranto (requiring subordinate authorities to show the authority by which they hold office). The Indian judiciary also enjoys a wide range of *suo moto* powers, enabling High Courts and the Supreme Court to take up cases of its own accord even in the absence of a formal petition.<sup>282</sup>

### Supreme Court

Despite these robust powers, the Supreme Court of India has been reluctant to engage closely with grave allegations of human rights abuse (and fundamental rights violations) in Uttar Pradesh since 2019.

The Supreme Court stayed a High Court order protecting the rights to privacy of human rights defenders involved in the anti-CAA protests. As described above, the district administration in Lucknow, on the orders of CM Yogi Adityanath, put up public hoardings in March 2020 containing photographs, names and addresses of alleged Muslim anti-CAA protesters, including prominent human rights defenders, as public notices for action.<sup>283</sup> The Allahabad High Court ordered state authorities to immediately take down all the posters. The order was challenged by

<sup>279</sup> See above [Obstacles for seeking justice](#).

<sup>280</sup> Sections 124A, 153A, 153B, 295A, 298, 505, Indian Penal Code (IPC) 1860.

<sup>281</sup> Constitution of India, Arts. 32, 226.

<sup>282</sup> Constitution of India, Arts. 32, 131, 226, 227.

<sup>283</sup> See above [Public hoardings](#); Press Trust of India, 'Yogi's Name and Shame Raj: Banners with Photos and Personal Details of CAA Protestors puts up in Lucknow', (*India Today*, 7 March 2020), <<https://www.indiatoday.in/india/story/yogi-s-name-and-shame-raj-banners-with-photos-personal-details-of-caa-protesters-put-up-in-lucknow-1653290-2020-03-07>>

the UP Government in the Supreme Court, which refused to stay the Allahabad High Court's order and commented that the UP government's actions were 'not backed by the law'.<sup>284</sup> The Supreme Court referred the case to a larger Bench and it remains pending at the time of this report. In the meantime, the state government has continued to target civilians with fresh hoardings of protestors put up in November 2020 in the state capital of Lucknow.<sup>285</sup>

On 17 December 2019, two days after the police entered the Aligarh Muslim University (in Uttar Pradesh) and used serious force against students, several petitioners petitioned the Supreme Court for an order restricting violent action against protesting students.<sup>286</sup> This cluster of petitions also sought directions from the Supreme Court to institute an independent committee to investigate the allegations of police violence. The Supreme Court, led by the then-Chief Justice of India S.A. Bobde, refused to hear the petitions, instead asking the petitioners to move their respective High Courts (in Allahabad) for relief.<sup>287</sup> India's Supreme Court thus denied the students a chance to have an immediate hearing, even though it was within its powers to take *suo motu*

cognisance of the violence and issue directions to state governments and police authorities.

The Supreme Court also refrained from inquiring *suo motu* into widespread and apparently disproportionate police violence against anti-CAA protestors in Uttar Pradesh, despite the fact that over 20 Muslims had been killed as a result. Proceedings related to such violence in district courts in Uttar Pradesh and the High Court of Uttar Pradesh remain pending.<sup>288</sup>

### High Court

The Allahabad High Court (the High Court for the state of Uttar Pradesh) has responded more robustly to credible allegations of rights violations. The information available suggests that the Allahabad High Court has dealt with a large number of *habeas corpus* petitions challenging preventive detentions under NSA between January 2018 and December 2020.<sup>289</sup> A media report that analysed 120 such petitions revealed that the NSA was being disproportionately invoked against Muslims on inappropriate grounds.<sup>290</sup> Encouragingly, this media analysis suggests that the High Court has been

<sup>284</sup> Debayan Roy, 'SC says there is no Law to back UP Govt. on 'Name and Shame' Posters of Anti-CAA Protestors', (*The Print*, 12 March 2020), <<https://theprint.in/judiciary/sc-says-there-is-no-law-to-back-up-govt-on-name-and-shame-posters-of-anti-cao-protestors/379621/>>

<sup>285</sup> The Wire Staff, 'Despite HC Orders, New Hoardings Appear in Lucknow with Names, Address of Anti-CAA Protestors', (*The Wire*, 06 November 2020), <<https://thewire.in/rights/despite-hc-order-new-hoardings-appear-in-lucknow-with-names-addresses-of-anti-cao-protestors>>

<sup>286</sup> See above (2) Documented abuses during CAA crackdown.

<sup>287</sup> Financial Express, <<https://www.financialexpress.com/india-news/jamia-amu-violence-supreme-court-refuses-to-entertain-pleas-directs-petitioners-to-approach-high-courts/1796405/>>

<sup>288</sup> Article 14, <<https://article-14.com/post/24-months-after-5-killed-in-meerut-in-police-crackdown-on-anti-cao-protests-no-probe-no-answers-61e8ce841aef>>; The Hindu, <<https://www.thehindu.com/news/national/other-states/a-year-on-kin-of-anti-cao-protest-victims-await-justice/article33389178.ece>>

<sup>289</sup> Kaunain Sherriff M., '94 out of 120 Orders Quashed: Allahabad High Court calls out Abuse of NSA in Uttar Pradesh', (*The Indian Express*, 7 April 2021), <<https://indianexpress.com/article/express-exclusive/national-security-act-uttar-pradesh-police-detentions-cow-slaughter-ban-7260425/>>

<sup>290</sup> See above [Misuse of national security laws](#).

willing to scrutinise preventive detention orders and rule against the government's preventive detention orders in a significant number of such cases.

The Allahabad High Court's response to challenges to the constitutionality of laws that discriminate against Muslims has been markedly inconsistent. While the High Court partially stayed some provisions of one such law, it seemed to approve of another discriminatory law. The Allahabad High Court stayed the application of provisions prohibiting conversions by marriage,<sup>291</sup> with the Allahabad High Court allowing the registration of inter-faith marriages by noting that state authorities could not intervene in the private lives of individuals.<sup>292</sup> Further, the court in November 2020 overturned an earlier September 2020 judgment, where a single judge had claimed that religious conversions for the sake of marriage were 'unacceptable' and which Chief Minister Yogi Adityanath had relied on for justifying the 'love jihad' law.<sup>293</sup> While these interventions by the High Court are welcome, the Supreme Court has been slow to hear challenges to anti-conversion laws in Uttar Pradesh as well as other states (including Uttarakhand, Himachal Pradesh and Madhya Pradesh). A petition challenging these laws has been pending

before the Supreme Court since February 2021. As with the CAA, the Supreme Court refused to grant an interim stay on these laws. Thus, the challenge to the anti-conversion law in Uttar Pradesh remains pending before the Allahabad High Court.<sup>294</sup>

Worryingly, the Allahabad High Court has been very inconsistent in response to laws banning cow slaughter.<sup>295</sup> In October 2020, the High Court had warned that the state's cow protection legislation 'is being misused against innocent persons'.<sup>296</sup> A year later, on 1 September 2021, the Allahabad High Court alarmingly opined that the 'government should bring a bill [...] to include cow within the scope of fundamental rights, and strict laws should be made to punish those who talk about harming cows'.<sup>297</sup> The Court's stark inconsistency and its September 2021 remarks that are at apparent odds with India's constitutional rights commitments raise doubts about whether the relevant measures will be rigorously reviewed.

### 2.3. Domestic human rights institutions

The National Human Rights Commission (NHRC) of India has statutory powers to summon and examine witnesses, discover and produce documents, receive evidence and requisition public records, similar to a civil court while conducting inquiries (deemed to be judicial proceedings) into

<sup>291</sup> See above [Interfaith marriage law](#).

<sup>292</sup> Umang Poddar, 'How Have Legal Cases Seeking to Strike Down India's Anti-Conversion Laws Fared?' (Scroll, 4 January 2022) <<https://scroll.in/article/1014042/how-have-legal-challenges-against-indias-anti-conversion-laws-fared>>

<sup>293</sup> The Wire, <<https://thewire.in/communalism/allahabad-high-court-conversion-marriage-love-jihad>>

<sup>294</sup> 'Supreme Court Refuses to Stay 'Love Jihad' Laws in Uttar Pradesh, Uttarakhand: Issues Notice' (Hindustan Times, 6 January 2021) <<https://www.hindustantimes.com/india-news/supreme-court-refuses-to-stay-laws-which-punish-marriages-based-on-religious-conversion-issues-notices-to-uttar-pradesh-uttarakhand/story-92lFE16wOVhx102NbZuxcP.html>>

<sup>295</sup> See above [Restrictive laws on cow meat](#).

<sup>296</sup> The Indian Express, <<https://indianexpress.com/article/india/up-cow-slaughter-law-is-being-misused-against-innocent-allahabad-hc-6889785/>>

<sup>297</sup> The Wire, <<https://thewire.in/law/allahabad-high-court-cow-national-animal>>

alleged human rights violations.<sup>298</sup> We note with concern that since 2019, the NHRC has responded inadequately to the human rights abuses against Muslims in Uttar Pradesh by merely issuing a notice to the Director-General of Police and the state government in January 2020.<sup>299</sup>

Although the NHRC is statutorily empowered to take *suo moto* cognisance of violations of human rights under section 12 of the Protection of Human Rights Act, this power has been selectively and sparingly exercised even in the face of grave violence against Muslims and anti-CAA protesters in Uttar Pradesh and in the face of extrajudicial killings so widespread that it appears to be systematic, as described above. It took almost two years, and multiple complaints by civil society groups, before the NHRC inquired in October 2021 into allegations of police violence, grievous injury and property damage caused to Muslims during the anti-CAA protests in Uttar Pradesh.<sup>300</sup> The results of its inquiry remain pending.

In addition to the NHCR, the Uttar Pradesh Human Rights Commission took *suo motu* cognisance of injuries and deaths during police crackdowns on anti-CAA protesters in December 2019 and sought an inquiry into the incident to be conducted by the

state government.<sup>301</sup> Publicly available media and official documentation suggest that such an inquiry has not been instituted since.

### 3. Crimes against humanity

The above-described acts committed by the Uttar Pradesh police in the context of the CAA protests suggest to the Panel that they formed part of a widespread or systematic attack against the civilian population pursuant to a state policy. They thereby may potentially amount to crimes against humanity.

#### 3.1. Underlying crimes

They include the crimes of **murder, torture, unlawful imprisonment and persecution**, as defined by the Rome Statute.<sup>302</sup> The shooting of 22 victims without justification constitutes murder.<sup>303</sup> The physical and mental abuse inflicted on victims in police custody can be considered torture.<sup>304</sup> Several human rights defenders and other victims were imprisoned in violation of domestic and international due process rights.<sup>305</sup> All these crimes targeted Muslims because of their religion and opponents of the CAA because of their political views and were committed in connection with other severe deprivations of fundamental rights,

<sup>298</sup> The Protection of Human Rights Act (1993), section 13.

<sup>299</sup> HT Correspondent, 'NHRC seeks report over "police brutality" during anti-CAA protests in UP' (*Hindustan Times*, 10 February 2020), <<https://www.hindustantimes.com/cities/nhrc-seeks-report-over-police-brutality-during-anti-kaa-protests-in-up/story-74pBUJb8Y0z5G5BWejr82N.html>>

<sup>300</sup> Aiman Khan, 'Two Years Since Killing of Anti-CAA Protestors in UP, NHRC Conducts Spot Inquiry' (*The Wire*, 29 December 2021), <<https://thewire.in/government/kaa-protests-uttar-pradesh-killing-nhrc>>

<sup>301</sup> Virendra Singh Rawat, 'UP human rights panel issues notice to state govt over CAA protests' (*Business Standard*, 1 January 2020), <[https://www.business-standard.com/article/current-affairs/up-human-rights-panel-issues-notice-to-state-govt-over-kaa-protests-120010100615\\_1.html](https://www.business-standard.com/article/current-affairs/up-human-rights-panel-issues-notice-to-state-govt-over-kaa-protests-120010100615_1.html)>

<sup>302</sup> Rome Statute of the International Criminal Court, <<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>>

<sup>303</sup> See above [Right to life](#).

<sup>304</sup> See above [Torture and other cruel, inhuman treatment](#).

<sup>305</sup> See above [Arbitrary detention/arrest](#).

such as freedom of assembly.<sup>306</sup> This can arguably be classified as persecution.

### **3.2. Attack against civilian population pursuant to state policy**

An attack against a civilian population is defined as a course of conduct consisting of the multiple commission of crimes pursuant or in furtherance of a state policy.<sup>307</sup>

#### **(a) Civilian population**

All victims of the acts described above are civilians, including working-class Muslims, human rights defenders and students, with no role in any form of combat functions.<sup>308</sup>

The individuals targeted in this attack share a common element that constitutes the reason they were targeted – their actual or assumed religion. The intention behind the attack was to prevent the Muslim community from protesting against the CAA or supporting protests in any manner, resulting in a significant number of members of the Muslim community in Uttar Pradesh being killed, arbitrarily detained, having sustained severe injuries, and having their property or source of income destroyed, which resulted in intimidation of the community as a whole.

With an intention to target the Muslim community, the perpetrators targeted persons participating in or organising

protests against the CAA, but also bypassers who were perceived to be protesters and generally members of the Muslim community. The state actors targeted Muslim neighbourhoods with the knowledge and intent that their acts would result in the intimidation of a wider community of Muslims in Uttar Pradesh.

#### **(b) Attack**

As described above, starting on 13 December 2019, the day after the CAA was adopted, the authorities of the state of Uttar Pradesh have been involved in acts of arbitrary detention and torture, as well as acts causing bodily injuries, and destruction of property, specifically and uniquely targeting Muslims with the ultimate goal of suppressing protests against the CAA, and where protests did occur, punishing those who participated as well as the wider Muslim community.<sup>309</sup> These acts increased in intensity and scale between 13 and 19 December 2019, parallel to the increase in the number of protests. Whenever individual protests occurred during this period, e.g. at Aligarh University on 13 and 15 December, the authorities would resort to arbitrary detention followed by torture, bodily injuries and destruction of properties against the target group. This course of conduct culminated on 20 December 2019, when the largest number of people assembled in marches across various districts, and the crimes extended to killings on that day.<sup>310</sup>

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<sup>306</sup> See above [Arbitrary Deprivation of Life, Torture and Other Inhuman Treatment](#) and [Arbitrary Detention](#).

<sup>307</sup> Article 7(2)(a) Rome Statute.

<sup>308</sup> See above [Specific Criminal Acts](#).

<sup>309</sup> See above [Specific Criminal Acts](#).

<sup>310</sup> See above [Murder](#).

With this escalation, the intended effect of this campaign was achieved as protests more or less completely ceased from 21 December 2019 onwards. The achievement of this goal is expressed in tweets from the Chief Minister's official Twitter account. The Chief Minister tweeted on 27 December 2019: 'Every rioter is shocked. Every troublemaker is shocked. Seeing the strictness of the Yogi government, everyone is silent. Do anything, now the compensation will be from the one who did the damage, this is a declaration of Yogi ji. Every violent activity will cry now because there is a Yogi government in UP.'<sup>311</sup> Another tweet of the same day read: 'On seeing the fierce form of Yogi ji's government against rioters, every fanatic is thinking that they have made a big mistake by challenging the power of Yogi ji. The kind of action the government is taking against rioters has become an example in the whole country.'<sup>312</sup> [unofficial translation]

However, the use of arbitrary detention and torture against individual human rights defenders or activists continued after 20 December 2019 on a smaller scale up until as late as June 2020 to ensure that the Muslim community would not be mobilised for further protests.<sup>313</sup>

It can be argued that this commission of various criminal acts in pursuance of a

concrete objective could amount to an attack.

### (c) State Policy

It is likely that the attack was committed pursuant and in furtherance of a state policy with the ultimate goal to suppress protests by the Muslim community against the CAA protest. Several indicators set out below point to the existence of a state policy: (1) all criminal acts were committed by officials of the Uttar Pradesh state government; (2) they were coordinated among different entities of the Uttar Pradesh state government; (3) there was a concerted effort by the state authorities to cover up the crimes; and (4) the attack was organised in nature.

The acts utilised by the authorities to suppress protests were all reportedly committed by state agents, in particular police officers, based on instructions by the state government. As described above, the Home Department of the state government of Uttar Pradesh directed the police as early as 12 December 2019 to implement restrictions on assemblies imposed under section 144 of the CrCP and police were equipped with riot control weaponry.<sup>314</sup> This signals that a considerable amount of state resources were invested.

In the lead up to 20 December 2019, measures to prevent protests were undertaken by different authorities across the state of Uttar Pradesh, including the

<sup>311</sup> Tweet by Yogi Adityanath Office, 27 December 2019, <<https://twitter.com/myogioffice/status/1210577983800397825?s=20>>

<sup>312</sup> Tweet by Yogi Adityanath Office, 27 December 2019, <<https://twitter.com/myogioffice/status/1210579722918232067?s=20>>

<sup>313</sup> See above [Arbitrary Detention and Arrests](#).

<sup>314</sup> See above [Freedom of Assembly](#).

prohibition of gatherings under section 144 of the CrCP by district magistrates, internet shutdowns by the Uttar Pradesh state government, preventive arrests by the police, and warnings issued by the police and the Chief Minister against protests.<sup>315</sup> This shows coordination across the state apparatus to achieve the same objective.

The conduct of state actors following the escalation on 20 December 2019 demonstrates a concerted effort by the police to cover up reports of killings and other crimes. As described above, families of the deceased from across districts reported a pattern of threats and intimidation by police, and forced burials at distant locations and in hurried funerals with the intent to dispose of bodies speedily. Families of the deceased were pressured to provide wrong information in FIRs, e.g. wrong cause of death, and FIRs that were registered did not contain references to the crime of murder.

As set out above, the Uttar Pradesh police have also been using the criminal justice system to target community members and human rights defenders, slapping false or exaggerated charges against them to deter further protests and to silence survivors and witnesses of police crackdowns.<sup>316</sup>

Indicators for the organised nature of the acts are further set out below under [Systematic Nature of the Attack](#).

### 3.3. Widespread nature of the attack

The attack affected a significant number of victims in Uttar Pradesh within a short time, including a notable number of children (under the age of 18), and spanned across a significant area within Uttar Pradesh, and can arguably be considered widespread.

#### (a) Number of victims

As set out above, **22 killings**, reportedly by police shooting, were documented on 19 (one case) and 20 December 2019 (21 cases).<sup>317</sup> The overall number of individuals arbitrarily detained is not established as there is no official record of the circumstances of all arrests and detentions. However, in the materials reviewed for this memo, **187 cases of arbitrary detention** were documented by NGOs between 13 December 2019 and June 2020, where the fundamental rights of the detainees were reported to have been violated, e.g. by refusal of legal representation, failure to inform on the whereabouts of the detainees to their families/representatives and lack of legal basis.<sup>318</sup> In the same period, **118 cases of torture** were reported in the materials reviewed, most of which were committed in custody.<sup>319</sup>

However, the state government of Uttar Pradesh claimed on 21 December 2019 to have detained 4,500 individuals and announced in January 2020 that 1,200

<sup>315</sup> See above [Timeline](#) of Events.

<sup>316</sup> See above [Individual Cases of Arbitrary Detention](#).

<sup>317</sup> See above [Murder](#).

<sup>318</sup> See above [Arbitrary Detention and Arrest](#).

<sup>319</sup> See above [Torture](#).

cases would need to be reviewed for potential arrest without cause.<sup>320</sup> It is likely that more cases of arbitrary detention and torture could be counted among those.

Notably, 35 of the 187 cases of arbitrary detention and 41 out of the 118 cases of torture were minors, with the youngest reported victim eight years old.

In the materials reviewed, 77 cases of violations of property rights, including vandalised homes and sealed shops, were reported on 20 and 21 December 2019.<sup>321</sup> It remains unclear how many individuals were seriously injured by police actions.

#### **(b) Locations of crimes**

In total, the various crimes were committed in 13 out of 75 districts in Uttar Pradesh.

The 22 cases of killings were spread over eight districts.<sup>322</sup> The 499 cases of arbitrary detention were documented in 12 districts.<sup>323</sup> The 118 cases of torture spread over nine districts.<sup>324</sup> As all the cases of torture (except for one) were committed in custody, the locations overlap with the cases of arbitrary detention. The 77 cases of property destruction and interference occurred in five districts.<sup>325</sup>

### **3.4. Systematic nature of the attack**

The attack can be argued to be systematic in nature as it appears to have been planned and prepared and then executed uniformly against a common target, namely Muslim communities, with coordination between different state authorities and directed at preventing protests against the CAA, and where protests occurred, punishing the community throughout Uttar Pradesh. To this end, various arms of the state machinery – police forces, civilian administration at multiple levels, and various non-state actors aligned to BJP's Hindu nationalist ideology – were allegedly mobilised and activated throughout the length and breadth of the state.

#### **(a) Planning and preparation of the attack**

On the day of the adoption of the CAA, 12 December 2019, the Uttar Pradesh state government's Home Department already directed the police to implement restrictions on assembly, even though at that point no protest had been announced and no indications of violent riots were apparent.<sup>326</sup> On the same day, preparations started for the crackdown on any eventual protests by introducing the 'Riot Scheme' by the Home Department, which equipped the police with riot control weaponry,

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<sup>320</sup> See above [Arbitrary Detention and Arrest](#).

<sup>321</sup> See above [Right to Property](#).

<sup>322</sup> The districts are Bijnor, Firozabad, Kanpur, Lucknow, Meerut, Muzaffarnagar, Sambhal and Rampur.

<sup>323</sup> The districts are Aligarh, Bijnor, Firozabad, Kanpur, Lucknow, Mau, Meerut, Muzaffarnagar, Prayagai, Sambhal, Shamil and Varanasi.

<sup>324</sup> The districts are Aligarh, Bijnor, Firozabad, Kanpur, Lucknow, Mau, Sambhal, Shamil and Prayagrai.

<sup>325</sup> The districts are Bijnor, Firozabad, Kanpur, Sambhal and Lucknow.

<sup>326</sup> See above [Freedom of Assembly](#).

including tear gas, rubber bullets and anti-riot guns.

Starting on 13 December 2019, the internet was being shut down by state authorities in various districts.<sup>327</sup> The first was Aligarh, where the first protest commenced on the same day at Aligarh University. Shutting down the internet has the effect of cutting means of communications between potential protesters but at the same time also prevents the documentation of police violence.

On 13 and 15 December 2019, the first protests took place at Aligarh University. At this first instance, the police started employing methods they would resort to in dealing with later protests, namely causing severe bodily injury by attacking unarmed protesters at the site, arbitrarily arresting protesters and bystanders, and physically abusing them in custody while using slurs and insults against Muslims.<sup>328</sup>

Following this first set of protests, the authorities invoked section 144 of the CrCP on 16 December 2019, which prohibits the gathering of more than four people, even though the requirements for issuing such an order were not necessarily met.<sup>329</sup> Section 144 of the CrPC can be applied to prohibit assemblies only when there are clear indications of incitement to violence and riots which were not present at that time. This restriction on assembly was

another preparatory step as it would provide an ostensibly legal basis for using violent means to disperse protests.

Another indication that preparations were made to commit criminal acts rather than crowd control comes from evidence that has emerged from across districts of police personnel destroying CCTV cameras before attacking protesters and bystanders or destroying property of Muslims, including in Meerut, Kanpur, Muzaffarnagar, Lucknow and Bijnor.<sup>330</sup>

### **(b) Execution of the attack**

The attack seems to have been executed in the same manner following two scenarios. In the first scenario, where the police met with a peaceful protest, they charged the crowd with batons, tear gas and stun grenades and physically assaulted protesters but also Muslim bystanders in the vicinity, including children, e.g. at Aligarh University.<sup>331</sup> This was followed by the arbitrary detention of large numbers of protesters and bystanders who were then physically abused in custody through beatings with batons, belts, etc., including on genitals, while using insults and slurs against Muslims, in particular requesting victims to chant Hindu slogans. On 20 December 2019, this conduct escalated to firing live ammunition at protesters and bystanders and killing 22 victims, which falls outside of the usual pattern but was

<sup>327</sup> See above [Timeline of Events](#).

<sup>328</sup> See above [Individual Cases of Torture](#).

<sup>329</sup> See above [Freedom of Assembly](#).

<sup>330</sup> Web Desk, "Watch: UP Police Smash CCTV Cameras in Before Violence Begin in Meerut" (*The Wire*, 27 December 2019), <<https://www.theweek.in/news/india/2019/12/27/watch-up-police-smash-cctv-cameras-before-violence-began-in-meerut.html>>; Fatima Khan, "Police Brutality Videos Need Verification' - UP DGP says CAA Protestors used Illegal Arms" (*The Print*, 28 December 2019), <<https://theprint.in/india/police-brutality-videos-need-verification-up-dgp-says-caa-protestors-used-illegal-arms/341894/>>

<sup>331</sup> See above [Individual Cases of Torture](#).

possibly the result of a speech made by the Chief Minister on the previous day (see below on [Escalation](#)).

In parallel to the violent crackdown on protests, when no immediate protests were occurring, the police arbitrarily arrested individuals at their homes or a religious seminar because of their potential to mobilise protests, or their importance in the Muslim community, as a way to intimidate the community as a whole to prevent protests, e.g. at the Islamic school in Muzaffarnagar.<sup>332</sup> In each of these cases, the arrest was followed by the same pattern of abuse in custody as described in the first scenario. In addition, in this scenario, homes and shops of Muslims who had no role in a protest were destroyed, vandalised or sealed to reinforce the intimidation.<sup>333</sup>

These two approaches were used across all 13 districts where crimes were documented, indicating a clear *modus operandi*.

#### **(c) Common target of the attack**

Another indicator of the systematic nature of the attack was the commonality of the targeted victims. The vast majority of victims of arbitrary detention, torture and killings in the reviewed materials were young male Muslims, including children.<sup>334</sup> Whether they were in fact participating or not participating in a protest appeared to be irrelevant as many of them were

bystanders who happened to pass by the area of protest. The destruction of property and shops also only affected Muslims. This shows that the targeting was directed against the wider Muslim community, not only against protesters, which confirms the state policy's goal to intimidate Muslims, in particular young men who are likely to come out to protest, from protesting and punish the overall community for protests that did occur.

A few reports mentioned physical and verbal assaults on female Muslims, but insufficient details are available to identify a pattern.

A sub-group among those targeted consists of human rights defenders and activists who were singled out for arbitrary detention and torture in custody, even though most of them did not participate in a protest.<sup>335</sup> This again confirms that the state policy aimed to suppress protests by eliminating potential protest leaders and organisers.

#### **(d) Coordination between different entities**

The coordination between different entities within the state apparatus indicates a possibly systematic attack. The police took on the role of directly executing the attack by arbitrarily detaining victims and abusing them in custody, and shooting and killing individuals.

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<sup>332</sup> See above [Individual Cases of Torture](#) and [Individual Cases of Arbitrary Detention](#).

<sup>333</sup> See above [Right to Property](#).

<sup>334</sup> See above [Victims' Profile](#) for the different crimes under [Specific Criminal Acts](#).

<sup>335</sup> See above [Individual Cases of Arbitrary Detention](#).

The administrative arm of the Uttar Pradesh state government, including district magistrates, district administration, and the Home Department of the Uttar Pradesh state government complemented these acts by shutting down the internet, issuing orders under section 144 of the CrPC to prohibit protests, and equipping the police with riot control weaponry.

In Muzaffarnagar, Firozabad and Sambhal especially, the team also heard of the role of local BJP politicians, members of Hindu extremist groups, and *police mitras* ('friends of police') working with district police in either instigating violence against protesters or directly targeting the protesters, including using firearms to shoot to kill.<sup>336</sup>

**(e) Escalation after speech from Chief Minister, Yogi Adityanath**

Another indication that the crimes, particularly the cases of killings, were not random acts by police officers who overreacted is the link between a speech made by the Chief Minister of Uttar Pradesh and the escalation of violence by the police on 20 December 2019. As mentioned above, on 19 December 2019, the Chief Minister, who is also the head of the Home Department, which has the ultimate authority over law enforcement, publicly warned that his government would take 'revenge' on protesters and that he had

given instructions to all police officers: '[...] All faces are marked out and have been captured on video and CCTV footage. We will confiscate all their properties to take revenge from them I have said strictly that entire UP is under Section 144. It has been so continuously from 8 November. There can be no demonstrations without permission, and it is not acceptable that there be violence in the name of demonstrations. Such kind of anti-social and anarchic activities will not be tolerated in any situation. I have talked personally to all police officers and given them necessary instructions that the general public should face no difficulties, but riotous elements should be dealt with strictly and investigation should be begun against them [...].'<sup>337</sup> [unofficial translation]

At this point, plans for larger protests on 20 December 2019 were already known. Following this speech, on the day of these protests, after seven days where no lethal force was used, the police used live ammunition and reportedly shot dead 21 victims in seven different districts.<sup>338</sup> The timing of the escalation shows that the Chief Minister's speech was apparently understood by the police as a *carte blanche* to use maximum force rather than the result of individual police officers overacting in the heat of the moment. Even though the speech is couched in careful language that does not seem to directly call for the use of excessive force, the use of

<sup>336</sup> Interview, family of Mohammad Abrar, Mohammad Haroon and Mohammad Shafeeq, Firozabad, 20 January; Interview, family of Mohammad Suleiman, Nehtaur, 16 January 2020; Kaushal Shroff, 'Aided by a pliant police, BJP workers turned Sambhal's CAA protests into communal stone pelting' (*The Caravan*, 10 January 2020), <<https://caravanmagazine.in/politics/bjp-turned-anti-caa-protests-in-sambhal-into-communal-stone-pelting-aided-by-a-pliant-police>>

<sup>337</sup> The Economic Times, "Yogi Adityanath on CAA protests: Properties of vandals will be confiscated" (19 December 2019), <<https://www.youtube.com/watch?app=desktop&v=J4D4oJg0oTs>>

<sup>338</sup> See above [Murder](#). One case of murder was committed on 19 December 2019 in Lucknow.

terms such as ‘revenge’ and ‘riotous elements should be dealt with strictly’ at a time when police had already violently cracked down on smaller protests, could be seen as an encouragement of such conduct.

## **V. Conclusion**

There is credible information that suggests that a wide range of international human rights, both civil and political as well as economic, social and cultural rights, have been violated by the authorities in Uttar Pradesh. In addition, there is credible evidence that some episodes of violence may amount to crimes against humanity. All of those violations were either targeting Muslims or disproportionately affecting this particular minority group which shows the ideological driver behind these actions.

These state-led abuses have had a serious and long-lasting impact on the victims and the wider Muslim community. The high number of children affected and the treatment meted out to women are particularly concerning. Despite the pervasiveness and seriousness of the claims made by victims and their families, the authorities have failed to address them through effective remedies and reparation.

## VI. CASE LISTS

### Case List A: List of individual cases of deaths resulting from police shooting in the context of CAA protests

#### Meerut<sup>339</sup>

On 20 December 2019, five Muslim men were shot dead by police at different locations in the districts that were in the vicinity of anti-CAA protests.<sup>340</sup> All five were male working-class Muslims, and the families of all five insisted that they were not protesters. Three received bullet injuries to the head, while the other two received bullet injuries to the chest and back, suggesting that the police fired with the intent to kill. The police in Meerut initially claimed that they did not fire even a single bullet at protesters but later changed their version, saying they fired in the air to disperse the crowd. Several witnesses stated that the police initially threw stones, then used teargas, and eventually started firing live bullets.<sup>341</sup>

Those killed during the protest were:<sup>342</sup>

1. **Zaheer Ahmed**, a 45-year-old man who used to work in a cattle fodder unit, was shot in his head while sitting beside a shop and smoking.<sup>343</sup> The police allegedly entered the *Jali Wali Gali* (an alley in a residential, working-class Muslim neighbourhood) in the neighbourhood of Lisari Gate and fired tear gas and bullets at the same time without giving any warning.<sup>344</sup> His elder brother stated Zaheer Ahmed was only 25m away from the house when a swarm of people stormed the lane he was in and the police opened fire on them.<sup>345</sup> Witnesses claim that the bullets came from the

<sup>339</sup> Western Uttar Pradesh's Meerut district, around 80km north-east of the national capital New Delhi, is home to around 1.4 million people. Of these, over 504,000 (36%) are Muslims. BJP controls three of the four state legislative segments that constitute the district, and the BJP's Rajendra Agarwal has been representing Meerut (along with parts of neighbouring Hapur district) in the national parliament since 2009.

<sup>340</sup> Prabhjit Singh, 'A year on, no FIRs against Meerut police for men killed in CAA protests, PIL languishes in Allahabad HC',

<<https://caravanmagazine.in/crime/meerut-five-muslim-cao-protests-shot-police-families-allege>>; Dimple Sirohi, "मेरठ-मुज़फ़्फरनगर और बिजनौर में भारी बवाल, आठ की मौत, दो पुलिस चौकी समेत दर्जनों वाहन फूँके" (*Amar Ujala*, 21 December 2019),

<<https://www.amarujala.com/uttar-pradesh/meerut/cao-protest-fierce-commotion-in-meerut-muzaffarnagar-followed-by-namaz-vandalism-in-vehicles?pageId=2>>

<sup>341</sup> HRW Report 2020, 46.

<sup>342</sup> Abdul Alim Jafri, "Families of 5 killed in Meerut Allege 'Target Killing' by UP Police" (*NewsClick*, 27 December 2019),

<<https://www.newsclick.in/Families-of-5-Killed-in-Meerut-Allege-Target-Killing-by-UP-Police>>; Ishita Bhatia and Piyush Rai, "Meerut: A Wedding Plan, Unborn Baby and Endless Wait for Justice" (*The Times of India*, 25 December 2019),

<<https://timesofindia.indiatimes.com/city/meerut/a-wedding-plan-unborn-baby-and-endless-wait-for-justice/articleshow/72944885.cms>>

; Reuters, CAA Protests: Fury, Grief Grips Meerut After December 20 Violence Leaves 5 Dead" (*India Today*, 28 December 2019),

<<https://www.indiatoday.in/india/story/cao-protests-meerut-december-20-violence-dead-up-police-1632125-2019-12-28>>

<sup>343</sup> HRW Report 2020, 46.

<sup>344</sup> Abdul Alim Jafri, "Families of 5 killed in Meerut Allege 'Target Killing' by UP Police" (*NewsClick*, 27 December 2019)

<<https://www.newsclick.in/Families-of-5-Killed-in-Meerut-Allege-Target-Killing-by-UP-Police>>; Ishita Bhatia and Piyush Rai, "Meerut: A

Wedding Plan, Unborn Baby and Endless Wait for Justice" (*The Times of India*, 25 December 2019),

<<https://timesofindia.indiatimes.com/city/meerut/a-wedding-plan-unborn-baby-and-endless-wait-for-justice/articleshow/72944885.cms>>

<sup>345</sup> Ishita Bhatia and Piyush Ra, "Meerut: A Wedding Plan, Unborn Baby and Endless Wait for Justice" (*The Times of India*, 25 December 2019),

<<https://timesofindia.indiatimes.com/city/meerut/a-wedding-plan-unborn-baby-and-endless-wait-for-justice/articleshow/72944885.cms>>

direction of where the police were positioned at the opposite end of the protesters.<sup>346</sup>

2. **Mohammad Asif**, a 20-year-old e-rickshaw driver, was shot in the chest near the Islamabad police station (*chowki*) while returning home after prayers.<sup>347</sup> He was portrayed by the police and the local Hindi media as being the ‘mastermind’ behind the violence in Meerut after police recovered his identification having a Delhi address. The police alleged that Asif came to Meerut from Delhi to create a disturbance in the city. Asif’s father, however, clarified that, while the family were previously residents of Delhi, they had been living in Meerut as full-time residents for five years, and the ID address had not been updated.<sup>348</sup>
3. **Aleem Ansari**, a 24-year-old *dhaba* (roadside restaurant) worker, was shot in the head while returning from his workplace, which was near the protests and the Islamabad police station (*chowki*).<sup>349</sup>
4. **Mohammad Mohsin**, a 28-year-old worker at a cattle fodder unit, was shot in his chest in the same neighbourhood as Zaheer Ahmed at Lisari Gate when he went out to buy fodder.<sup>350</sup> His house was close to the main protest area.<sup>351</sup>
5. **Asif Khan**, a 33-year-old tyre shop worker, was shot in the back in the same neighbourhood as Zaheer Ahmed at Lisari Gate while he was returning home.<sup>352</sup>

Families of all five deceased, along with other residents and neighbours, claim that the police openly fired at unarmed protesters and other bystanders.<sup>353</sup>

Families of several of the deceased alleged denial of medical aid: Aleem Ansari’s brother testified that ‘the police threw the body of his brother outside the hospital and the hospital administration locked the doors of the hospital and refused to give any treatment to his brother. Later on, when the protestors gathered outside the hospital and asked them to open the gate, only then the hospital administration took the body inside the hospital. Aleem was

<sup>346</sup> Citizens Against Hate, (2020), “‘Everyone Has Been Silenced’ Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal”, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>347</sup> Citizens Against Hate, (2020), “‘Everyone Has Been Silenced’ Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal”, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>348</sup> Abdul Alim Jafri, ‘Families of 5 killed in Meerut Allege “Target Killing” by UP Police’ (*Newslick*, 27 December 2019),

<<https://www.newslick.in/Families-of-5-Killed-in-Meerut-Allege-Target-Killing-by-UP-Police>>

<sup>349</sup> Abdul Alim Jafri, ‘Families of 5 killed in Meerut Allege “Target Killing” by UP Police’ (*Newslick*, 27 December 2019),

<<https://www.newslick.in/Families-of-5-Killed-in-Meerut-Allege-Target-Killing-by-UP-Police>>

<sup>350</sup> Abdul Alim Jafri, ‘Families of 5 killed in Meerut Allege “Target Killing” by UP Police’ (*Newslick*, 27 December 2019),

<<https://www.newslick.in/Families-of-5-Killed-in-Meerut-Allege-Target-Killing-by-UP-Police>>; Ishita Bhatia and Piyush Rai, ‘Meerut: A

Wedding Plan, Unborn Baby and Endless Wait for Justice’ (*The Times of India*, 25 December 2019),

<<https://timesofindia.indiatimes.com/city/meerut/a-wedding-plan-unborn-baby-and-endless-wait-for-justice/articleshow/72944885.cms>>

<sup>351</sup> HRW Report 2020, 46.

<sup>352</sup> HRW Report 2020; Ishita Bhatia and Piyush Rai, ‘Meerut: A Wedding Plan, Unborn Baby and Endless Wait for Justice’ (*The Times of India*,

25 December 2019), <<https://timesofindia.indiatimes.com/city/meerut/a-wedding-plan-unborn-baby-and-endless-wait-for-justice/articleshow/72944885.cms>>

<sup>353</sup> Reuters, ‘CAA Protests: Fury, Grief Grips Meerut After December 20 Violence Leaves 5 Dead’ (*India Today*, 28 December 2019),

<<https://www.indiatoday.in/india/story/caa-protests-meerut-december-20-violence-dead-up-police-1632125-2019-12-28>>

not given any treatment, and the police seized all CCTVDVRs and hid all the evidence.<sup>354</sup> Similarly, Mohsin was refused admission at four hospitals in the city. The district administration allegedly ordered the doctors not to admit any ‘rioters’.<sup>355</sup> He was finally admitted to the local government medical college, which declared him dead on arrival.<sup>356</sup>

No FIRs have been filed against any police officers, despite numerous complaints from the families of the deceased. The police refused to register an FIR on the grounds that all the persons killed were part of the protest and they died in cross-firings between protestors.<sup>357</sup> The police also claimed that FIRs about the incident have already been registered, and it is not possible to register two FIRs of the same incident.<sup>358</sup> Families of the victims have reported that they have received threats from the police that they would initiate cases against them if the families tried to pursue their claims against the police.<sup>359</sup>

The families of all five victims have alleged that the police first refused to hand over the bodies to them and then put pressure on them to conduct forced burials at some distant places under heavy police presence. Mohammad Mohsin’s brother testified: ‘They started pressurising us to bury the body to the extent that they even arranged for a gravedigger themselves and even got the grave dug. We went to the cemetery near our house and buried the body there. The body was buried at 7am on the 21st of December. As soon as the body was buried, the police left.’<sup>360</sup> This could indicate that the police wanted to bury the evidence in haste.

### Firozabad<sup>361</sup>

Seven people were reportedly shot dead by the police in Firozabad on 20 December 2019. Again, all were male working-class Muslims living in an area along the Rasulpur bypass between Naini Glass junction and Jatavpuri junction, which was the centre of the CAA protests.<sup>362</sup> Residents stated that police were waiting outside the mosques in that area, together with hundreds of men in civilian clothes.<sup>363</sup> A CAA protest was scheduled to take place at Naini Glass Chowk, but before the protests started, the police, along with another unidentified person on the side of

<sup>354</sup> Interview, family of Mohammad Aleen, 21 December 2020, on file with authors and can be provided on request.

<sup>355</sup> Citizens Against Hate, (2020), “‘Everyone Has Been Silenced’ Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal”, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>356</sup> Citizens Against Hate, (2020), “‘Everyone Has Been Silenced’ Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal”, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>357</sup> Prabhjit Singh, ‘A Year On, No FIRs against Meerut Police for Men Killed in CAA Protests, PIL Languishes in Allahabad HC’ ( *The Caravan*, 31 December 2020), <<https://caravanmagazine.in/crime/meerut-five-muslim-caa-protests-shot-police-families-allege>>

<sup>358</sup> Prabhjit Singh, ‘A Year On, No FIRs against Meerut Police for Men Killed in CAA Protests, PIL Languishes in Allahabad HC’ ( *The Caravan*, 31 December 2020), <<https://caravanmagazine.in/crime/meerut-five-muslim-caa-protests-shot-police-families-allege>>

<sup>359</sup> Article 14, ‘24 Months After 5 Killed In Meerut In Police Crackdown On Anti-CAA Protests, No Probe & No Answers’ (20 January 2022), <<https://article-14.com/post/24-months-after-5-killed-in-meerut-in-police-crackdown-on-anti-kaa-protests-no-probe-no-answers-61e8ce841aeef>>

<sup>360</sup> Citizens Against Hate, (2020), “‘Everyone Has Been Silenced’ Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal”, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>361</sup> Western Uttar Pradesh’s Firozabad district, known as the centre of India’s glassmaking industry, is home to around 2.49 million people (2011 Census). Of these, over 313,000 (12.6 per cent) are Muslims. The BJP controls three of the four legislative segments that constitute the district (a fifth segment remains vacant) and also represent Firozabad in the national parliament.

<sup>362</sup> Hemani Bhandari, ‘Kin of dead wait for justice in Firozabad’, ( *The Hindu*, 29 December 2019), <<https://www.thehindu.com/news/national/other-states/kin-of-dead-wait-for-justice-in-firozabad/article30427440.ece>>

<sup>363</sup> Rohan Venkataramakrishnan, ‘Attacks and apathy: Two cases from Firozabad illustrate how the UP police have treated Muslims’ ( *Scroll.in*, 4 January 2020), <<https://scroll.in/article/948648/attacks-and-apaty-two-cases-from-firozabad-illustrate-how-the-up-police-have-treated-muslims>>

the police, started firing.<sup>364</sup> All bullet injuries were reported to be above the waist (including three to the face/head), again suggesting that the police acted with the intent to kill.

1. **Mohammad Haroon**, a 30-year-old daily wage labourer, was shot in his face at the Naini Glass Marketplace (*Chowk*) when he was returning from the animal fair at Pachokhara village in the Tundla district.<sup>365</sup>
2. **Mohammad Abrar**, a 26-year-old labourer, was shot twice – one bullet hit him in his arm and the other in his spine – at Naini Glass Marketplace (*Chowk*) when he was returning home from work.<sup>366</sup> His father testified that from the terrace of his house, he saw police and others in civilian clothes opened fire.<sup>367</sup>
3. **Arman**, alias **Kallu**, a 24-year-old labourer, was shot in the chest at the Naini Glass Marketplace (*Chowk*) on his way home.<sup>368</sup> The Superintendent of the Police requested his father not to mention the police in the FIR, and when he refused, the Superintendent changed the FIR to say that the victim was shot but that it was unclear whether the bullet was fired by the police or a civilian.<sup>369</sup>
4. **Rashid**, a 33-year-old physically challenged labourer, was shot in the head at the Naini Glass Marketplace (*Chowk*) when he was returning home after collecting his daily wage dues.<sup>370</sup> People in the area of the incident told his father that he was shot by the police and the police pressured the hospital where he died to change their finding that he died from a police bullet.<sup>371</sup>
5. **Mugeem Qureshi**, a 17-year-old labourer, was shot in his stomach at the Naini Glass Marketplace (*Chowk*) when he was returning home from work and died on 23 December 2019 at the Safdarjung Hospital in Delhi.<sup>372</sup> The medical record issued mentions ‘firearm injury’, but the FIR registered by the local police station omits this fact.<sup>373</sup>

<sup>364</sup> Interview, family of Mohammad Haroon, Firozabad, 20 January 2020, on file with authors and can be provided on request.

<sup>365</sup> Akanksha Kumar, ‘Firozabad CAA Stir: No Mention of Gunshot in Complaint of 3 Dead’ (*The Quint*, 7 January 2020), <<https://www.thequint.com/news/india/up-police-cao-stir-in-firozabad-gunshot-injury-not-mentioned-for-three-dead#read-more>>

<sup>366</sup> Press Trust of India, ‘UP Man Injured in Anti-CAA Protests Dies; Firozabad Death Toll Reached 7’ (*Business Standard*, 14 January 2020), <[https://www.business-standard.com/article/pti-stories/up-man-injured-in-anti-cao-protests-dies-firozabad-death-toll-reaches-7-120011400728\\_1.html](https://www.business-standard.com/article/pti-stories/up-man-injured-in-anti-cao-protests-dies-firozabad-death-toll-reaches-7-120011400728_1.html)>

<sup>367</sup> Citizens Against Hate, (2020), ‘“Everyone Has Been Silenced” Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal’, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>368</sup> Hemani Bhandari, ‘Kin of Dead Wait for Justice in Firozabad’, (*The Hindu*, 29 December 2019), <<https://www.thehindu.com/news/national/other-states/kin-of-dead-wait-for-justice-in-firozabad/article30427440.ece>>

<sup>369</sup> Citizens Against Hate, (2020), ‘“Everyone Has Been Silenced” Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal’, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>370</sup> Arvind Chauhan, ‘Anti-CAA Protests Leave 6-yr-Old Orphaned in Firozabad’ (*The Times of India*, 23 December 2019), <<https://timesofindia.indiatimes.com/city/agra/anti-cao-protests-leave-6-yr-old-orphaned-in-firozabad/articleshow/72943732.cms>>

<sup>371</sup> Citizens Against Hate, (2020), ‘“Everyone Has Been Silenced” Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal’, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>372</sup> Akanksha Kumar, ‘Firozabad CAA Stir: No Mention of Gunshot in Complaint of 3 Dead’ (*The Quint*, 7 January 2020), <<https://www.thequint.com/news/india/up-police-cao-stir-in-firozabad-gunshot-injury-not-mentioned-for-three-dead#read-more>>

<sup>373</sup> Akanksha Kumar, ‘Firozabad CAA Stir: No Mention of Gunshot in Complaint of 3 Dead’ (*The Quint*, 7 January 2020), <<https://www.thequint.com/news/india/up-police-cao-stir-in-firozabad-gunshot-injury-not-mentioned-for-three-dead#read-more>>

6. **Nabijaan / Navi Jaan / Nabi Jan**, a 22-year-old, was shot in the chest when he was returning home from work.<sup>374</sup> Even though the medical report found the entry and exit of a bullet in his body, the FIR registered by the police did not mention this fact.<sup>375</sup>
7. **Mohammad Shafeeq**, a 40-year-old scrap dealer, was shot in the head at the Naini Glass Marketplace (*Chowk*), where he got caught between protesters and the police while returning home.<sup>376</sup> Even though the medical records mention ‘gunshot injury’, the FIR registered at the local police station does not include this fact.<sup>377</sup>

In three of the cases, the victims were refused medical treatment by hospitals, which were reportedly under pressure from authorities not to admit the injured: Nabijaan’s father alleged that Nabijaan was denied first-aid treatment by Firozabad district hospital, and he lost his life because of excessive bleeding.<sup>378</sup> Similarly, Mohammad Shafeeq was denied initial medical treatment by the local hospitals and was later admitted to a hospital in nearby Agra. He did not receive proper treatment there as well and was again referred to the Safdarjung Hospital in Delhi where he died.<sup>379</sup> Mohammad Abrar was denied initial medical treatment at Firozabad hospital because of the pressure from the administration. The family then took him to a hospital in Agra, and from there he was referred to Delhi’s Apollo Hospital. After being discharged from the hospital, Abrar died on 12 January 2020.<sup>380</sup>

Forced burials were reported from Firozabad like in other districts, with the police reported to have forced every family to bury the deceased hurriedly at some distant place. In the case of Rashid, the police allegedly did not even allow Muslim religious rites to be performed at the hurried burial.<sup>381</sup>

There have been concerted efforts by the police to obfuscate the victims’ families’ accounts of events and the nature of injuries suffered. Every death reported in the district was caused by bullet injuries, a fact confirmed by post-mortem reports and other initial medical reports. However, the police did not mention bullet injuries as the cause of death in the three FIRs they registered of the incidents (Muqem Qureshi, Mohammad Shafeeq and Mohammad Haroon).<sup>382</sup>

<sup>374</sup> Arvind Chauhan, ‘Anti-CAA Protests Leave 6-yr-Old Orphaned in Firozabad’ (*The Times of India*, 23 December 2019), <<https://timesofindia.indiatimes.com/city/agra/anti-kaa-protests-leave-6-yr-old-orphaned-in-firozabad/articleshow/72943732.cms>>

<sup>375</sup> Shyamal Yadav, ‘CAA protests: In one of the worst-hit UP towns, 6 deaths, ‘no bullets found’” (*The Indian Express*, 5 January 2020), <<https://indianexpress.com/article/cities/uttar-pradesh-firozabad-citizenship-act-protests-police-firing-6200073/>>

<sup>376</sup> Hemani Bhandari, ‘My Husband was Shot at While Returning from Work’ (*The Hindu*, 25 December 2019), <<https://www.thehindu.com/news/cities/Delhi/my-husband-was-shot-at-while-returning-from-work/article30392411.ece>> (Last accessed on 10.03.2021); Akanksha Kumar, ‘Firozabad CAA Stir: No Mention of Gunshot in Complaint of 3 Dead’ (*The Quint*, 7 January 2020), <<https://www.thequint.com/news/india/up-police-kaa-stir-in-firozabad-gunshot-injury-not-mentioned-for-three-dead#read-more>>

<sup>377</sup> Akanksha Kumar, ‘Firozabad CAA Stir: No Mention of Gunshot in Complaint of 3 Dead’ (*The Quint*, 7 January 2020), <<https://www.thequint.com/news/india/up-police-kaa-stir-in-firozabad-gunshot-injury-not-mentioned-for-three-dead#read-more>>

<sup>378</sup> Arvind Chauhan, ‘Anti-CAA Protests Leave 6-yr-Old Orphaned in Firozabad’ (*The Times of India*, 23 December 2019), <<https://timesofindia.indiatimes.com/city/agra/anti-kaa-protests-leave-6-yr-old-orphaned-in-firozabad/articleshow/72943732.cms>>

<sup>379</sup> Hemani Bhandari, ‘My Husband was Shot at While Returning from Work’ (*The Hindu*, 25 December 2019), <<https://www.thehindu.com/news/cities/Delhi/my-husband-was-shot-at-while-returning-from-work/article30392411.ece>>

<sup>380</sup> Citizens Against Hate, (2020), ‘“Everyone Has Been Silenced” Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal!’ <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>381</sup> Citizens Against Hate, 2020.

<sup>382</sup> Akanksha Kumar, ‘Firozabad CAA Stir: No Mention of Gunshot in Complaint of 3 Dead’ (*The Quint*, 7 January 2020), <<https://www.thequint.com/news/india/up-police-kaa-stir-in-firozabad-gunshot-injury-not-mentioned-for-three-dead#read-more>>

Families allege that police forced them to change their complaints and doctored accounts of the incident as a condition for releasing dead bodies. Families were forced to mention that deaths had occurred due to firings from the crowd and not by police.<sup>383</sup>

### Kanpur Nagar<sup>384</sup>

On 20 December 2019, three Muslim men were reportedly shot by the police in Kanpur Nagar near locations of anti-CAA protests. All three were young, male working-class Muslims whose families insist that they were not protesters. All three received bullet injuries in the chest or abdomen, all above the waist. On that day, police had been deployed around the mosque at Eidgah Maidan, where after afternoon prayers, some people gathered spontaneously in protest against the CAA.<sup>385</sup> Local witnesses, confirmed by video footage taken that day, stated that the police opened fire without provocation on the informal gathering around the mosque.<sup>386</sup>

1. **Aftab Alam**, a 23-year-old mason, was shot in the chest at Eidgah Maidan as he went to collect his wages and crossed the demonstration against the CAA.<sup>387</sup> His mother claims that he told her that a policeman shot him before he died.<sup>388</sup>
2. **Mohammad Saif**, a 25-year-old tannery labourer, was shot in the abdomen while he was going to work after offering Friday prayers at the Eidgah Maidan mosque.<sup>389</sup> His brother says that Saif told him at the hospital that the police had fired at him.<sup>390</sup>
3. **Raees Khan**, a 30-year-old street food seller, was shot in the abdomen when he came out of the Mosque at Eidgah Maidan to offer Friday prayers.<sup>391</sup> Another person who was injured at the same time testified that he saw the police shoot Raees.<sup>392</sup> His mother also claims that he told her he was shot by the police before he died.<sup>393</sup>

<sup>383</sup> Citizens Against Hate, (2020), “Everyone Has Been Silenced” Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal’, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>384</sup> Kanpur Shehar, encompassing Kanpur city has a population of 2.7 million (2011 Census). Muslims make up 20% of the population.

<sup>385</sup> Sagar, ‘Quietly defiant, Kanpur’s Muslims persist in the face of police brutality and state apathy’ (*The Caravan*, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>

<sup>386</sup> Sagar, ‘Quietly defiant, Kanpur’s Muslims persist in the face of police brutality and state apathy’ (*The Caravan*, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>

<sup>387</sup> Sagar, ‘Quietly defiant, Kanpur’s Muslims persist in the face of police brutality and state apathy’ (*The Caravan*, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>

<sup>388</sup> Citizens Against Hate, (2020), “Everyone Has Been Silenced” Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal’, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>; Sagar, ‘Quietly defiant, Kanpur’s Muslims persist in the face of police brutality and state apathy’ (*The Caravan*, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>; Aishwara S Iyer, “They Shot Him”: Kin of Three Deceased Blame UP Police, Seek FIR” (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir/read-more#read-more>>

<sup>389</sup> Asad Rehman, ‘CAA Protest: In Kanpur, a Police Outpost damaged, Cop Critical; 2 Victims’ Kin Await Bodies’ (*The Indian Express*, 22 December 2019), <<https://indianexpress.com/article/cities/lucknow/caa-protest-in-kanpur-a-police-outpost-damaged-cop-critical-2-victims-kin-await-bodies-6179001/>>; Sagar, ‘Quietly defiant, Kanpur’s Muslims persist in the face of police brutality and state apathy’ (*The Caravan*, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>

<sup>390</sup> Citizens Against Hate, (2020), “Everyone Has Been Silenced” Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal’, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>; Sagar, ‘Quietly defiant, Kanpur’s Muslims persist in the face of police brutality and state apathy’ (*The Caravan*, 7 January 2020), <<https://caravanmagazine.in/politics/caa-protests-uttar-pradesh-kanpur-dead-police-muslims>>; Aishwara S Iyer, “They Shot Him”: Kin of Three Deceased Blame UP Police, Seek FIR” (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir/read-more#read-more>>

<sup>391</sup> Rasia Hashmi, ‘CAA-NRC: Raees was Shot in Stomach by Police in Kanpur’ (*The Siyasat Daily*, 24 December 2019), <<https://www.siasat.com/caa-nrc-raees-was-shot-stomach-police-kanpur-1772015/>>

<sup>392</sup> Citizens Against Hate, (2020), “Everyone Has Been Silenced” Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal’, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>393</sup> Rasia Hashmi, “CAA-NRC: Raees was shot in stomach by police in Kanpur” (*The Siyasat Daily*, 24 December 2019), <<https://www.siasat.com/caa-nrc-raees-was-shot-stomach-police-kanpur-1772015/>>; Aishwara S Iyer, “They Shot Him”: Kin of Three Deceased

All three were reportedly still alive when they were taken to the Hallet Hospital.<sup>394</sup> However, the hospital staff refused to provide medical treatment.<sup>395</sup> Raees Khan's father alleged that the doctors at the hospital refused to give any treatment to Raees when they discovered he was a Muslim.<sup>396</sup> Similarly, Aftab's mother alleged that her son was not given any kind of treatment from the hospital and that they came to attend to him only after he had passed away.<sup>397</sup>

The families of all three alleged that the dying declaration of the deceased was not recorded by the police or the administration, even though all three families claim that before dying, the deceased informed them that it was the police that shot at them.<sup>398</sup>

### Bijnor<sup>399</sup>

Two different towns in the Bijnor district witnessed two cases of police shootings on 20 December 2019. The two killings were reported in Nehtaur, where no protests were taking place.<sup>400</sup> Both victims were young male Muslims from working-class families. Police were deployed in Nehtaur even though no protests were announced, and, according to witness accounts, the police attacked Muslims who came out of the mosque after Friday prayers.<sup>401</sup>

The two persons killed in Nehtaur were:

1. **Mohammad Suleiman**, a 20-year-old university student, was shot in the stomach by a bullet, which the forensic report confirmed as coming from a service weapon.<sup>402</sup> Suleiman's post-mortem report confirmed his death due to bullet injury with a bullet recovered from the vertebral column.<sup>403</sup> This is the only case in which the police admitted the fact that the person died as a result of police fire.<sup>404</sup> The police have, however, claimed that they fired in self-defence when Suleiman fired a country-made pistol at a police officer, but the police did not find any weapon on

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Blame UP Police, Seek FIR" (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir#read-more#read-more>>

<sup>394</sup> Sagar, 'Quietly defiant, Kanpur's Muslims persist in the face of police brutality and state apathy' (*The Caravan*, 7 January 2020), <<https://caravanmagazine.in/politics/cao-protests-uttar-pradesh-kanpur-dead-police-muslims>>

<sup>395</sup> Sagar, 'Quietly defiant, Kanpur's Muslims persist in the face of police brutality and state apathy' (*The Caravan*, 7 January 2020), <<https://caravanmagazine.in/politics/cao-protests-uttar-pradesh-kanpur-dead-police-muslims>>

<sup>396</sup> Aishwarya S Iyer, "They Shot Him": Kin of Three Deceased Blame UP Police, Seek FIR', (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir#read-more#read-more>>

<sup>397</sup> Aishwarya S Iyer, "They Shot Him": Kin of Three Deceased Blame UP Police, Seek FIR', (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir#read-more#read-more>>

<sup>398</sup> Aishwarya S Iyer, "They Shot Him": Kin of Three Deceased Blame UP Police, Seek FIR', (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/up-anti-cao-violence-december-2019-kanpur-anas-saif-aftab-alam-deaths-fir#read-more#read-more>>

<sup>399</sup> Bijnor has a mixed population profile, 55% Hindu and 43% Muslim. It has one Parliamentary constituency – that it shares with Muzaffarnagar – currently with the BSP, and five state assembly segments, all currently with the ruling BJP.

<sup>400</sup> Citizens Against Hate, (2020), "Everyone Has Been Silenced" Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal', <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>401</sup> Sagar, 'Adityanath's Police Raj' (*The Caravan*, 27 December 2019), <<https://caravanmagazine.in/politics/nehtaur-bijnor-fear-up-police-defends-two-killings-state-rampage>>

<sup>402</sup> Citizens Against Hate, (2020), "Everyone Has Been Silenced" Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal', <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>403</sup> Citizens Against Hate, (2020), "Everyone Has Been Silenced" Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal', <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>404</sup> HRW Report 2020, 47; Aishwarya S Iyer, 'Remembering Suleiman: UPSC Aspirant who Died in Police Firing', (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/suleiman-bijnor-up-police-diring-anti-cao-protests-anas#read-more>>

Suleiman.<sup>405</sup> The family of Suleiman report that he was picked up by the police on his way from the mosque, taken to an alley, and shot.<sup>406</sup>

2. **Mohammad Anas**, a 22-year-old labourer, was shot in the face when he went out to buy milk.<sup>407</sup> The post-mortem confirmed he died from a bullet.<sup>408</sup> The bullet reportedly came from the direction where police were stationed at the end of the road from his house, about 200m away.<sup>409</sup> Even though the police deny killing Anas, witnesses claim they saw the police firing directly at him.<sup>410</sup>

On 28 December 2019, Suleiman's brother, Shoeb Mallick, filed a complaint at Nehtaur police station in Bijnor district against seven police officers, including the Station House Officer (SHO) of Nehtaur police station, Rajesh Solanki; City In-charge, Ashish Tomar; Constable Mohit Sharma; and another three police personnel, claiming the police party picked up Suleiman as he was returning home from the mosque after Friday prayers. The complaint claimed that police took Suleiman into a nearby lane, where he was shot dead at close range by Constable Mohit Sharma.<sup>411</sup> Media reports quoting Bijnor's Superintendent of Police (SP), **Sanjeev Tyagi**, claimed that a FIR for murder had been registered against six police officers, including SHO Solanki.<sup>412</sup> However, in July 2020, the investigations against the six police officers named in the FIR were dropped without providing the reasons to the victim's family.<sup>413</sup>

Families of both victims alleged that they were denied medical aid, with no doctors being available for them in Nehtaur hospital and that they had to wait for hours before the victims were attended to. Anas' father told the media: 'When I reached the spot, he was breathing. We took him to the government hospital but not a single doctor was available. We then rushed to Bijnor, but he died on the way.'<sup>414</sup>

Like in several other districts, both families alleged forced burials, which were conducted hurriedly in the absence of several of the victims' family members. The police allegedly initially

<sup>405</sup> HRW Report, 2020, 47; 'CAA protests in UP: Police bullet that killed 20-year-old was fired 'in self-defence', says official', (*Scroll.in*, 24 December 2019), <<https://scroll.in/latest/947723/caa-protests-in-up-constable-fired-bullet-that-killed-20-year-old-protestor-police-admit>>; Abdul Alim Jafri, 'Bijnor: Families of 2 Youth Killed Say There Were no Doctors in Nehtaur on Dec 20', (*Newslick*, 28 December 2019), <<https://www.newslick.in/bijnor-families-2-youth-killed-say-there-were-no-doctors-nehtaur-dec-20>>

<sup>406</sup> Abdul Alim Jafri, 'Bijnor: Families of 2 Youth Killed Say There Were no Doctors in Nehtaur on Dec 20', (*Newslick*, 28 December 2019), <<https://www.newslick.in/bijnor-families-2-youth-killed-say-there-were-no-doctors-nehtaur-dec-20>>

<sup>407</sup> Abdul Alim Jafri, 'Bijnor: Families of 2 Youth Killed Say There Were no Doctors in Nehtaur on Dec 20', (*Newslick*, 28 December 2019), <<https://www.newslick.in/bijnor-families-2-youth-killed-say-there-were-no-doctors-nehtaur-dec-20>>

<sup>408</sup> Citizens Against Hate, (2020), "'Everyone Has Been Silenced' Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal', <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>409</sup> Sagar, 'Adityanath's Police Raj' (*The Caravan*, 27 December 2019), <<https://caravanmagazine.in/politics/nehtaur-bijnor-fear-up-police-defends-two-killings-state-rampage>>

<sup>410</sup> Sagar, 'Adityanath's Police Raj' (*The Caravan*, 27 December 2019), <<https://caravanmagazine.in/politics/nehtaur-bijnor-fear-up-police-defends-two-killings-state-rampage>>

<sup>411</sup> Abdul Alim Jafri, 'Bijnor: Families of 2 Youth Killed Say There Were no Doctors in Nehtaur on Dec 20', (*Newslick*, 28 December 2019), <<https://www.newslick.in/bijnor-families-2-youth-killed-say-there-were-no-doctors-nehtaur-dec-20>>

<sup>412</sup> Kaunain Sheriff M, 'Judge Shreds Bijnor Police Claims: No Proof of Protestors Firing or Bullet Injury to Cops', (*The Indian Express*, 29 January 2020), <<https://indianexpress.com/article/india/citizenship-act-protests-up-bijnor-police-court-6240169/>>

<sup>413</sup> Aishwarya S Iyer, 'Remembering Suleiman: UPSC Aspirant who Died in Police Firing', (*The Quint*, 12 December 2020), <<https://www.thequint.com/news/india/suleiman-bijnor-up-police-diring-anti-kaa-protests-anas#read-more>>

<sup>414</sup> Abdul Alim Jafri, 'Bijnor: Families of 2 Youth Killed Say There Were no Doctors in Nehtaur on Dec 20', (*Newslick*, 28 December 2019), <<https://www.newslick.in/bijnor-families-2-youth-killed-say-there-were-no-doctors-nehtaur-dec-20>>

refused to hand over the bodies to the families and threatened to file false cases against them. The families were forced to bury the bodies in distant villages under heavy police presence.<sup>415</sup>

### Sambhal<sup>416</sup>

Two deaths were reported in Sambhal on 20 December 2019, one of which resulted from a police shooting, whereas the second victim was killed by another civilian. Both deaths occurred due to bullet injuries. Both victims were male working-class Muslims. On that day, after the Friday prayers, some protesters gathered spontaneously to march towards the Chandausi Chowk area and were met by the police at the Chauraha government hospital, who began charging the crowds with batons, tear gas and a water cannon.<sup>417</sup>

The two persons killed in Sambhal were:

1. **Bilal Pasha**, a 31-year-old labourer, was shot in the face in the vicinity of the protests while he was going to neighbouring Moradabad to make payments for a car he recently bought.<sup>418</sup> His family registered a complaint with the police claiming that the shot was fired by the police.<sup>419</sup>
2. **Mohammad Shehroz**, a 22-year-old, was shot in his abdomen at Shankar Chauraha.<sup>420</sup> On the day of the killings, in one of the many videos captured by locals, a man named Santosh Kumar – a BJP leader, according to locals – was identified as the person who shot and killed Shehroz.<sup>421</sup>

The families of the deceased have accused the police of doctoring FIRs. On 20 December 2019, the family of Bilal filed a complaint at the Sambhal Police Station stating that a police officer shot him, but the police in the FIR changed the contents of the complaints and wrote that Bilal received injuries to his face during the protest and consequently died.<sup>422</sup>

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<sup>415</sup> Citizens Against Hate, (2020), “*Everyone Has Been Silenced*” *Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal*, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>416</sup> As per the 2011 census, Sambhal has a total population of 21, 92,933 where Muslims are in majority.

<sup>417</sup> Kaushal Shroff, ‘Aided by a Plain Police, BJP Workers Turned Sambhal’s CAA Protest into Communal Stone Pelting’ (*The Caravan*, 10 January 2020), <<https://caravanmagazine.in/politics/bjp-turned-anti-cao-protests-in-sambhal-into-communal-stone-pelting-aided-by-a-plain-police>>

<sup>418</sup> Kaushal Shroff, ‘Aided by a Plain Police, BJP Workers Turned Sambhal’s CAA Protest into Communal Stone Pelting’ (*The Caravan*, 10 January 2020), <<https://caravanmagazine.in/politics/bjp-turned-anti-cao-protests-in-sambhal-into-communal-stone-pelting-aided-by-a-plain-police>>

<sup>419</sup> Kaushal Shroff, ‘Aided by a Plain Police, BJP Workers Turned Sambhal’s CAA Protest into Communal Stone Pelting’ (*The Caravan*, 10 January 2020), <<https://caravanmagazine.in/politics/bjp-turned-anti-cao-protests-in-sambhal-into-communal-stone-pelting-aided-by-a-plain-police>>

<sup>420</sup> Citizens Against Hate, (2020), “*Everyone Has Been Silenced*” *Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal*, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>421</sup> Kaushal Shroff, ‘Aided by a Plain Police, BJP Workers Turned Sambhal’s CAA Protest into Communal Stone Pelting’ (*The Caravan*, 10 January 2020), <<https://caravanmagazine.in/politics/bjp-turned-anti-cao-protests-in-sambhal-into-communal-stone-pelting-aided-by-a-plain-police>>

<sup>422</sup> Kaushal Shroff, ‘Aided by a Plain Police, BJP Workers Turned Sambhal’s CAA Protest into Communal Stone Pelting’ (*The Caravan*, 10 January 2020), <<https://caravanmagazine.in/politics/bjp-turned-anti-cao-protests-in-sambhal-into-communal-stone-pelting-aided-by-a-plain-police>>

**Muzaffarnagar**<sup>423</sup>

Muzaffarnagar district had one death resulting from a police shooting on 20 December 2019. On that day, protesters marched towards Mahavir Chowk, passing through Meenakshi Chowk, after Friday prayers to hand over a letter to the District Magistrate.<sup>424</sup> At Meenakshi Chowk, they were met by the police and Hindu mobs who charged them with batons and tear gas.<sup>425</sup>

The victim, **Noor Mohammad**, was a 26-year-old Muslim taxi driver who was shot in his head near Meenakshi Chowk as he was leaving a car park.<sup>426</sup> The police denied firing live bullets and claimed that protesters had shot him.<sup>427</sup>

Noor Mohammad was referred to a hospital in the neighbouring Meerut district, where he died. The police did not allow the family of Noor Mohammad to bring his body home to Muzaffarnagar for his last rites. The police threatened the family that they would file criminal cases against them for rioting if they took the body to Muzaffarnagar. Noor Mohammad was thus forcibly buried in Daurala, 42km away from their home.<sup>428</sup>

The victim's family has allegedly been receiving threats from police since the event. They allege that they were forced to agree to record that the death occurred due to a protester firing at the deceased. The family also allege that the police have been threatening them not to pursue the case.<sup>429</sup>

Recently, the family was informed that police had filed the Final Report, which concludes the investigations in the matter, claiming that the killing was the result of firing by other protesters, and, in the absence of eyewitnesses, the case was being closed. The family is planning to challenge the report in higher courts.

<sup>423</sup> As per the 2011 census Muzaffarnagar municipality had a population of 392,768, and the population of the urban agglomeration was 494,792. Muzaffarnagar city is almost evenly split between Hindus (55.79% of the population) and Muslims (41.39%).

<sup>424</sup> Tushar Dhara, 'In Muzaffarnagar, police and Hindutva groups attack Muslims in attempt to recreate 2013 riots' (*The Caravan*, 28 December 2019), <<https://caravanmagazine.in/politics/muzaffarnagar-police-hindutva-groups-attack-muslims-attempt-recreate-2013-riots>>

<sup>425</sup> Tushar Dhara, 'In Muzaffarnagar, police and Hindutva groups attack Muslims in attempt to recreate 2013 riots' (*The Caravan*, 28 December 2019), <<https://caravanmagazine.in/politics/muzaffarnagar-police-hindutva-groups-attack-muslims-attempt-recreate-2013-riots>>

<sup>426</sup> Ibid.; Citizens Against Hate, (2020), "'Everyone Has Been Silenced'" *Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal*; <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>427</sup> Tushar Dhara, 'In Muzaffarnagar, police and Hindutva groups attack Muslims in attempt to recreate 2013 riots' (*The Caravan*, 28 December 2019), <<https://caravanmagazine.in/politics/muzaffarnagar-police-hindutva-groups-attack-muslims-attempt-recreate-2013-riots>>

<sup>428</sup> Shadab Moizee, 'Muzaffarnagar Victim Leaves Behind Pregnant Wife, Little Finances' (*The Quint*, 23 December 2019), <<https://www.thequint.com/videos/news-videos/citizenship-amendment-act-caa-protests-muzaffarnagar-noor-mohammad-death-victim-ground-report#read-more>>

<sup>429</sup> Citizens Against Hate, (2020), "'Everyone Has Been Silenced'" *Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal*; <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

### Lucknow<sup>430</sup>

Capital Lucknow witnessed one death: **Mohammed Wakeel**, a 32-year-old who was shot in the abdomen on 19 December 2019.<sup>431</sup> A police spokesperson confirmed that the post-mortem report indicated Wakeel's death from a firearm injury shot at close range but denied that the police fired the shot.<sup>432</sup> On that day, protests erupted against the CAA and police responded with tear gas, rubber bullets and stun grenades.<sup>433</sup> His family stated that Mohammed Wakeel was not participating in the protests but was shot near the Satkhanda where protests were happening and the police post, which was burnt.<sup>434</sup> His father was told that when the police started charging protesters with batons and protesters were pelting stones, Mohammed Wakeel sought refuge in a lane, but when he started moving out of the lane towards the police, he was shot at from the front.<sup>435</sup>

### Rampur<sup>436</sup>

Rampur district witnessed one death: **Faiz Khan**, a 22-year-old shop assistant, who was shot in his neck on 20 December 2019 when he rushed to help an older man at the Hathi Khana protest site who had collapsed when the police started using tear gas against the protesters.<sup>437</sup> On that day, large protests against the CAA were held, including at the Hathi Khanna crossing.<sup>438</sup> Faiz's brother heard from bystanders that the protesters were unarmed, and nobody from the group of protesters fired a bullet.<sup>439</sup> This indicates that the shooting must have come from the police.

Faiz was reportedly denied medical aid. Bystanders took the injured Faiz to the district hospital, but his family stated that the hospital staff refused to give any treatment to him and said that they had orders not to attend to any person with bullet injuries. Faiz's family waited for hours until Faiz died later that day.<sup>440</sup>

Faiz's family alleges that they were assaulted by the police, who also reportedly assaulted the victim's corpse. According to the family, around 60-70 policemen came to the hospital and

<sup>430</sup> Lucknow, the capital city of Uttar Pradesh, has a population profile of about 23% Muslim population and 71% Hindu population.

<sup>431</sup> Fatima Khan, 'In Lucknow, man killed in violence leaves behind a converted wife & their Hindu-Muslim love' (27 December 2019),

<<https://theprint.in/india/in-lucknow-man-killed-in-violence-leaves-behind-a-converted-wife-their-hindu-muslim-love/341353/>>

<sup>432</sup> Manisha Sahu, 'UP: 14 of 16 killed in CAA protests fell to bullet injuries' (*The Indian Express*, 23 December 2019),

<<https://indianexpress.com/article/india/up-cao-protests-deaths-bullet-injuries-6180302/lite/>>; Sanhati, Profiles: "The 23 People Who Died in Uttar Pradesh during the CAA-NRC Protests" (21 January 2020), <<http://sanhati.com/excerpted/19479/>>

<sup>433</sup> Citizens Against Hate, (2020), "Everyone Has Been Silenced" *Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal*, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>434</sup> Sanhati, "Profiles: The 23 People Who Died in Uttar Pradesh during the CAA-NRC Protests" (21 January 2020),

<<http://sanhati.com/excerpted/19479/>>; Yusra Husain, "Lucknow: Mohammad Wakeel who died of gunshot wounds was not a protester, father claim" (*Times of India*, 19 December 2019), <<https://timesofindia.indiatimes.com/city/lucknow/lucknow-mohammad-wakeel-who-died-of-gunshot-was-not-a-protester-father-claims/articleshow/72891007.cms>>

<sup>435</sup> Yusra Husain, "Lucknow: Mohammad Wakeel who died of gunshot wounds was not a protester, father claim" (*Times of India*, 19 December 2019), <<https://timesofindia.indiatimes.com/city/lucknow/lucknow-mohammad-wakeel-who-died-of-gunshot-was-not-a-protester-father-claims/articleshow/72891007.cms>>

<sup>436</sup> Rampur is a city and the municipality headquarters of Rampur District of Uttar Pradesh. Rampur district has been identified by the Ministry of Minority Affairs as one of 14 Minority Concentration districts in the state, based on the 2001 census data on population.

<sup>437</sup> Naomi Barton, 'Bystander Shot during Police Crackdown on CAA Protest in Rampur was Denied Medical Aid' (*The Wire*, 29 December 2019), <<https://thewire.in/rights/rampur-up-police-firing-cao-protests>>

<sup>438</sup> Naomi Barton, 'Bystander Shot during Police Crackdown on CAA Protest in Rampur was Denied Medical Aid' (*The Wire*, 29 December 2019), <<https://thewire.in/rights/rampur-up-police-firing-cao-protests>>

<sup>439</sup> Citizens Against Hate, (2020), "Everyone Has Been Silenced" *Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal*, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>440</sup> Citizens Against Hate, (2020), "Everyone Has Been Silenced" *Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal*, <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

tried to take away Faiz's body, but his family formed a protective circle around him. Following this, the police started beating the family members with *lathis* (batons). Faiz's body, lying on a stretcher, was also assaulted.<sup>441</sup>

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<sup>441</sup> Citizens Against Hate, (2020), "*Everyone Has Been Silenced*" *Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal*; <<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

## Case List B: List of individual cases of arrest/detention and abuse in custody in the context of CAA protests

One group targeted by arbitrary detentions and arrests comprised Muslim human rights defenders, activists and members of local opposition parties. Below are accounts of 16 of these cases. Some of them were also subjected to physical and mental abuse in detention.

1. **Mohammad Shoaib**, a 76-year-old senior advocate, was put under house arrest on 18 December 2019 in Lucknow.<sup>442</sup> On 19 December, police officers illegally entered his house and took him to the Hazratganji police station without informing anyone of his whereabouts, where the Circle Officer (CO) reportedly abused him and used communal slurs against him.<sup>443</sup> The police charged him with rioting (section 147 of the Indian Penal Code - IPC), arson (section 435 of the IPC), criminal conspiracy (section 120-B of the IPC), voluntarily causing hurt (section 323 of the IPC), attempt to murder (section 307 of the IPC) among other offences, during the anti-CAA protest on 20 December 2019. Later on, a recovery notice was also served to him, and his photograph, name and address were also showed in the 'name and shame' poster put up by authorities in public. The FIR was registered only after the family filed a *habeas corpus* petition in the Allahabad High Court. Shoaib was not even named in the first FIR originally registered against unknown persons in Lucknow and was added only later on. He was released on 14 January 2020.
2. **Sadaf Jafar** (also spelt **Zafar**),<sup>444</sup> an artist and member of the opposition Congress party, was arrested on 19 December 2019 when she was recording a police crackdown on a protest in Lucknow. In custody, she was slapped and beaten by female officers present at the police station. Later, she was taken to another room on being called by a senior officer. After being questioned for some time, the officer asked two female constables to assault her. The two constables slapped her, called her Pakistani because of her identity as a Muslim, pulled her by the hair, and kicked her in the stomach and on the knee. She stated that she was beaten with batons and kicked in the stomach, which caused severe internal bleeding. After being detained in Lucknow on 19 December 2019, she was not allowed to call a lawyer, and her children were not informed of her whereabouts. She reported hearing the screaming voices of other men being beaten by

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<sup>442</sup> National Herald India, 'CAA protests: Lucknow lawyer Mohammad Shoaib, activist Sadaf Jafar untraceable after arrest', (<<https://www.nationalheraldindia.com/india/caa-protests-lucknow-lawyer-mohammad-shoaib-activist-sadaf-zafar-untraceable-after-arrest>>); (<<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>443</sup> Citizens Against Hate, (2020), "'Everyone Has Been Silenced'" Police Excesses Against Anti-CAA Protesters in Uttar Pradesh, and the Post-Violence Reprisal'; (<<http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>>

<sup>444</sup> Scroll.in, Citizenship Act protests: Activist Sadaf Jafar alleges torture, abuse in UP police custody (8 January 2020), (<<https://scroll.in/latest/949129/citizenship-act-protests-activist-sadaf-jafar-alleges-torture-abuse-in-police-custody>>); The Wire, Watch: 'UP Police Kicked and Beat Us in Custody,' Say Activists Arrested in Lucknow (16 January 2020), (<<https://thewire.in/communalism/up-police-muslims-cao-protests>>); Arfa Khanum Sherwani, Watch: 'Now Beginning to Realise What Being Muslim in Amit Shah's India Means': Sada Jafar (*The Wire*, 17 January 2020), (<<https://thewire.in/communalism/watch-now-beginning-to-realise-what-being-muslim-in-amit-shahs-india-means-sadaf-jafar>>); Vijayta Lalwani, "A month after UP police made sweeping arrests, bail orders show that it is unable to offer evidence" (*Scroll.in*, 20 January 2020), (<[https://amp.scroll.in/article/950409/a-month-after-up-police-made-sweeping-arrests-bail-orders-show-that-it-is-unable-to-offer-evidence?twitter\\_impression=true](https://amp.scroll.in/article/950409/a-month-after-up-police-made-sweeping-arrests-bail-orders-show-that-it-is-unable-to-offer-evidence?twitter_impression=true)>); KarwanE Mohabbat (February 2020), 'A State at War with its People: Report on State Action in UP Targeting Dissent and Muslim Minorities', (<<http://karwanemohabbat.in/wp-content/uploads/2020/06/A-State-at-War-With-Its-People-KeM-Feb2020.pdf>>); CAH Report, 55.

the police while in detention. She was released on bail by the Sessions Court on 1 January 2020 after the prosecution had failed to produce any evidence of the claims made against her in the FIRs and to establish her specific role in any crime.

3. **Dr Pawan Rao Ambedkar**,<sup>445</sup> an academic and social activist, was arrested on 19 December 2019 during a CAA protest in Lucknow. At the protest site, he was beaten by a police officer using batons on the head and other parts of the body so that he lost consciousness. At the same time, he was repeatedly hit on the head with a scooter helmet by a female constable until the helmet broke. The beating continued while he was brought to the Hazratganji police station. At the police station, men in civilian clothes joined police officers in beating him. He was pushed into a room where 10 to 15 policemen surrounded him and continued beating him. He was held in a cramped cell with 25 people for the night without food and where it was very cold. While in the cell, one police officer kicked him in the stomach on several occasions. The next day, he witnessed Deepak Kabir, another social activist, who came to the police station to look for him, being beaten by police officers. Ambedkar was released on 10 January 2020.
4. **Robin Verma**,<sup>446</sup> a young academic and social activist, was forced into a police jeep by four unidentified men in plain clothes on 20 December 2019, along with Omar Rashid, correspondent of the national newspaper *The Hindu*, in Lucknow, and taken to Hazratganji police station. There, he was kicked, punched, hit with batons, slapped, and beaten with a thick leather belt, and his hair was plucked out. This injured one of his fingers and led to swelling in his face. He was also insulted for having Muslim contacts on his phone. Initially, after his arrest, the police denied him a blanket, food and water during his detention. He spent 25 days in jail and was released on bail on 14 January 2020 due to lack of evidence. Verma was not even named in the FIR originally registered against unknown persons in Lucknow and was added only later on.
5. **Deepak Kabir**,<sup>447</sup> an artist and social activist, was arrested on 20 December 2019 at the Hazratganji police station in Lucknow, where he inquired about a friend and was assaulted by the police with batons and rifle butts. For at least 10 minutes, 12 to 15 police

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<sup>445</sup> The Wire, Watch: 'UP Police Kicked and Beat Us in Custody,' Say Activists Arrested in Lucknow, 16 January 2020, <<https://thewire.in/communalism/up-police-muslims-caa-protests>>; CAH Report, 55 and 86.

<sup>446</sup> Radhika Bordia, "Uttar Pradesh human rights defenders – one Muslim, the other Dalit – arrested for protesting CAA", (*Scroll.in*, 30 December 2019), <<https://scroll.in/article/948190/uttar-pradesh-human-rights-defenders-one-muslim-the-other-dalit-arrested-for-protesting-cao>>; *Scroll.in*, 'Why do you have Muslim friends? UP Police allegedly asked activist, 14 January 2020, <<https://scroll.in/latest/949850/why-do-you-have-muslim-friends-up-police-allegedly-asked-activist-arrested-during-cao-protests>>; The Quint, 'Why Do You Have Muslim Friends?: UP Police to Detained Activist, 15 January 2020, <<https://www.thequint.com/news/india/why-do-you-have-muslim-friends-up-police-activist-robin-verma-anti-cao-protests#read-more>>; Vijaya Lalwani, "A month after UP police made sweeping arrests, bail orders show that it is unable to offer evidence" (*Scroll.in*, 20 January 2020), <[https://amp.scroll.in/article/950409/a-month-after-up-police-made-sweeping-arrests-bail-orders-show-that-it-is-unable-to-offer-evidence?twitter\\_impression=true](https://amp.scroll.in/article/950409/a-month-after-up-police-made-sweeping-arrests-bail-orders-show-that-it-is-unable-to-offer-evidence?twitter_impression=true)>; The Quint, 'You're Hindu, How Is Your Name Robin?': UP Police to Act Activist, 22 January 2020, <<https://www.thequint.com/videos/news-videos/cao-protests-youre-hindu-how-is-your-name-robin-up-police-to-an-activist#read-more>>; CAH Report, 87-88.

<sup>447</sup> Omar Rashid, 'Brutally thrashed and labelled urban naxal', says theatre actor Deepak Kabir, (*The Hindu*, 9 January 2020), <<https://www.thehindu.com/news/national/other-states/brutally-thrashed-and-labelled-urban-naxal-theatre-actor-deepak-kabir-recalls-police-brutality-over-cao/article30522134.ece>>; Asad Rehman, Uttar Pradesh: Activist Deepak Kabir released, alleges torture, (*The Indian Express*, 10 January 2020), <<https://indianexpress.com/article/india/uttar-pradesh-activist-deepak-kabir-released-alleges-torture-6209074/>>; The Wire, Watch: 'UP Police Kicked and Beat Us in Custody,' Say Activists Arrested in Lucknow, 16 January 2020, <<https://thewire.in/communalism/up-police-muslims-caa-protests>>; CAH Report, 88 and 148.

officers beat him with batons and kicked him. The SHO told the other police officers to tie his hands and legs and beat him as much as they could. After a medical examination at a local hospital, he was held down by four police officers, and a fifth hit him with a baton incessantly. The District Police Chief told the officers to beat him so much that he would not be able to sit for months and make sure there would be a 1.5-2-inch swelling on his buttocks. He was denied food and water for 24 hours. He was released on bail on 7 January 2020.

6. **Mohammad Faisal**,<sup>448</sup> a lawyer associated with the National Confederation of Human Rights Organisations, was arrested by the Special Operation Group of the police and local police at the Chief Judicial Magistrate Court in Kairana in Shamli district on 23 December 2019 when representing clients in a bail matter. He was taken by force to the Kairana police station and detained. During custody, he was reportedly verbally abused, slapped, beaten with sticks and given electric shocks on his back and around his waist, which led to ongoing pain in his leg. He was granted bail on 2 January 2020.
7. **SR Darapuri**, a 77-year-old former police officer and human rights defender, was detained on 19 December 2019 in his house in Lucknow and later on arrested by the police. He was denied access to a lawyer by the police and refused food for three days.<sup>449</sup> He was granted bail by the Lucknow Sessions Court and was released three days after his bail order.<sup>450</sup> He was also charged with multiple offences such as rioting (section 147 of the IPC), arson (section 435 of the IPC), criminal conspiracy (section 120-B of the IPC), voluntarily causing hurt (section 323 of the IPC), attempt to murder (section 307 of the IPC) among other offences. He was also served with the notice of recovery of damages, and his photograph, name and address were also shown in the 'name and shame' poster.
8. **Kafeel Khan**, a doctor and activist, was arrested on 29 January 2020 in Aligarh district for promoting enmity between the groups on the grounds of religion and later under the draconian National Security Act (NSA), which provides for prolonged detention without trial.<sup>451</sup> On 1 September 2020, the Allahabad High Court acquitted Khan and quashed his detention under the NSA.<sup>452</sup>

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<sup>448</sup> CAH Report, 88; Arrested, Assaulted and Tortured: Adv. Mohammed Faisal, Human Rights Lawyer Perturbed by Uttar Pradesh Police. (*National Confederation of Human Rights Organizations*, 14 January 2020) <[https://www.nchro.org/index.php/2020/01/13/arrested-assaulted-and-tortured-adv-mohammed-faisal-human-rights-lawyer-perturbed-by-uttar-pradesh-police/#:~:text=in%20the%20state,-Arrested%2C%20Assaulted%20and%20Tortured%20%3A%20Adv.,implicated%20by%20the%20UP%20Police](https://www.nchro.org/index.php/2020/01/13/arrested-assaulted-and-tortured-adv-mohammed-faisal-human-rights-lawyer-perturbed-by-uttar-pradesh-police/#:~:text=in%20the%20state,-Arrested%2C%20Assaulted%20and%20Tortured%20%3A%20Adv.,implicated%20by%20the%20UP%20Police;)>; Rajasthan lawyer alleges torture by U.P. police (*The Hindu*, 13 January 2020), <<https://www.thehindu.com/news/national/other-states/rajasthan-lawyer-alleges-torture-by-up-police/article30562548.ece>>

<sup>449</sup> Karwan E Mohabbat (February 2020), 'A State at War with its People: Report on State Action in UP Targeting Dissent and Muslim Minorities', <<http://karwanemohabbat.in/wp-content/uploads/2020/06/A-State-at-War-With-Its-People-KeM-Feb2020.pdf>>

<sup>450</sup> Kumar Abhishek, 'Anti-CAA Protests: Sadaf Jafar, SR Darapuri, 10 Others Granted Bail', (*India Today*, 4 January 2020), <<https://www.indiatoday.in/india/story/anti-kaa-protests-sadaf-jafar-sr-darapuri-10-others-granted-bail-1633960-2020-01-04>>

<sup>451</sup> FP Staff, 'Dr Kafeel Khan Cleared of NSA Charges; Allahabad High Court Orders His Immediate Release' (*Firstpost*, 01 September 2020), <<https://www.firstpost.com/india/dr-kafeel-khan-cleared-of-nsa-charges-allahabad-high-court-orders-his-immediate-release-8773701.html>>

<sup>452</sup> FP Staff, 'Dr Kafeel Khan Cleared of NSA Charges; Allahabad High Court Orders His Immediate Release' (*Firstpost*, 01 September 2020), <<https://www.firstpost.com/india/dr-kafeel-khan-cleared-of-nsa-charges-allahabad-high-court-orders-his-immediate-release-8773701.html>>

9. **Asif Chandan**, the district head of the opposition party of All India Majlise Ittehadul Muslamin (AIMIM), together with four other men (**Anas, Aamir, Faizan** and **Wahab Ghani**), was arrested in Mau district on 22 June 2020 under numerous FIRs in connection with the violence that occurred in Mau district on 17 December 2019.<sup>453</sup> He was later re-arrested under the stringent NSA and remains in jail.<sup>454</sup>

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<sup>453</sup> Aishwarya S Iyer, “Crushing Dissent” NSA Slapped on Anti-CAA Protestors in UP’s Mau’, (*The Quint*, 9 September 2020), <<https://www.thequint.com/news/india/uttar-pradesh-mau-cao-protest-december-2019-violence-nsa>>

<sup>454</sup> Aishwarya S Iyer, “Crushing Dissent” NSA Slapped on Anti-CAA Protestors in UP’s Mau’, (*The Quint*, 9 September 2020), <<https://www.thequint.com/news/india/uttar-pradesh-mau-cao-protest-december-2019-violence-nsa>>

### Case List C: List of cases of physical and mental abuse by police against CAA protesters

The table below lists 117 cases of physical and mental abuse by the Uttar Pradesh police recorded by credible sources. Not all the cases in the list are reported in sufficient detail for the purpose of this submission, but this list provides a sense of the magnitude of the abuses committed by the Uttar Pradesh police in the context of the crackdown on protesters and supporters of the protests.

Date	Description of incident	Location	No. of victims	No. of minors	Victim description	Perpetrator
15.12.2019	<a href="#">Abuse of students in custody after arrest from campus</a>	Aligarh Muslim University (Aligarh)	4	0	Students	Police
19.12.2019	<a href="#">Arrest of human rights defender at her home and abuse in custody</a>	Lucknow	1	0	Human rights defender (Jafar)	Police
19.12.2019	<a href="#">Arrest of human rights defender during protest and abuse in custody</a>	Lucknow	1	0	Human rights defender (Ambedkar)	Police and civilians
20.12.2019	<a href="#">Abuse of minors in custody</a>	Bijnor	22	22	Boys 13 years and older	Police
20.12.2019	<a href="#">Arrest of human rights defender and abuse in custody</a>	Lucknow	2	0	Human rights defender (Verma)	Police
20.12.2019	<a href="#">Arrest of human rights defender and abuse in custody</a>	Lucknow	1	0	Human rights defender (Kabir)	Police
20.12.2019	<a href="#">Arrest of students and principal at Madrasa and abuse in detention</a>	Muzaffarnagar	50	14	Boys 8 years and older and students and school staff	Police
20.12.2019	<a href="#">Beating and burning with a hot iron rod on the street and detention</a>	Muzaffarnagar	1	1	14-year-old	Police
20.12.2019	<a href="#">Arrest and abuse in custody</a>	Kanpur	5	3	Civilians	Police

23/12/2019	<a href="#">Arrest of human rights defender and abuse in custody</a>	Shamli	1	0	Human rights defender (Faisal)	Police (Special Operation Group)
Unknown	<a href="#">Arrest and abuse in detention</a>	Firozabad	14		Civilians	Police
Unknown	<a href="#">Abuse in detention</a>	Sambhal	1	1	Student of Jamia	Police
Unknown	<a href="#">Abuse in detention</a>	Firozabad	14		Civilians	Police
	<b>TOTAL</b>		<b>117</b>	<b>41</b>		

### Case List D: Individual cases of encounter killings in police operations

The following list is presented as emblematic cases reflective of the broader pattern in more than 100 killings since 2017. These cases highlight the methodical pattern repeated by the police in reporting each of the extrajudicial killings during police encounters, multiple procedural irregularities and substantive violations of the criminal justice system, such as *inter alia* ignorance of several glaring factual contradictions and inconsistencies in the police's version of the events<sup>455</sup> that are often identical, magisterial enquiries being closed exclusively on the basis of police reports, the claims of self-defence by police admitted without any judicial scrutiny and no record of collection of evidence from the scene of the crime.

1. **Shamim** (30 years old, son of Faku, resident of village Sisona, Muzaffarnagar, Uttar Pradesh) was killed during a police encounter on 30 December 2017 in Muzaffarnagar, Uttar Pradesh.<sup>456</sup> According to the inaccurate claims made by the police, the Special Weapons and Tactics (SWAT) Team Muzaffarnagar and Special Cell Delhi Police received information that Shamim, along with his accomplices, were planning to come to Jansath town in Muzaffarnagar and carry out a road robbery in a Swift car. A team of police officials comprising three police officials of Jansath police station, led by the SHO; three officials of the SWAT Team Muzaffarnagar; and 11 officials of the Special Cell Delhi Police reached the spot, waiting to stop the robbery. The said Swift car was spotted, and when asked to stop, the driver started firing at the police and ran in the opposite direction. Shamim, who was sitting in the front seat next to the driver, also fired at the police. Police fired back at

<sup>455</sup> The police report versions presented in the individual cases below are taken from NGO reports cited for each case, rather than from copies of the actual police reports.

<sup>456</sup> Tanseem Haider, "Uttar Pradesh: Wanted criminal dies in police encounter", (*India Today*, 31 December 2017)

<<https://www.indiatoday.in/india/story/wanted-criminal-dies-in-police-encounter-in-uttar-pradesh-1119423-2017-12-31>>; Communication to the Government of India by Mandates of the Special Rapporteurs on extrajudicial, summary or arbitrary executions; on the promotion and protection of the right to freedom of opinion and expression; on the situation of human rights defenders; on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Reference: UA IND 27/2018 (11 December 2018), <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24240>>

them in self-defence, and Shamim was injured inside the car. Police Constable Ashok Khari was injured in the crossfire, and both were taken to the public hospital in Jansath, where Shamim succumbed to his injuries. The other assailants managed to escape.<sup>457</sup>

Shamim's family learned about the encounter on the morning of 31 December 2017 through local newspapers. They were not informed by the police of his death. The media reports claimed that he was an absconding criminal with a running cash reward on him. According to the family's testimonies gathered by local NGOs, Shamim did not have criminal charges against him. The autopsy report of Shamim's dead body showed a bullet injury on the forehead measuring 4 x 3 cm; a bullet wound on the temple measuring 1.5 x 1 cm; and 13 severe injuries, including lacerations on the neck.<sup>458</sup> The medical report recorded that the two bullets would have been shot from a close range.<sup>459</sup> The severe injuries indicate the deceased was tortured before being shot down. While police records say Shamim was shot at 10:50pm, his wristwatch, in the photograph of his body shot after the encounter, shows 7pm.<sup>460</sup>

No reports were filed against the police officers involved. Instead, three FIRs (840/17, 841/17, 842/17) were filed on 31 December 2017 against Shamim (after his death) and another unnamed accused at the Jansath police station in the Muzaffarnagar district, for attempted murder and robbery under the Indian Penal Code, sections 25 and 27 of the Arms Act and sections 41 and 102 of the Criminal Procedure Code. An autopsy was conducted, and the report was given to the family members.

The father of the deceased told local NGOs that the police had been pressuring them since the encounter and even asked them to sign certain papers.<sup>461</sup> Due to fear of possible police backlash, and the struggle for survival that the family is undergoing, the family has not pursued any legal action against the police officials so far.<sup>462</sup> The family is not aware of any further investigation done by the police. The family, however, states that their statements have not been taken by any police officer or any other authority as yet, and neither have they received any summons from the court for a judicial inquiry.<sup>463</sup>

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<sup>457</sup> Shruti Menon, "Cut And Paste FIRs On Encounters In Yogi Government's Drive To Eliminate Crime", (*NDTV*, 21 February 2018), <<https://www.ndtv.com/india-news/cut-and-paste-firs-on-encounters-in-yogi-adityanath-governments-drive-to-eliminate-crime-1815222>>

<sup>458</sup> Autopsy report on file with author and can be provided on request.

<sup>459</sup> Medical report on file with author and can be provided on request.

<sup>460</sup> Ananya Bhardwaj, "UP encounters: Killed at 11 pm but watch shows 7; another shot dead after 7 years in jail", (*The Print*, 8 March 2018), <<https://theprint.in/politics/up-encounters-killed-at-11-pm-but-watch-shows-7/39992/>>; Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021), <https://vhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

<sup>461</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>, 38.

<sup>462</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>, 38.

<sup>463</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>, 38.

2. **Aslam** (son of Mausam Ali and resident of Bunta village in the Shamli district, Uttar Pradesh) was killed in a police encounter by officers of the Dadri police station, in the Gautambudh Nagar district, Uttar Pradesh, on 9 December 2017.<sup>464</sup> The police claim that they were alerted of two criminals intending to commit looting and robbery, following which the police set up barricades to apprehend the criminals. On being spotted, the two alleged criminals attempted to flee and started firing at the police officials. The police fired back in self-defence, and cross-firing ensued, which continued for 15 minutes and resulted in severe injuries to one of them (Aslam). He was brought to the hospital and succumbed to his injuries on 9 December 2017, while his companion managed to flee.<sup>465</sup>

However, statements by family members refute the police narrative: Israna, Aslam's wife, states that on the morning of 7 December 2017, some men took away Aslam and Ramzani (killed by the police on 8 December 2017, details below) on the pretext that they would help them to surrender in court concerning the cases of looting and theft registered against them. She received a call from a police official on the night of 9 December 2017, asking for details about Aslam, such as the name of his village, etc. The policeman, however, did not inform her about Aslam's killing. Later, the family received the news through the village headman that Aslam had been killed by the Noida police and that Ramzani had been killed by the Aligarh police. Israna reported seeing bruises on Aslam's dead body, presumably resulting from beatings, along with fractures on his arms and legs. The family was denied any post-mortem reports from the hospital where they received Aslam's dead body. The police escorted the family and stayed to ensure that the dead body was buried without further investigations.<sup>466</sup>

After his death, the police filed an FIR only against Aslam for attempted murder and not the other unidentified assailant. There is no record of any subsequent judicial or investigative inquiry. The family has not received either the copy of the FIR or the post-mortem report despite repeated requests.<sup>467</sup>

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<sup>464</sup> Another death in Police Encounter (*Times of India*, 10 December 2017), <<https://timesofindia.indiatimes.com/city/noida/another-death-in-police-encounter/articleshow/62003642.cms>> 1; Criminal killed in police encounter in UP (*The Tribune*, 11 December 2017), <<https://www.tribuneindia.com/news/archive/nation/criminal-killed-in-police-encounter-in-up-511569>>; Communication to the Government of India by Mandates of the Special Rapporteurs on extrajudicial, summary or arbitrary executions; on the promotion and protection of the right to freedom of opinion and expression; on the situation of human rights defenders; on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Reference: UA IND 27/2018 (11 December 2018), <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24240>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021), <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

<sup>465</sup> Hrishita Rajbangshi and Anwesha Nandi, "The Case of Aslam Ali, Now Just A Statistic in UP's Chronicle of Crime Fiction" (*NewsClick*, 07 June 2018), <<https://www.newsclick.in/case-aslam-ali-now-just-statistic-ups-chronicle-crime-fiction>>

<sup>466</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

<sup>467</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021), <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

3. **Ramzani** (son of Shafiq, resident of Boodhiya village, in the Yamunanagar district, Haryana) was killed in a police encounter by police officials of the Akbarabad police station, Aligarh, Uttar Pradesh on 8 December 2017.<sup>468</sup> According to the police narrative, Ramzani was apprehended with two other alleged criminals, who fired gunshots at the police when they were asked to stop. The police fired in self-defence, and this led to one of them being severely injured while the other two escaped. The injured person (Ramzani) later succumbed to his injuries in the hospital. The other two remain unidentified.<sup>469</sup>

This course of events is refuted by Ramzani's wife, Salma, who reported that the two men were taken away by some men on the pretext that they would help them to surrender in court concerning the cases of looting and theft registered against them. On 9 December, Salma's brother received a call from the Aligarh police station that Ramzani had been killed in an encounter. According to Salma, there were marks of torture on Ramzani's dead body, and his limbs were also fractured. It appears that he had died because of torture and was then shot, as his clothes did not have any bullet marks on them.<sup>470</sup>

4. **Furqan** (33 years old, son of Mir Hassan, Titarwara village in the Shamli district, Uttar Pradesh) was killed in a police encounter on 22 October 2017.<sup>471</sup> The police allege that the police officials were guarding a check post when they were fired upon by five persons on two motorcycles on 22 October 2017. The police followed the criminals in their jeep, but the motorcycles disappeared near the village of Bitawada. In the meantime, the Special Task Force team, who were already in search of these criminals, arrived and accompanied the police team. When the police asked them to surrender, two criminals rode away on their bike, and three others ran into the sugarcane field and started firing at the police. At around 10:30pm, the police started firing back, and after 15 minutes of firing, the police closed in and caught them, during which police officers were injured. Two criminals managed to flee, and one sustained injuries and fell in the fields. Officers later confirmed that the injured criminal was Furqan, who was sent for treatment at the public hospital. According to the police, Furqan was a criminal with eight cases registered against him.<sup>472</sup>

<sup>468</sup> Express News Service, "Uttar Pradesh | Copycat encounters: 21 deaths, 20 similar FIRs, same sequence of events", (*Indian Express*, 22 August 2018), <<https://indianexpress.com/article/india/uttar-pradesh-encounters-21-deaths-20-similar-firs-same-keywords-yogi-adityanath-up-police-5316609/>>; Communication to the Government of India by Mandates of the Special Rapporteurs on extrajudicial, summary or arbitrary executions; on the promotion and protection of the right to freedom of opinion and expression; on the situation of human rights defenders; on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment., Reference: UA IND 27/2018 (11 December 2018)

<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24240>>, Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021), <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

<sup>469</sup> Express News Service, "Uttar Pradesh | Copycat encounters: 21 deaths, 20 similar FIRs, same sequence of events", (*Indian Express*, 22 August 2018), <<https://indianexpress.com/article/india/uttar-pradesh-encounters-21-deaths-20-similar-firs-same-keywords-yogi-adityanath-up-police-5316609/>>

<sup>470</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

<sup>471</sup> UP Police Got Furqan Released From Jail, Shot Him Dead In 'Encounter' Two Weeks Later (*Clarion*, 26 February 2018), <<https://clarionindia.net/up-police-got-furqan-released-from-jail-shot-him-dead-in-encounter-two-weeks-later/>>; Killing Fields of UP: The Reality of 'Encounters' Under Yogi Regime (*News Click*, 27 March 2018), <<https://www.newsclick.in/killing-fields-reality-encounters-under-yogi-regime/>>; Animesh Pandey, "Under Yogi's guidance, UP Police is exterminating criminals with vengeance", (*TFI Post*, 11 April 2021), <<https://tfipost.com/2017/04/furqan-kairana-exodus-yogi-rule/>>

<sup>472</sup> UP Police Got Furqan Released From Jail, Shot Him Dead In 'Encounter' Two Weeks Later (*Clarion*, 26 February 2018), <<https://clarionindia.net/up-police-got-furqan-released-from-jail-shot-him-dead-in-encounter-two-weeks-later/>>

This narrative was contradicted by statements of the victim's family: According to Furqan's family, on 22 October 2017, at about 4:00pm, Furqan had gone to meet his wife and relatives. He was arrested by police officers along with Anees, son of Mushtaq (Furqan's cousin's brother), and Rahul, son of Ramesh. The three of them were taken in a police jeep. While Anees and Rahul were taken to the Shahpur police station, Furqan was taken to the fields near Badakta Canal Bridge, Budhana police station, where Furqan was killed, and later it was reported as an encounter. Meer Hassan (Furqan's father) states on the record that there was no reward on Furqan's head prior to the encounter, he was not wanted in any case, and that Furqan had been let out on bail a month before his encounter. Furqan had been residing with his wife and children for the past month. On 24 January 2018, Meer Hassan filed a complaint before the Chairman of the NHRC, New Delhi, Case No. 3788/24/57/2018, in which he had stated that Furqan's brothers were called upon along with Rahul and Anees, who were eyewitnesses to Furqan's murder. They were threatened by police personnel, who stated that Anees and Rahul, who are currently in jail, would be killed during their appearance before the court on remand by showing that they were trying to escape and Meer Hassan's other sons would also meet the same fate.<sup>473</sup>

After the incident, no autopsy reports or FIRs were provided to the victim's family. An FIR was filed against Furqan and unknown accused persons on 23 October 2017 in the Budhana police station, Muzaffarnagar district. The FIR was silent about the nature of the injuries received by the two police officers who were injured in the cross-firing and the nature of the injuries received by Furqan. The fingerprints of the deceased victim were not found on the weapons recovered by the police from the scene of the crime. These facts further strengthen the report of eyewitnesses and challenge the veracity of the police's contradictory narrative.<sup>474</sup>

On 15 February 2018, the NHRC passed an order and the complaint was sent to the Senior Superintendent of the Police (SSP) of Muzaffarnagar to take appropriate action within eight weeks and to inform the complainant of the action taken in the matter. No further developments have been reported on that front. The victim's father appealed the summary dismissal of the criminal enquiry by the District Magistrate before the High Court of Allahabad. The High Court ordered the government and police officers to file their representation in April 2018.<sup>475</sup> No findings have been made on the conduct of police officers thus far.

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<sup>473</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India ( *Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021) <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

<sup>474</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India ( *Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

<sup>475</sup> Ashutosh Tripathi, "Allahabad HC Issues Notice to Yogi Govt in Furqan Encounter Case, Seeks Reply Within 3 Weeks", ( *News 18*, 18 April 2021), <<https://www.news18.com/news/india/allahabad-hc-issues-notice-to-yogi-govt-in-furqan-encounter-case-seeks-reply-within-3-weeks-1722383.html>>

5. **Waseem** (son of Mustakeen, resident of the Jahanpur village in the Shamli district, Uttar Pradesh) was killed in a police encounter on 28 September 2017 in Meerut, Uttar Pradesh. He was a minor (17 years old) at the time of his death and worked as a daily-wage worker outside of Uttar Pradesh.<sup>476</sup> The police reported a contradictory and seemingly inaccurate story. They had registered an FIR at Kairana police station on 11 September 2017, where two criminals (Anuj and Waseem) were caught in police action. Anuj was taken into custody, however, Waseem managed to flee the scene after a gunfight. On 28 September 2017, the Special Task Force in Meerut received information about Waseem and his plans to commit a crime in Meerut. The police set up barricades to apprehend the criminals. Waseem (along with another accomplice, Sabir) tried to flee the scene on their motorcycle. When they were chased by the police, they fired gunshots at the police, and the police fired in self-defence. Waseem was injured, taken to a hospital and succumbed to his injuries, while his accomplice (Sabir) escaped and could not be arrested.

According to his mother, however, she was falsely framed on the charge of drug trafficking six days before he was killed by the police. An informer working for the police informed Waseem of his mother's arrest. On hearing the news, Waseem came to Shamli to enquire of his mother's whereabouts. In Shamli, he was detained by the police and taken to Meerut, where his staged encounter killing was carried out. On 24 September 2017, a police contingent from Shamli arrived and vandalised Waseem's and his neighbour's house in Jaghanpura village. Four days later, the police called the village chief to say that Waseem had been shot dead in a police encounter in the Saroorpur area of Meerut. Waseem's family members were in detention when Waseem was killed, and they were not allowed to attend his funeral. On his dead body, the blackening of skin around the bullet holes indicated that the shooting had taken place at very close range and could not be attributed to bullets that would have been fired during a shoot-out.<sup>477</sup>

- Since the incident, three FIRs were filed at the Saroorpur police station in the Meerut district against Sabir and Waseem, charging them under section 307 of the Indian Penal Code (attempted murder) and section 25 of the Arms Act (illegal possession of arms). An autopsy was carried out by a team of doctors and was video-recorded by the police. A Closure Report was filed by the police officers of the same police station on the basis of documentary evidence, an investigation of the scene of the crime, forensic and postmortem results, and the Magisterial Inquiry. It was established that the deceased was a 'dreaded criminal' who was engaged in extortion, looting and murder. Since both the accused

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<sup>476</sup> Shruti Menon, "Cut And Paste FIRs On Encounters In Yogi Government's Drive To Eliminate Crime", (*NDTV*, 21 February 2018), <<https://www.ndtv.com/india-news/cut-and-paste-firs-on-encounters-in-yogi-adityanath-governments-drive-to-eliminate-crime-1815222>>; Communication to the Government of India by Mandates of the Special Rapporteurs on extrajudicial, summary or arbitrary executions; on the promotion and protection of the right to freedom of opinion and expression; on the situation of human rights defenders; on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Reference: UA IND 27/2018 (11 December 2018), <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24240>>

<sup>477</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

persons in the FIR, Waseem and Sabir, died in different ‘encounter’ incidents, the Closure Report stated that the investigation was closed. Waseem’s mother sent representations to the NHRC and other authorities. There have been no proceedings against the involved police officers to date.<sup>478</sup>

6. **Akbar** (son of Mahmood) was killed in a police encounter on 3 February 2018 near Kali Mandir, Jjinjhana, Shamli, Uttar Pradesh.<sup>479</sup> The police claimed that he was a criminal and an accomplice of Sabir (killed on 1 January 2008, also mentioned as an accomplice in the case of Waseem above), and therefore, police had declared a reward of 50,000 Rupees on Akbar. On 3 February 2018, an FIR was filed against Akbar for extortion and attempted murder. The SWAT team received information on his whereabouts and plan to collect ransom money. They set up barricades and planned to apprehend the criminal. The police reported seeing two people come on a motorcycle to pick up the ransom money, and the police asked them to surrender. The two men fired on the police, and the police fired in self-defence. One of them (Akbar) was injured, taken to the hospital and succumbed to injuries. The other accused escaped and could not be identified. Two policemen also received bullet injuries and were sent to the hospital for treatment.

In contrast to the police narrative, according to his family, Akbar lived in Bangalore, Karnataka (over 2,000km away from Shamli in Southern India), along with his wife and children. The family had come to their village in Uttar Pradesh eight days before Akbar was killed. His wife was not aware of how he ended up in Shamli on the day of the killing but stated that he had been in Bangalore before that in January.<sup>480</sup>

An autopsy report was made available to Akbar’s family. The dead body had five bullet wounds, including in the face, stomach, and chest, one fractured arm, and ligature marks present on the right leg, indicating that he was tied up, further contradicting the report of the police. There are no reports on further enquiries or an investigation into the matter.<sup>481</sup>

7. **Ikrām** (40 years old, son of Munshi, resident of Baghpat, Uttar Pradesh) was killed in a police encounter on 11 August 2017 in Kairana, Uttar Pradesh.<sup>482</sup> The police’s false version of the event was as follows: Information was received by the police that two criminals had looted a bike, 8,700 Rupees, a gold chain and a gold ring. When they were apprehended by police on the way, their bike slipped, and they fired on the police, and police fired back in

<sup>478</sup> Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People’s Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021) <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

<sup>479</sup> UP encounters killings: 50 down and still counting (*Economic Times*, 07 May 2018), <[https://economictimes.indiatimes.com/news/politics-and-nation/up-encounters-killings-50-down-and-still-counting/articleshow/64063712.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpnst](https://economictimes.indiatimes.com/news/politics-and-nation/up-encounters-killings-50-down-and-still-counting/articleshow/64063712.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpnst)>

<sup>480</sup> Countering the Silence: Citizens’ Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

<sup>481</sup> Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People’s Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021) <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

<sup>482</sup> Ali Qambar Zaidi, “Fact Finding Report On Police Encounters In Western Uttar Pradesh” (*Human Rights Law Network*), <<http://www.slic.org.in/uploads/2020/04/western-up.pdf>>

self-defence. According to the FIR, Ikram was surrounded by the police from all sides between 11:30pm and midnight, during which Ikram kept firing indiscriminately at the police. Ikram was hit by the police firing and thereafter captured while his accomplice escaped. He was taken to the public hospital in Kairana, where he succumbed to his injuries. A weapon, money and jewelry were shown as recovery from the accused. Two police constables were injured by the bullets fired by the accused.

This narrative is contradicted by statements of family members: According to Hanifa (Ikram's wife), on 10 August 2017, five or six men came to her house inquiring after Ikram's whereabouts. They detained Ikram and assaulted him before taking him away in a car. On the morning of 11 August 2017, Hanifa was informed by her relatives that Ikram was killed in a police encounter by officials of the Kairana police station. When Ikram's body was returned to the family, the police officials threatened the family, saying if they took any legal action, Ikram's wife would also be killed in a similar manner, and false cases would be registered against her minor sons. When the family looked at Ikram's body, they noticed severe marks of torture. There was a huge injury wound on the back of his head and other marks of assault on his waist, neck and other parts of the body. His arms and ribs were also fractured. As per the autopsy report, Ikram had five bullet wounds on his right knee, right thigh, right foot, left knee and left foot, and three fractures on his right leg. Further, blackening marks were found around the gunshot wounds indicating close-range fire.<sup>483</sup>

After the incident, three FIRs were filed against Ikram and an accomplice for attempted murder, robbery, etc. Inquest proceedings were undertaken. An autopsy was conducted, and the process was video-recorded. The final report on the FIRs was filed, closing the case on the grounds that Ikram succumbed to his injuries. There were no enquiries into the claims of self-defence or FIR against the police officers.<sup>484</sup>

8. **Nadeem** (aged 30, son of Late Irshad and resident of the Baghowali village, Muzaffarnagar, Uttar Pradesh) was killed on 8 September 2017 in a village jungle, in Karoli, Muzaffarnagar district, as a result of police fire.<sup>485</sup> The police adopted their standard concocted narrative that on 8 September, police received information around 8:30pm that on Sambhalheda – Jatwada road, a motorcyclist, who had tried to loot other motorcyclists, was on a pulsar bike and was coming towards Jatwada. The Station Officer (SO), along with other police

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<sup>483</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021), <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

<sup>484</sup> Manish Sahu *et al.*, "Uttar Pradesh encounters: Between the lines, marking the common words" (*Indian Express*, 21 August 2018), <<https://indianexpress.com/article/india/uttar-pradesh-police-encounters-yogi-adityanath-bjp-govt-5316530/>>

<sup>485</sup> Ananya Bhardwaj, "UP encounters: Killed at 11 pm but watch shows 7; another shot dead after 7 years in jail", (*The Print*, 8 March 2018), <<https://theprint.in/politics/up-encounters-killed-at-11-pm-but-watch-shows-7/39992/>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021) <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

officials, were standing near a public square heading towards that road and spotted the motorcycle. The police officials asked the motorcyclist and a passenger to stop, after which the motorcyclist turned the bike, and the motorcycle slipped. When the police officials tried to go towards them, both persons on the motorcycle stood up and started firing at the police officials, as a result of which the Sub-Inspector (SI) was hit by a bullet in his arm. Seeing the situation, the officer in charge ordered firing in self-defence. One of the two assailants was injured, and the other managed to escape. Both the injured assailant and the injured SI were sent to the government hospital in Jansath for treatment, where the assailant succumbed to his injuries.<sup>486</sup>

This narrative was refuted by statements of Nadeem's family, according to which he was picked up by police officials of the Nai Mandi police station on 5 September 2017, from his village, in a false case of theft and was kept in police custody and tortured. On 6 September 2017, Mohd. Isha Ali, Mujmil, Village Pradhan, along with other members of the family, went to the police station. At the police station, the officials showed the family that Nadeem was detained in the police station but refused to give them any documents pertaining to his detention or arrest. The family members waited outside the police station till evening and then returned home. Thereafter, the family members learned that the police claimed that Nadeem escaped from police custody on 6 September 2017 by throwing chillies at police officers. When the family members learned this, they feared that Nadeem would be made a victim of police encounters. They immediately sent a letter through fax addressed to the NHRC, district police officials and other authorities mentioning the illegal detention of Nadeem. The family members learned on 8 September 2017 that Nadeem had been killed in a police encounter. When Nadeem's body was returned to his family after the autopsy, they saw that his body was covered with marks of beating and torture. The bones of his arms, legs, spinal cord and neck had all been broken due to brutal beatings. The only visible bullet wound was a clean shot in the forehead.<sup>487</sup>

After the incident, three FIRs (FIR No. 0396/17, FIR No. 0397/17, FIR No. 0398/17) related to the incident were filed against Nadeem and an unknown accused dated 8 September 2017 at the Kakroli police station, Muzaffarnagar district, for attempted murder, possession of arms and ammunition, and assisting in the concealment of stolen property under the Indian Penal Code. The family has not been given the autopsy report by police officials. No

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<sup>486</sup> Express News Service, "Uttar Pradesh | Copycat encounters: 21 deaths, 20 similar FIRs, same sequence of events", (*Indian Express*, 22 August 2018), <<https://indianexpress.com/article/india/uttar-pradesh-encounters-21-deaths-20-similar-firs-same-keywords-vogi-adityanath-up-police-5316609/>>

<sup>487</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

trial has been conducted so far against the nine police officers involved in the alleged killing.<sup>488</sup>

9. **Shamshad** (aged 35, son of Shahid, resident of the Sherpur village, Khanajadpur, Sharanpur district, Uttar Pradesh) was killed in a police encounter on 11 September 2017 in front of ITC Gate in the Saharanpur district.<sup>489</sup> The police's inaccurate story of the incident followed a similar pattern as in the other killings. The police were informed about two criminals on a motorcycle who ran away firing at the police at Deoband Railway Crossing during a police-check. The criminals were chased by the SHO along with three police officers armed with guns and AK-47s in a police car. SO Yajdat Sharma, along with five police officers, all armed with pistols, AK-47s and 70 bullets, were stationed at a police-check post near Hasanpur Chungi. SHO Nanota also reached Hasanpur Chungi and informed SO Yajdat about his chase with the criminals. A SWAT team of eight officers, also informed by SHO Nanota, reached Hasanpur Chungi, all armed with pistols, AK-47s and 80 bullets. Another police team of the Intelligence Wing, comprised of six police officers armed with pistols and 40 bullets, were sent to the Khalasi Line area to look for the criminals. While SO Jajdat Sharma and SHO Nanota, along with eight other officers, were continuing their search at Hasanpur Chungi, they saw the two accused on the motorcycle approach the police barricade. On seeing the police, the accused tried to run away and were followed by the police officers. The accused fired at the police team while trying to run away. The two other police teams (SWAT Team and Intelligence Wing) were already informed and were waiting in position to surround the accused. Seeing the other police teams, the accused turned their bike to escape, their motorcycle slipped on the road, and the criminals fell. They started firing at the police. The police fired back in self-defence. Thereafter, one criminal was injured after being shot by the police, while the other managed to escape.<sup>490</sup>

This was contradicted by his family: According to Saliha (Shamshad's wife), he was imprisoned in Deoband jail for the past year-and-a-half. On 7 September 2017, Shamshad's wife learned that the police said that Shamshad had been brought to Vikas Nagar from Deoband jail for a hearing, and on the way back to Deoband, he escaped, along with an accomplice. She stated that on 11 September 2017, she heard that Shamshad was killed in an encounter by officials of Police Station Sadar Bazaar. Saliha alleged that the police officials had, in fact, fabricated the story of Shamshad running away from jail. The police officers illegally kidnapped Shamshad on his way back to Deoband, tortured, and then

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<sup>488</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

<sup>489</sup> Sandeep Rai, "Wanted criminal killed in encounter by the police" (*Times of India*, 11 September 2017), <<https://timesofindia.indiatimes.com/city/meerut/wanted-criminal-killed-in-encounter-with-police-2-cops-injured/articleshow/60468605.cms>>; Express News Service, "Uttar Pradesh | Copycat encounters: 21 deaths, 20 similar FIRs, same sequence of events", (*Indian Express*, 22 August 2018), <<https://indianexpress.com/article/india/uttar-pradesh-encounters-21-deaths-20-similar-firs-same-keywords-yogi-adityanath-up-police-5316609/>>

<sup>490</sup> Express News Service, "Uttar Pradesh | Copycat encounters: 21 deaths, 20 similar FIRs, same sequence of events", (*Indian Express*, 22 August 2018), <<https://indianexpress.com/article/india/uttar-pradesh-encounters-21-deaths-20-similar-firs-same-keywords-yogi-adityanath-up-police-5316609/>>

killed him. Speaking to local NGOs, Saliha stated that when the family received the dead body, they noticed marks of beatings on his neck and other body parts. She further stated that it looked like he was already dead for two to three days since the dead body was bloated. The bullet wounds were surrounded by blackening of the skin, indicating that he was shot at close range, according to Saliha.<sup>491</sup>

After the incident, an FIR was filed at the Sadar Bazaar police station on 11 September 2017 against Shamshad and another unknown accused person for attempted murder. An inspector level (junior) officer from the Janakpuri police station was made the Investigating Officer in the case. An autopsy was conducted and video-recorded. Importantly, in the FIR the time of occurrence of the event was stated as 11 September 2017 at 1:30am. However, the autopsy report records the time of the autopsy as 4:55pm on 11 September. The autopsy report, however, very clearly states that the body sent for autopsy looks one to four days old, strengthening the family's version of events. Further, the autopsy also recorded that the seventh, eighth and ninth ribs on the left side were fractured.

There has been no judicial proceeding against any of the 23 police officers involved in the alleged killing.

10. **Ehsaan** (alias Mohammed Saleem, aged 36, resident of Mandi, Uttar Pradesh) was killed during a police encounter while evading arrest on 25 March 2018.<sup>492</sup> The police offered their similar story of how the encounter killing happened. They claim that around 1:30pm on 25 March 2018, two 'miscreants' were seen coming at high speed from the Chilkana side who were being chased by SO Sarvasa. The 'miscreants' were startled when they noticed the policemen in front of them conducting a check, and as soon as they tried to encircle them, the man sitting at the back opened fire on the police party with the intention of killing. They were chased by the SHO, Special Weapons and Arms Team along with his team, the Intelligence Wing officer in charge and his team, and SO Sarvasa. They retaliated by firing at the criminals.

The police story has many loopholes, such as the fact that the home guards posted near the place of the reported incident did not hear shots fired or see police; varying police versions of where and when Saleem first opened fire; missing medical records of the injured policeman; and a reward against Saleem declared before he was formally charged.

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<sup>491</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021), <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 8 November 2021.

<sup>492</sup> Abhishek Angad, "Holes in Saharanpur encounter: Unheard shots, missing report and many versions", (*Indian Express*, 29 March 2018), <<https://indianexpress.com/article/india/holes-in-saharanpur-encounter-unheard-shots-missing-report-and-many-versions-in-saleem-death-5115289/>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021) <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 08 November 2021.

The records show that the police shootout resulting in Ehsaan's death took place on the intervening night of 24-25 March 2018, before a formal complaint against him was filed. The complaint about the shooting and theft from Nawab Singh was filed at 6:25am, the morning after Ehsaan's death. All these facts strengthen the finding that the police carried out an extrajudicial killing and later created circumstances to support their version.<sup>493</sup>

11. **Jaan Mohammad** (alias Jaanu, son of Iqbal, resident of Muzaffarnagar, Uttar Pradesh) was killed in a police encounter on 17 September 2017 on national highway 58, Muzaffarnagar district.<sup>494</sup> According to the police, on the day of the incident, eight officers from the Khatoli police station were at a check post. At 5:30am, a white-colored Swift car approached from the Meerut side. The officers gestured with a flashlight to stop them, but they hit the barricade and drove away towards Muzaffarnagar. The police then suspected them to be criminals and informed the control room. When the police tried to stop them near Khatoli turn, the accused fired at them with the intention to kill them. The police then managed to overtake the car, and it collided with the pipe of a tin shade. When the police officers got out of their jeep, the accused started firing at the police and two police constables were injured. In self-defence, the SI gave the order to fire back. One of the accused managed to get out of the car and ran away towards the fields while the other one in the driving seat tried to escape, but he was injured. Police approached the injured accused where they found that he was Jaanu, alias Jaan Mohammad, son of Iqbal, a wanted criminal who escaped from a police clash on 11 September 2017.

According to Jaan Md.'s family, he had been in prison for two years and had been released on bail five months before his death. Since then, the police had started harassing him and his family again by randomly coming to their house and taking their household items and mobile phones. As a result, he had to leave his house in the village. On 15 September 2017, Jaan Md. visited his lawyer, Sajid, in Meerut to surrender himself in court. But as court timings were over for the day, the lawyer asked him to come on Monday. Jaan Md. then went to his cousin Ayyub's house in the Kaithwari village, Meerut, to seek his help to surrender. Police raided Ayyub's house, and later it was heard that Jaan Md. had been killed in the police encounter on 17 September 2017.<sup>495</sup>

The family said that Jaan Md. did not know how to drive a car. They also questioned the police's account, claiming it did not make sense why Jaan would plan to commit a crime

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<sup>493</sup> Abhishek Angad, "Holes in Saharanpur encounter: Unheard shots, missing report and many versions", (*Indian Express*, 29 March 2018), <<https://indianexpress.com/article/india/holes-in-saharanpur-encounter-unheard-shots-missing-report-and-many-versions-in-saleem-death-5115289/>>

<sup>494</sup> Muzaffarnagar encounter: Wanted criminal Jaan Mohammad gunned down (*ANI News*, 17 September 2017), <<https://www.aninews.in/news/national/general-news/muzaffarnagar-encounter-wanted-criminal-jaan-mohammad-gunned-down201709171023260003/>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021), <<https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>>, accessed 08 November 2021.

<sup>495</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>; Muzaffarnagar encounter: Wanted criminal Jaan Mohammad gunned down (*ANI News*, 17 September 2017), <<https://www.aninews.in/news/national/general-news/muzaffarnagar-encounter-wanted-criminal-jaan-mohammad-gunned-down201709171023260003/>>

since he planned to surrender himself before the court. The police are now implicating Jaan's younger brother Feroz in the same cases for which Jaan Md. had been accused. Feroz is currently in prison; his family is not applying for bail out of fear that the police will kill him in an encounter if he is released.<sup>496</sup>

After the incident, three FIRs were filed against Jaan at the Khatauli police station, Meerut, on 17 September 2017 for attempted murder and illegal possession of arms. No proceedings or trials against the police officers were held.

12. **Noor Mohammad** (alias Haseen Mota) died in a police encounter on 30 December 2017, at 10:00pm near Shatabdi Nagar, Meerut.<sup>497</sup> The police's fabricated version of the story is that they received information about two criminals who were going to commit a crime. In order to prevent that, the police set up barricades to apprehend the alleged criminals. Two people on a motorcycle tried to flee after seeing the police and were chased by the police. Their motorcycle lost balance and fell, and the criminals fired gunshots at the police, and the police fired in self-defence. One criminal (Noor Mohd.) was injured, taken to the hospital and succumbed to his injuries. The other accused escaped and could not be identified.

This is contradicted by his family: On the day of the incident, Noor was on his way home when he was confronted by the police, illegally detained, tortured and subsequently shot repeatedly, according to Noor's family. Apart from a few petty cases, Noor Mohammad was never involved in any organised crime in the region, contradicting the police version of Noor Mohammad being a dreaded gangster with links to the Mukim Kala gang. When the family received Noor's body, they noticed severe marks of beating on his body and that his arm and leg were fractured. There was a strong smell of burning flesh and blackening around the gunshot wounds indicating the bullets were fired from a close range.<sup>498</sup>

Another loophole in the police's version of events comes from the fact that the family has the victim's medical reports, including an x-ray report taken on 29 October 2017, indicating that Noor Mohammad had been in great pain because of issues in his bone structure and that he was in no condition to take on the police in an alleged gun fight. Police records also showed his motorcycle was a stolen one, but Shakila (Noor's wife) claimed that it was his own, and she had valid documents to prove that.<sup>499</sup>

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<sup>496</sup> Neha Dixit, 'A Chronicle of the Crime Fiction That is Adityanath's Encounter Raj' (*The Wire*, 24 February 2018),

<<https://thewire.in/rights/chronicle-crime-fiction-adityanaths-encounter-raj>>

<sup>497</sup> Ananya Bhardwaj, 'UP encounters: One 'mistaken identity', another killed after 'raising hands in surrender'' (*The Print*, 9 March 2018),

<<https://theprint.in/politics/up-encounters-one-rote-a-bike-ran-with-a-broken-foot-another-was-shot-despite-putting-hands-up/40336/>>; Extinguishing Law And Life: Police Killings and Cover up in the State of Uttar Pradesh, Report by YHRD, CAH, and People's Watch, Extinguishing Law and Life Police Killings and Cover up in the State of Uttar Pradesh (October 2021), <https://yhrd.in/documents/wp-content/uploads/2021/10/up-final-export.pdf>, accessed 8 November 2021.

<sup>498</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

<sup>499</sup> Countering the Silence: Citizens' Report On Extrajudicial Executions In Uttar Pradesh and Haryana, India (*Citizens Against Hate*, May 2018), <<https://citizensagainsthate.org/wp-content/uploads/2018/06/Countering-The-Silence-Full-report.pdf>>

After the incident, an FIR was filed at the Partapur police station on the statement of the SI against Noor charging him with attempted murder. An autopsy was conducted. No further investigations are on record.

13. **Bhalchandra Yadav** (alias Bhai Chandra aka Bhalla, son of Ramavataar Yadav, resident of Satna, Madhya Pradesh) was killed in a police encounter on 31 March 2021 in Bahil Purwa Forest Area, Chitrakoot, Uttar Pradesh.<sup>500</sup> According to the police, Bhalchandra was a member of a criminal gang and had a bounty on him of 25,000 Rupees. The Superintendent of Police (SP) Chitrakoot was tipped-off regarding the presence of the gang members in their region. On his orders, the STF team and Bahil Purwa police officers surrounded the area. As soon as they spotted the gang members, the gang started firing at the police. The police fired in retaliation, and the cross-firing continued for 25 minutes. None of the police officers were injured. One member of the gang was injured in the firing, while the others escaped successfully. The police recovered a rifle and 24 cartridges from the dead body. He was declared dead when brought to the nearest public hospital. Bhalchandra was accused of 12 separate charges of extortion, robbery and abduction in Uttar Pradesh as well as the adjoining state of Madhya Pradesh.<sup>501</sup>

Contrary to this narrative, according to news reports, Bhalchandra, along with his brother, had gone to attend a court hearing on 31 March. They were stopped by the Special Task Force team and local police officials. They were beaten up, and then the police shot Bhalchandra while taking his brother into custody. The police refused to hand over the dead body of the victim to the family. It was later, at the intervention of a local member of the state legislative assembly, that the dead body was returned, but police ensured that the body was cremated in their presence. The signatures of Bhalchandra and his brother were placed on record in the court on the day of the killing to prove their presence, thereby challenging the veracity of the police's claims of their cross-firing and self-defence in a jungle. After the incident, the family requested that a report should be filed against the involved police officers. On 16 June 2021, the NHRC asked for a full investigative report on the incident.

14. **Taufiq** (resident of Pratapgarh, Uttar Pradesh) was killed in a police encounter on 17 October 2021 in Pratapgarh, Uttar Pradesh.<sup>502</sup> According to Pratapgarh Superintendent of Police, Satpal Antil, on 16 October 2021, a team of police went to nab suspected thieves who had stolen money from an ATM after they received information about their activities. The

<sup>500</sup> News Reports from Amar Ujala (Hindi), 1 April 2021, 2 April 2021, and 3 April 2021, Amar Ujala and Hindustan New (Hindi reports) 22 June 2021; 15 Cops to be Booked For Robbery, Murder in Dacoit Balachandra Fake Encounter Case (*News 18*, 8 October 2021), <<https://www.news18.com/news/india/15-cops-to-be-booked-for-robbery-murder-in-dacoit-balachandra-fake-encounter-case-4300157.html>>; MP Dacoit Carrying Bounty of Rs 25,000 Killed in Hour-long Encounter (*News 18*, 1 April 2021), <<https://www.news18.com/news/india/mp-dacoit-carrying-bounty-of-rs-25000-killed-in-hour-long-encounter-3595286.html>>

<sup>501</sup> 15 Cops to be Booked For Robbery, Murder in Dacoit Balachandra Fake Encounter Case (*News 18*, 8 October 2021), <<https://www.news18.com/news/india/15-cops-to-be-booked-for-robbery-murder-in-dacoit-balachandra-fake-encounter-case-4300157.html>>

<sup>502</sup> 'My Husband Was Killed in Fake Encounter': Wife of 'Criminal', Killed by UP Police (*News 18*, 18 October 2021), <<https://www.news18.com/news/india/my-husband-was-killed-in-fake-encounter-wife-of-criminal-killed-by-up-police-4335335.html>>; Video of the wife's version, <<https://clarionindia.net/encounter-death-in-ups-pratapgarh-taufiqs-family-rejects-police-version/>>

alleged criminals opened fire at the police team in which two policemen (Satyam and Ram Singh) were injured. The police opened fire at them in self-defence, where Taufiq sustained injuries and eventually died in hospital the following day.<sup>503</sup>

However, his wife refutes the police narrative. According to her, Taufiq was sleeping on the roof of his house on 17 October 2021 when two policemen (Satyam and Ram Singh) barged into the house through the window and started firing at sleeping Taufiq. He tried to escape by jumping off the roof. While running, he fell into the well. The policemen beat him up with a long bamboo while he was in the well. Taufiq's wife witnessed the entire incident and stated that the same police officers came to their house earlier in the day asking for money (like on many other occasions). The police abandoned Taufiq in the well, presuming him to be dead. Half an hour later, the policemen returned and shot at him, according to the family. Taufiq was declared dead when his family brought him to the hospital.<sup>504</sup>

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<sup>503</sup> HT Correspondent "Probe ordered into death of ATM thief in police encounter in Pratapgarh" (*Hindustan Times*, 20 October 2021),

<<https://www.pressreader.com/india/hindustan-times-lucknow/20211020/281694027975481>>

<sup>504</sup> "My Husband Was Killed in Fake Encounter": Wife of 'Criminal', Killed by UP Police (*News 18*, 18 October 2021),

<<https://www.news18.com/news/india/my-husband-was-killed-in-fake-encounter-wife-of-criminal-killed-by-up-police-4335335.html>>;

Video of the wife's version, <<https://clarionindia.net/encounter-death-in-ups-pratapgarh-taufiqs-family-rejects-police-version/>>

*End of Report*

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The background of the cover is an aerial photograph of a dense forest, showing a mix of green and blue tones. On the right side, there are several horizontal lines in various colors (blue, purple, yellow, green) that appear to be part of a graphic design or a scanning artifact.

**REPORT OF THE PANEL OF INDEPENDENT INTERNATIONAL EXPERTS TO EXAMINE  
INFORMATION ABOUT ALLEGED VIOLATIONS OF INTERNATIONAL LAW COMMITTED  
AGAINST MUSLIMS IN INDIA SINCE JULY 2019**

**2022**